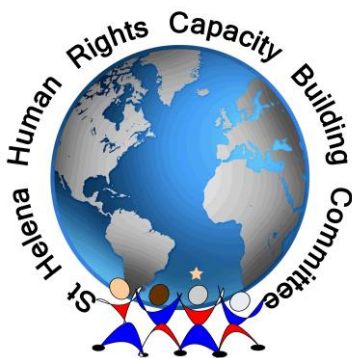


2013- 2015

The St Helena Human Rights Commission

Report for Attorney General
May 2013



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Annex A A HUMAN RIGHTS COMMISSION FOR ST HELENA

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SUMMARY

This paper presents the recommendations of the Citizenship Commission for the establishment of a National Human Rights Institution to be called the St Helena Human Rights Commission (SHHRC). It is proposed that the SHHRC has a pool of 3 - 5 Commissioners and a Director/Office Manager, and that its mandate covers the promotion of human rights, the investigation of human rights complaints and support for the St Helena Government (SHG) in the preparation of treaty monitoring reports. To ensure independence and autonomy an Appointments Panel is recommended to oversee the recruitment and performance of Commissioners and to deal with any dismissal procedures.

INTRODUCTION

1. The Challenge Fund for the Building Human Rights Capacity in the British Overseas Territories Project has supported the Citizenship Commission to develop this proposal for a National Human Rights Institution (NHRI) for St Helena.
2. A series of meetings was held with the general public, government officials, the private sector, and civil society organisations to explore their views on the potential form and mandate of an NHRI. This paper has been written by the Citizenship Commission, with advice from the Commonwealth Foundation technical support person, Julie Ashdown. It summarises the views expressed in those meetings and makes recommendations for the establishment of an NHRI for St Helena (see Annex 1 for full list of recommendations).

BACKGROUND

3. The following international human rights treaties have been extended to St Helena:
 - UN International Covenant on Civil and Political Rights (ICCPR)
 - UN International Covenant on Economic, Social and Cultural Rights (ICESCR)
 - UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
 - UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
 - UN Convention on the Rights of the Child (CRC)
 - European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR)

4. The St Helena Government (SHG) is committed to extending the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to the island in the near future.
5. In addition, the Constitution of St Helena (2009) protects a range of individual rights, including the right to life, protection from inhuman treatment, protection from slavery and forced labour, the right to personal liberty, the right to a fair trial, the right of prisoners to humane treatment, freedom of movement, the right to privacy and family life, the right to marry and spouse's and children's rights, freedom of conscience, the right to primary education, freedom of expression, freedom of assembly and association, protection from deprivation of property, protection from arbitrary deprivation of St Helenian status, and protection from discrimination.

PARIS PRINCIPLES

6. In 1993 the United Nations adopted international standards, known as the Paris Principles, as the basic requirements for effective NHRIs. The six core components are:
 - i. Independence guaranteed by statute or constitution
 - ii. Autonomy from government
 - iii. Pluralism and diversity, including through membership and effective cooperation
 - iv. A broad mandate based on universal human rights standards
 - v. Adequate powers of investigation
 - vi. Adequate resources
7. The Commonwealth and the United Nations take the view that these are internationally established benchmarks which NHRIs should aim to achieve and both organisations are committed to working with institutions to help them meet the Paris Principles.

FORMAT OF A NATIONAL HUMAN RIGHTS INSTITUTION

8. There is no blueprint for an NHRI and the appropriate structure depends on the circumstances of the territory, the range of activities anticipated and the resources available. The consultation revealed that the preferred format for St Helena is a hybrid model, combining a broad mandate to advise on and investigate human rights complaints, with the promotion of greater awareness and understanding of human rights. It is recommended that that NHRI be called the St Helena Human Rights Commission (SHHRC).

