



Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

Sam Bulgin, QC, JP
Honourable Attorney General
Fourth Floor Government Administration Building
Grand Cayman
CAYMAN ISLANDS KY1-9000

21 November, 2011

VIA E-MAIL: virginia.gendron@gov.ky

Dear Mr. Bulgin,

The Human Rights Commission wishes to thank you for sight of the Criminal Procedure Code (2011 Revision) and Penal Code (2010 Revision), received on 2 November, 2011 and the Firearms (Amendment) Bill, 2011, received on 11 November, 2011.

CPC (2011 Revision) and Penal Code (2010 Revision)

The rationale behind *some* of the proposed changes is self-evident and the Human Rights Commission does not see any basis for strong criticism if one accepts that the crackdown on gang activity is necessary, reasonable and justifiable for the protection of public order and safety.

However, there are a number of areas which give rise to concern, in particular the very large increase in sentences for being 'drunk and disorderly' and unauthorised wearing of a 'uniform' and the very wide discretion given to police officers - for example, to determine when an item is being worn to conceal identity. Difficult questions might arise in relation to identity concealment point, for example, in cases involving Muslim women wearing hijab, nuns wearing habits, party goers wearing costumes, a stylish youngster wearing a large baseball hat and sunglasses to the movies, etc. The HRC would encourage the provision of clear guidance and training in the exercise of this wide discretion to narrow the scope for confusion and/or abuse of the powers.

Firearms (Amendment) Bill, 2011

It appears that the grounds and procedure set out in the draft are reasonable to achieve the ends of the legislation. However, from a human rights perspective, it seems that the provisions warranting closer inspection are the proposals for detention without charge up to a maximum of 28 days (by order of the Summary Court). Can you comment on whether this matches up to similar provisions in the UK or other countries or provide any further explanation of the rationale behind these proposals?

The HRC strongly recommends that the new powers introduced in this bill for the RCIP warrants the creation of guidelines to prevent abuse and these should be in place at the same time the Law comes into force.

Conclusion

When a proposed piece of legislation tends to reduce or restrict existing rights of the Cayman public HRC would wish to be provided with an informative explanation paper which would set out justification for such reduction or restriction. In this regard we note that the Memorandum of Objects and Reasons at the front of each Bill now merely summarises each clause of the Bill but fails to give any reasons. It is becoming more frequent for authorities to put together proposed legislation which is clearly intended to cut into the rights of suspects or accused persons as a reaction to the kind of pressures we now face as a society.

When doing so, it is even more important for them to provide careful justification of their actions, showing that they have taken into account the human rights implications of the measures being proposed.

In conclusion, it would have been helpful to have more information about why these changes are necessary and considered to be potentially helpful. Without that, the HRC is unable to comment more extensively save to say that these aspects of the draft Bills are unsatisfactory in the absence of some explanation or justification for their introduction.

Yours sincerely,



AP Richard Coles
Chairman, Human Rights Commission

cc: Honourable Deputy Governor

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