



Cayman Islands  
Human Rights Commission  
*promoting, protecting and preserving human rights*

# Annual Report 2013

## Table of Contents

Statement from the Chairman .....	4
Chapter 1: The Cayman Islands Human Rights Commission .....	5
1.1 Vision .....	5
1.2 Mission .....	5
1.3 Constitutional Guidelines .....	5
Chapter 2: Monitoring Human Rights in Policy, Practice and Legislation .....	7
2.1 Prison Service – Voting Rights of Prisoners .....	7
2.2 Mental Health Bill 2013 and Mental Health Commission Bill 2013 .....	7
2.3 Adoption of Children Bill 2012 .....	8
2.4 Human Tissue and Transplant Bill, 2013 .....	8
2.5 Environmental Governance Review .....	8
2.6 Election Observers .....	8
2.7 HRC Volunteer Mediators .....	9
2.8 Monitoring of Remedies following Declarations of Incompatibility .....	9
2.9 Police Search Warrants Issued by Justices of the Peace .....	9
2.10 Signing of Warrants by Justices of the Peace .....	9
2.11 Immigration Appeals Tribunal (IAT) .....	10
2.12 Health Services Authority’s Neonatal Policy .....	10
2.13 Immigration Department – Migrant Policies .....	10
2.14 Government’s Policy on Deportations .....	11
2.15 Matrimonial Causes Law, the Affiliation Law and the Maintenance Law .....	11
2.16 Whole-Life (Prison) Sentences .....	12
2.17 Interception of Communications Audit Committee .....	12
2.18 Prison Strip Search Policy .....	13
2.19 Freedom of Information Law, 2007 and Regulations, 2008 .....	14
2.20 Justice Protection Bill 2008 (Witness Protection Programme) .....	14
2.21 Immigration Law (2013 Revision) .....	15
2.22 Firearms Amendment Bill (2013) .....	15
2.23 National Conservation Bill, 2013 .....	15
Chapter 3: Engagement with Public Officials, Civil Society and the Media .....	16
Public Officials .....	16
3.1 Department of Environment – Discrimination Query .....	16
3.2 Consultation on Auditor General’s Future Performance Audit Programme .....	16
3.3 Meeting with Crown Counsel (Human Rights Specialist) .....	17
3.4 Request for Human Rights Related Judgments .....	17
3.5 Meeting with Director of Prisons .....	17
3.6 Meeting with Honourable Minister – Education, Employment and Gender Affairs – Convention on the Elimination of Discrimination against Women .....	17
3.7 Presentation to Members of the Legislative Assembly .....	18
Civil Society .....	18

3.8	Caymanian Bar Association’s Student Chapter .....	18
	Media 18	
3.9	Tasers .....	18
3.10	Report on an announced inspection of HM Cayman Islands Prison Service (22–27 July 2012) by HM Chief Inspector of Prisons .....	19
3.11	Decision from the Grand Chamber of the European Court of Human Rights.....	19
3.12	First Murder Trial Following the Implementation of the BoR.....	19
3.13	International Labour Organisation’s Domestic Workers Convention, 2011 (No.189)....	19
3.14	Whole Life Sentences .....	20
3.15	International Human Rights Day .....	20
Chapter 4:	Human Rights Education, Events and Presentations .....	21
4.1	Guidance on Introducing Human Rights in Primary and Secondary Schools .....	21
4.2	Guidance on Reasonable Accommodation of Religion in Work Schedules .....	21
4.3	Bill of Rights: Implications for Public Officials – Informational Booklet .....	21
4.4	Bill of Rights Informational Pamphlets.....	21
4.5	Human Rights Impact Assessment Tool for Environmental Protection.....	21
4.6	Human Rights Impact Assessment Tool for Legislation.....	22
4.7	Human Rights Presentation – Brac Lodge.....	22
4.8	Human Rights Presentation – University College of the Cayman Islands .....	22
4.9	Human Rights Presentation – St. Ignatius Catholic School.....	23
4.10	Request for Human Rights Presentation – Inmate Council HMP Northward .....	23
4.11	Past, Present and Future: Illustrations for the Bill of Rights, Freedoms and Responsibilities .....	23
4.12	HRC Website and Facebook Page .....	23
Chapter 5:	Alleged Breaches or Infringements of Human Rights .....	24
Chapter 6:	Moving Forward .....	25
Appendices	.....	26
Appendix 1:	Human Rights Commission Members.....	26
Appendix 2:	Cayman Islands Bill of Rights, Freedoms and Responsibilities (BoR).....	27
Appendix 3:	International Human Rights Treaties Extended to the Cayman Islands .....	28
Appendix 4:	Report on Cuban Migrants .....	29
Appendix 5:	Report on Whole-Life Sentences.....	43
Appendix 6:	Report on Interception of Telecommunications.....	67

## Statement from the Chairman

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During this reporting period (1 January to 31 December, 2013) the HRC has continued to recognise that the protection and promotion of human rights plays a key role in the sustainability of Cayman's credibility as a democratic society as well as the maintenance of the country's security and good governance.