9. Other Overseas Territories have established or are planning:

- Bermuda – Human Rights Commission
- Cayman Islands – Human Rights Commission
- Falkland Islands - Complaints Commissioners with a mandate to address matters of maladministration only
- Montserrat – Complaints Commissioner
- Turks and Caicos Islands – Human Rights Commission

ESTABLISHMENT OF THE ST HELENA HUMAN RIGHTS COMMISSION (SHHRC)

10. The process of establishing the SHHRC will be important to ensure that it is seen as independent. It is essential that all sectors of society buy into the process if the SHHRC is to have the trust and confidence of both government and the people. The Home and International Committee, and the Legislative Council (LegCo) as a whole, have a key role to play in approving the establishment, structure and mandate of the SHHRC, and in enacting an Enabling Ordinance and approving a budget for the effective operation of the institution. It is recommended that civil society organisations and the general public should be engaged and kept informed throughout the process, primarily but not exclusively, through the radio and newspapers.
11. Although Section 113 of the 2009 Constitution allows the Governor to appoint a Complaints Commissioner to investigate any complaint of maladministration or such other matters as may be prescribed by the Ordinance, the FCO's Constitution Adviser has confirmed that this does not prevent LegCo passing a separate Ordinance to establish an NHRI with a remit to promote and protect human rights. It is, therefore, recommended that an Enabling Ordinance is passed, setting up the SHHRC with a clear mandate and adequate resources.

MANDATE

12. Under the Paris Principles the mandate of an NHRI should be as broad as possible. It should define the area of competence for the SHHRC. It is recommended that this covers the rights enshrined in the 2009 Constitution and those contained in the international human rights treaties which have been extended to St Helena. The Enabling Ordinance should also include a broad statement to the effect that the SHHRC is entitled to look into, investigate or comment on any human rights situation, without any prior approval or impediment. This will help to ensure independence and autonomy.

13. Human rights laws typically apply to the Government, which includes all departments and administrative branches of the state, law enforcement bodies, correctional and detention facilities, state owned companies and companies where the Government exercises control, eg, where it owns over 50% of the capital. Clear definitions of terms such as “government” and “public service” should be included in the Enabling Ordinance. It is also recommended that the SHHRC should cover complaints against the private sector as well as the Government, where these would not otherwise be dealt with by the Public Solicitor or the Labour Regulatory Authority. This would enable complaints about employment rights to be investigated. But, it must be made clear that the SHHRC is not an alternative to normal judicial process, e.g., police investigation and prosecution in criminal cases.
14. Naturally, people on St Helena would like a broad mandate for the SHHRC, but they recognise that this is likely to be limited by the resources available. The following were the most consistently raised services people wanted and it is recommended that these should be cited in the Ordinance:
- ❖ Education and awareness raising – many people on St Helena do not know what their rights are. Information should be tailored for vulnerable groups, e.g., the disabled or young people. It would also help to manage people’s expectations. In addition, the SHHRC should provide information on the procedure for dealing with complaints, both for individuals who believe their rights or freedoms have been infringed and for those against whom the complaint is made.
 - ❖ Investigating complaints – an ability to act on behalf of, or support, individuals or groups with human rights grievances. The Enabling Ordinance will need to specify the circumstances in which this could take place, e.g., it is recommended that all other complaints procedures, including legal proceedings, should be exhausted before the SHHRC can instigate an investigation. The Ordinance should also spell out any complaints which are excluded from consideration, e.g., those dating from incidents more than 12 months previously, anonymous complaints, trivial or vexatious complaints and those previously considered and found to be without basis.
 - ❖ Investigation of specific themes – it is recommended that the SHHRC is mandated to investigate human rights themes where there is evidence of systematic abuses of human rights.
 - ❖ Encouraging SHG to act on specific issues and also reviewing and advising on new legislation and policies.

- ❖ Monitoring SHG compliance with, and implementation of Ordinances and also with international human rights treaties. In this capacity, the NHRI could provide their own shadow report to UN Treaty Bodies and also facilitate SHG consultations with civil society in the preparation of government reports and follow-up action on UN Treaty Body Recommendations.

15. There was support for the SHHRC to offer some form of mediation, but this could overlap with the services already offered by the Public Solicitor and the Lay Advocates. It is therefore recommended that this be reviewed once the SHHRC has bedded in with its other responsibilities and there is a better indication of the demand for such services.

16. Although these were not covered in the public consultation, it is recommended that the following services also be included in the SHHRC mandate as these are considered to be the minimum or basic level of responsibilities for NHRIs under the Paris Principles:

- Cooperating with international and regional human rights organs and other national institutions (there could be good scope for working with NHRIs in other OTs).
- Assisting and taking part in the development of education programmes in human rights.
- Monitor and report on human rights issues generally in St Helena.

