STAKEHOLDER REPORT

Initial Submission to the Committee for Civil & Political Rights
ICCPR 8 – January 2020

St Helena Equality & Human Rights Commission
Equality for everyone, every day, everywhere.

1 QUESTIONS THAT THE COMMITTEE MAY LIKE TO ASK

1. To set out how UKG protects the Right to self-determination in its overseas Territories including St Helena.

2. Would UKG clarify and codify its constitutional relationship with SHG and their respective responsibilities with regard to human rights?

3. What facilities exist to challenge acts and decisions made by the UK authorities that will have impacts on the rights of people in St Helena?

4. What plans are there to simplify, harmonise and strengthen equality protections in St Helena to an equivalent standard to OTs in other jurisdictions?

5. What consideration has the UK Government given to extending all its international human rights commitments to all the territories under the territorial sovereignty of the United Kingdom including St Helena?

6. What technical and financial support does the UK Government provide to St Helena and in particular the SHEHRC, for engagement with periodic reporting and UN Special Procedures to ensure that voices from this British Overseas Territory (BOT) are properly considered in terms of compliance with international human rights standards?

7. What assessments have been done recently or will be done soon into the current standards of the enjoyment of human rights in BOTs as they compare with those in the UK in order to understand what areas may need further development and support?

8. What avenues exist to access funding to support improvement of human rights in BOTs from the UK under the International Development Act?

9. Having devolved responsibility for SHEHRC to the St Helena Government what measures are in place to ensure that the SHEHRC is adequately funded and fit for purpose meeting the Paris and Belgrade Principles?

10. What measures will be put in place to further guarantee the independence and effectiveness of the SHEHRC under the Paris and Belgrade Principles?

Background

2 The St Helena Equality & Human Rights Commission (SHEHRC)

The SHEHRC was established by local Ordinance[1] on 1st August 2015 and officially opened its doors on 10th December the same year with four local (lay) Commissioners and one member of staff (the CEO who is also an ex officio Commissioner). This has increased to 2.5 staff (full time equivalent). As St Helena has a population of approximately 4,500 there are no universities, professional NGOs or human rights experts from which to draw our Commissioners but they do represent the diversity of our community and they are experts when it comes to understanding life on St Helena.

As part of the SHEHRC's engagement with the United Nations and Council of Europe treaty monitoring processes, it presents this submission regarding the UK's Eighth Periodic Report on compliance with the International Covenant on Civil and Political Rights (ICCPR) to the UN Human Rights Committee (the Committee).

3 St Helena

After its discovery in 1502 St Helena was colonised by the British East India Company in 1659 and became a Crown Colony in 1834.[2]Since the beginning of the 20th Century, St Helena has been reliant on the UK Government (UKG) for grant in aid.

The relationship between the UK and St Helena has developed on an ad hoc basis over the centuries, indeed our Constitution[3] in its preamble refers to Charters and Letters Patent from 1673, 1682 and 1883. This has resulted in a lack of consistency in terms of human rights protections for Saints (as we call ourselves) all of whom are proudly British citizens.

In recent years UKG has supported the development of human rights laws and policies in St Helena. This has included the drafting of the 2009 Constitution which includes the protection of fundamental rights and freedoms of the individual[4] and the development of a National Human Rights Action Plan in 2011 which led to the establishment of the St Helena Equality & Human Rights

[1] The Commission for Equality & Human Rights Ordinance 2015 available at https://www.sainthelena.gov.sh/wp-content/uploads/2017/11/Commission-for-Equality-etc-Ordinance.pdf

[2] The UK Parliament passed the India Act in 1833, a provision of which transferred control of St Helena from The East India Company to the Crown with effect from 22nd April 1834, at a price of £100,000.

[3] The Constitution of St. Helena, Ascension and Tristan da Cunha, 2009. Available at https://www.sainthelena.gov.sh/wp-content/uploads/2017/11/Constitution-of-St-Helena-Ascension-and-Tristan-da-Cunha-2009.pdf

[4] Ibid Part 2

Commission in 2015. However since the end of the Developing Human Rights Capacity in the Overseas Territories Project in March 2012 as far as the St Helena Equality & Human Rights Commission is aware no funding has been available from UKG for the development of human rights since then.