Throughout 2013, the Human Rights Commission (HRC) worked diligently to continue to monitor human rights in policy, practice and legislation; develop innovative strategies to build awareness through education, events and presentations; investigate alleged breaches or infringements of human rights by public officials; and engage with civil society and the media.

2013 has brought with it the final implementation of the Bill of Rights, Freedoms and Responsibilities. As such, the people of the Cayman Islands now have unprecedented access to the local courts in which to file alleged complaints of breaches or infringements of human rights.

While the HRC has had a very successful year in its ability to be active, disappointingly, it must highlight its concern regarding the unfortunate trend amongst various public authorities not to respond to official correspondence issued by the HRC. Such instances of non-responsiveness have created delays related to research, investigation, communication, and decision-making; all of which negatively impact the ability of the HRC to efficiently respond (and provide resolution where applicable) to complainants' allegations of human rights breaches or infringements. Although the Constitution stipulates that public authorities "...must respond in writing within a reasonable time to the Human Rights Commission", it is seemingly the case that various public authorities are either unaware of this duty or blatantly disregard it. In either case, the HRC continues to urge those in senior positions within the public service to set the example for developing a human rights compliant organisational culture across the Cayman Islands Government by demonstrating a cooperative spirit with the HRC for the benefit of protecting the public's fundamental rights.

The HRC applauds those who have embraced the concepts of essential rights and freedoms on a local level as a means of maintaining a fair and just society. The embracing of such concepts will assist the Cayman Islands community in becoming a society which values equally all persons treating them with fairness, dignity and respect.

The HRC encourages the public to visit our website ([www.humanrightscommission.ky](http://www.humanrightscommission.ky)), join us on Facebook, call us at 244-3685, or email us at [info@humanrightscommission.ky](mailto:info@humanrightscommission.ky) to get involved in promoting human rights in the Cayman Islands.

Richard Coles  
Chairman, Human Rights Commission

# Chapter 1: The Cayman Islands Human Rights Commission

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## 1.1 Vision

This vision of the HRC is: *promoting, protecting and preserving human rights.*

## 1.2 Mission

Leaders in promoting, protecting and preserving human rights in the Cayman Islands by:

- promoting the integration of human rights values into everyday life;
- encouraging government accountability to national and international human rights standards;
- embracing the Cayman Islands Bill of Rights, Freedoms and Responsibilities and the principles of democracy; and
- empowering all persons to understand and exercise their rights.

## 1.3 Constitutional Guidelines

The Constitutional guidelines for the Commission are found in Section 116 of the Cayman Islands Constitution Order 2009 (the Constitution) which reads as follows:

- 116.-(1) There shall be in and for the Cayman Islands a Human Rights Commission (referred to in this section as "the Commission").
- (2) The Commission's primary responsibility shall be promoting understanding and observance of human rights in the Cayman Islands.
- (3) The Commission shall consist of a Chairman and four other members appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, at least two of whom shall be experienced lawyers.
- (4) In the exercise of their functions, the Commission and its members shall not be subject to the direction or control of any other person or authority.
- (5) The Commission shall replace the Human Rights Committee.
- (6) The Commission shall have power to –
  - a) receive and investigate complaints of breaches or infringements of any right or freedom contained in the Bill of Rights or international human rights treaties that have been extended to the Cayman Islands, and investigate such possible breaches or infringements on its own initiative;
  - b) provide advice to persons who consider that their rights or freedoms have been infringed;
  - c) provide a forum for dealing with complaints by mediation or conciliation or by making recommendations;
  - d) issue guidance on procedures for dealing with any complaints of breaches or infringements of rights and freedoms;
  - e) contribute to public education about human rights;
  - f) issue reports relating to human rights issues on its own initiative; and
  - g) undertake such other functions, for the purpose of fulfilling its primary responsibility under subsection (2), as may be conferred on it by a law enacted by the Legislature.