17. There is some public concern about whether the SHHRC will have sufficient teeth to be effective. It is recommended that this is addressed by:

- Enabling the SHHRC to carry out investigations and make general recommendations to the Home and International Committee (H&IC) of LegCo and to the Governor for further action where they have identified a pattern of abuses.
- Requiring bodies, such as employers or Government Directorates, against which the SHHRC upholds complaints, to submit a response to the Governor and/or LegCo (H&IC) within three months on what steps they propose to take to address any recommendations from the SHHRC.
- Allowing the SHHRC to specify in its report the time within which an injustice should be remedied.
- Allowing the SHHRC to publish its reports and findings on complaints without reference to any other body

18. Some people have suggested that the SHHRC cover Ascension Island and Tristan da Cunha. But, these islands have slightly different constitutions and there might be funding challenges. So, it is recommended that the Enabling Ordinance be restricted to complaints arising in St Helena only. Complaints made by Saints working elsewhere would need to be dealt with under the relevant local legislation. In time, when the SHHRC is successfully established, it might be worth exploring the scope for cooperation with a similar body in Ascension Island and/or Tristan da Cunha.

POWERS

19. The Enabling Ordinance should spell out the powers of the SHHRC. Under the Paris Principles, an NHRI should have the authority to “hear any person and obtain any information and any document necessary for assessing” the situation. It is recommended that the SHHRC has the power to compel a person to give evidence or testimony to them and to protect individuals from potential retaliation for having done so.
20. It is recommended that the Enabling Ordinance also clarifies the relationship between the SHHRC and LegCo, in that the latter funds and supports the former, but is not able to direct its activities or set priorities for it. The SHHRC should work closely with the Public Solicitor’s Office, but should not compete for work or take on any complaints which would more properly be carried out by either the Public Solicitor or the courts process.

COMPOSITION

21. Concern was expressed about the possibility of finding an individual to act as a Human Rights Commissioner who was, or would be seen to be, independent, given that St Helena is a small island with many people related to each other. It is recommended that this be overcome by appointing a Commission of five people, along the lines of the pool of magistrates, with not all being expected to work at the same time. This would improve the flexibility for cover when members were off island on holiday or for medical treatment. Also, where an individual member had a conflict of interest (as defined in the Ordinance), he/she would step back from that particular case and leave it to their fellow members. Having more than one member would also create better opportunities for a diverse membership of the SHHRC.
22. A pool of 5 equal-ranking Commissioners could be paid a retainer and per diem fee on the same basis as magistrates. At around £3,000 a year, this would be more cost-effective than paying full or part-time salaries. They would be supported by, initially, a full-time Director and a part-time Office Manager who would act as first point of call for both public and government. This Office Manager could be shared with, say, the proposed

Community Development Office (see comments below on accessibility). It is recommended that an expatriate Director be appointed for the first two years to bring in expertise and to establish the role, direction and independence of the SHHRC. The Director would provide training for the Commissioners and also for the Office Manager, with the aim of the latter taking on the Director's role in the third year. At this stage staffing could be reviewed as there will be a better idea of the level of complaints and activity needed.

23. SHHRC members and staff should consist of men and women known for their integrity and impartiality of judgment, and it is recommended that they are representative of as broad a range of society as possible, including ethnic groups (islanders and expatriates), and people with disabilities or other under-represented groups. However, the skills base will be as important as the diversity. An effective SHHRC will require members with proven expertise, knowledge and experience in the promotion and protection of human rights. As these skills are currently limited on St Helena, it will be important for SHHRC members to receive extensive training themselves, as well as developing a succession plan so that other islanders can develop the appropriate skills and enlarge the recruitment pool for the future. It is recommended that sufficient funds are allocated to allow this. For training suggestions see Annex 4. In the meantime, candidates of the highest possible calibre should be sought. To ensure confidence and a feeling of ownership in the SHHRC, there was a general preference that Commissioners should be appointed from the island community.
24. The Paris Principles stress the importance of ensuring diversity and wide representation of civil society groups within the NHRI. There should also be gender balance. It is recommended that at least one of the SHHRC members should have a close connection to an NGO working in the community. Pluralism can also be reflected in the choice of trainers and in the thematic areas chosen for focus in public education and investigation.
25. It is recommended that the Ordinance setting up the SHHRC includes the following issues:
 - **Method of appointment:** an open and transparent appointment process will provide a clear signal to the public about the independence of the SHHRC and the process itself should be publicised widely. As in other OTs, appointments to the SHHRC should be made formally by the Governor. However, it is recommended that a SHHRC Appointments Panel be set up to coordinate the process, working with the Governor, to determine the selection of members. This panel could also monitor performance of the Commissioners and recommend any

dismissal procedures (see below). The Appointments Panel should have a diverse membership itself, and consist of a minimum of 3 members and a maximum of 5, including someone from civil society, a person with a legal background (but not currently working on law, so perhaps a retired Magistrate or former Lay Advocate), and someone from the Legislative Council (in other OTs this has been the Speaker to help ensure impartiality). Alternatively this role might be undertaken by the Judicial Services Commission. The process for selecting SHHRC Commissioners should include:

