

DELIVERED THROUGH THE EXPERT ADVISORY CALL-DOWN SERVICE (EACDS) LOT B:

STRENGTHENING RESILIENCE AND RESPONSE TO CRISES



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ST HELENA POLITICAL GOVERNANCE REVIEW (REPORT TWO).

PROFESSOR DR JEREMY SARKIN

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EXPERT ADVISORY CALL DOWN SERVICE – LOT B

STRENGTHENING RESILIENCE AND RESPONSE TO CRISES

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LIST OF ABBREVIATIONS

ACRONYM	Full title
DFID	The Department for International Development
ExCo	Executive Council
FCO	The Foreign and Commonwealth Office
LegCo	Legislative Council
OTs	Overseas Territories
PAC	Public Accounts Committee
SHG	St Helena Government
UK	United Kingdom
JSC	Judicial Services Commission

1 EXECUTIVE SUMMARY

This is the second report reviewing St Helena's governance system. In this report recommendations are made, and a road map suggested for the way forward over the next eighteen months, so that a new system can be in place by the middle of 2021, when the next elections are to be held.

The report finds there is clear support for change across the Island, but concern about what it should be and whether that change could be workable. There is a clear choice facing St Helena between retaining the present arrangements, perhaps trying to make them work better than they do at present, or moving to a ministerial system either directly or by using a hybrid system that combines the present committee system with a ministerial arrangement. This report suggests that the best way forward would be for the implementation of a full ministerial system.

Suggestions are made about how to operationalize a functional ministerial system and what a model functional ministerial system could like, that contains a Chief Minister and 4 other Ministers and five civil service directorates. Recommendations are made about how to achieve greater openness, transparency and accountability. Also examined is how to give a greater say to Islanders in their governance by examining which governance powers ought to be devolved to St Helena. The roles of various institutions are examined, including that of the Public Accounts Committee and a new Public Service Commission. Recommendations are also made on the auditing and oversight functions.

The report recommends that there be 11 elected representatives who are elected in the one constituency that presently exists on St Helena, but that each councillor be allocated a specific district to represent.

The report makes recommendations on a Roadmap to adopt the changes by St Helena's next election in June 2021. It finds that there needs to be two parts to the Roadmap that 1) on Island 2) in the UK. The report notes that popular will or general acceptance will need to be shown for the changes to be accepted in the UK. It is recommended that the best and least divisive way forward for St Helena would be for an educational and consultation process to be embarked on followed by a resolution in the Legco.

2 INTRODUCTION

- 1) This is Professor Jeremy Sarkin's, second report reviewing St Helena's political governance system. In this report recommendations are made for how St Helena's Governance system ought to be reformed and a road map suggested for the way forward for St Helena over the next eighteen months. This timeframe is suggested so that a new system can be in place by the middle of 2021, when the next elections are scheduled to occur on the island.
- 2) The first report issued after the first visit to St Helena in September 2019, examined the challenges that St Helena's present governance system faces at present, why those exist, what mechanisms exist in other Overseas Territories (OTs), and what the possible ways forward are for the Island. A key question was how to ensure better, quicker, more efficient, more transparent and more accountable decision-making.
- 3) Improving governance processes and ensuring greater communal participation was noted in a 2012 United Kingdom (UK) report where it was stated that:

"The UK Government ... believe[s] in giving power to people and communities across the UK and the Territories to drive reform. This means strengthening accountability including by making the performance of public bodies and services more transparent. We will work with the people, communities and governments of the Territories to realise this vision."

