



## Cayman Islands Human Rights Commission

*promoting, protecting and preserving human rights*

REF: HRC-RES-MIGRANTS

1 December 2015

Bruce Smith  
Acting Chief Immigration Officer  
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CAYMAN ISLANDS KY1-1102

Via e-mail: [bruce.smith@gov.ky](mailto:bruce.smith@gov.ky)

Dear Mr. Smith,

As you are aware the Human Rights Commission (“the Commission”) continues to have an interest in the policies and practices utilised by the Cayman Islands Government in the handling of illegal migrants encountered in our territorial waters.

In May 2015 the Commission communicated these concerns to the Ministry of Home Affairs (“the Ministry”) following a meeting I had with the United Nations High Commission for Refugees’ (“the UNHCR”) Deputy Regional Representative for the USA and Caribbean Dr. Buti Kale to discuss migration both in the Cayman Islands and in the region.

During our discussions Dr. Kale raised concerns about people trafficking and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (“**the Protocol**”) (which supplements the United Nations Convention against Transnational Organized Crime (“**the Convention**”). Following enquiries the Commission learned that whilst the Cayman Islands are not a signatory to the Convention 166 states (including the United Kingdom) are. Clearly the goals articulated in the Convention and Protocol are regarded as important throughout the global community.

Specifically Dr. Kale and I discussed the UNHCR’s concerns about allowing migrants entering Cayman waters to carry on their journeys (providing the occupants in the boat are safe and the boat is in good condition) as opposed to landing all persons in Cayman to be formally processed. It is the formal processing of migrants in controlled circumstances which can ensure

the Cayman Islands are not a party to human trafficking, as the proper investigation of potential people trafficking cannot be carried out during interceptions at sea.

The Commission further communicated that it agreed with the UNHCR that immediate reconsideration should be given to the process currently in place as it fails to ensure that the Cayman Islands does not deter and prevent human trafficking. The Commission requested details of the Government's consideration of a requirement for formal processing and indicated that in the event that the issue had not previously been considered the Commission urged the government to do so as a matter of priority. Additionally the Commission asked for confirmation as to whether the Government currently had any intention to ask for the Convention and Protocol to be extended to the Cayman Islands and if not requested reasons why.

The Commission has since received an email via Assistant Chief Officer in the Ministry from the Assistant Chief Immigration Officer (Visa Section) indicating *inter alia*, the following:

"Following a meeting attended along with the Hon. AG, DPP, Commissioner of RCIP and yourself representing the MOHA, we recognized the need to have implemented a separate assessment form which provided a mechanism toward seeking to identify any potential violations pursuant to our local legislation namely the TRAFFICKING IN PERSONS (PREVENTION AND SUPPRESSION) LAW, 2007 (LAW OF 2007) alongside of our IMMIGRATION LAW. Having recognized and agreed that the aforementioned legislation covers wider issues apart from the general arrival of irregular migrants by air or sea, our current implementation solely focuses on arrival by sea at this time, but can be applied to additional scenarios i.e. exploitation of workers etc.

The current process in aid of fulfilling our obligations are as follows:-

1. Upon arrival or interception of any migrants at sea and where minors (younger than 18yrs) and/or women are onboard, it is mandatory that an assessment is completed.
2. All efforts have to be made to conduct assessments with women and/or minors in isolation from the connected group of which they arrived.
3. Identities of women and minor children will be corroborated with national identification (as is possible) enabling identification of family relationships and best interest determinations.

4. Determination is made and recorded on the established assessment form by an assessor (DOI) as to whether the migrant(s) are being trafficked or smuggled.
5. If determination reveals that the migrant(s) is being trafficked or smuggled, standard criminal process are actioned by the DOI and/or RCIP. As it relates to welfare needs following this scenario, a referral is immediately made to the Department of Children and Family Services.
6. If determination is in the negative, a decision by the DOI to approve continuation of travel following all current guidelines and policies are taken.
7. In circumstances where groups cannot continue on their own volition and repatriation or refugee determination is in process; as it relates to minors and their respective parent(s) or guardian (as decided by the DOI), alternate housing arrangements are to be made as soon as practicable to minimize potential physical and psychological risks.
8. Requisite landing processes are to be strictly followed recording details of the migrants, permissions afforded, conditions and/or limitations to be met. These details will be recorded within established temporary admission forms inclusive of a full face photo.
9. Welfare checks are to be conducted by the DOI assigned officer, where records of their visit(s) and notes are to be reported to a supervisor for sign off and/or appropriate action.

Please note that a formal policy or SOP has not been drafted but we will have this actioned asap. In absence of our own finalized SOP or Guideline, we will adopt international guidelines set by UNHCR on this issue. It is imperative that the intended mandatory training on sensitization of trafficking in persons is timely, giving officers from DOI, RCIP along with other LEA the requisite knowledge of key triggers and identifiers relative to victims of these crimes.”

The Commission welcomed this information and was satisfied that the Department was attempting to comply with the Protocol. The Commission was aware that the Ministry was continuing to gather the relevant information necessary for consideration by the Honourable Premier as to requesting the extension of the Protocol to the Cayman Islands.

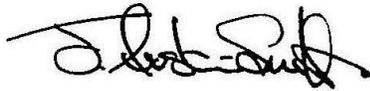
On 8 October 2015 the Commission became aware of the arrival of a boat in the George Town Harbour which contained numerous Cuban migrants. Following attempts to contact the Department, the Commission liaised with the Royal Cayman Islands Police Service (“the RCIPS”)

regarding the welfare of these migrants. The Commission ultimately learned that none of the female migrants were separated and assessed, in line with the policy set out above. In fact, the Commission was informed by the RCIPS that they did not have authority to remove, without their consent, any person from the vessel in order to conduct an assessment and therefore this policy could not be followed.

In order for the Commission to determine how to proceed we would be grateful if you could confirm whether the above detailed policy has actually been given effect or whether this is a draft/discussion policy. If this policy has been given effect could you please indicate why it was not followed in handling the migrants on 8 October 2015. If it is not in effect could you please confirm why.

Thank you in advance for your consideration of this matter.

Yours sincerely,



James Austin-Smith  
Chairman, Human Rights Commission

cc: Chief Officer Ministry of Home Affairs  
Commissioner of Police