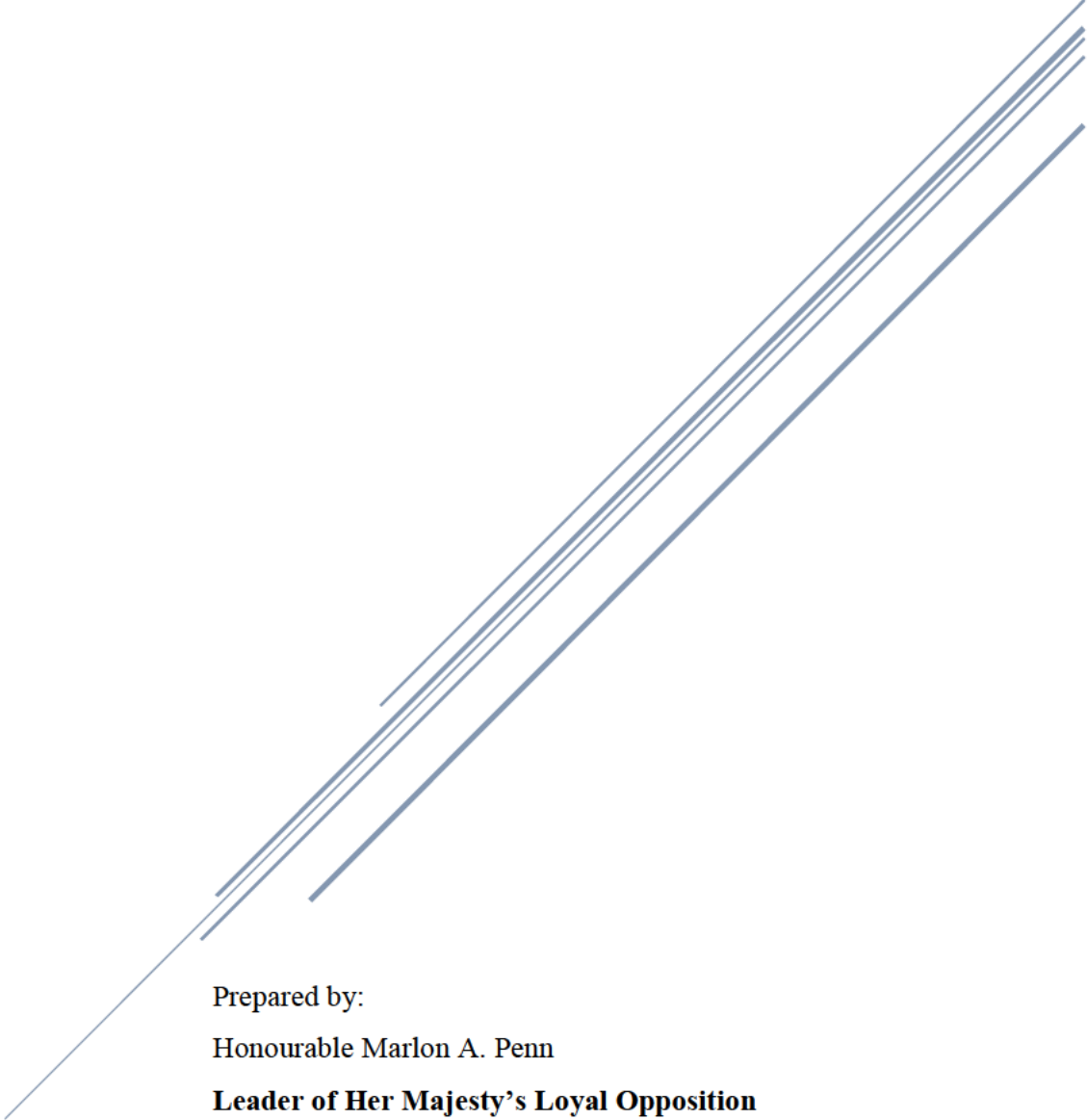


**Leader of Her Majesty's Loyal Opposition**  
**Response to Commission of Inquiry Letter**  
**dated May 17, 2021**



Prepared by:

Honourable Marlon A. Penn

**Leader of Her Majesty's Loyal Opposition**

**(8<sup>th</sup> District Representative; Member, National Democratic Party)**

Mobile: [REDACTED]

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June 11, 2021

Commissioner  
The Rt Hon Sir Gary Hickinbottom  
BVI International Arbitration Centre  
3rd Floor, Ritter House  
Wickham's Cay II  
Road Town, Tortola.

ufs Richard G Rowe and Daniel Fligelstone Davies  
Silk Legal (BVI) Inc  
30 DeCastro Street  
Road Town, Tortola.

