



Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

Disclaimer

The attached report entitled Research Project - Summer 2013 seeks to explore the question: *'Over the past few years there have been proposals for a sex offender registry in the Cayman Islands; would the creation of a public registry be a breach of human rights - right to privacy?'* It was written by the Student Chapter of the Caymanian Bar Association.

The topic was selected by the students themselves as a matter of interest and in order to fulfill a research assignment prescribed by the Caymanian Bar Association. It was presented to the Human Rights Commission for possible use as a resource.

The Human Rights Commission acknowledges the hard work and extensive research that went into the creation of this report, however, the facts, conclusions, views, opinions and other information contained in the report are those of the Student Chapter and not those of the Human Rights Commission. The Human Rights Commission has posted this report to recognise the work of the Student Chapter and for public interest regarding this sensitive issue which raises important human rights questions.



STUDENT CHAPTER

"Over the past few years there have been proposals for a sex offender registry in the Cayman Islands; would the creation of a public registry be a breach of human rights - right to privacy?"

Research Project- Summer 2013

Foreword

During the past few years, the Student Chapter of the Caymanian Bar Association has undertaken various research exercises during the summer, which has provided an opportunity for the different levels of the Student Chapter to collaborate and work in unison on a single project.

The Student Chapter has had opportunities of presenting reports in the past to the Cayman Islands Human Rights Commission (the "HRC"), and this year, the HRC suggested that the Student Chapter select a topic of their interest. After much thought, in June 2013, the Student Chapter proposed "Whether the creation of a public sex offender registry in the Cayman Islands would be a breach of human rights - the right to privacy?".

Since then, there has been an awakening and resurgence of interest on this topic within the Cayman Islands. No doubt, this has provided the Student Chapter with another source of information and feedback from our own community.

I would like to take this opportunity to thank all the students who contributed to this report (names listed on page 3) and have enthusiastically participated in our discussion forums whilst working on their relevant sections of this report.

Ridhlima Kapoor

Kindly note that this report will be utilised by the Cayman Islands Human Rights Commission as a resource and may not reflect the position of the HRC.

This report only reflects the views and findings of the students who have contributed to this research and not that of the HRC.

For more information on the Caymanian Bar Association and/or the Student Chapter, please visit our website at www.caymanbar.org.ky.

Executive Summary

Although establishing a sex offender's registry in the form proposed by the Bill appears to be a prima facie breach of the right to privacy, beneath the surface we see that there are strong arguments indicating that there is an inherent need for this in Caymanian society.

Further, subsequent to comparisons between the Cayman Islands, Bermuda, Jamaica, the EU, the USA and the UK's legislation, we see that provisions facilitating the establishment of a sex offender's registry may provide a certain degree of adequate protection for vulnerable individuals in society.

When ruling on whether a certain measure is a breach of human rights, an effective rule of thumb is whether the measure is negative or positive and whether it is necessary for the functioning of society; both questions here can be answered in the affirmative.

As seen from the research within this report, there are numerous variables that must be taken into account when considering the implementation of a public registry including: how best to disclose information about an offender; length of time the information is publically available; opportunities for review; and how to prevent misuse of such data.

Contributors

- ❖ Erin Panton
- ❖ Daegan McLaughlin
- ❖ Jaime-Lee Eccles
- ❖ Joseph Jackson
- ❖ Katrina Watson
- ❖ Kimberly Ebanks
- ❖ Nickolas Moore
- ❖ Renee Lindo
- ❖ Tania Smith

Collated & edited by: Ridhiima Kapoor, Articled Clerk Representative; and
Joni Ebanks, BPTC/PPC/LPC Representative

A special thanks to: Abraham Thoppil, Vice President
Brett Basdeo, Treasurer; and
Joannah Bodden-Small

Table of Contents

SECTION 1 - The Proposed Bill	page 5
SECTION 2 - The Bill of Rights and the Human Rights Act	page 7
SECTION 3 - Jurisdiction Comparison	page 10
SECTION 4 - Social Media Perspective	page 23
SECTION 5 - Data Protection Elements	page 26

Section 1

The Proposed Bill

By: Joseph Jackson

Summary of the Sex Offender Register Bill, 2009 ("the SOR Bill")

The SOR Bill was presented as a consultative draft proposed by the then Health Minister, Hon. Anthony Eden in February 2009. The SOR Bill seeks to establish a Sex Offender Registry (the "**Registry**") which will manage and maintain a register of sex offenders to be known as the Sex Offender Register (the "**Register**"). The Register will contain personal information of registered sex offenders, such as full name, date of birth, residence, and place of employment; and thereafter the re-registration of the sex offender on the anniversary of the initial registration for the prescribed registration period. The SOR Bill also provides for the taking of photographs, finger prints and DNA samples at the time in which registration takes place. Any subsequent changes to the personal information would have to be reported to the Registry.

Provision is also made for the Registry to be notified of any intention to travel either outside of the Islands or within the Islands but away from their usual place of abode or residence for any period in excess of twenty-four hours.

Access to the Register is restricted to the Registry save where the Governor in Cabinet sets a prescribed list of those approved authorities which may have access to the Register. The Registry may, where it is in the interest of the due administration of justice to do so, grant an approved authority access to the Register.

Does the Register constitute a breach of an individual's right to privacy?

Under Part 1, Section 9 of the Cayman Islands Constitution Order 2009 your private and family life, your home and your correspondence is protected ("correspondence" could include communication by letter, telephone, fax, and e-mail). The concept of "private life" is broad. In general, this means you have the right to live your own life, with reasonable personal privacy in a democratic society, taking into account the rights and freedoms of others. This right limits the extent to which Government can invade your bodily privacy without your permission, such as taking blood samples. This right can also extend to the Government putting in place laws to prevent the media from intruding your life. Any interference with your right to private and family life by the Government needs to be justified and must achieve a legitimate public objective. Grounds for Government interference include the interest of defence, public safety, public order, public morality or public health. It should be noted that interference with rights to privacy can also be justified for the purpose of protecting the rights and freedoms of other persons.