- Public advertisement of vacancies and invitation to the public to make nominations
 - Short-listing of candidates for interview by the Appointments Panel
 - Interview of short-listed candidates by the Appointments Panel
 - Appointments Panel to recommend name(s) to the Governor
- **Criteria for appointment:** under the Paris Principles it is acceptable to have specific requirements or restrictions for the selection of NHRI members to ensure a representative range of people. As well as having men, women and under-represented groups, it would be worth including criteria, e.g., for specific legal qualifications or experience. If legally qualified individuals cannot be identified, it is recommended that an alternative source of independent, qualified legal advice is secured for the SHHRC, preferably a panel of legal advisers in the UK (similar to the Legal Support Panel for the Public Solicitor's office) who could provide ad hoc advice from time to time. In addition, there should be criteria excluding certain individuals who may compromise the independence and reputation of the SHHRC, e.g., serving Councillors or SHG staff or those with unspent convictions for theft, fraud or other serious crime. But there should be no discriminatory criteria, e.g., on age. More broadly, SHHRC members should have integrity, moral courage and competence and be able to exercise sound judgment and fairness. They must also possess public credibility and be independent from executive influence. They should be sensitive to issues relating to gender, ethnicity, and people with disabilities and other vulnerable groups. Once appointed SHHRC members should avoid any conflict of interest and should one arise, declare it immediately. It is recommended that comparators for salaries and working conditions are included in the Ordinance, e.g., setting the retainer and per diem for the Commissioners on a par with Magistrates. Employment processes for

staff at the SHHRC should promote professionalism and equal employment opportunities.

- **Duration of appointment:** It is recommended that there should be a fixed term of office for SHHRC Commissioners of 5 years, which is long enough for them to hone their expertise and use that expertise for the benefit of the public. Too short a term would hamper the effectiveness of the SHHRC, though overly long periods may also impact as members lose objectivity. However, initially, it is recommended that the terms of office for the first SHHRC members are varied so that replacement times are staggered to avoid complete loss of expertise, i.e., 1 of the Commissioners serves 5 years, 1 serves 4 years and 1 serves 3 years (each of these renewable).
- **Whether members may be reappointed:** it is also general practice that NHRI members are reappointed at least once and for the same duration as the initial term. It is therefore recommended that two terms of office be the maximum for SHHRC Commissioners, but, given the small pool of candidates in St Helena, they may be reappointed for up to 2 further terms after an absence of one term. This should be specified in the Ordinance.
- **Who may dismiss members and for what reasons:** Section 113(d) of the Constitution gives the Governor power to remove a Complaints Commissioner from office in certain circumstances. It is recommended that a similar power be included in the Enabling Ordinance, with the proviso that the Governor acts in response to a recommendation from the SHHRC Appointments Panel. The Ordinance should spell out the exact circumstances under which a SHHRC member may be removed to avoid compromising the independence of the Commission, e.g.,
 - Sudden inability, physical or mental, accompanied by certification
 - To have been convicted of a serious crime
 - Inappropriate conduct
 - Serious negligence or misconduct in fulfilling his or her constitutional or legal obligations as demonstrated through performance management by the Appointments Panel.
 - Conflict of interest, such as proven participation in political activity
- **Privileges and immunities:** It is recommended that SHHRC members should be immune from criminal or civil legal action for all tasks

undertaken by them in the proper exercise of their official functions. The aim is to avoid situations where Commissioners or staff are sued for slander or libel as a result of doing their job as required by law, eg, when coming to a recommendation or decision or voicing an opinion or view on a human rights matter, even if it were proved to have been false, provided the Commissioner acted in good faith. This immunity is limited to acts performed under the Enabling Ordinance and it is lifted for offences committed outside the scope of that authority. SHHRC members and staff should also be immune from search, seizure, requisition, confiscation or any other form of interference in their archives, files, documents, property or funds

DUTIES OF ST HELENA HUMAN RIGHTS COMMISSIONERS AND STAFF

26. It is recommended that the Enabling Ordinance sets out the overall duties of SHHRC Commissioners and staff. These duties should be publicised widely to demonstrate that the SHHRC has a proactive role and is more than just a committee.