- (7) The Commission shall have no power to –
- a) represent or provide representation to parties to litigation;
  - b) act in a judicial capacity or make binding determinations as to whether any right or freedom contained in the Bill of Rights or any international human rights treaty or instrument has been breached; or
  - c) compel any person to do anything against his or her will;
- but any public official to which the Commission addresses a recommendation must respond in writing within a reasonable time, and such responses shall be published by the Commission unless there is a good reason to withhold publication.
- (8) The Commission shall make an annual report to the Legislative Assembly about its activities.
- (9) Further provision relating to the establishment and operation of the Commission may be made by the  
Legislature, but such legislation shall not derogate from any provision of this section.
- (10) Nothing contained in or done pursuant to this section or any law made under subsection (9) shall –
- a) oblige a person to refer any complaint of a breach or infringement of any right or freedom referred to in the Bill of Rights to the Commission; or
  - b) prevent a person from seeking redress directly from the Grand Court in relation to any breach or infringement of a right or freedom referred to in the Bill of Rights, and the fact that such person had previously sought the assistance of the Commission with respect to such breach or infringement shall not prejudice any legal action.

## Chapter 2: Monitoring Human Rights in Policy, Practice and Legislation

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### 2.1 Prison Service – Voting Rights of Prisoners

The HRC received a memorandum from the (then) Acting Director of Prisons, Daniel Greaves, in which he sought “guidance as it relates to voting rights for remand prisoners”. While members agreed that the Elections Office was more appropriately charged with providing such guidance it agreed in January 2013 that in accordance with s.52 of the Elections Law (2009 Revision) prisoners, whether remand or sentenced, do not qualify to vote as absent electors. Further, the HRC conveyed its understanding 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).

The HRC, however, 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 and as such requested that the Supervisor of Elections to ensure that a mobile polling station was available to visit Her Majesty’s Prison Services. Ultimately, five prisoners were bussed from H.M.P. Northward to various polling stations on Grand Cayman; two of the prisoners voted in East End, one in George Town, one in West Bay and one in Bodden Town.

The HRC also noted that 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.

### 2.2 Mental Health Bill 2013 and Mental Health Commission Bill 2013

Following a review of the Mental Health Bill 2013 in January 2013, the HRC reiterated to the Chief Officer within the Ministry of Health, Youth, Sports and Culture the HRC detailed concerns related to sections of the bill that addressed treatment without consent and postal restrictions, while general comments covered aspects such as mental health care law principles as described by the World Health Organisation, restriction of rights and patient confidentiality.

The HRC implored the Ministry and the Mental Health Commission to address the fact that the general public as well as professionals, people with mental disorders, families of people with mental disorders, and advocacy organizations working on their behalf are frequently ill informed about the changes brought about by new legislation.

Further the HRC noted the provision in the legislation for the establishment of regulations for particular actions that are likely to need regular modifications; thus, providing flexibility to the mental health law.

### 2.3 Adoption of Children Bill 2012

Following a review of The Adoption of Children Bill, 2012, in February 2013 the HRC sent correspondence to the Chief Officer within the (then) Ministry of Community Affairs, Gender and Housing setting out areas of concern as it related to the draft bill and its compliance with human rights standards.

Various issues were highlighted with respect to human rights implications including the definition of marriage as well as the justification for different treatment on the basis of an applicant's age, sex or other status (i.e. sexual orientation). In addition, the HRC continued to express its concern regarding the delay in dealing with adoption cases as reported by the previous Minister, Mr. Mike Adam. The HRC underlined that any undue delay raises the possibility of challenges under s.17 (protection of children) of the BoR and indicated that in order to comply with international standards for protecting the best interests of the child these delays must be remedied.

### 2.4 Human Tissue and Transplant Bill, 2013

Following a comprehensive review of this legislation in March 2013 for compliance with the BoR the HRC found no areas in which human rights issues are a concern.

### 2.5 Environmental Governance Review

Following on from the review of the Assessment of Environmental Protection Frameworks in the UK Overseas Territories, produced by The Foundation for International Environmental Law and Development (FIELD) and The Royal Society for the Protection of Birds (RSPB) the HRC corresponded with the Chief Officer within the (then) Ministry of Health, Environment, Youth, Sports and Culture (May 2013) and subsequently the Honourable Minister of Financial Services, Commerce, and Environment (October 2013) in regarding its concerns related to the document. In responding to the HRC the Chief Officer indicated that the Ministry is well aware of the constraints placed on protecting the environment of the Cayman Islands due to the lack of adequate up-to-date primary legislation. The Chief Officer further indicated the intention of the Ministry to highlight the need to remedy this matter by passing the National Conservation Bill 2013 as soon as possible.