Upon conviction, sex offenders would submit their names, home addresses, workplace and details of any property which they own in the Islands. Such details would qualify as personal and to divulge such information to make them public arguably goes against the right to privacy. There has been much discussion and commentary in certain quarters on particularly the utility of such a measure in a small country meaning that even though we have numerous nationalities which make up the demographic of the Island, most people tend to know relatively everyone in their respective

community/neighbourhood. Public access could have a significantly detrimental effect against those who are labelled as sex offenders on this list and run the risk of being ostracised from their families and the community at large.

Given that there is an inherent right to privacy, there is a strong argument that a register containing the names of sex offenders will constitute a breach of the individual's rights to privacy if the Register is made available to the public. According to the current consultative draft, the public would not have access to the Register however, there are strong efforts to have the SOR Bill amended to provide for parts of the Register to be made available to the public. This is obviously where issues of human rights and breach of the right to privacy emerge.

Is the SOR Bill appropriate for the Cayman Islands?

The SOR Bill has requirements which may not be entirely necessary or practicable in a jurisdiction as small as the Cayman Islands. For example, there are registration requirements for an offender to report to the Registry in the event of travel within the Islands where he is away from his usual place of abode or residence for any period in excess of twenty-four hours. In practice, this would require someone who lives in Bodden Town going to register with the police station in West Bay because they are going to spend the weekend there. In a sense, it may be more practical for a registered offender to be fitted with an electronic monitoring device so that he may be tracked or perhaps establishing restricted zones to prohibit certain districts or areas. How long a person stays on the Register depends on the length of the sentence following conviction according to the SOR Bill. This of course will affect such things as the registration period and for how long a convicted offender will have to carry out such required reporting on his whereabouts.

Section 9 of the SOR Bill states that the registration period for which a sex offender is required to report to the Registry shall be:

(a) **life**

- (i) where that sex offender had been sentenced to imprisonment for a term in excess of thirty months; or
- (ii) where that sex offender had been found not guilty or not criminally responsible on account of a mental disorder;

(b) **ten years** where that sex offender has been sentenced to imprisonment for a term in excess of six months and less than thirty months;

(c) **seven years** where that sex offender had been sentenced to imprisonment for a term in excess of six months or less;

(d) **five years** where that sex offender had been sentenced to a non-custodial sentence.

The Royal Cayman Islands Police Service ("**RCIPS**") supported the idea of a sex offender registry¹ but the establishment of the Register/Registry is a Government policy decision and outside of the RCIPS' remit. Nevertheless, it would be the responsibility of the RCIPS to compile detailed records of these offenders for intelligence and information purposes. Yet, proposal of a designated Registry and Register which contains information on sex offenders but is not available to the public seems like an exercise in futility creating unnecessary added costs for government, which might only be justified if it was predominantly for the public's use and access.

¹ "**Sex offender list needed now**", 11 April 2011, Cayman News Service (para 4)
Article link: <http://caymannewsservice.com/crime/2011/11/04/sex-offender-list-needed-now>

Section 2

Cayman Islands Bill of Rights and the Human Rights Act 1998

By: Renee Lindo

The Cayman Islands Bill of Rights and the Human Rights Act 1998 are both cognizant of the fact that the right to privacy and family life is an inherent human right. This section aims to point out similarities and differences in both pieces of legislation.

Section 9 of the Bill provides: - Private and family life

- 1 Government shall respect every person's private and family life, his or her home and his or her correspondence.
- 2 Except with his or her own consent or as permitted under subsection (3), no person shall be subjected to the search of his or her person or his or her property or the entry of persons on his or her premises.
- 3 Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—
 - (a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, or the development or utilisation of any other property in such a manner as to promote the public benefit;
 - (b) for the purpose of protecting the rights and freedoms of other persons;
 - (c) to enable an agent of the Government or a public body established by law to enter on the premises of any person in order to inspect those premises or anything on them for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that public body;
 - (d) to authorise, for the purpose of enforcing the judgment or order of a court, the search of any person or property by order of a court or the entry on any premises by such order; or
 - (e) to regulate the right to enter or remain in the Cayman Islands.

The HRA - Right to respect for private and family life

Section 9 of the Bill follows closely with Article 8 of the HRA, the latter of which provides:

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.

- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 8 of the HRA is a broad-ranging right that is often closely connected with other rights such as freedom of religion, freedom of expression, freedom of association and the right to respect for property. The concept of a right to a private life also encompasses the importance of personal dignity and autonomy and the interaction a person has with others, both in private or in public.

The obligation on the State under Article 8 of the HRA is to refrain from interfering with the right itself and also to take some positive measures in place, for example, to criminalise extreme breaches of the right to a private life by private individuals.

Family Life

Article 8 of the HRA also provides the right to respect for one's established family life. This includes close family ties, although there is no pre-determined model of a family or family life. It includes any stable relationship, be it married, engaged, between parents and children; siblings; grandparents and grandchildren etc. This right is often engaged, for example, when measures are taken by the State to separate family members (by removing children into care, or deporting one member of a family group).

Respect for the home

Right to respect for the home includes a right not to have one's home life interfered with, including by unlawful surveillance, unlawful entry, arbitrary evictions etc.

Respect for correspondence

Everyone has the right to uninterrupted and uncensored communication with others – a right particularly of relevance in relation to phone-tapping; email surveillance; and the reading of letters.