Dear Commissioner Hickinbottom,

I refer to the letter dated May 17, 2021 from the "Commission" addressed to Silk Legal (BVI) Inc, advising that members of the House of Assembly of the Virgin Islands have "participant status" and that the "Commission" would like to hear the views of "members" on certain matters.

Before I get into the matter of expressing my views, I feel compelled to advise that my response is that as Leader of the Opposition, who represents the National Democratic Party in the House of Assembly, you ought to be aware that there other members of the Opposition of different political parties. Therefore, I cannot agree to a "Position Statement" as it is termed from the Members as a whole.

Commissioner Hickinbottom, I acknowledge that good governance is the cornerstone of any well-functioning government in successful democracies. As such, I regard the practice of good governance as not only critical for the overall development of our society, but especially necessary to keep the trust of the people we serve.

Today in the British Virgin Islands, one of our primary benchmarks of good governance rests with The Virgin Islands Constitution Order 2007. That was some 14 years ago. Our society has since progressed to where further constitutional advancement is merited. Accordingly, as an elected official dating back to when I was first elected to the House of Assembly, I have always sought to give priority to improving governance through systemic and institutional changes to ensure that government works better for all.

Commissioner Hickinbottom, I acknowledge the questions that have been put before “Members” and provide my views in the attached document and in the following areas; not necessarily in seriatim, but in a manner consistent with how I wish to express my views. However, I have provided a reference table below where you can find answers in my response to the questions raised. I welcome the opportunity to further discuss these matters with you.

1. Governance, Good Governance and Poor Governance
2. Constitutional Advancement
3. Legislative Reform and Strengthening Institutional Practices
4. Government Operations and the Public Service
5. Law and Order
6. Safety and Security
7. Communications

Questions	Answers
(1) What do you understand by the term “good governance”?	See my section 1. Governance, Good Governance and Poor Governance.
1. What do you understand by the term “poor governance”?	See my section 1. Governance, Good Governance and Poor Governance.

<p>2. To what extent do you consider good governance to be important in sustaining public confidence in all elements of government?</p>	<p>See my section</p> <ol style="list-style-type: none"> <li>1. Governance, Good Governance and Poor Governance.</li> </ol>
<p>3. As a member of the House of Assembly, what role, if any, do you have in ensuring there is good governance and how have you carried out that role?</p>	<p>Advocating for constitutional advancement, legislative reform, strengthening policies and practices of the government departments and statutory bodies and further developing the civil service and police force.</p> <p>See my sections;</p> <ol style="list-style-type: none"> <li>2. Constitutional Advancement,</li> <li>3. Legislative Reform and Strengthening Institutional Practices,</li> <li>4. Government Operations and the Public Service,</li> <li>5. Law and Order and</li> <li>6. Safety and Security.</li> <li>7. Communications</li> </ol>
<p>4. What mechanisms, statutory or otherwise, make up the current system in place in the BVI to ensure good governance?</p>	<p>See my sections;</p> <ol style="list-style-type: none"> <li>2. Constitutional Advancement,</li> <li>3. Legislative Reform and Strengthening Institutional Practices,</li> <li>4. Government Operations and the Public Service,</li> <li>5. Law and Order and</li> <li>6. Safety and Security.</li> <li>7. Communications</li> </ol>