- 4) During the second visit to St Helena in January and February 2020, dozens of meetings were held including a number with the St Helena Executive Committee (Exco) and Legislative Committee (Legco). A number of individual meetings were also held with councillors.
- 5) Meetings were also held with a variety of officials including the Governor, Chief-Secretary, Financial-Secretary, Attorney General, the Legislative drafter, the Chief Auditor, Internal Auditor, and other administrators, such as the SHG Core Leadership Group and Employee's Representative Group. Meetings were held with people of various organizations, including the Chamber of Commerce and civil society.
- 6) A meeting was held with about ten religious leaders, and others with the Equality and Human Rights Commission, the Public Accounts Committee and with members of the judiciary, employee representatives and others. There have also been follow-up communications with various persons.
- 7) A meeting was held at the beginning of the visit with various members of the media and a well-attended press conference, with journalists from all branches of the media took place at the end of the visit. A number of radio interviews were held to enhance interest and knowledge about the process. Some of these have been repeated and will be continue to be broadcast to keep the issues in the public eye.

- 8) There were also a number of evening public consultation meetings and a public drop in meeting was held one afternoon in the garden of a restaurant where the public could come and address their issues of concern.
- 9) As is noted in the first report after my visit in September, St Helena is facing a number of challenges. These affect a range of particular matters that are central to the Island's future. It is particularly the aging population, insufficient economic growth, insufficient tourist numbers, lack of investment, small tax base, lack of economic opportunity, and low wages amongst others, that are some of the problems that exist. These need to be faced and crucial decisions taken to address these matters. For example, more ways need to be found to attract those who have left St Helena to come back and contribute to the future of the Island.
- 10) Central to the governance process is the fact that the committee system does not work well, as was discussed in my first report. There are many blockages in the system. The governance model at present is facing a number of challenges. There is much public dissatisfaction with the present system. There is a perception that there is confused governance and decision-making. There are strong public views that there is little individual accountability for decisions or for the delivery of services. Crucially, the view in the community is that the process does not work very effectively. It is seen that there are problems in developing policy and legislation quickly enough. It often takes a long time for decisions to be made. There is a lack of clarity over roles and responsibilities. There are complex mechanisms for decision-making which means processes are slow and inefficient. There is a lack of coherence between the elected structures and the administrative arms so that implementation of decisions is not carried out effectively and efficiently. Rational processes are not always seen. There is also insufficient political vision and leadership.
- 11) During an interview with the Chief Secretary of St Helena she noted that: " it was increasingly difficult to deliver efficient and effective public services with the current political governance system."
- 12) It is therefore necessary, to move to a more coherent system that allows better and quicker decisions to be made with individual responsibility and accountability for those decisions. Generally, after the consultations that I had across the Island with a variety of sectors and individuals, there is broad acceptance that change is needed.
- 13) During the consultation process it became clear that there were different views on what that change should be. A very few want the present system to continue, while more prefer the present system to be continued with the adding on of more individual responsibility either for committee chairs or for a move to committee system with a ministerial system added on. Others however, prefer the move to a wholesale ministerial system. This is because there is realisation that if things continue the way

they are there is greater likelihood that the challenges that the Island faces will not be resolved as quickly and efficiently as possible. There is a wide belief that political vision and leadership are needed, which has not always been the case in the past.