27. The Commissioners' role includes:

- Investigating complaints and making recommendations for future action, such as ways to avoid recurrence of the complaint
- Setting the vision and overall priorities for the SHHRC in liaison with the Director
- Influencing key stakeholders in SHG and LegCo to change behaviours and respond positively to recommendations of the SHHRC
- Promoting public awareness of human rights on St Helena
- Monitoring SHHRC expenditure and accounting for it direct to LegCo
- Training and keeping up to date with relevant human rights legislation in St Helena and the UK
- Monitoring good practice elsewhere and promoting it in St Helena
- Liaising with other NHRIs in the OTs and Commonwealth

28. The Director will have a more strategic role in establishing the SHHRC and setting up effective working practices in the first two years. A key part will be to train the Office Manager to be able to take over in year 3. Duties should include:

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- Providing leadership for the SHHRC and guidance for the Commissioners
- Strategic planning for the SHHRC
- Setting up accounting and budgeting procedures for the SHHRC
- Establishing case management procedures, such as complaint forms, standard letters, screening procedures, standing instructions for early refusal and referral, and investigation procedures
- Allocating complaints and cases to appropriate Commissioners and managing their workload against resources
- Setting up systems for the collection and use of caseload data to track trends
- Ensuring confidentiality and privacy procedures for the SHHRC, Commissioners and Office Manager
- Promoting public awareness of human rights and coordinating campaigns on specific issues
- Publishing factsheets and information about rights
- Writing an annual report on behalf of the SHHRC for presentation to the Governor and LegCo, as well as public distribution
- Establishing systems for regular engagement with stakeholders, including civil society, the Public Solicitor and SHG
- Providing training for the SHHRC Commissioners and Office Manager on human rights and relevant techniques, such as investigation procedures
- Monitoring relevant human rights legislation and good practice in St Helena, the UK and other OTs
- Providing advice to SHG on existing and proposed legislation
- Writing shadow reports from SHHRC to UN Treaty Monitoring Bodies

INDEPENDENCE

29. The most important issue which was raised during the consultation was the need for the SHHRC to be independent from SHG and for any members to be, and be seen to be, independent. The SHHRC will be a state-

sponsored body in the sense that its existence depends on an Ordinance and on SHG funding. It is therefore accountable to elected representatives in terms of reporting on its performance, eg, through annual reports setting out activities and achievements, as well as financial accounts. But there must be no interference in the activities or priorities of the SHHRC by either LegCo or the SHG. The nearest parallel is with the court system. It is recommended that the Ordinance includes the provision that the SHHRC shall not be subject to the direction or control of any other person or authority in the exercise of its functions.

30. The SHHRC will also be accountable to the public and should make its annual report widely available, as well as holding regular meetings with civil society and the general public. Radio and newspapers should be used to help raise awareness of the SHHRC as well as human rights more generally.
31. Most respondents did not want the SHHRC Commissioners to be appointed by the Governor. But all the other OTs have Human Rights or Complaints Commissioners appointed by the Governor, often in close consultation with local politicians. In a territory the size of St Helena it should be possible to have an inclusive and transparent appointment process as outlined above (under Composition – method of appointment), so that the public can have confidence in the individuals formally appointed by the Governor.
32. It will also be important for the SHHRC to have a clear and impartial mandate which is promoted widely. In its activities, the SHHRC should make clear that it acts neither for the person making the complaint nor the person against whom the complaint is made, but that it has a duty to investigate complaints fairly. It is recommended that reprisals or actions against anyone who complains to the SHHRC or who assists with an investigation should be strictly forbidden under the Ordinance and actions taken to enforce this. This is particularly important in St Helena where many people expressed fear of retribution if they spoke out.