### 2.6 Election Observers

The HRC was invited, by the Supervisor of Elections, to nominate a representative to participate in the 2013 General Elections in the capacity of a local observer. Due to the fact that this had the potential to create a conflict of interests in the instance that the HRC received human rights complaints centred on any aspect of the election process, the offer was respectfully declined. The Chairman did, however, meet with the International Observer team, at their request, on 18 May, 2013 during which time the Chairman was asked to share any human rights concerns the HRC may have had with regard to the elections process. The Chairman was happy to report that from a human rights perspective its only area of concern was ensuring any person who was in custody or care during an election was provided with the opportunity to vote by way of mobile voting or absentee postal ballot.



## 2.7 HRC Volunteer Mediators

Following a public calling the HRC received submissions in May 2013 from two persons interested in being appointed to assist when needed to facilitate mediation in cases accepted by the HRC in which there are clear allegations of breaches of human rights. After reviewing the experience and training of the applications, only one of the applicants met the pre-established and advertised criteria.

## 2.8 Monitoring of Remedies following Declarations of Incompatibility

During the reporting year, Justice Henderson, in Grand Court, ruled that Section 65(4) of the Police Law 2010 was incompatible with section 5(5) of the Bill of Rights. In light of the declaration, the HRC anticipated that the Attorney General would view the matter with some urgency; as such, it sought to garner an understanding of the steps that had been taken or planned with respect to the Legislature providing a remedy for the incompatibility. The HRC sent correspondence to the Attorney General in May 2013; however, while it has not received any formal feedback it understands that amendments to the Police Law (2010 Revision) are due to be laid in the LA in the near future.

## 2.9 Police Search Warrants Issued by Justices of the Peace

The HRC noted the legal judgment made by Justice Henderson concerning a police search warrant signed by a JP and issued against a local woman, which was judged to be unlawful in light of the fact that the JP did not have a clear understanding of the elements of the offence in relation to the search warrant. The HRC corresponded with the Commissioner of Police on 5 June, 2013 in an effort to better understand the steps planned with respect to remedying the current approach and its deficiencies. While it has not received any formal feedback it understands that the Government intends to submit various legislative changes to the House, which would ensure legislation relating to policing is in compliance with the BoR.

## 2.10 Signing of Warrants by Justices of the Peace

Following on from the judgment delivered by Justice Henderson (referred to in 2.7 above) the HRC wrote to the President of the Justices of the Peace Association Mrs Debra Humphreys on 5 June, 2013 at which time it indicated that it wished to understand the steps that have been taken or will be taken by the Justices of the Peace Association in order to ensure that all Justices of the Peace (JP's) are fully trained and aware of all of the requirements for carrying out their functions but also the requirements under the BoRFR, particularly s.7 Fair Trial. The HRC has not yet received a formal reply in relation to the enquiries submitted to the President but understands through media reports that the Office of the Deputy Governor has made it mandatory for all JP's to undertake a more extensive and modern course of training every three years (two modules totalling four hours) beginning in January 2014. In addition the Deputy Governor indicated that JP's will be facing more stringent regulations through a JP's code of conduct, a procedure which allows for complaints against a JP, and greater background checks.

### 2.11 Immigration Appeals Tribunal (IAT)

Following the receipt of various complaints the HRC became increasingly more aware that appeals filed with the Immigration Appeals Tribunal have been significantly delayed due to various circumstances. These delays are concerning to the HRC from the perspective that extensive delays may cause the government to breach or infringe on an appellant's human rights – specifically their right to fair trial. To this end the HRC corresponded with the Chairman of the IAT in June 2013 to query the status of the backlog of appeals and any further plans which have been identified to reduce the length of time appellants are waiting to have their appeals heard. The HRC is aware that legislative and procedural changes were made in an attempt to assist with the remedying of these delays and it is hoped this remedies the situation.

### 2.12 Health Services Authority's Neonatal Policy

The Chief Officer within the (then) Ministry of Health Youth, Sports and Culture requested the HRC's assistance with relevant research in order to create sound human rights compliant policies on dealing with neonatal related issues. The research, submitted in August 2013, included an outline of primary legal instruments that may be applicable, legal arguments as to whether neonates qualify for "rights" since their survival depends on extensive medical care and the decisions of others, the rights and freedoms of others involved i.e. the parents and doctors, the role of the decision makers in determining the best interests of the child, relevant case law, quality of life considerations, and experts in the field.