Limitations

Article 8 of the HRA is a qualified right and as such the right to a private and family life and respect for the home and correspondence may be limited. So while the right to privacy is engaged in a wide number of situations, the right may be lawfully limited. Any limitation must have regard to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole.

In particular any limitation must be:

- in accordance with law;
- necessary and proportionate; and
- for one or more of the following legitimate aims:
 - in the interests of national security;
 - in the interests of public safety or the economic well-being of the country;
 - in the prevention of disorder or crime;
 - in the protection of health or morals; or
 - in the protection of the rights and freedoms of others.

Balancing rights

The right to respect for a private life often needs to be balanced against the right to freedom of expression. If there is an alternative, less intrusive, way of achieving the same aim then the alternative measure should be used.

Additionally, as was recently held in the Supreme Court in 2011 automatic lifetime inclusion to the register breached the Human Rights Act², thus while the register itself may not be an infringement the inability to have one's name removed may be.

Collection of public data and their access

In determining whether personal information held by the authorities involves any of the private-life aspects protected by Article 8 of the HRA, the Court will have due regard to the specific context in which the information at issue has been recorded and retained, the nature of the records, the duration of the storage, the way in which these records are used and processed and the results that may be obtained.³

Handling of personal data

The inclusion of a person's details in a national database of offenders does not, contravene Article 8, even when the data undergoes automatic processing and is used for police purposes. In *Gardel v France*⁴ the Court was satisfied that the preventive aim of the database of sex offenders, into which the applicant's details were entered following a sentence of 15 years' imprisonment for the rape of a minor, could represent a way for the state to fulfill its obligation to protect vulnerable groups from particularly reprehensible forms of criminal activity. The length of data conservation was found to be proportionate in relation to the aim pursued, in light of the fact that the applicant a request for the deletion of data, and that its analysis was subject to a duty of confidentiality and that its access was restricted to precisely determined circumstances. The Court unanimously held that the balance struck between private and public interests at issue was fair, thus the database did not violate Article 8 of the HRA.

² R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department [2010] UKSC 17

³ S and Marper v United Kingdom [ECHR] 2008 1581

⁴ No. 16428/05, ECHR 2009

SECTION 3

Jurisdiction Comparison

A. The European Union

By: Jamie-Lee Eccles

This section will provide a brief overview of the sex offender laws within several countries in the European Union, namely England, Ireland and France.

England

The laws regulating the Sex Offender's Registry in England is known as "Sarah's Law". This allows parents to ask the police if someone with access to their child has been convicted or is suspected of abuse. The police may reveal details confidentially if they think it is in the child's best interests. The information given to the parent is very limited and cannot be passed on to others.

The name "Sex Offenders Register" is however misleading as it does not indicate a centrally held register that is accessible to the public. Rather, it is the name used to describe a system of notification whereby offenders must register their details with the police. It contains the details of anyone convicted, cautioned or released from prison for sexual offences since September 1997. The sentence received is used to calculate the period for which the offender will be subject to notification requirements. Prior to a Supreme Court case in 2010, a person that had been imprisoned for 30 months or more would remain on the register indefinitely. In the case of *R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department*⁵ it was held that being kept on the register indefinitely was a breach of Article 8 of the European Convention of Human Rights. This resulted in Parliament passing a new provision in the Sexual Offences Act that allows an individual to appeal to have their name removed. The bar has been set very high as those sex offenders that were on the register for life have to wait 15 years after their release from prison to appeal.

Ireland

The Irish Laws regarding Sex Offenders are very similar to that of England, in that they create a system of notification rather than an actual public registry. Those convicted of certain sexual offences are now obliged to provide certain information to the police including the address at which they are living following their release from prison. Similar to the new amendment to English Law, anyone required to report to the Irish police indefinitely is allowed to apply to the Court to be released from that obligation after at least 10 years have passed from the date of the person's release from custody.⁶

Germany

German Laws regarding a sex offenders register are quite different from that of the England and Ireland. In fact, Germany have stated in the European Parliament that they regard the manner in

⁵ [2010] UKSC 17

⁶ http://www.citizensinformation.ie/en/justice/criminal_law/criminal_trial/sex_offenders_register.html <accessed August 15th 2013>

which the UK sex offenders register is operated as being unlawful and contrary to the European Convention on Human Rights.⁷ Germany does not have any public sex offender disclosure laws, but instead has a private database of the names of convicted sex offenders, to which only criminal prosecutors and law enforcement officials have access to.⁸

⁷ <http://www.theopinionsite.org/changes-to-sex-offenders-register-may-be-unlawful/> <accessed August 20th 2013>

⁸ <http://www.stripes.com/news/usafe-keeps-track-of-registered-sex-offenders-on-base-1.181399>

Jurisdiction Comparison

B. The European Court of Human Rights

By: Erin Panton

The right to privacy in Cayman Islands law is encompassed under section 9 of The Cayman Islands Constitution Order 2009 (the "**Constitution**"). It was modelled after Article 8 of the Human Rights Act 1998, which was in turn adopted from the European Convention on Human Rights and Fundamental Freedoms (the "**Convention**"). Therefore, our approach as to whether the establishment of a sex offender registry would result in a breach of the right to privacy should be consistent with that of the European Court of Human Rights ("**ECtHR**") and the Convention, where the right in its current form initially originated.

In the recent ECtHR case of *Gardel v. France*,⁹ the Court answered this specific question in detail, in the context of French law. As a starting point, it was noted by the Court that "*the storing by a public authority of information relating to an individual's private life*" does indeed amount "*to an interference within the meaning of Article 8*" and that the Court had previously already ruled as such in relation to this issue.¹⁰ However, the Court ultimately held that there was no violation of Article 8 where a sex offender was required to report to a public authority on a regular basis to give personal details to be stored on a registry. This is because the interference was deemed necessary from the standpoint of the requirements of the Convention. It should be noted, however, that this registry was only available to certain approved public authorities and not the public in general.