Under international law stemming from the UN Charter[5]UKG is responsible for the security and governance of St Helena and her people. St Helena, like all the BOTs, is not able to sign international human rights treaties in its own right. SHG can request extension of a treaty and the UKG, if it agrees, will liaise with the UN. The UKG also can enforce an instrument on it territories.

UKG has made political commitments to ensure the same standards of human rights apply in its OTs as they do in the UK. For example, the 2012 White Paper on the Overseas Territories describes the UK Government's position as follows:

> "The UK Government's long-standing practice in this area is to encourage the Territories to agree to the extension of UN human rights conventions that the UK has ratified, but to extend these to the territories only when they are ready to apply them. We will support those Territories that face resource and capacity constraints."[6]

[5] https://www.un.org/en/sections/un-charter/chapter-xi/index.html
[6] 2012 White Paper, n 10, 52

4 INTRODUCTION

This is not only the SHEHRC's first submission to the Committee but its first submission to the UN. In its four years of service to St Helena the SHEHRC has worked with the majority of the population through its work promoting and protecting human rights. Over 15% of the population has sought our assistance/advice; the issues involved have included State neglect,[7] the right to marry for same-sex couples employment protection and disability issues.

Routinely we assist: people with difficulties accessing social housing and benefits; those with disabilities unable to access work, education and care; and those suffering fuel poverty.

Two issues stand head and shoulders above the rest when it comes to addressing human rights issues within St Helena and affect the SHEHRC's ability to achieve real progress. They are:

1. The Territory's restricted ability to exercise its right to self-determination including to report directly to the UN, vote on significant matters like "Brexit" or indeed take part in the elections for the Government that decides its future.
2. The very unclear relationship between UKG and SHG with regard to responsibility for protecting human rights. Although the UK Government (UKG) has supported the development of human rights laws and policies in its St Helena, including the addition of a Bill of Rights section in our Constitution,[8] it has not codified its own responsibility for human rights on the island.

If transparency on these issues can be achieved the path for reporting and resolving the SHEHRC's concerns will be clearer and it will be more likely that the human rights concerns on the island will be understood and resolved.

St Helena is proudly British and fought hard for the restoration of full British Citizenship after it was withdrawn by the British Nationality Act 1981 (citizenship was restored in 2002). The SHEHRC has no doubt that Saints want to remain British but on a more equal basis with their counterparts in the UK. As it says in the preamble to the Constitution:

(f) satisfied that their British citizenship has been restored, and recalling that everyone has the right to a nationality and the right not to be arbitrarily deprived of his or her nationality, and wishing to continue and strengthen their relationship with the United Kingdom;[9]

[7] https://www.bailii.org/sh/cases/SHSC/2015/SHSC20151.html
[8] Constitution of St Helena, Ascension Island & Tristan da Cunha 2009 Part 2. Available here
[9] Constitution of St Helena, Ascension Island & Tristan da Cunha 200, Preamble (f)

Summary of Issues

5 ARTICLE 1 SELF-DETERMINATION.

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

The right of the people of St Helena to self-determination is not, in our considered opinion, adequately protected in the Constitution of St Helena, Ascension & Tristan da Cunha. It is not included in the Partnership Agreement that defines St Helena's relationship with the UK, nor is it included in Part 2 the Bill of Rights section. Self-determination is only referred to in the Preamble, which states:

(g) recognising that all peoples have the right of self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development;

While the preamble sets the background against which the Constitution is set it does not directly provide any legal protection. It does not define the right, set limitations or provide remedy.

The Government in power in the UK makes decisions on a daily basis that affect Saints political status, financial wellbeing and economic development. Yet the people of St Helena, as with all the BOTs, cannot vote in general elections, have no direct representation in parliament and are not consulted.

Currently, an evaluation of the island's controversial airport is being undertaken by UKG, which the SHEHRC understands includes data on visitor numbers and tourism spend. This information is vital to our nascent tourism industry, the Saint diaspora and potential investors but the head of the recent DFID Financial Aid Mission stated that this report would not be made public.