<p>5. What do you consider to be the strengths and weaknesses of that system?</p>	<p>See my sections;</p> <ol style="list-style-type: none"> <li>2. Constitutional Advancement,</li> <li>3. Legislative Reform and Strengthening Institutional Practices,</li> <li>4. Government Operations and the Public Service,</li> <li>5. Law and Order and</li> <li>6. Safety and Security.</li> <li>7. Communications</li> </ol>
<p>6. What steps do you as Members of the House of Assembly consider should be taken to promote the strengths and remedy the weaknesses you have identified so as (if you have answered (4) above in the positive) to sustain public confidence in all elements of government?</p>	<p>See my sections;</p> <ol style="list-style-type: none"> <li>2. Constitutional Advancement,</li> <li>3. Legislative Reform and Strengthening Institutional Practices,</li> <li>4. Government Operations and the Public Service,</li> <li>5. Law and Order and</li> <li>6. Safety and Security.</li> <li>7. Communications</li> </ol>
<p>7. What are the standards by which good governance is currently measured in the BVI?</p>	<p>Good governance is currently measured through public perception and the elections process. Where a government is seen or not seen to be practicing good governance, it is removed through the election cycle.</p>

<p>8. In what way, if any, do you consider those standards to be insufficient?</p>	<p>If a government is seen not to be practicing good governance, the voters have to wait until the next election cycle to remove that government.</p> <p>There are limited mechanisms in place to put checks and balances on a sitting government.</p>
<p>9. What steps do you, as Members of the House of Assembly, consider should be taken to ensure that the standards of governance in place will sustain public confidence in all elements of government?</p>	<p>See my sections;</p> <ol style="list-style-type: none"> <li>2. Constitutional Advancement,</li> <li>3. Legislative Reform and Strengthening Institutional Practices,</li> <li>4. Government Operations and the Public Service,</li> <li>5. Law and Order and</li> <li>6. Safety and Security.</li> <li>7. Communications</li> </ol>

Yours Truly,

.....

Hon. Marlon Penn  
 Leader of Her Majesty’s Loyal Opposition  
 (8<sup>th</sup> District Representative; Member, National Democratic Party)

cc: Hon. Mark Vanterpool  
 (4<sup>th</sup> District Representative; Member, National Democratic Party)

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## **1. GOVERNANCE, GOOD GOVERNANCE AND POOR GOVERNANCE**

Good governance is not merely a buzz word, not something you say or tout. It is something you do! It is a form of governance that should be incessantly pursued and practiced.

United Nations Economic and Social Commission for Asia and the Pacific (“ESCAP”) defines Governance as the process of decision making and the process by which decisions are implemented (or not implemented). It is the complex process where Governments and Government bodies wield power, and enact and promulgate public policies which directly affect human and institutional interactions, and economic and social development.

Governance is a system and process, not a single activity and, therefore successful implementation of a good governance strategy requires a systematic approach that incorporates strategic planning, development and, effective implementation of laws and policies, checks and balances on power and authority and, regular elections.

In the context of national governance, and of a democratic society such as the Virgin Islands, I am of the view that good governance should comprise the following major characteristics:

- a) Participatory
- b) Consensus oriented
- c) Accountable
- d) Transparent
- e) Responsive
- f) Effective and Efficient
- g) Equitable and Inclusive
- h) Follows the rule of law

Good governance is responsive to the present and future needs of society. It centres on how governments conduct public affairs, manage public resources and, the responsibilities of governments to meet the needs of the masses as opposed to a select group in society.



When all of the above characteristics of good governance are in place, decisions made and implemented are always for the common good, there is the proper and effective utilisation of resources, corruption is minimised, the views of minorities are taken into account, and the voices of the most vulnerable in society are heard.

Poor Governance is the opposite of the aforementioned. It results from the lack of adherence to good governance principles, policies, and practices. For example lack of transparency and accountability are bad practices that undermine confidence in our government and governing institutions. Ultimately, non-adherence to the principles of good governance could result in corrupt and other nefarious practices; and well ultimately retard social and economic progress.

## **2. CONSTITUTIONAL ADVANCEMENT**

Good governance cannot exist in a vacuum. Its fundamental basis is underpinned by the laws and rules which govern our Territory. At the highest level, this is our Constitution. Over the years we have had various constitutional changes culminating in the latest “The Virgin Islands 2007 Constitution” which reflects our advancement as a territory and our desire for greater autonomy to manage our affairs.

I believe that a Constitutional review is necessary and is both an enabler and a prerequisite to a deepening of the democratic institutions of government, as well as to enhance good governance, transparency and, accountability which will ultimately deliver political, social and economic maturity. There are a number of further advancements and changes to our constitution that should be explored as a means to improving our Governance. Among others these are:

- a) The introduction of term limits for certain elected representatives and particularly the role of Premier. This will ensure that that the territory has the benefit of diverse competencies at the highest level of leadership.