- 14) There is support for change across the Island in all sectors of society. A very small number of people want the present system to remain. Amongst the vast majority who want change however, there is some concern about whether there is capacity on the Island for a new system to work. If a new system were adopted there is going to be a need for an adjustment period. More people with vision and leadership will need to participate in the system. More people would be needed with more qualifications and additional skills to stand for public office. People will need to be encouraged to participate in any new system. The success of a changed governance system will be determined by who gets involved and how well a clearer system of responsibility and accountability works. There will need to be much support and incentives to expand participation in the system. Training and on-going education will be vital. The provision of legal and technical skills is essential. The provision of resources to provide that support is essential, as are incentives to bring more people into the system. These are questions for discussion after the constitutional changes are accepted, otherwise they will be a distraction. However, FCO and DFID should be engaged, and announce their commitment to support a new system, in all ways necessary. It is however important to note that changing the system will not automatically bring about all that is desired. Much needs to be done to make the system workable. Those who become more responsible for carrying out the tasks of governance will need training and on-going support, more advice and technical assistance. More resources are going to be needed, at least in the first few years. In this way, the adoption of a new system should strengthen the work of politicians and administration to deliver on the needs of St Helena.
- 15) For the future to be effective and efficient, the integration and coherence of the political governance system with the public administration (termed SHG at present) is key.
- 16) There is commitment for change by the Administration that wants the system to work. Already the Administration is gearing up for reform. As the Chief Secretary stated: *“a public sector reform and modernisation programme which will focus on improvement in the delivery of public services so that the public sector functions in accordance with good government principles, will be implemented from April 2020 and will start with a rigorous analysis of all SHG functions both core and non-core... This reform will complement the political governance reform which is currently taking place and will support the transition towards the option of a different model of political governance to improve efficiencies in decision making.”* There is therefore a commitment by the senior officials on St Helena for the change process to be supported and ways found to assist its successful implementation.
- 17) There needs to be a coherent governance system with lines of authority and responsibility... The process needs to be more seamless with clear functional responsibility leading from political

responsibility for vision, policy and resources in each committee/ministerial portfolio (e.g. health, education, social affairs, economy, environment...) and the administration directorates responsible for delivering services with the resources they have been given.

- 18) Thus, there is a clear choice facing St Helena. That is between retaining the present arrangements, perhaps trying to make them work better than they do at present, or moving to a ministerial system. Retaining the present system and creating a hybrid model by adding ministerial or individual responsibility is a possibility but not the ideal choice. It will retain many of the present problems, although it might engender more individual responsibility. For those who are concerned a full ministerial system is one that the Island does not have the capacity for, or people to play those roles, the hybrid model will allow progression to occur while not changing the system too drastically.
- 19) My clear recommendation however would be for the ministerial system to be introduced as soon as possible to allow St Helena to face its challenges, in far more decisive ways, in the short to medium term. However, an alternative system could be hybrid system which keeps the committee system, but which adds on 5 ministers with individual responsibility, including, most importantly, a Chief Minister. The committees could then play an advisory role to each of the ministers.

3 A MINISTERIAL SYSTEM OR THE CONTINUATION OF THE COMMITTEE SYSTEM BUT WITH MINISTERS ADDED ON.

- 20) The benefits of a ministerial system are that collective responsibility of a committee with differing viewpoints gives way to individual political responsibility for decisions and results. Individual ministers with the support of the heads of directorates/ ministries and the work of the administrators in those departments, become responsible for policy making and implementation. They can plan a clearer programme of action, in advance, that they can communicate to the public. There can then be a plan with vision and the ability for development and delivery to occur. Each ministry, with the direction of the Chief Minister, can prioritise more decisively staff, time and finance on what and when they will be working. Government business in the Legislature can be planned in advance.

Each Minister would have political responsibility for the matters in their department. The Minister also has the responsibility for designing and implementing policy. Legislation that legalises policy should under this system usually emanate from a Ministry. That Minister should approve it, before sending it to Exco (similar to a Cabinet) and Legco (the legislature or Parliament) to be debated, voted on and finalised. In this way, there is a programme emanating from each ministry. The Minister decides on policy after getting input and advice from officials, consultees, organisations, other politicians, etc and then presenting at Exco for approval from other ministers to proceed and then present to Legco for political debate and adoption unanimously or by a majority vote.

After approval of the policy, the Minister is then responsible for the implementation of the policy with the support of the Ministry concerned. The Minister must however ensure that the ministry has the resources to implement it. The minister also has to make the political decision on priorities if there are not enough resources to implement all of the policies for which he or she is responsible. The director of the ministry or directorate must implement a policy and be accountable if it is not done, or not done well. The Minister must hold the Chief Secretary / Director of the Ministry accountable for that. Any sanctions by officials for non-achievement has to remain the responsibility of the Chief Secretary. The Chief Minister will hold the Minister politically accountable, the Chief Minister and the Minister will be held accountable by Legco, and all of them by the electorate.