The HRC has also indicated a willingness to review the policy once it had been completed and vetted by the necessary entities such as the Legal Department.

### 2.13 Immigration Department – Migrant Policies

The HRC sub-committee designated with responsibility for this subject matter embarked on a process of reviewing all the relevant documentation. The sub-committee concluded that, generally, the procedures outlined in the various documents are adequate with regard to compliance with the BoR.

Following the acceptance of the recommendations of the sub-committee the HRC met with 1. the Deputy Governor and the Attorney General to discuss the possibility of re-drafting the Memorandum of Understanding (MOU) signed between the Governments of the Cayman Islands and Cuba; 2. the Director of Public Prosecutions and the Chief Immigration Officer to discuss the possible creation of a public education campaign in order to clarify and educate the residents of the Cayman Islands regarding the intent of s.109 of the Immigration Law (2011 Revision); and 3. the Commissioner of Police and other representatives from the Royal Cayman Islands Police Service to discuss how the Marine Unit assesses and determines whether to bring ashore refugees found within the territorial waters of the Cayman Islands.

During the course of the meetings the Deputy Governor indicated his desire to have the HRC conduct an audit of the process in practice; however, after following up numerous times on the

parameters of the proposed audit the HRC has still not received clarity. Therefore, the HRC has been unable to assist with such an audit. The HRC did, however, conduct research relating to the International Organisation for Migration (IOM) which may be able to assist in the event an audit is undertaken in the future.

Following the examination of the issues the HRC released a report in August 2013 (attached as Appendix 4) specifically with regard to migrants originating from Cuba; however it was noted that the Cayman Islands Government's practices, processes, and procedures for handling irregular immigration apply to all migrants regardless of jurisdiction of origin.

#### 2.14 Government's Policy on Deportations

On 25 September, 2013 the HRC corresponded with the Honourable Deputy Governor who referred the HRC to Chief Office Bush in the Ministry of Home and Community Affairs. On 26 September, 2013 the HRC corresponded with the Chief Office indicating that over the course of the past three years the HRC has received complaints from foreign national prisoners incarcerated in the Cayman Islands regarding alleged breaches of their human rights by the Cayman Islands Government as they understood they were to be subject to deportation proceedings after having served their prison sentences. In each instance the prisoner has alleged that they have a connection of some sort to the Cayman Islands – most often that connection has been children (both Caymanian and non-Caymanian).

The HRC highlighted the fact that the decisions and actions surrounding deportation carry various human rights implications and indicated that the HRC is keen to understand the protocols adhered to by the Government as it relates to forming a recommendation to Cabinet in order to deport a foreign national. The HRC indicated its desire to review this policy to ensure it is compatible with the BoR and strikes a balance between those rights of the individual and of the public. If the Ministry was not in possession of such a policy, the HRC requested that it be provided with an explanation as to how recommendations are formulated on these matters and whether any steps are being taken to remedy the lack of such a written policy.

As CO Bush failed to respond to the HRC it followed up with the Deputy Governor, who on 19 December, 2013 assured the HRC that it would receive a response from CO Bush before the end of the day on 23 December, 2013. At the time of writing this report the HRC had not received the said response.

#### 2.15 Matrimonial Causes Law, the Affiliation Law and the Maintenance Law

As part of the public consultation phase, in October 2013 the HRC examined the relevant pieces of legislation that encompassed the family law reform package. In doing so the HRC did not immediately have any substantive comment to put forth for consideration by the Law Reform Commission. It did however query with the Ministry of Education, Employment and Gender Affairs whether the legislation had been subsequently reviewed for compliance with CEDAW (following the comments/report provided by the Ministry back in February). The Ministry responded that it

was content that the proposed legislation did take into account the CEDAW Articles, CEDAW legislative review, HRC report on CEDAW, Caymanian Bar Association (Student Members) Legislative Review for CEDAW compliance, and recommendations within the Cayman Islands National Policy on Gender Equity and Equality.

#### 2.16 Whole-Life (Prison) Sentences

Over the course of its existence, the HRC has received various complaints alleging breaches of human rights due to the complainant having been sentenced to the mandatory punishment for a murder conviction - that is life imprisonment without the possibility of release otherwise referred to as a whole life sentence. Such complaints remind us that the question of how societies should respond to their most serious crimes, if not with the death penalty, is perhaps the oldest and most sensitive issue underpinning the topic of crime control. The HRC supports the introduction of a tariff system composed of minimum terms, and sees such penal reform as necessary in light of the implementation of the BoR, particularly section 3 – Torture or Inhuman or Degrading Treatment.