The OTs (except Gibraltar) were not allowed to vote in the Brexit referendum yet a significant amount of funding comes to Saint Helena directly from Europe. Projects are proposed by SHG and approved by elected members, funding bids reflect the priorities for St Helena, not necessarily the UK. Within weeks of the referendum European funding for a much needed replacement for the islands only hospital was lost.

UKG also has the right to enforce measures on its OTs to defend their own interests whether they align with those of the territories or not, despite UKG's recognition of the principle that "the interests of the inhabitants of these territories are paramount".[10]However there is a lack of clarity as to UKG's

[10]https://books.google.sh/books?id=DVI6AQAAIAAJ&pg=PA136&lpg=PA136&dq=%E2%80%9Cthe+interests+of+the+inhabitants+of+these+territories+are+paramount%E2%80%9D.&source=bl&ots

responsibility to provide technical or financial support in order for SHG and the wider society to understand and meet the standards human rights required. There is no designated funding for the protection of Rights on the island.

At the present time, should someone be aggrieved at a decision made by UKG that affects their rights, St Helenian's have a right to seek remedy should all else fail, at the European Courts. This independent process seems likely to be taken from the people of St Helena without any consultation or participation. As UKG has also so far not signed Optional Protocol 1, allowing individuals who claim to be victims of a human rights abuse to report directly to the Committee, the Saints' right to self-determination will be compromised further. Without clear and objective avenues for legal challenge, St Helena may be unable to defend its interests and protect its citizen's rights should UK interests conflict with ours.

Overseas Territories in other jurisdictions are treated like a division of that state, with the right to vote and take part in the life of the ruling state on an equal footing to citizens on the mainland. The effect of this thinking becomes apparent when considering the process for extending treaties to the OTs.

The UK has extended most of the UN Conventions that it has signed and ratified to St Helena, including the:

- International Covenants on Civil and Political Rights (ICCPR)
- International Covenant of Economic, Social and Cultural Rights (ICESCR)
- Convention on the Rights of the Child[11] (CRC)
- Convention on the Elimination of Discrimination against Women (CEDAW),
- Convention Against Torture (CAT), but not the Optional Protocol.
- Convention on the Elimination of Racial Discrimination (CERD)

UKG Government states it has asked territories if they wish the Convention on the Rights of People with Disabilities (CRPD) to be extended to them. However St Helena has declined as funding is a severe restriction. Again in other jurisdictions when they ratify a treaty it is automatically extended to their OTs and the required funding and any required technical expertise is made available.

The Committee may wish to ask the State Party:

1. **To set out how UKG protects the Right to self-determination in its overseas Territories including St Helena.**

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[11] UKTS No 44 (1992); Cm 1976.

2. **Would UKG clarify and codify its constitutional relationship with SHG and their respective responsibilities with regard to human rights?**

3. **What facilities exist to challenge acts and decisions made by the UK authorities that will have impacts on the rights of people in St Helena?**

4. **What plans are there to simplify, harmonise and strengthen equality protections in St Helena to an equivalent standard to OTs in other jurisdictions?**

5. **What consideration has the UK Government given to extending all its international human rights commitments to all the territories under the territorial sovereignty of the United Kingdom including St Helena?**

6 PART 2 ARTICLES 2-5 – WHO IS RESPONSIBLE?

The relationship between UKG and SHG with regard to its responsibility for protecting human rights is unclear. For a full discourse on the issues please see the Island Rights Initiative's report "Mapping the UK's responsibilities for human rights in UK Overseas Territories and Crown Dependencies has been updated to include recent developments since December 2019".[12]

UKG has supported the development of human rights laws and policies in St Helena, including the addition of a Bill of Rights section in our Constitution of 2009. In its White Paper of 2012 and its recent report on Human Rights in 2019[13]UKG has stated its responsibility for the security and governance of its populated OTs including St Helena and its people as non-self-governing territories under international law flowing from the UN Charter.[14] UKG recognise the principle that "the interests of the inhabitants of these territories are paramount, and accepts as a sacred trust the obligation to promote to the utmost, … the well-being of the inhabitants of BOTs, and, to this end:

[12] https://www.islandrights.org/mapping-the-uks-responsibilities-for-human-rights-in-uk-overseas-territories-and-crown-dependencies-update/

[13]White Paper on the Overseas Territories on the 28 June 2012 p52 available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/32952/ot-wp-0612.pdf

[14] The UN Charter http://www.un.org/en/sections/un-charter/chapter-xi/index.html

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;"[15]

It is not clear to the SHEHRC how those commitments are being put into practice either legally or through adequate resources to ensure effective enjoyment of rights in areas such as healthcare, education and self-determination.