The Chief Secretary ought to become the Chief Director over the Directors of Ministries with an overall civil service coherence role. The Chief Director would report to the Chief Minister on public service performance. The Financial Secretary ought to become the financial advisor (or Director/Permanent Secretary of an Economics & Finance Ministry) presided over by the Chief Minister.

4 OPERATIONALIZING A FUNCTIONAL MINISTERIAL SYSTEM FOR ST HELENA

- 21) For either types of system – the full ministerial system or a hybrid system made of the continuation of the committee system but now with ministers - there ought to be a Chief Minister and four other Ministers on St Helena. They each ought to have specific defined portfolios.
- 22) Each Minister needs to have a one directorate or ministry in their portfolio. This would mean rationalising down to five the present structure of directorates in SHG. The Chief Minister in addition to having overall responsibility, and leading on political vision, ought to have the financial portfolio. This is one of the key issues that is necessary to allow the Island to function better. The Chief Minister will lead the Island, and represent St Helena wherever necessary, including, most importantly, on finance and economic matters.
- 23) The budgetary system ought to be that Ministers create a draft budget for their Ministry. The Chief Minister must then review all those budgets. The Chief Minister must then devise an overall draft budget, including suggested allocations for each Ministry.

After approval, each Minister becomes responsible for the budget lines of the amounts allocated to their Ministry.

5 A MODEL OF WHAT THE 5 MINISTERIAL PORTFOLIOS AND DIRECTORATES COULD BE COMPOSED OF.

24) These are a suggested way forward but more discussion ought to be had on what makes the most sense in integrating the present 8 directorates into a model for the future. In any case there needs to 5 ministries headed by a Chief Minister as well as 4 other Ministers. These could be:

Chief Minister and Ministry 1 = Chief Minister's Office, Economic Development & Finance

Minister and Ministry 2 = Health & Social Development

Minister and Ministry 3 = Home Affairs & Public Safety

Minister and Ministry 4 = Access & Transport

Minister and Ministry 5 = Natural Resources & Infrastructure

5.1 CHIEF MINISTER AND MINISTRY NO 1 = CHIEF MINISTER'S OFFICE, ECONOMIC DEVELOPMENT & FINANCE

Budget

Economic Development

Finance

Strategy

Planning

5.2 MINISTER AND MINISTRY NO 2 = HEALTH & SOCIAL DEVELOPMENT

Education,

Social Care

Health

Probationary Services

Sport

5.3 MINISTER AND MINISTRY NO 3 = HOME AFFAIRS & PUBLIC SAFETY

Immigration

Labour

Social Security

Social Housing

Human Rights
Constitutional Affairs
Cultural Affairs
Media & Broadcasting
Police
Prison
Border Security
Emergency Services
Disaster Management

5.4 MINISTER AND MINISTRY NO 4 = ACCESS & TRANSPORT

Civil Aviation
Ports
Transport
Postal Services
Telecommunications
Maritime Affairs
Registry Service

5.5 MINISTER AND MINISTRY NO 5 = NATURAL RESOURCES & INFRASTRUCTURE

Fisheries
Agriculture
Forestry
Land and Buildings
Works
Infrastructure Development
Environment & Protected Areas

5.6 OPENNESS AND TRANSPARENCY

It is clear that these are central issues for St Helena. Much disaffection on the Island exists because people are not aware, or insufficiently informed, about the process and the outcomes of specific matters. Constituents want better engagement and want the process that will bring about change speeded up. They also want to understand how decisions are taken, who took them, and why they were taken. There is much criticism about these issues at present.