The HRC ultimately published a report in November 2013 (attached as Appendix 5) on the topic indicating that it remains of the strong opinion that legislative reform is necessary to repeal the relevant laws that require judges to impose mandatory whole life sentences for murder convictions. By publishing the report, the HRC intends to promote a clearer understanding as to why legislative changes are necessary with respect to truly establishing proportionate ‘punitive’ periods, represented by minimum terms, and ‘preventative’ periods during which release and liberty on licence is dependent on an assessment of risk posed by the prisoner to the Cayman Islands community.

#### 2.17 Interception of Communications Audit Committee

The ability to intercept messages wherein ‘messages’ include a communication sent, delivered to, received or transmitted, or intended to be sent, delivered, received or transmitted by telecommunication, is amongst a range of investigative techniques which may be used by the Royal Cayman Islands Police Service under the Information Communications Technology Authority Law (2006 Revision) and the Terrorism law (2009 Revision) for the prevention and detection of criminal acts as well as counter terrorism. However, the ability to use this technique must be balanced against the need to safeguard the human rights of people within the Cayman Islands. Part 1 of the Cayman Islands Constitution Order 2009 – the Bill of Rights, Freedoms and Responsibilities (BoR) sets out those relevant rights and freedoms.

Associated with the lawful interception of telecommunication messages is the potential of intrusion into an individual’s private life. As such, the HRC has remained steadfast in its belief since 2011 that a means of mitigating potential intrusion is the oversight safeguard provided by the creation of an Interception of Communications Audit Committee. It is a matter of concern that, although required by the Information Communications Technology Authority (Interception of Telecommunication Messages) Regulations, 2011 which have been in force since 2011, such a Committee has not been established by the Governor-in-Cabinet.

The HRC released a report in November 2013 (attached as Appendix 6) on the topic with the aim of outlining the historical legislative developments of the ICTA law, various correspondence between the HRC and the Government, the underlying human rights implications of message interception, and its primary concerns as it relates to a lack of an Interception of Communication Audit Committee. The overall theme of the report was that the use of intercepting messages as an investigative technique, for the prevention and detection of criminal acts as well as counter terrorism, must be balanced against the need to safeguard the human rights of people within the Cayman Islands.

#### 2.18 Prison Strip Search Policy

In September 2011 the HRC conducted an investigation into an allegation of human rights infringements relating to the conduct of a strip search carried out at H.M.P. Fairbanks. Due to the significant limitations on the power which it has to conduct investigations and as a consequence obtain information, the HRC was unable to say with accuracy whether or not the complainant was victimised as set out in the complaint. The HRC did however note that “there were irregularities in the search procedure due in no small measure to the fact there is no formal written procedure dealing with searches of this type.” The then Portfolio of Internal and External Affairs indicated its willingness to rectify this problem by developing detailed written procedures to govern future strip-searches. While the HRC did not find that this particular complaint was substantiated, it agreed that the broader issue of strip searches in prisons should be reviewed. As such on 13 April, 2011 the HRC subsequently requested, from the (then) Chief Officer, Portfolio of Internal and External Affairs, Mr. Eric Bush, a copy of the “comprehensive written procedures [being developed to] govern the way in which searches including strip searches are conducted...” that was referred to in his letter to the complainant dated 3 March, 2011.

After making numerous requests the HRC received a copy of the requested policy on 19 November, 2013, more than two years after conducting a full review of the Draft Search Policy from Chief Officer in the Ministry of Home and Community Affairs. In its review of the draft policy in 2011 the HRC highlighted to the then Chief Officer (Franz Manderson) of the (then) Portfolio of Internal and External Affairs, “...that this document submitted to us in its present condition should be considered no more than an initial draft for discussions purposes and is far from ready to be published and/or utilized. It should be considered as a very first working draft and much further work and review needs to be undertaken.” On receipt of the finalised version of the search policy on 19 November, 2013 the HRC conducted a comparative analysis of the draft policy and the finalised version which revealed only minor alterations. While noting these minor changes the HRC was concerned to note that a significant number of recommendations, concerns, and questions raised by the HRC in September 2011 were not addressed.

As such, the HRC reiterated to Chief Officer Bush the same sentiment for the current search policy as it did for the draft search policy insofar as to say, again, that overall, the prison service’s search policy leaves many questions unanswered and lacks clarification on critical procedures with inherent human rights implications under the BoR and the European Convention on Human Rights.