- b) More clearly articulating the role of and responsibilities of the Leader of the Opposition and, institutionalising an “Office of the Leader of the Opposition” as a means to driving and improving accountability. Currently the Constitution merely speaks to the appointment of the Leader of the Opposition. The Leader of the Opposition should be vested with clearer roles and responsibilities as well as with institutional support and resources to effectively carry out those responsibilities.
- c) The appointment of the Leader of the Opposition as Member of the National Security Council (NSC); or alternatively providing mechanisms for greater participation or input on matters of national security; by the Leader of the Opposition. This will allow for greater and wider participation from an additional Member of the House of Assembly (HOA), who represents the views of the wider BVI population. In addition, we would like to have a representative from civil society as a member the NSC to provide greater perspective from the population.
- d) Increase the number of Ministers (through relevant amendments to the Constitution) so as to allow for a larger number of Ministers to manage the voluminous and complex ministerial portfolios. This could lead to greater efficiency, effectiveness, and responsiveness as well as greater participation.
- e) Require the Speaker of the House of Assembly to be chosen only from among the elected members of the HOA. This will allow for greater accountability to the people of the Virgin Islands who elected that Member to the HOA (and therefore better governance of the HOA), rather than the intrinsic allegiance that may arise if a public member were elected as Speaker by the governing party.

- f) The elimination of powers that could be unilaterally invoked by the United Kingdom, such as Orders in Council. The exercise of that power (actual or threatened) is wholly inconsistent with key characteristics of good governance which demands that governance is participatory, consensus oriented, equitable and inclusive. For example, the UK's decision to unilaterally impose public registers of beneficial ownership on its Overseas Territories (OTs) by threat of Order in Council underscores the need for a new and fundamentally different 'constitutional construct'; one better suited to the strategic goals and aspirations of BVI and its people.
- g) Introduction of a bicameral system in the legislature to provide for greater scrutiny of bills and government policies.
- h) Implement a recall device where voters can remove an elected official who is not properly discharging his/ her duties, from office before that official's term has ended.
- i) Enactment of the Human Rights commission, which is highlighted in our 2007 constitution.
- j) Constitutional changes to allow greater self-government by the local elected government:
  - i. Cabinet to be only made up of elected members who have been appointed Ministers and, the Premier to chair Cabinet. In addition, Junior Ministers to be allowed to attend Cabinet and be part of the deliberations, even though they may not have a vote.
  - ii. The portfolio of the Civil Service to be moved to an elected member who has been appointed Minister responsible for that subject area.
  - iii. Clarification of the positions of Junior Ministers so that they can be appointed to any Ministry that requires additional management.
  - iv. District councils to allow the "Sister Islands" and larger constituencies greater management of their local affairs.

### **3. LEGISLATIVE REFORM AND STRENGTHENING INSTITUTIONAL PRACTICES**

Beyond constitutional reform, there are a number of other key legislative requirements that could be instrumental in achieving good governance, and, in particular to allow for greater transparency and accountability.

In BVI, over the years, we have made some strides in implementing some such legislation and best practices. I am proud that my National Democratic Party Government (NDPG) (both before and during my time as an elected member) implemented or supported the implementation of various pieces of legislation.

For example:

- The Public Finance Management Act and its Regulations, to provide for stronger and better management of our public finances.
- Our Protocols for Effective Financial Management furthers that objective through our commitment to transparency, accountability, value for money, medium-term planning and management of risks, and by adhering to standards of best practice in our financial management.
- In addition, recognising the close nature of our society, NDPG implemented the Register of Interests for elected members as a matter of transparency and openness. As well, NDPG started a few years ago to publish Cabinet decisions to provide an open window into our deliberations; subject to relevant safeguards.
- Greater efficiencies through technology, online publications and databases, and fully navigable websites could be helpful in maximising transparency in the Cabinet decision process. This was started under an NDP Administration where the Cabinet process was digitised and an eGovernment strategy formalised and adopted. We need to go further with the roll out of that strategy.