- 25) While a Consultation Policy for St Helena was adopted, and seemingly published, in 2017, very few people appear to know about it. Even those who are generally well informed do not know about it, and even less people are knowledgeable about its contents. The Policy itself is useful and if regularly implemented will be a major step forward. However, the policy itself needs the subject of consultation. It should then become legislation. This is essential, so that any process that does not follow that rubric is not valid. This is essential, as where sufficient consultation occurs, the greater likelihood that the outcome will be accepted, and the greater degree to which service delivery will result. This does not have to be done before the constitutional process is concluded in 2021, but the process should begin.
- 26) Critically, where there is sufficient information and an opportunity to engage, the greater the opportunity for the community to hold those who make decisions accountable for the choices they make.
- 27) Efficient and acceptable decision-making is underpinned by community participation that results from transparent and open processes. In this regard, the confidentiality oath of councillors ought to be reviewed to allow them to be more open at times. Councillors often blame the oath for their inability to be open about what they are working on. This is not to infer that everything ought to be able to be revealed. There will be issues that have a commercial, privacy, dignity, or other important reasons, why the information must remain confidential. However, confidentiality ought to be exception rather than the rule. An Access to Information Act should also be adopted.

6 ACCOUNTABILITY

- 28) The key to a reformed system is one that accepts that with greater responsibility for Ministers is that such a system needs strong checks and balances of that power. That accountability needs to have an internal and external dimension. Internally ministers need to be accountable for their decisions. The Chief Minister will also have to be accountable for the actions of the ministers. The power to dissolve the Assembly or Parliament ought to be possible after being requested by the Chief Minister. The Governor ought to be given the final discretion but the circumstances when this can be done specified.

- 29) Internally the individuals and processes need to be accountable by having question time for the Chief Minister, for Ministers, for the directors of Directorates or Ministries. There needs to be openness as far as how and why decisions are made. Conflict of interest rules need to be robust and enforced. A Members Interest Register is needed. This should have some confidentiality aspects to it, but can be reviewed the PAC, Chief Auditor and other institutions where necessary.
- 30) There ought to be strong institutional accountability processes so that the Parliament or Assembly at appropriate times holds ministers and ministries to account. Motions of no confidence ought to be permitted. A number of institutions need to have their appointment mechanisms, as well as their roles and their powers reviewed. The Equality and Human Rights Commission needs to be made Paris Principles compliant. The members ought to be appointed, as with other institutions, by independent processes such as the Judicial Services Commission.
- 31) The Complaints Commission, which can be appointed in terms of the present Constitution by the Governor, ought to become a standing mechanism possibly as an Ombudsman. This Commission or Ombudsman ought to be independently appointed possibly through the JSC. For many appointments, at present, there is a great deal of discretion about the way the process occurs. Greater independence in appointment and functioning ought to occur.

7 GREATER SAY BY ISLANDERS IN THEIR GOVERNANCE

- 32) The 2012 UK White Paper *“The Overseas Territories: Security, Success and Sustainability”* notes that: *Each Territory has its own unique constitution. The previous government launched in 1999 a process of modernising the constitutions of the inhabited Territories. We are continuing this work with a view to equipping each Territory with a modern constitution. We expect these constitutions to continue to evolve and to require adjustment in the light of circumstances. But we believe that the fundamental structure of our constitutional relationships is the right one: powers are devolved to the elected governments of the Territories to the maximum extent possible consistent with the UK retaining those powers necessary to discharge its sovereign responsibilities.”*
- 33) It should be determined which powers ought to be devolved, and which powers of the Governor are retained. Rather than allow each Governor to decide which powers to devolve and when to devolve them, it should be that more of them are directly devolved with the ability to take back those powers when there is the need to do so for specific problematic circumstances. There have been shifts in giving greater say to communities over such matters on various OTs over the years. Thus, matters concerning Defence and general external affairs (although the Chief Minister also ought to have a role in external affairs) ought to be retained by the Governor. A number of other powers are already delegated, and thus there ought to be a shift to ensure that these powers are given to those on St Helena. There ought to be the power by the Governor to take such powers back under specified

emergency situations. Thus, shipping, finance, and policing could be given to the governance system on the Island directly, but with claw back clauses for specified circumstances.