For a potential registry in the Cayman Islands, this means that it would be highly unlikely that the establishment of such a registry would amount to a breach of the right to privacy under our Constitution,¹¹ provided certain requirements are met. Before arriving at this point, however, it is necessary to first discuss how the Court came to this decision and the requirements that Cayman would have to meet in order to ensure compliance.

Gardel v. France

As stated above, the Court began with the initial starting point that, based on the authorities,¹² such storing of personal information by a public authority comes within the meaning of Article 8 and would therefore be a breach on its face.¹³ This, too, would likely be our initial interpretation in the Cayman Islands, meaning that the establishment of a registry storing private information on individuals would thus be a breach of our Constitution.¹⁴

In consideration, the Court would have to examine whether this interference is necessary from the standpoint of the requirements of the Convention. When deciding this question, the Court

⁹ (App no 16428/05) ECHR Chamber of the Court (Fifth Section) 17 March 2010.

¹⁰ *Adamson v. The United Kingdom* (App no 42293/98) ECHR Court (Third Section) 26 January 1999.

¹¹ Section 9 of the Cayman Islands Constitution Order 2009.

¹² *Supra*, n. 2. Further examples include *Rotaru v. Romania* (App no 28341/95) ECHR Grand Chamber 4 May 2000; and *Leander v. Sweden* (App no 9248/81) ECHR Chamber of the Court 26 March 1987.

¹³ *M.M. v. The United Kingdom* (App no 24029/07) ECHR Chamber of the Court 29 April 2013.

¹⁴ *Supra*, n.3.

looks at a number of factors to determine whether appropriate safeguards have been put in place to ensure proportionality and prevent any such use of personal data which would be inconsistent with the guarantees of the right to privacy. It was noted that "*the need for such safeguards is all the greater where the protection of personal data undergoing automatic processing is concerned*".¹⁵ Derogations from this are only permitted where they are necessary in a democratic society in the interests of, among other things, public safety, the suppression of criminal offences or protecting the rights and freedoms of others.¹⁶

Safeguards

The Court in *Gardel* said that the domestic law in question must implement safeguards to ensure that the offender's inclusion on the register is proportionate to its aim of protecting the general public. Specifically, it should ensure that the personal data stored by the registry is relevant and not excessive to the purposes for which they are stored and that they are not stored for any period longer than the purpose so requires. It must also afford adequate guarantees to ensure that the data is sufficiently protected from misuse and abuse. Simply put, safeguards must be implemented to ensure (i) proportionality; and (ii) adequate protection from misuse and abuse of the information.

(i) Proportionality

- (a) It is a logical conclusion to say that the rights of the general public, specifically the right to protection provided by the government, outweigh the right to privacy of one individual. Children and other vulnerable individuals are entitled to State protection, in the form of effective deterrence, from such grave types of interference with essential aspects of their private lives. Accordingly, it could be more of a breach of the public's right to State protection than it would be a breach of one individual's right to private life, especially when that individual is a sex offender, thus making the breach a proportionate and necessary one in this aspect.
- (b) However, the successful rehabilitation of offenders must also be taken into account. It has been noted that "*the use of criminal data outside the criminal trial may jeopardise the convicted person's chances of social reintegration*."¹⁷ It can be said that it is unfair to punish offenders 'twice', meaning that, after they have already served their sentence, they are being punished again by being included on the register. This would mean that they would be subject to reporting requirements which require the offender to update the registry on their current living situations and other personal details, on an annual basis as well as every time there is a relevant change. They must even report to the registry any time they intend to travel. These requirements would place a considerable hindrance on any individual's life and social integration. However, it has been held that such reporting requirements are not disproportionate and do not result in a breach of the right to privacy, *provided* that provisions for review exist, especially in the case where the reporting period is life.¹⁸ Thus, there

¹⁵ See more support for this at *supra*, n. 5, at p.25, paras.123-124.

¹⁶ *Ibid.*

¹⁷ *Supra* n.5.

¹⁸ *Ibid.*

would be no question of breach in this respect if the legislature were to include provision allowing for review of an offender's continued inclusion on the register. Currently, the Cayman Islands Sex Offender Register Bill 2009 (the "**Bill**") has no such provision and the reporting period, depending on the severity of the sentence, is a maximum of life. This ties in with the issues in relation to the length of time for which the personal data is stored.

- (c) The Bill, as mentioned above, provides for the listing of an offender on the register for a maximum period of life. The storing of data for such a long period of time could give rise to an issue under the right to privacy. It has been said that *"[e]ven public information can fall within the scope of private life where it is systematically collected and stored in files held by the authorities ... This is all the more true where the information concerns a person's distant past ... as the conviction itself recedes into the past, it becomes part of the person's private life which must be respected."*¹⁹ Further, it has been known for quite some time that even criminals, or criminal suspects, are entitled to their right to privacy.²⁰ In the *Gardel* case, the ECtHR approved a period of either 20 or 30 years, depending on the severity of the sentence, for which such information would be stored on the register, subject to application for removal of the stored data. For example, as in *Gardel*, provision could be made in the Bill which allows offenders to make an application (presumably to the registry itself) to have the data concerning him or her deleted if conserving the data no longer appears necessary. This procedure would provide adequate and effective safeguards of the right to respect private life, while still providing adequate protection to the public. The data would automatically be deleted on completion of the 20-30 year period anyway, but applicants would further have the opportunity to apply for early removal. Although, as discussed above in relation to the reporting period, the lifelong period of listing on the register would also not result in a breach of the right to privacy where a review provision exists in which offenders could apply for removal. Therefore, even where the period of listing continues to be life and the legislature does not seek to reduce it to, for example, a period of 20-30 years, this length of time would not be disproportionate to the aim pursued in storing the information so long as the legislature implements a provision for review.