RESOURCES

33. As set out above, the SHHRC will need to be funded by SHG but, to preserve its financial autonomy, the SHHRC should have control over its own finances. It is recommended that the Enabling Ordinance should provide for adequate funding to enable the SHHRC to fulfil its mandate. The SHHRC should be responsible for drafting its own annual budget to be submitted to LegCo for approval. LegCo's role would be to review and evaluate the audited financial reports every year, and the SHHRC should be able to defend its budget requests directly before LegCo. The budget should not be linked to any particular SHG Directorate and decisions of, or

actions by, the SHHRC should not affect the budget allocation. This will be especially important given the complaints investigation role of the body and any likely role in reviewing legislation or advising SHG: in such circumstances, a financial connection between the SHHRC and a Directorate may give rise to a damaging conflict of interests.

34. At a minimum, SHG funding should enable core programming, ie, conducting investigations, carrying out general outreach and education programmes, and publishing an annual report. It will need to cover staff and office costs. The funding for the SHHRC should be secure, ie not altered arbitrarily during the period for which it was approved. When faced with difficult financial circumstances for St Helena, any essential budget reduction for the SHHRC should not be out of proportion to other core functions, especially in the area of rule of law.
35. The provision of adequate resources by SHG should not prevent the SHHRC seeking additional funding from other sources. Consideration could also be given to making charges for some of the services offered, although in the consultation people thought that advice on complaints should be free or almost free to ensure access for all.

ACCESSIBILITY

36. During the consultations there was clear preference for the offices of the SHHRC to be located away from SHG and to be in a discrete location. Concern was expressed by some about being seen to be entering the office and the gossip which could result. It is recommended that, if at all possible, the SHHRC office is co-located with others, for example, a Community Development Officer to strengthen civil society is expected to be appointed later this year. Sharing an office would not only help reduce overheads, but could also help address privacy issues. It will be important for the office to be easily accessible, including for the disabled and elderly.
37. It is recommended that a simple and easy to use website should be set up to improve accessibility. This should include information on basic rights, a PDF of the Rights and Responsibilities booklet, guidance on the services available and how to access them. It might be helpful to develop a simple questionnaire for complainants to complete which could be available online (see Cayman Islands website). The website could also include basic information about welfare and benefits in an easy to understand format.
38. Information about the SHHRC and the services it provides as well as more general information about human rights should be available at the Public Library, in schools, and through radio and newspaper reports in order to reach the widest possible audience.

RECOMMENDATIONS OF THE CITIZENSHIP COMMISSION

This is a summary of the recommendations in the body of the report. For more detail, please see the relevant paragraph.

It is recommended that:

- the NHRI be called the St Helena Human Rights Commission (SHHRC) (para 8).
- an Enabling Ordinance be passed, setting up the SHHRC with a clear mandate and adequate resources (para 10).
- civil society organisations and the general public are engaged and kept informed throughout the process of setting up the SHHRC (para 11).
- the mandate of the SHHRC covers the rights enshrined in the 2009 Constitution and in the international human rights treaties which have been extended to St Helena (para 12).
- the SHHRC can handle complaints against the private sector as well as the Government (para 13).
- the mandate of the SHHRC should cover education and awareness-raising; investigating individual complaints and specific themes; reviewing and advising on existing and new legislation; monitoring compliance with international human rights treaties; and promoting information about SHG policies for vulnerable groups (para 14).
- all other complaints procedures, including legal proceedings, should be exhausted before the SHHRC can instigate an investigation (para 14).
- the SHHRC is mandated to investigate human rights themes where there is evidence of systematic abuses of human rights (para 14).
- the provision of mediation services be reviewed once the SHHRC has bedded in (para 15).
- the SHHRC mandate also includes cooperation with international and regional NHRIs, assisting with education programmes on human rights, and monitoring and reporting on human rights in St Helena in general (para 16).
- the SHHRC can make general recommendations to LegCo and the Governor; can require a response from those against whom it upholds complaints; can specify deadlines for remedies; and can publish reports without reference to any other body (para 17).