8 AN ENHANCED ROLE FOR THE JSC

- 34) As noted above, appointments, also ought to be constitutionally devolved, and routinely made at arms-length, by independent processes, with specified legislated tenure periods, particularly for the oversight mechanisms. The role of the JSC should be enhanced in this regard.

9 A PUBLIC SERVICE COMMISSION

- 35) A Public Service Commission, which could operate on a part time basis, ought to be created. The PSC ought to be given authority with regard to the public service. The PSC ought to make senior appointments. Human Resources could make some lower level appointments, but guidance and the policy ought to be set by the PSC. Issues of disciplinary processes and other allied matters should be determined by the PSC and exercised by the PSC for senior personnel.

10 PERSONNEL CONTRACTS

- 36) Specified contract periods with detailed performance requirements, ought to be introduced for the civil service.

11 THE CIVIL SERVICE

- 37) The civil service or public administration ought to be so named, and there should be a move away from using the term the St Helena Government (SHG).

12 COHERENCE AND SYSTEMIC INTEGRATION

- 38) The system must be seen to be one where there is coherence and systemic integration. The Minister must, with the support and advice of the directorate or ministries, become the functional leader for the political and administrative system. Thus, the minister must have the director of that directorate, department or ministry, report and be accountable to the minister. If the director is not carrying out, or is not able to achieve the needs or instructions of the minister, then disciplinary action, which could lead to termination, should occur.

13 THE PUBLIC ACCOUNTS COMMITTEE

- 39) As noted in my previous report, the PAC ought to be reformed to play a more involved and vital role. Again, appointments ought to be done independently. There ought to be more independent persons and fewer councillors on the PAC. The powers and scope of work of the PAC ought to be

reviewed. The role of the PAC ought to cover all entities that are state entities and even should review those institutions that receive substantial state assistance.

14 AUDITING

- 40) The role, functions and powers of the Chief Auditor needs to be reviewed so that the official can also have oversight of all state entities and those who receive substantial state assistance. The “Good Practice in Effective Oversight of Public Finances in the UK Overseas Territories” an FCO document of February 2017 needs to be complied with. This document envisages both constitutional and legislative changes to issues concerned with public finances on the OTs. Compliance is also necessary with the Lima Declaration. These ought to be carried out. Internal auditing processes also ought to be enhanced and the reporting line of the Audit and Risk Committee changed so that it reports to the Committee Of Ministers. That Committee ought to be chaired by an independent person. A variety of anti-corruption measures ought to be put in place to ensure that corruption does not creep into the system.

15 OVERSIGHT

- 41) External oversight also needs to be enhanced. This means that ministers and ministries ought to be regularly informing the public about what they are doing, how they are doing it, and encourage input. The concept of People’s Meetings could be regularly held.
- 42) Hearings that allow input to be given ought to be an essential part of the legislative or policy formation process. Parliamentary processes ought to have a public engagement process including on the budget. This should then be legislated so that it is an essential and critical component of the legislative process. It would mean that without that public process the legislation could be overturned.
- 43) Public engagement by councillors ought to be regularised and become an essential feature of the system. A calendar of such meetings ought to be published for a year at a time. Meetings should be scheduled for all districts regularly.

16 ONE CONSTITUENCY FOR ELECTIONS ON ST HELENA

- 44) The present system of one constituency for elections ought to be retained. This is the case as going back to the old system of having multiple constituencies was moved away from previously because of the difficulties of having more than one constituency. Multiple constituencies would see some areas having lots of candidates and other areas potentially only having one or maybe even no one standing in that district.