(ii) Misuse and abuse

There is also a concern that, if listed on a public register, members of the public will try to take the law into their own hands and 'punish' the offender themselves. This issue of vigilantes ties in with the successful rehabilitation issue in that particular difficulties are posed, in terms of reintegration back into society, when the general public knows of an individual's listing on the sex offender register. They would effectively be labelled a social pariah, and it can be concluded that this could very well result in a breach of the right to respect for private and family life. However it is submitted that these issues would not cause too much concern as it is proposed in the Bill that the Cayman Islands Sex Offender Register would only be

¹⁹ *Ibid.*

²⁰ *Malone v. The United Kingdom* (App no 8691/79) ECHR Grand Chamber 2 August 1984.

available to certain approved public authorities, and not the general public. Thus, the offender would still be able to successfully reintegrate back into society, get on with their lives, and be afforded protection by preventing misuse and abuse of that offender's personal information by the public.

Such safeguards as outlined above, if implemented, would ensure that the establishment of a Sex Offender Registry in the Cayman Islands does not breach the right to respect for private and family life.

Jurisdiction Comparison

C. Bermuda and Jamaica Comparison

By: Tania Smith

Any law that requires a sex offender to register with a sex offender registry following their conviction and release from prison is arguably at odds with the human right to privacy. Everyone has the human right to privacy and to private family life²¹. In the modern world, many countries can be found to have a form of sex offender's register including Australia, Canada, Ireland, South Africa, the UK and America. It has been argued that the creation of such registers encroaches on an individual's right to privacy although as it will be seen that argument has been rebuked with courts saying that an individual's right to privacy can be limited if it is necessary and proportionate in order to protect public safety. As with most human rights, courts have a balancing act to perform when competing human rights are at issue. The European Court of Human Rights stated that the requirement for an individual to sign the register is a proportionate measure when one considers the gravity of the harm which could be caused to the victim of a sexual attack if the said offender were to reoffend²².

General restrictions on an individual's right to privacy by signing the register include making it more difficult to find and keep a job if prospective employers were able to find them on a sex offender's register. Furthermore, prisoners can argue that they would be unable to make a stable home in a new community and are concerned with threats of harassment and violence that arguably come from being on the sex offender's register. It is fair to say that this could be detrimental to a prisoner's rehabilitation and continued treatment following their time in prison.

Bermuda

In Bermuda there is no statutory provision for a Sex Offenders Registry to be in the public domain. Although the Sex Offenders Registry was introduced in 2001, whether information is released or not is assessed on an individual case-by-case basis. The risk of harm to the public or to a named individual is considered before any information is disclosed and it is important to note that the government has put a notable insistence on the amount of information that needs to be disclosed and for what purpose. This is because it is thought by the authorities that putting the Registry in the public domain would prevent the individual from living a normal life following imprisonment and may increase their risk of violence. In 2012, it was said by the then Attorney General of Bermuda that *"Whilst historically there have been demands from some segments of the community for a US styled sex offenders register in the wake of convictions for sexual offences, Bermuda's laws, which are modelled on UK law, do not allow for the establishment of such a register."*²³

However in order to alleviate the public's concerns over the monitoring of sex offenders, the authorities have said that there is regular and continued monitoring of those imprisoned under section 329G of the Bermuda Criminal Code. It can be argued that Bermuda takes the human right of

²¹ Article 12 of 'The Universal Declaration of Human Rights'

²² *Bouchacourt v France* (Application No 5335/06) 17 December 2009

²³ Owain Johnston-Barnes, 'Attorney general says the Common Law does not allow for a sex offender register' (*The Royal Gazette online*, 19 July 2012) < <http://www.royalgazette.com/article/20120719/NEWS03/707199953> > accessed 16 August 2013.

privacy very seriously and by making disclosure on a case-by-case basis they are respecting an individual's private life. If the Cayman Islands were going to implement a Sex Offenders Register it is fair to say that they should adopt a similar code of reasoning and implementation that the Bermuda Government has adopted.

However, a Bermuda Alliance candidate disagrees with the approach of the Attorney General and points to the dangers of sex offenders in Bermuda and argues that children have human rights too. The Bermuda Alliance candidate argues that, "*The danger that pedophiles and other sexual deviants pose to children and young people is a rapidly-growing issue... Although official statistics say there were under 100 cases of child sex abuse reported to them in 2009, Family Centre Director Martha Dismont feels that police figures reflect severe underreporting.*"²⁴

Bermuda's system has been compared with the UK's 'Sarah's Law' in that whereby if a parent or adult is concerned over the safety of a child and this is considered a reasonable request then the police can disclose information regarding the individual if they are on the register. Furthermore it has been reported that no childcare professional had used the Register and labelled it 'useless'²⁵. However a spokesperson for One Bermuda Alliance has called for a completely public register²⁶ irrespective of any potential violation of the individual's right to privacy.

Jamaica

Jamaica has in place a Sex Offenders' Registry due to the Sexual Offences Act signed into law on October 20 2009. Section 29 of the Act introduced the Sex Offenders' Register and the Sex Offenders' Registry into Jamaican law. However, the Act requires regulations in order to put the register in use. The required regulations are currently being debated in Jamaica's legislature and sparking debate throughout the country. A representative from the office of Jamaicans for Justice expressed concern about the individual's human rights for allowing such a register to be in the public domain by saying that, "*The general concern about registries is that people have served their time and done their punishment, in having such a registry in place you are stigmatising them and leaving them vulnerable.*"²⁷ The opportunities for review are considered imperative for the operation of the Register and the regulation of the Register must cut the delicate balance between serving the public interest and the offender's human rights.