- the Enabling Ordinance be restricted to human rights complaints arising in St Helena only (para 18).
- the SHHRC has the power to obtain documents or compel a person to give evidence or testimony to them and to protect individuals from potential retaliation for having done so (para 19).
- the Enabling Ordinance sets out the relationship between the SHHRC and LegCo, in that the latter funds and supports the former, but is not able to direct its activities or set priorities for it (para 20).
- the SHHRC has a pool of 5 Commissioners (para 21): they are as representative of as broad a range of society as possible and at least one of them has a close connection to an NGO working in the community (para 23-24).
- an expatriate Director be appointed for the first two years to bring in expertise and to establish the role, direction and independence of the SHHRC, while training a local candidate to take over (para 22).
- a SHHRC Appointments Panel be set up (or the Judicial Services Commission be authorised) to coordinate the recruitment and performance management processes for Commissioners, and to deal with any dismissal procedures (para 25).
- the Governor be given power to dismiss a Commissioner in response to a recommendation from the SHHRC Appointments Panel (para 25).
- a source of independent, qualified legal advice is secured for the SHHRC, preferably a panel of legal advisers in the UK (para 25).
- comparators for salaries and working conditions are included in the Enabling Ordinance, eg, setting payments for the Commissioners on a par with Magistrates (para 25).
- the term of office for SHHRC Commissioners is 5 years, renewable once in the first instance; but the terms of office for the first SHHRC members are staggered to avoid complete loss of expertise at the same time (para 25).
- SHHRC members are immune from criminal or civil legal action for all tasks undertaken by them in the proper exercise of their official functions (para 25).
- the Enabling Ordinance sets out the overall duties of SHHRC Commissioners and staff (para 27-28).

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- the Enabling Ordinance includes the provision that the SHHRC is not subject to the direction or control of any other person or authority in the exercise of its functions (para 29).
- reprisals or actions against anyone who complains to the SHHRC or who assists with an investigation should be strictly forbidden under the Enabling Ordinance and actions taken to enforce this (para 32).
- the Enabling Ordinance should provide for adequate funding to allow the SHHRC to fulfil its mandate (para 33).
- the SHHRC office is co-located with others, for example, a Community Development Office (para 37).
- a website should be set up to improve accessibility (para 38)

CHECKLIST FOR THE ENABLING ORDINANCE

General

- Title of NHRI – St Helena Human Rights Commission (SHHRC).
- Definitions e.g., Commissioner, complaint, equal, government, human rights, public service etc.
- Independence of SHHRC and staff guaranteed by statute.
- Mandate
- Powers of the SHHRC – binding recommendations, fines etc.
- Responsibilities of the Governor, LegCo and SHG to support the SHHRC and implement its recommendations.
- Relationship to courts and LegCo.
- Terms of Reference for SHHRC Commissioners.

SHHRC Commissioners/staff

- Number of Commissioners/staff.
- Calibre and criteria for Commissioners/staff.
- Method of selection and appointment of Commissioners.
- Duration of appointment of Commissioners.
- Whether Commissioners may be reappointed to the SHHRC.
- Who may dismiss members and staff and for what reasons.
- Conflicts of interest.
- Privileges and immunities.
- Remuneration and working conditions for Commissioners/staff.
- Commissioners immune from criminal or civil legal action related to the proper exercise of their official function.

Resources

- Funding – SHG and freedom to seek additional funding elsewhere without reference; also how amount will be fixed in future.

- SHHRC's responsibility for its own budget and ability to defend its budget directly before LegCo.
- Provision of office space and supplies.

Accountability

- Accountability and reporting requirements – who to and in what format.
- Ability to publicise advice and reports without referral or prior approval from SHG, LegCo or the Governor.

Procedures

- Circumstances under which a complaint may be brought to the SHHRC.
- Procedure of investigation and any appeal process.
- Scope of mediation process.
- Reprisals against complainants or those who assist the SHHRC in its investigations must be explicitly forbidden.

Limitations

- Geographical limitations of the SHHRC, ie, it will only investigate human rights breaches alleged to have been committed on St Helena.
- Any other limitation, i.e., will the SHHRC investigate only infringements alleged to have been committed by SHG, public authorities or public officials, or will it cover the private sector as well?
- Is there a time limit for complaints, e.g., within 12 months of the alleged breach taking place?

ANNEX 3

INDICATIVE TRAINING MENU FOR NHRIs¹

The St Helena Human Rights Commission (SHHRC) will be starting from a relatively low base of knowledge and training will be essential for Commissioners and staff. Following list is based on recommendations from the UNDP-OHCHR toolkit, but any training programme should be based on a needs assessment.