- 45) However, each councillor ought to be allocated a specific district to be the representative for. Some districts because of their size might have more than one councillor, but others may have only one. Therefore, every part of the Island would have a representative that can see to the issues and problems in that area. Individual accountability would therefore be enhanced, but individuals across the Island would have a specific councillor responsible and accountable for their needs and be their specific link to the governance process.
- 46) Thus, after the election each representative elected to the Assembly or Parliament ought to be allocated a district on St Helena to represent. Thus, the districts on St Helena ought to be divided roughly by population size to ensure that proportionally each representative represents about the same number of people.

17 INSTITUTIONAL STRUCTURE AND ELECTIONS

- 47) As noted above, this report proposes a Chief Minister and four other Ministers. The institution they serve in ought to be called the Cabinet of Ministers. This is where policy and legislation should be developed and then introduced to the legislature.
- 48) There ought to be 11 elected representatives called Parliamentarians, Assembly Representatives, or Members of Parliament. They should be elected to an institution called the Assembly, the Legislature or the Parliament. The number of representatives ought to be an odd number to avoid tied votes in the legislature.
- 49) The Assembly ought to be chaired by a Speaker who is given strong powers to direct the work of the Assembly, Parliament or whatever term is decided on. The Speaker needs to be carefully selected to play a vital role in ensuring that transparency and accountability is achieved and that the institution is effectively managed.
- 50) The 11 representatives ought to be divided to serve in either the cabinet if they became a minister (5 persons) with the rest serving in the legislature (6 persons) with legislative and oversight roles. Thus, there would be majority in the legislature to serve as an accountability mechanism to the cabinet.
- 51) To ensure that more people participate in elections, which is a problem on the Island as participation rates for elections are generally low, the voter's role ought to be completely separated from the jury system. Two separate systems ought to be created so that being on the voter's role is completely separate from the pool for jury duty.
- 52) As noted, in my first report, there is no appetite for political parties at present. During the by-election in November 2019 there was discussion about that matter, and a grouping of aligned people did involve itself in that election. Thus, that political group, or political movement, might mature

into a political party in the future. Thus, the possibility for the creation of such structures ought to be a possibility when such interest manifests itself in the future. Thus, political parties are not required and not prevented from being formed.

- 53) After the general election held every four years, the new Parliament, Legislature or Assembly must meet within a short-specified time to elect a Chief Minister. The elected Chief Minister must then choose the other four Ministers. The Governor should then formally appoint the Chief Minister and the other Ministers to the Cabinet.
- 54) The Governor, the Attorney General and the Chief Director of the Civil Service should be ex officio members of the Cabinet.
- 55) The Chief Minister should chair the Cabinet. The Chief Minister determines which portfolios each Minister holds and may change or discharge a Minister. These five officials should then hold office for the period of the term of the elections, unless they individually resign, or the government as a whole resigns.
- 56) The Governor should formally appoint and accept the resignation of a Chief Minister or a Minister. A motion of no confidence by the legislature has the effect of dissolving the government and an election is called. When this occurs, the Governor should consider if the Chief Minister could reconfigure the government or formally dissolve the legislature and cabinet and calls an election.

17.1 A ROADMAP TO ADOPT THE CHANGES

- 57) St Helena's next election is due to occur in June 2021. It makes sense to try and ensure that the changes are in place to have the next election based on the new system and that those elected then start in the new governance system.
- 58) There needs to be two parts to the reform of the system: 1) that occurs on Island 2) That which occurs in the UK.
- 59) The St Helena process ought to be completed by September/ October 2020 because there needs to be the process in the UK which ought to occur between September/ October 2020 and April 2021 in order for there to be enough time before elections are held between June-July 2021, to begin the implementation phase.
- 60) While the process must begin on St Helena, negotiations should also begin with the UK FCO at least when the 1st draft of the constitutional text has been drafted but discussions could in fact begin earlier.