One of the problems that Jamaica has encountered with sex offenders is where sex offenders are deported from elsewhere and/or repatriated back to the country. It was reported that, "*Some serious offenders are coming. They are down there with a clean slate because the law doesn't make*

²⁴ Ceola Willson, 'One Bermuda Alliance spokesperson backs public sex offender register' (The Royal Gazette online, 23 July 2013) <<http://www.royalgazette.com/article/20120723/NEWS01/707239933&source=RSS>> accessed 14 August 2013

²⁵ Ibid 24

²⁶ Ibid 24

²⁷ A representative from the office of Jamaicans for Justice, "Contacted the office of Jamaicans for Justice on 12 August 2013"

*provision for them to be captured by the sex-offenders' registry. It's a big hole in the legislation.*²⁸ It is interesting to note that the representative from the office of Jamaicans for Justice agrees with the problems of deportees states that the public should be informed about deported sex offenders including their convictions and current whereabouts²⁹. This appears to be in conflict with their earlier human rights argument and arguably is part of the political football, which this issue has become.

Contrast with the Cayman Islands

In the last few years there has been growing support for the introduction of a sex offender registry in the Cayman Islands. The Cayman Islands should take the warnings from Bermuda and Jamaica as to the widespread political opinion these types of proposals can cause. In 2010 an activist presented the Government with a signed petition for the creation of a public registry.³⁰ However, it did not receive enough signatures in order to trigger a referendum under section 70(2) of the 2009 Constitution.

The Sex Offender Registry Bill³¹ was proposed in 2009 when the former Minister of Health Anthony Eden commissioned a 60-day public consultation. Mr. Eden emphasised the importance of the consultation by saying, *"Through this public consultative process, his ministry welcomed greater collaboration with government and non-government agencies as a means of raising awareness of this social issue that is threatening the stability of our families."*³² However, the Bill was never voted on by the Government. The Bill contained a list, which tracked the locations of those convicted of sex offences, rather than a public register accessible to all. The Attorney General position on the registry at the time was not in favour and disputed, *"the utility of such a measure in a small country and whether it was workable"*.³³ Presently no further plans have been unveiled as to the introduction of such a register.

As seen above, the Attorney General of Bermuda made comparisons to the UK's laws on sex offender registers. In the UK, the Sexual Offences Act 2003 introduced the Violent and Sex Offender Register where those who have been imprisoned for more than 12 months for violent or sexual offences or those who are thought to be a risk to society are required to sign the register with their local police. There have been numerous human rights arguments advocated against the introduction of such registers, which culminated in the landmark Supreme Court case of *R (JF and Angus Aubrey*

²⁸ Tyrone Reid, 'Perverts on the Loose-Deported Sex Offenders Roaming Undetected' (The Jamaica Gleaner, March 10 2013) <<http://jamaica-gleaner.com/gleaner/20130310/lead/lead2.html>> accessed 16 August 2013.

²⁹ Ibid 27

³⁰ Cayman News Service <http://www.caymannewsservice.com/headline-news/2010/11/02/sex-offender-list-petition-filed> accessed 16 August 2013

³¹ Consultation Draft, "A Bill for a Law to Establish a Sex Offender Registry; To make provision for the requirement to report by sex offenders; and to make provision for matters connected therein" (22 January 2009) <<http://www.legislativeassembly.ky/pls/portal/docs/PAGE/LGLHOME/BUSINESS/BUSINESS/REPORTS/REPORTS20082009/CONSULTATIONDRAFTSEXOFFENDERREGISTERBILL2009.PDF>> accessed 16 August 2013

³² Anthony Eden, 'Comment Now on Sex Offender Bill' (Cayman Islands Government, 17 March 2009) <http://www.gov.ky/portal/page?_pageid=1142,4342636&_dad=portal&_schema=PORTAL> accessed 18 August 2013.

³³ Ibid 32

*Thompson) v Secretary of State for the Home Department*³⁴. In April 2010, the Supreme Court found that there had been a breach of the human rights of those signed on the register due to the indefinite notification requirements in section 82(1) of the 2003 Act. The Court ruled that the law was disproportionate and as a result of this case, appeals were made provisional for those on the register for 15 years³⁵.

³⁴ [2009] EWCA Civ 792.

³⁵ Sexual Offences Act 2003 (Remedial) Order 2012

Jurisdiction Comparison

D. United States of America - Sex Offender Registry and Public Website

By: Katrina Watson & Renee Lindo

The National Sex Offenders Registry

The National Sex Offender Registry is a database available only to law enforcement that is maintained by the FBI's Criminal Justice Information Services Division.

Legislation in the form of the Lychner Act 1996 required the U.S. Attorney General to establish a national database at the FBI to track the whereabouts and movements of each person who has been convicted of a criminal offense against a victim who is a minor, has been convicted of a sexually violent offense, or is a sexually violent predator. Under the Act, the FBI³⁶ may release relevant information to federal, state, and local criminal justice agencies for law enforcement purposes only. Public notification will only be made if it is necessary to protect the public. However, the Act specifically states that in no case shall the FBI release the identity of any victim of an offense that required registration of a sex offender.

The legislation also made it a criminal offense for a registered sex offender to move to another state and knowingly fail to notify the FBI and authorities in the new state. Notification to the FBI and state authorities must be made within 10 days upon moving to a new state and/or establishing residence following release from prison or placed on parole, supervised release, or probation. Upon release, each sex offender is notified of their lawful duty to register with the FBI and appropriate local authorities.