Further, the HRC noted that the current Prison Director Neil Lavis is reviewing the policy; the HRC continues to await evidence of a comprehensively human-rights-compliant search policy underpinned by international standards in which the rights of detained persons are balanced against the lawful powers vested in the prison service officials.

#### 2.19 Freedom of Information Law, 2007 and Regulations, 2008

On 21 November, 2013 the HRC corresponded with the Honourable Deputy Governor thanking him for alerting the Commissions Secretariat to the fact that the proposed changes to the FOI Law and Regulations submitted by the FOI Law Review Subcommittee are in the process of being forwarded to Cabinet for acceptance. The HRC understands that, if accepted, amendments to the FOI Law will include making the FOI Law applicable to the HRC, along with others. The HRC expressed its disappointment that the Subcommittee responsible for making these recommendations did not afford the HRC an opportunity to provide input or discuss the potential impacts of such amendments, especially concerns with respect to the confidentiality of complainants.

As a matter of record the HRC indicated its desire to have the Deputy Governor ensure that legal drafting considers the following when making amendments to the legislation and regulations:

- (1) All documents relating to, or tending to reveal, HRC deliberations about complaints should be exempted insofar as only published decisions should be made available for public access;
- (2) Exemptions should be made for preserving the anonymity of complainants and the confidentiality of the complaints process so as to protect the identity of complainants together with any information which could lead to complainants being identified, including relevant sections of meeting minutes and associated correspondence (unless redacted); and
- (3) Exemptions should be made to support the expectation of confidentiality by all parties involved in arbitration.

The abovementioned suggestions for exemptions were based on the HRC's review of the existing exemptions under the current FOI law wherein the HRC is of the opinion that such exemptions do not cover any of the three points put forth above.

#### 2.20 Justice Protection Bill 2008 (Witness Protection Programme)

Following the receipt of a complaint the HRC conducted an investigation into the Witness Protection Programme and subsequently the Justice Protection Bill (2008). The HRC understands that although the Bill has not been implemented as law, the Royal Cayman Islands Police Service (RCIPS) aims to conduct its witness protection operations in line with the Bill as a means of maintaining a degree of regulation and accountability for the RCIPS as well as participants in the programme.

While the HRC did not find evidence of immediate concerns with respect to non-compliance with the BoR in the Justice Protection Bill (2008), the HRC took the opportunity to convey to the

Attorney General for his consideration several areas which, from a legislative perspective, amendments may be desirable to enhance the value of the Justice Protection Bill and its ability to secure the rights and freedoms of the programme's participants.

Ultimately, the HRC reiterated its concern with respect to operating a Justice Protection Programme without the relevant legislation in which to ground policies and procedures of authorities. As such, the HRC strongly suggested that the Justice Protection Bill (2008) and other necessary legislation be reviewed with the intention of implementation or amendment as the case may be, to create a legal framework that increases protection, assistance, and support services for victims and other witnesses of criminal and civil matters in the Cayman Islands.

Due to the fact that the Justice Protection Bill 2008 was gazetted on 15 September, 2008 but never assented to by former Governor Jack, the HRC brought to the attention of then Governor Taylor the grave concern that whilst the programme is operational it has no statutory basis. The HRC has again addressed these concerns in writing to Governor Kilpatrick.

#### 2.21 Immigration Law (2013 Revision)

In December 2013 the HRC reviewed the amendments to the Immigration Law (2013 Revision) with respect to compliance with the BoR. Overall the review did not find immediate cause for concern with regard to human rights violations however the HRC nevertheless corresponded with the Honourable Premier to express its expectation that the policy decision to no longer allow persons to appear in person during the appeals hearing must not provide a disadvantage to either party.

#### 2.22 Firearms Amendment Bill (2013)

The HRC was provided with the consultation draft version of the Firearms Amendment Bill (2013), which it reviewed with respect to compliance with the BoR. After conducting a review of the proposed changes in December 2013, the HRC did not find immediate cause for concern with respect to issues of non-compliance with Cayman's human rights standards. However as part of the review the HRC requested the Attorney General (AG) to indicate the reasoning behind the proposed changes as described in the draft Bill. The HRC has not received a response to its query.

#### 2.23 National Conservation Bill, 2013

The HRC reviewed the National Conservation Bill, 2013 in December 2013 with respect to compliance with the BoR. The HRC was concerned with the effect the Bill would have in particular to s.9 – Private and family life, s.15 – Property, and s.18 – Protection of the Environment. While the HRC was not able to fully consider the content of the Bill due to the time restraints it did note the extensive public education campaign that the Government facilitated prior to the passing of the legislation.

