



Cayman Islands  
Human Rights Commission

*promoting, protecting and preserving human rights*

Mr. Kearney Gomez MBE, JP  
Supervisor of Elections  
P.O. Box 10120  
Grand Cayman KY1-1001  
CAYMAN ISLANDS

17 January, 2013

Via Email: [electionsoffice@candw.ky](mailto:electionsoffice@candw.ky)

Dear Mr. Gomez,

**RE: General Elections, 2013 – Remand Prisoners**

The Human Rights Commission thanks you for your copied response to the above subject dated 04/01/2013 Ref: GE29. The Commission discussed the response in its 9 January meeting and would like to take this opportunity to seek further clarification.

Firstly, regarding the eligibility of prisoners, in general, to vote. Section 91 (1) (a) of the Constitution and subsequently the second schedule of the Elections Law (2009 Revision), under the heading 'note of qualifications to be registered as an elector' reads as follows:

Provided that such person is not-

(a) under sentence of death imposed on him by a court in any part of the Commonwealth, or serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court, or under such a sentence of imprisonment the execution of which has been suspended.

It is our understanding, therefore, that an elector is disqualified from voting if they are *servi*ng a sentence of imprisonment exceeding twelve months. However, someone who previously *serve*d a sentence of imprisonment exceeding twelve months remains qualified to vote regardless of whether they are currently serving a sentence of less than twelve months or are on remand.

Secondly, the Commission is concerned regarding the arrangements which you indicate the Acting Director of Prisons should undertake in order to bring eligible prisoners to the voting stations to vote on Election Day.

The Commission agrees that in accordance with section 52 of the Elections Law (2009 Revision) prisoners, whether remand or sentenced, do not qualify to vote as absent electors. Additionally, the Commission understand that prisoners, whether remand or sentenced, are not expressly afforded the opportunity to vote by mobile voting in accordance with section 50(1) (a) of the Elections Law (2009 Revision); however the Commission believes the spirit and intent of the law under this section intended to provide all persons unable to physically attend the polling stations on Election Day the opportunity to vote. Section 50(1) reads:

Mobile polling stations

50. (1) Subject to this section, where-

(a) an elector is unable or likely to be unable-

(i) to go in person to the polling station because he is or is likely to be in a hospital, rest home or other similar institution, or because he is a geriatric at home;

(ii) by reason either of blindness or any other physical incapacity to go in person to the polling station or, if able to go, to vote unaided; or

(iii) to go in person to the polling station because of the general nature of his occupation, service or employment; and

(b) that elector is not entitled under section 52 to vote as an absent elector, that elector is entitled to have his vote taken at a mobile station if, in the prescribed manner and within the prescribed time, he applies to be treated as an absent elector voting at a mobile station and if his application is allowed by the registering officer under section 53.

In past cases arguing human rights, the prison has qualified as a *home* and thus the Commission questions whether prisoners could not also fit within section 50(1) affording them the opportunity to vote. Section 50(2) further indicates that the Supervisor of Elections, subject to the approval of the Governor, may establish mobile polling stations to accommodate such persons as described in section 50(1). We would ask, therefore, that permission is obtained for a mobile polling station to visit Her Majesty's Prison Services. If prisoners, either remand or sentenced, cannot be afforded the opportunity to vote under section 50(1) the prison will have no other option but to make arrangements for prisoners to be escorted to the relevant polling stations on Election Day; though we do not see this as a practical solution to this problem, nor is it cost-effective or a proper use of resources. Additionally, we anticipate that this will create security concerns for the prison.

We also note that while this letter specifically addresses prisoners being held in the custody of Her Majesty's Prison Service; other entities such as the Royal Cayman Islands Police Service, the Cayman Islands Health Services Authority and the Department of Children and Family Services need to ensure they too make arrangements to give qualified voters the opportunity to cast their votes during the 2013 election. As such we have copied in the Honourable Deputy Governor so that he may ensure all relevant Heads of Departments, through the Chief Officers, can make such arrangements.

Additionally, we understand that His Excellency has agreed to re-open the process which would allow additional eligible persons the opportunity to register to vote in the 2013 Elections; we would ask that the same entities which house and care for persons in our community and thus need to make allowances to ensure persons are given the opportunity to exercise their right to vote also afford those eligible persons the opportunity to register to vote now and for future elections.

As you are aware, a prisoner who is not serving a sentence exceeding twelve months and is a qualified and a registered elector retains the right to vote per both the Elections Law and section 92 of the Constitution. If he or she is not presented with the means and opportunity to vote this is tantamount to denial of that right. It appears that there is an anomaly in the Elections Law (2009 Revision) allowing for some prisoners to be eligible to vote and yet not providing them with a practical manner in which to exercise that right. As such at the very least we would encourage both the Elections Office and the Prison Service to take legal advice on this matter.

We do hope that you will reconsider your previous directive so that all persons in the Cayman Islands qualified to vote can utilise their right to do so.

Kind regards,



Richard Coles  
Chairman  
Human Rights Commission

cc: His Excellency the Governor  
Honourable Deputy Governor  
Chief Officer, Portfolio of Internal and External Affairs  
Acting Director of Prisons