The National Sex Offender Public Website

The National Sex Offender Public Website ("NSOPW")³⁷ is a public safety resource that provides the public with access to sex offender data nationwide. NSOPW is a partnership between the U.S. Department of Justice and state, territorial, and tribal governments, working together for the safety of adults and children.

NSOPW is the only U.S. government Website that links public state, territorial, and tribal sex offender registries from one site. In addition, the Website provides visitors with information about sexual abuse and how to protect themselves and loved ones from potential victimization. NSOPW is managed by the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) as authorized by the Sex Offender Registration and Notification Act (SORNA). Access of this information is free of charge. NSOPW's advanced search tool provides information

³⁶ www.fbi.gov

³⁷ www.nsopw.com

about sex offenders through a number of search options. Searches may be conducted by: name; nationally; address; county; and city/town.

Individual State Registries

Florida

Through the Public Safety Information Act of 1997, Florida³⁸ became the first state to list sexual predators and offenders on the Internet and to make the same information available through a 24-hour/day hotline to the public. Certain information on Florida sexual predators and sexual offenders has been made available to the public by:

- posting the predators/offenders registration information and their photographs on the Internet;
- maintaining a toll-free telephone line for the public to inquire whether an individual is a sexual predator or sexual offender;
- making informational flyers and brochures on sexual predators and sexual offenders available to the public;
- providing an online account search that allows citizens to see if an email address or instant message name belongs to a registered sexual offender or predator; and
- providing an automatic e-mail notification system that allows citizens to sign-up to receive e-mail notifications regarding offenders/predators in their area.

Under the Florida Sexual Predators Act there are numerous criteria that may cause a sexual offender to be registered. The Act makes an important distinction between sexual offender and sexual predator.

Under Florida law Sexual offenders/predators must:

- be listed on the public registry website;
- remain on the website for one year after the date of death as provided on the death certificate; and
- report the following information: all names and aliases ever used; date of birth; race; sex, hair and eye colour; height and weight; photograph; place of birth; driver's license; telephone numbers; residential address or addresses including transient (i.e. homeless); employer's name, address and telephone number; school name, address and telephone number; all email addresses and internet identifier. (This information is a public record unless exempt or confidential pursuant to legislation. These registration requirements are to be fulfilled more than once a year depending on what category they are in.)

It is possible for a sexual offender/predator to petition the court to be removed from the registry. Also, if offenders or predators are visiting from another state he/she must report in person to the sheriff's office within 48 hours of establishing a temporary residence in Florida.

³⁸ <http://offender.fdle.state.fl.us/offender>

California

The public has been able to view information on sex offenders required to register with local law enforcement under California's Megan's Law (2004)³⁹. Previously, the information was available only by personally visiting police stations and sheriff offices or by calling a 900 toll-free number. Megan's Law provides the public with certain information on the whereabouts of sex offenders so that members of our local communities may protect themselves and their children.

Persons convicted of specified sex crimes are required to register as sex offenders with a local law enforcement agency. Registered sex offenders are required to update their information annually, within five working days of their birthday. Some sex offenders must update more often. Approximately 25% of registered sex offenders cannot be posted online by law.⁴⁰ Whether public disclosure is permitted is based on the type of sex crime for which the person is required to register.

Some persons whose registrable sex offenses are non-disclosable to the public may obtain relief from the duty to register upon obtaining a certificate of rehabilitation. All others must obtain a governor's pardon to obtain relief from the duty to register as a sex offender. A person is eligible to apply for a certificate of rehabilitation seven to ten years (depending on the registrable sex offense) after release from custody or on parole or probation, whichever is sooner. Certain registrable sex offenders are not eligible to obtain a certificate of rehabilitation.

The law is not intended to punish the registrant and specifically prohibits using the information to harass or commit any crime against a registrant. A person may use the information disclosed on the Attorney General's Website only to protect a person at risk. It is a crime to use the information disclosed on the website to commit a misdemeanor or felony. Unless the information is used to protect a person at risk, it is also prohibited to use any information that is disclosed pursuant to this website for a purpose relating to health insurance, insurance, loans, credit, employment, education, scholarships, fellowships, housing, accommodations, or benefits, privileges, or services provided by any business. Misuse of the information may make the user liable for money damages or an injunction against the misuse.

³⁹ www.meganslaw.ca.gov

⁴⁰ www.meganslaw.ca.gov

SECTION 4

Media and Social Media Perspective

By: Kimberly Ebanks

In early July a public sex offenders' registry, was created on Facebook to 'name and shame' the sexual predators in the Cayman Islands community. *"A sex offender registration was designed as a tool to assist police in tracking offenders and apprehend suspects. The public notification aspect of the registry was intended to increase public awareness and arm communities with information that may help them to avoid contact with sex offenders and thus prevent victimization."*⁴¹ A public sex offender registry in the small community of the Cayman Islands will definitely garner significant attention from the media sources like Cayman Compass and Cayman News Service.

Studies show that *"more admissions will occur when societal attitudes toward sexual offending, including the victimization of children, become less punitive and stigmatizing. Little wonder that suspects deny offending when, if convicted, they face a future of being "named and shamed" on sex offender registries or face social ostracism in other ways."*⁴² If the approach is changed the sexual offender registry can work in a small community if the people are willing to change their stance on the matter as well as be more informed on the situation at hand.