How these objectives will be achieved has not been codified in the Constitution or in any document in the public domain. In short, if a specific fundamental right is not adequately protected where does the responsibility fall? On SHG who may not have the funds to take the required action or on UKG?

As St Helena relies on UKG for grant in aid if funds have been made available to ensure the above aims are met they are not ring-fenced. UKG has adopted a policy of "allowing" St Helena its independence by agreeing an aid budget and devolving responsibility for how that money is spent to local government through the local legislature. This in itself should allow St Helena to run its own affairs and is prima facia in line with articles 2-5 but only if SHG is fully aware of its delegated responsibilities with regard to human rights protection and is adequately funded to meet them.

An example is the SHEHRC which was established as a result of the Building Human Rights Capacity in the Overseas Territories Project which ended in 2012. The SHEHRC is striving to meet the standards of the Paris Principles[16] but is struggling; in the 4 years it has been operating, despite regular requests the Commission has received no money for training for either Commissioners or Staff. In addition our funding includes nothing for legal assistance, expert advice or research which would enable the SHEHRC to be fully fit for purpose and for example properly evidence a report such as this.

Meetings with Elected Members, SHG Officials and the Islands Governor failed to resolve the situation. The Governor's Office has assisted in an application to the Foreign& Commonwealth Office, the UKG department under which BOTs fall. This has to date been unsuccessful as it appears BOTs are neither foreign nor Commonwealth members in their own right. The SHEHRC therefore does not meet the criteria for any of the FCO's Human Rights funding.

The UKG will report to this Committee this year on behalf of the BOTs, including St Helena as part of its regular reporting cycle, however the space given to BOTs

[15] Article 73. http://www.un.org/en/sections/un-charter/chapter-xi/index.html
[16] UN Human Rights Council, *National institutions for the promotion and protection of human rights : report of the Secretary-General* , 1 May 2012, A/HRC/20/9, available at: https://www.refworld.org/docid/5007fe912.html [accessed 8 January 2020]

in such reports is limited and the value of the information they record is reliant to a large extent on the information gathered and recorded by SHG.

The capacity of SHG to provide detailed information is limited due to lack of resources and training. Much of the evidence the SHEHRC needs to provide accurate detail for this document is unavailable, it is unavailable to SHG too either because the data is not collected or is unreported. Transparently accurate data provided by an independent third party is also unavailable. Complaints against the Island's only police force are subject to internal investigation, complaints about medical treatment likewise. Appeals can be made to the Governor but he/she has direct responsibility for the police (there is no political oversight). This does not provide an open and objective process in which the public have confidence.

While the SHEHRC is defined by Ordinance as being independent it has been subject to unwarranted interference by previous Governors and by SHG Officials. The SHEHRC is independent and willing to contribute to the process of independent data collection our capacity to do so is limited due to SHG's refusal to allow the Commission sufficient funding to carry out empirical research, training in reporting and support. The time scales for this reporting cycle were not shared with the SHEHRC. There is, therefore, a need for UK support to both SHG and the SHEHRC to ensure that periodic reporting is effective.

The Committee may wish to ask the state party

1. **What technical and financial support does the UK Government provide to St Helena and in particular the SHEHRC, for engagement with periodic reporting and UN Special Procedures to ensure that voices from this British Overseas Territory (BOT) are properly considered in terms of compliance with international human rights standards?**

2. **What assessments have been carried out recently or will be done in the near future into the current standards of the enjoyment of human rights in BOTs and how they compare with those in the UK in order to understand what areas may need further development and support?**

3. **What avenues exist to access funding to support improvement of human rights in BOTs and in particular St Helena from the UKG?**

4. **Having devolved responsibility for SHEHRC to the St Helena Government what measures are in place to ensure that the SHEHRC is adequately funded and fit for purpose meeting the Paris and Belgrade Principles?**

5. **What measures will be put in place to further guarantee the independence and effectiveness of the SHEHRC under the Paris and Belgrade Principles?**

At this time the SHEHRC has concerns about many issues on St Helena which will go unreported in UKG's report to the Committee, due to the lack of data available and to the low priority UKG places on its OTs particularly those territories perceived by some in the UK as a drain on UK tax payers.