I believe and accept that there is more work to be done. This is why, I share the aspiration of many Virgin Islanders and, Members of the HOA that it is important to pass and implement a Freedom of Information Legislation, a strong Ministerial Code of Conduct, and an improved Procurement Legislation.

I also believe that it is imperative that we enhance the functions and resources of the Office of Director of Public Prosecutions, Office of the Attorney General Chambers, Internal Auditor Unit, Auditor General, the Complaints Commission and that of the Office of the Leader of the Opposition. These roles can be a strong driver of greater accountability.

Another important reform and necessary reform is the introduction of rules on campaign financing and a limit on political donations, in order to ensure free and fair elections and full transparency in the election process.

Scribing laws, regulations, rules and practices is important, however, these actions must be supported through effective implementation mechanisms, such as “regulatory impact risk assessments,” which would provide for an important and informed process on the efficacy of such laws, regulations, rules and practices.

The likelihood of actually achieving good governance is greatly enhanced as we would then be in a better position to develop and improve the delivery and implementation mechanisms. Therefore it is imperative that we commit necessary resources, enhance our capacities, utilise more and greater technology and strengthen our institutional practices in order to achieve effective good governance.

#### **4. GOVERNMENT OPERATIONS and the PUBLIC SERVICE**

I firmly believe that the “Public Service” need to be “fit for purpose”. The impact of the 2017 natural disaster events, and the recent Corona Virus pandemic caused significant disruption to government operations, detracting from incremental improvements over the past several years. The Governance Action Plan of a re-elected NDP Government shall include reforms to deliver greater continuity in the event of future disasters as well as greater efficiency and improvements in the provision of government services.

Among other things there needs to be a greater focus on:

- a) Redesigning the public service by merging some critical services to create greater efficiencies, critically assessing the needs of the public, assigning the right resources to meet those demands and building capacity where there may be gaps.
- b) Committing greater funding and resources to training and re-training of the public service to deliver “world-class services”.
- c) Implementing the automation of government services (E-government Initiative), including application and processing of permits and licenses and collection of fees and taxes.
- d) Greening the public services, including reducing the use of paper files, by digitising government documents.
- e) Implementing a performance monitoring framework for statutory bodies and ensuring that they are aligned to the overall goals of their portfolio ministry.
- f) Formalising and encouraging public/private collaborations for services and initiatives that are best served by significant private sector input or support.

- g) Fast tracking pilot E-government initiatives that focus on services that are critical to “Sister Islands” residents, such as paying fees and taxes and applying for licenses and permits, in order to minimise the need for travel to Tortola.
- h) Instituting a programme that rewards persons for creating efficiencies and savings in government operations.
- i) Introducing the already drafted “Public Service Management Act” that speaks to a modern public service and seeks to:
  - i. Establish a high performing apolitical service that is responsive to Government priorities.
  - ii. Focus on the delivery of services in a professional and non-partisan way.
  - iii. Promote the effectiveness and efficiency of government ministries and departments.
  - iv. Provide for the administration of service and the employment and management of officers and employees;
  - v. Provide for the rights and obligations of officers and employees.
  - vi. Promote equality of employment opportunity in the service.

## **5. LAW AND ORDER**

Maintaining law and order is fundamental to our security, social well-being and the success of BVI’s economy. Therefore, it shall be my mandate to continue to foster better collaboration between national security agencies. To this end, where possible, my actions will include a focus on:

- a) Expanding the composition of the National Security Council to include the Leader of the Opposition and a representative from Civil Society so that a broader diversity of perspectives, views and expertise are brought to bear in making decisions.

- b) Implementing institutional changes that will promote greater cohesion and cooperation between various agencies. In this regard, proposed actions include:
- i. Integrating the criminal justice system so that courts, police and other law enforcement agencies work more harmoniously.
  - ii. Modernising the court system, including a family court to address domestic issues and a small claims court to assist debt collection.
  - iii. Strengthening law enforcement with the addition of necessary human and technical resources.
- c) Supporting the Royal Virgin Islands Police Force initiative for greater community policing, in order to create a stronger bond with members of the communities that are being policed.
- d) Identifying and addressing the root causes of crime and ongoing gun-related activities that are destroying families.
- e) Seeking to eradicate the gun culture through building stronger relations between communities and law enforcement.
- f) Appointing a Gun Violence Reduction Coordinator to have a singular focus on implementing strategies to reduce the incidence of gun violence. The coordinator will review the effectiveness of existing strategies/legislation, while ensuring that all social services are effective in dealing with the root causes of crime.
- g) Introducing legislation to decriminalise cannabis possession for amounts under seven grams to ensure that young people are not prevented from future opportunities due to having a criminal record. To also allow persons who have been convicted of possession of the same, to have their conviction expunged.
- h) Introducing an independent Commission of Investigations that is civilian staffed and aims to provide checks and balances on police powers.