Research indicates that "the public" are consistently misled and uninformed about *"matters of crime and punishment, public preferences have acquired a level of influence and deference that many might find difficult to justify."* The media when giving information often fall short of providing the relative facts necessary for readers to make knowledgeable decisions about the issues that are of most concern to them and it tends to be less capable on providing the more "mundane informative" function which are vital for self-governing debate. For instance, in England during the summer of 2000, the media in response to the murder of Sarah Payne by a convicted sex offender attempted to summon support for a public sex offender registry modeled on "Megan's Law" in the United States. "Sarah's Law" was put into the readers mind by certain News Tabloids with the promise to publish the names and photographs of 50 convicted pedophiles each week. The tabloid paper promptly ended the exercise after a number of "vigilante attacks" broke out. Although the campaign elevated the public's awareness on the issue of sex offenders the readers were undeniably still given limited information which they could have used to assess the crimes and the risks.⁴³

The media sometimes present certain myths related to sex offenders that run contrary to the data supported by empirical research, such as identifying sex offenders as being compulsive, homogenous, specialists, and incapable of benefiting from treatment. These myths affect the public's overall perception of sex offenders and their crimes, which, in turn, can influence public policy. Television news presents several myths about sex crimes and sex offenders; however, research on

⁴¹ Bill Heberton, 'From Dangerous to Precaution', The British Journal of Criminology, 49.3 (2009), p. 48.

⁴² Kathleen Daly, 'Setting the Record Straight and a Call for Radical Change', The British Journal of Criminology, 48.4, p. 559.

⁴³ David A. Green, 'Public Opinion Versus Public Judgment About Crime', The British Journal of Criminology, 46.1 (2006), pp. 131 – 135.

whether the print media perpetuate these myths is limited.⁴⁴ *"The public reaction to sexual offenders has become increasingly dramatic over the past 20 years and this despite the fact that the rate of sexual offences reported to the police has dropped significantly"* (Kong et al. 2003). The highly emotional response to sexual offences, fuelled partly by media representations of the worst cases, has produced some important changes in the criminal justice system. Indeed, public calls for tougher sentences for sex offenders, long-term supervision orders, community notification when sex offenders are released from prison, and sex offender registries have been answered by countries such as Canada, the United States and the United Kingdom, albeit not satisfactorily enough for those who, set on avoiding any risk of future harm, request the containment of the sex offender before he commits his offence.⁴⁵

Social theorists have defined this growing societal concern for greater security and the avoidance of risk as characterizing a new period in our modernity - one resulting mostly from the economic pursuits of a technical-industrial complex that has produced real risks to people, and have called this society "risk society". A risk society is one given to seeing dangers everywhere and hence developing a style of governance geared towards the provision of security - a style of governance, in other words, that attempts to minimize and manage risks to the self and the environment. Drawing on theories of risk society, criminologists have addressed the growing importance of the concept of risk in current criminal justice and penal policies. The risk rationality that has come to dominate penal culture and practices has been described as a "new penology" - one predominantly concerned with retribution, incapacitation and the management of groups of offenders rather than the rehabilitation of individuals. While debates exist as to whether risk-based philosophies represent a sharp break or not from previous penal practices, all theorists recognize that the pursuit of security has come to take priority over the welfare and moral state of the offender. This transformation in the nature of penal culture is particularly evident in prison rehabilitation, where, as Garland suggests, it is "future victims who are being "rescued" by rehabilitative work, rather than the offenders themselves". The sex offender has experienced this change more profoundly than any other type of offender."⁴⁶

Promoting public safety by holding offenders accountable and by instituting effective crime prevention measures is a core governmental obligation. Unfortunately, the Human Rights Watch (HRW) research reveals that sex offender registration, community notification, and residency restriction laws are ill-considered, poorly crafted, and may cause more harm than good:

- the registration laws are overbroad in scope and overlong in duration, requiring people to register who pose no safety risk;
- under community notification laws, anyone anywhere can access online sex offender registries for purposes that may have nothing to do with public safety. Harassment of and violence against registrants have been the predictable result; and

⁴⁴ Galeste, Marcus A., Henry F. Fradella, and Brenda Vogel. 2012. "Sex Offender Myths in Print Media: Separating Fact from Fiction in U.S. Newspapers." *Western Criminology Review* 13.2, pp. 4-24.

⁴⁵ Dany Lacombe, 'Consumed with Sex: The Treatment of Sex Offenders in Risk Society', *The British Journal of Criminology*, 48.1 (2008), p. 55.

⁴⁶ *Ibid.*, p. 56.

Section 5

Data Protection

By: Daegan McLaughlin & Nickolas Moore

The United Kingdom maintains the Violent and Sex Offender Register (VISOR). The register contains the details of all those convicted of a crime in England and Wales under the 2003 Sexual Offences Act, those jailed for more than 12 months for violent offences, and those thought to be at risk of offending. The Register can be accessed by the Police, National Probation Service, and HM Prison Service personnel.

There is a sliding scale applied to offenders required to go on the register. Anyone with a prison term of 30 months to life is subject to an indefinite term of registration - usually for the rest of their life. A sentence of six months to 30 months is accompanied by 10 years on the register. Failure to register attracts a fine and or a jail sentence of up to five years. According to the Home Office, the compliance rate is around 97%.

The United Kingdom's sex offender registry does not allow the public to access the information. The purpose of the sex offender registry is to give the police access to information which will give them a better chance of assessing the risk to society posed by an offender. However, a sex offenders registry alone is a tenuous guide for measuring risk to the public because of its inaccessibility to the public.

The need for the protection of data with regards to a potential sex offender registry is paramount. We must decide whether such a registry is in breach of human rights as defined in the Cayman Islands Bill of Rights (2009 Constitution). The Data Protection Bill (2011) is of significant importance here. In the consultation of the draft bill, it states "Data protection legislation seeks to protect an individual's rights with respect to the collection, use and sharing of his or her personal data". It also states that the bill is consistent with the requirements of the Bill of Rights.