17.2 TIMELINE THE ROADMAP PROCESS OUGHT TO FOLLOW

17.2.1 On St Helena:

- 61) This present report should serve at Exco as soon as possible after it is completed. (end of February 2020).
- 62) A process ought to be set up to assist in devising a governance policy. This should be done by way of a short consultation process carried out by two or three independent well-respected persons supported by a small secretariat on the Island. The Governor could formally appoint this group but to enhance their independence and the way they will be viewed by the community who may otherwise have negative perceptions about who is chosen they ought to be appointed on the basis of JSC advice, as to who the two independent persons ought to be. (1 month) April 2020.
- 63) There then ought to be the first consultation process based on this present report (1 month) May 2020.
- 64) The short consultation process ought to be concluded with a brief report with recommendations that should serve at Exco. (2 weeks) June 2020.
- 65) On the basis of this present report, and that consultation report the Chief Secretary should be requested to draft a policy based on this report and the consultation report (2 weeks) July 2020.
- 66) That policy ought to be used to instruct the legislative drafter to write a first draft of sections of the Constitution that need to be amended or added. (1 month) August 2020.
- 67) There ought to then be consultation on draft sections of the amended or new constitutional provisions, by the same two persons, if possible, who conducted the earlier consultation. (1 month) September 2020.
- 68) The findings of this consultation ought to be sent to Exco and the drafter requested to amend the text accordingly. (2 weeks) October 2020
- 69) There then ought to be a Resolution in Legco finalising the text. (2 weeks) November 2020
- 70) The final revised text then ought to be sent to the UK FCO to finalise the process December 2020

17.2.2 The UK process:

- 71) The UK Government White Paper of 1999 entitled Partnership for Progress and Prosperity: Britain and the Overseas Territories noted that: *“The link between the UK and the Overseas Territories is enshrined in the constitution of each territory. The Overseas Territories believe that their constitutions need to be kept up to date and where necessary modernised. Each Overseas Territory is unique and needs a constitutional framework to suit its*

own circumstances. Suggestions from Overseas Territory governments for specific proposals for constitutional change will be considered carefully.”

- 72) The process of adopting a change to the constitution of an OT is completed when there is an Order in Council that accepts the reformed Constitution of the OT. Ministers in the UK recommend this to the Queen. The Order is formally adopted after the advice of the Privy Council.
- 73) The tradition has been for a new text to be decided on in the OT and then for agreement to be reached on the wording of the revised or new constitution amendments, or of a new constitution, though negotiations between the UK and representatives of the OT. This negotiation has taken place with the FCO.
- 74) In the case of the process concerning changes to the St Helena constitution over the period 2020-2021, the process on island, and with Ministers in the UK, for the purpose of saving time, should be done in parallel rather than one following the other.

18 REFLECTING THE WILL OF THE PEOPLE

- 75) A key issue for these changes to be accepted in the UK is for general acceptance by the population in the OT territory of the new version of the constitution to be shown.
- 76) There are various ways that popular will or general acceptance can be shown. In the recent past this has occurred in a number of different ways. Such acceptance has been either reflected in 1) a resolution of the local representatives, 2) that the changes are desired as a result of a public consultation process 3) a referendum. Each of these methods has been used recently.
- 77) In the Falklands, Montserrat and the Virgin Islands the legislatures adopted a resolution after public consultation and no referendum was held.
- 78) Last time the constitution was changed in St Helena in 2009 the draft was approved by a majority of councillors and no referendum occurred.
- 79) A similar process occurred in Ascension, Tristan da Cunha and Pitcairn where no referendum occurred.
- 80) A referendum it seems however is being planned for the Falklands in the not too distant future but that is about an issue that there has already had two previous referendums about.
- 81) The best and least divisive way forward for St Helena would be for an educational and consultation process to be embarked on followed by a resolution in the LegCo as delineated in the suggested roadmap above.

82) A referendum is not the suggested route that ought to be followed. Referendums are not reflective always of attitudes. They are dependent on the question that is voted on, and are contingent on the way the politics of the referendum are carried out.