These issues include but are not limited to

- The level of violence against women & girls and in particular the lack of robust Domestic Abuse legislation.
- The lack of legislation to provide those in the private sector with protection against discrimination, bullying and sexual harassment.
- The Islands only prison is 200 years old and while improvements were made following the SHEHRC's 2018 report into conditions of detention at the prison, it remains unfit for purpose.
- Limited assistance to those with disability particularly in access to work and to public buildings
- With regard to citizens with claims against the state or state bodies, little progress has been made in developing a comprehensive framework to ensure that prompt, thorough and independent investigations are conducted to establish the truth, to prosecute perpetrators and to ensure adequate redress for victims.
- Little action has been taken to institute prompt, independent and thorough investigations and ensure that all victims of abuse obtain redress and have an enforceable right to compensation.
- The lack of Freedom of Information and Data Protection legislation.

APPENDIX 1 - ICCPR DEROGATIONS THAT APPLY IN ST HELENA

Reservations:

United Kingdom of Great Britain and Northern Ireland [36]

United Kingdom of Great Britain and Northern Ireland

Upon signature:

First, the Government of the United Kingdom declare their understanding that, by virtue of Article 103 of the Charter of the United Nations, in the event of any conflict between their obligations under Article 1 of the Covenant and their obligations under the Charter (in particular, under Articles 1, 2 and 73 thereof) their obligations under the Charter shall prevail.

Secondly, the Government of the United Kingdom declare that:

(a) In relation to Article 14 of the Covenant, they must reserve the right not to apply, or not to apply in full, the guarantee of free legal assistance contained in sub-paragraph (d) of paragraph 3 in so far as the shortage of legal practitioners and other considerations render the application of this guarantee in British Honduras, Fiji and **St. Helena** impossible;

(b) In relation to Article 23 of the Covenant, they must reserve the right not to apply the first sentence of paragraph 4 in so far as it concerns any inequality which may arise from the operation of the law of domicile;

Upon ratification:

Firstly the Government of the United Kingdom maintain their declaration in respect of article 1 made at the time of signature of the Covenant.

The Government of the United Kingdom reserve the right to apply to members of and persons serving with the armed forces of the Crown and to persons lawfully detained in penal establishments of whatever character such laws and procedures as they may from time to time deem to be necessary for the preservation of service and custodial discipline and their acceptance of the provisions of the Covenant is subject to such restrictions as may for these purposes from time to time be authorised by law.

Where at any time there is a lack of suitable prison facilities or where the mixing of adults and juveniles is deemed to be mutually beneficial, the Government of the United Kingdom reserve the right not to apply article 10 (2) (b) and 10 (3), so far as those provisions require juveniles who are detained to be accommodated separately from adults, and not to apply article 10 (2) (a) in Gibraltar, Montserrat and the Turks and Caicos Islands in so far as it requires segregation of accused and convicted persons.

The Government of the United Kingdom reserve the right to interpret the provisions of article 12 (1) relating to the territory of a State as applying

separately to each of the territories comprising the United Kingdom and its dependencies.

The Government of the United Kingdom reserve the right not to apply or not to apply in full the guarantee of free legal assistance in sub-paragraph (d) of paragraph 3 of article 14 in so far as the shortage of legal practitioners renders the application of this guarantee impossible in the British Virgin Islands, the Cayman Islands, the Falkland Islands, the Gilbert Islands, the Pitcairn Islands Group, **St. Helena and Dependencies** and Tuvalu.

The Government of the United Kingdom interpret article 20 consistently with the rights conferred by articles 19 and 21 of the Covenant and having legislated in matters of practical concern in the interests of public order *(ordre public)* reserve the right not to introduce any further legislation. The United Kingdom also reserve a similar right in regard to each of its dependent territories.