General Training in Human Rights Protection:

¹ Based on UNDP-OHCHR Toolkit

Objective: To ensure that those involved in programme activities have sufficient human rights knowledge to carry out their activities. Sample course areas include (in alphabetical order):

- Case Management
- Civil and Political Rights
- Core Protection Issues for NHRIs
- Economic, Social and Cultural Rights
- International Human Rights Protection System
- Introduction to Investigative Techniques
- Introduction to the Principles of Human Rights
- Monitoring
- Public Inquiries and Systemic Approaches
- Role of National Human Rights Institutions

Thematic Issues:

Objective: To ensure that those involved in programme activities have sufficient human rights knowledge about cross-cutting thematic issues. Some sample course areas include:

- Rights of Detainees
- Rights of Persons with Disabilities, including HIV/AIDS
- Rights of the Child
- Rights of Women, including gender sensitivity training
- Employment rights

General Training in Human Rights Promotion

Objective: To ensure that commission employees involved in developing and delivering education and sensitisation programmes have the knowledge skills and abilities to carry out their functions in a thorough and professional manner.

- Developing effective public education programs
- Developing effective web sites (undertaken with IT specialist)
- Participatory Training Methodology /Adult Centred Learning
- Making effective presentations
- Report writing (annual reports, periodic reports, preparing summary documents)
- Communications and media liaison

Advanced courses in Core Protection Issues, e.g

- - Monitoring places of detention
 - Protecting witnesses, complainants and human rights defenders
 - Investigation planning
 - Interviewing witnesses
 - Planning and carrying out systemic investigations

CHECKLIST FOR ASSESSING COMPLIANCE WITH THE PARIS PRINCIPLES²

- ✓ Mandate is set out in legislation and gives authority to promote and protect human rights.
- ✓ Competence is defined in legislation and is as broad as possible, covering rights protected by international human rights treaties as well as those in the Constitution.
- ✓ Competence covers both state and private sector.
- ✓ Competence for time jurisdiction allows the examination of matters even predating institution, or discretionary power to limit examination of 'old' cases.
- ✓ Able to provide advice on own initiative on legislative or administrative provisions, any violation the institution takes up, the national situation generally or in specific matters.
- ✓ Can publicise advice, important cases, opinions or recommendations, including through the media, without referral or prior approval.
- ✓ Participates in reviews of legislation and policy at time of ratification of international human rights instruments.
- ✓ Regularly reviews and provides formal comments on draft legislation and policy, and on the human rights situation generally or with respect to key issues.
- ✓ Encourages ratification of international human rights instruments.
- ✓ Directly participates in drafting of country human rights reports.
- ✓ Cooperates with international and regional (OT) human rights organs and other national institutions.
- ✓ Assists in developing/reviewing curricula for schools.
- ✓ Assists in human rights training of prison guards, police, fire service and customs staff.
- ✓ Publishes an annual report.
- ✓ Develops basic brochures on the human rights instruments.

² Based on UNDP-OHCHR Toolkit

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- ✓ Member composition demonstrates gender balance and pluralism by including representatives of NGOs and vulnerable groups.
- ✓ Staff composition is broadly representative and gender balanced.
- ✓ Appointment of members is effected by official act.
- ✓ Appointment is for specific duration and renewable.
- ✓ Appointment process, duration, renewability and criteria is set out in legislation.
- ✓ Nominations for appointment include input from civil society.
- ✓ Selection process involves Parliament.
- ✓ Criteria for selection includes demonstrated experience in human rights.
- ✓ Conditions for which a member may be dismissed are set out in legislation and related to serious misconduct, inappropriate conduct, conflict of interest or incapacity only.
- ✓ Decision to dismiss requires approval preferably by autonomous body such as a panel of judges and/or a minimum 2/3 vote of Parliament.
- ✓ Institution reports directly to Parliament.
- ✓ Members have immunity for official acts.
- ✓ State funding is sufficient to allow for core programming in protection and promotion, independent staff and separate premises; and is not subject to financial control which might affect independence.
- ✓ Budget is drawn up by the institution and is separate from any Directorate's budget.
- ✓ Institution has authority to defend budget requests directly before Parliament.
- ✓ Budgets are secure and are not subject to arbitrary reduction either in the year for which it is approved or from one year to the next.
- ✓ Institution can consider any issue within its competence on its own initiative or the proposal of its members or any other petitioner.
- ✓ Institution can hear any person or obtain any information or documentation necessary to carry out its work, and obstruction in obtaining, or denial of, access to a person, document or premises is punishable in law.

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- ✓ The institution can set up working groups which may include non-Commission staff.
- ✓ The institution consults with other bodies responsible for promoting and protecting human rights.