## 6. SAFETY AND SECURITY

The Virgin Islands is a large ocean territory that is located in the hurricane alley of the Caribbean where it is subject to the annual hurricane season. It is also a territory that has limited available land space and a small population. These particular factors give rise to a number of threats that good governance must address, in order to protect citizens and visitors.

- a) Large ocean territory – The Virgin Islands has an 80,000 sq km economic / fishing zone so we need to protect our oceans as well as land area. The threats include drugs and gun smuggling, illegal immigrants, poaching, border breaches, disasters at sea, natural disasters.

Technology, partnerships with our neighbouring countries and assistance from the UK are needed to protect such a large area.

- b) Disaster Preparedness – Hurricanes and potentially other natural disasters such as earthquakes and tsunamis are annual threats. Disaster preparedness and management needs to be elevated to a national security threat and the National Emergency Operations Centre (“NEOC”) (with the Department of Disaster Management reporting to it) needs to become a more structured organisation with dedicated leadership, a budget and the necessary resources.
- c) Health Security – COVID-19, the global pandemic has exposed the vulnerabilities that such pandemics or even multiple injuries say from a large gathering or visiting cruise-ship could have on the health system. Preparedness for global pandemic, local contagious diseases and multiple injuries / casualties that affect a large portion of the population should be elevated to a national security risk. The Health Emergency Operations Centre (“HEOC”) needs to become a more structured organisation with dedicated leadership, a budget and the necessary resources.

- d) Food Security – Needs to be classified as a national security risk and a plan of action developed so that the territory is able to sustain itself for a 6 month period in the event it is cutoff from the rest of the world. A policy and the capacity for self-sufficiency in a few key food groups, proteins (from long line / deep sea fishing), vegetables (from greenhouse farming), and water (from desalination) should be developed and financed.
  
- e) Energy Security – Needs to be classified as a national security risk and a plan of action developed so that in the event of a disaster such as the 2017 hurricanes that the territory is able to generate electricity to support its citizens, visitors and the economy. A national policy for energy security to include key elements such as renewable energy, construction of additional generating capacity and substations, placing the connections to key loads such as supermarkets, water desalination plants, etc underground, fuel storage capacity for 2-3 months of electricity generation, etc needs to be developed and financed.
  
- f) Economic Security – The 2017 hurricanes and now the COVID-19 global pandemic has exposed the need for multiple legs to the economy and the need for its diversification. An economic pillar should be defined and a policy developed that once an industry is identified as an economic pillar, that the education and workforce development systems and other infrastructure must be put in place to support that economic pillar. At any given time, even during a major disaster or a global pandemic, there should be at least two major industries operating in the Virgin Islands.

## **7. COMMUNICATIONS**

Commissioner Hickinbottom, I recognise that better communication with residents and other stakeholders is important in delivering good governance. Accordingly, as an elected leader, I will continue to encourage greater engagement, participation and ownership of the territory's development.

Greater engagement can be had through:

- a) Establishing a Unit for Public Outreach and Engagement within the Office of the Premier to spearhead a more effective approach to government communication that reflects 21st Century reality.
- b) Continuing to diversify the mechanisms for the delivery of Government communications with a focus on more dynamic media channels.
- c) Promoting a culture and practice of more public consultation in relation to major governmental initiatives and issues.
- d) Reinststitute “Government on the Road” where at least once bi-annually, the Government conducts town hall meetings to update the public on the Government initiatives and to receive feedback from the public on its priorities, creating a continual awareness among our people that they have a right to participate in the Governance of their country.
- e) Introduce a programme for residents’ input towards proposing innovative and creative solutions for efficiency of government operations and make use of the referenda process to make decisions on sensitive issues. This could be spearheaded through the district councils mentioned earlier.