## Chapter 3: Engagement with Public Officials, Civil Society and the Media

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### Public Officials

#### 3.1 Department of Environment – Discrimination Query

The HRC assisted with a query as to whether or not section 19(1) of the Marine Conservation Law (2007 Revision) in January 2013 contained discriminatory wording in relation to section 16 of the BoR. The HRC reviewed the relevant documents and considered the enquiry, concluding that:

1. The wording of section 19(1) of the Marine Conservation Law is discriminatory in the ordinary sense of the word since it discriminates on the basis of nationality; however, section 16 of the BoR limits discrimination to only the rights set out under the BoR. There is no right in the BoR that on the face of it would include the right to fish. It therefore follows that section 16 is unlikely to be applicable.
2. If the requirement of the fishing license is an effort to protect the environment it might be argued that it is not "reasonable" as required by section 18 (protection of the environment) of the BoR which requires government to adopt "reasonable legislative and other measures to protect the heritage and wildlife and the land and sea biodiversity of the Cayman Islands".
3. If the requirement is a revenue measure (by requiring a license fee) then it may be arguable that the fishing license is an exception (appropriation of revenues) as set out in section 16 of the BoR subsection (4)(a).

In this instance, on the face of it, the wording in section 19(1) of the Marine Conservation Law (2007 Revision) likely does not infringe the BoR. However the Department of Environment (DoE) was encouraged to further explore the reasoning behind the wording due to s.19 (Lawful Administrative Action) of the BoR, which requires that:

- "All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair..." and
- "Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act."

This would ensure s.19(1) of the Marine Conservation Law (2007 Revision) is a rational or proportionate response.

#### 3.2 Consultation on Auditor General's Future Performance Audit Programme

In June, 2013 the HRC was invited by the Auditor General to provide his office with feedback on which performance audit topics it should consider over the next three years. The consultation was being advanced in order to ensure the work of the Auditor General is broad and balanced and is able to be focused on where the office can have the most impact and is responsive to the concerns



of stakeholders. From a human rights perspective the HRC indicated that it would like to see attention given to the areas of legal aid and the prison system.

### 3.3 Meeting with Crown Counsel (Human Rights Specialist)

On 11 September 2013 the HRC met with a new Crown Counsel hired to assist the Attorney General's Chambers with matters related to human rights. During the meeting the HRC provided the Crown Counsel with background to the HRC's constitutional mandate and detailed legislative concerns which had arisen over the past four years.

### 3.4 Request for Human Rights Related Judgments

Following the publicity of two human rights related judgments in October 2013 the HRC requested that the Court Administrator provide the HRC with a copy of any judgment which related to human rights cases. While the Court Administrator indicated a willingness to do this he also indicated that the Judicial Administration website is in the process of being revamped and thus the HRC, as well as the broader community will be able to more easily access court judgments and other documents.

### 3.5 Meeting with Director of Prisons

Following a review of the concerns encountered by the HRC with regards to the prison system over the past four years the HRC met with the new Prison Director on 23 October, 2013 and discussed these with him. These included the conditions in the prisons as noted by the UK Inspectorate, the compliance with s.6(2) and (3) relating to the segregation of convicted from unconvicted prisoners and adults from juveniles respectively before 6 November 2013, strip search policy, whole life (prison) sentences, voting rights of prisoners, and the proposed implementation of a smoking ban within the prison, amongst other topics. The Prison Director undertook to provide feedback and/or plans for proposed resolution to the HRC on these matters.

### 3.6 Meeting with Honourable Minister – Education, Employment and Gender Affairs – Convention on the Elimination of Discrimination against Women

In November 2013 the HRC met with Minister Rivers, Councillor Connolly, Deputy Chief Officer Suckoo and members of the Gender Equality Policy Team at her request to discuss the HRC's 2011 Report on the Convention Eliminating Discrimination against Women (CEDAW).

After discussions on the Government's intent to sign up to CEDAW (while requesting reservations a, c and e and declaration 15(3)) and an opportunity to express any concerns the HRC may have the HRC indicated the following:

- The HRC Report dated 8 October, 2011 was obviously not current and further indicated that some of the concerns noted by the Commission may have been mitigated by the passage of the Gender Equality Law;
- The HRC was happy to see that after two years the Government had considered the HRC's report;

- The HRC would be happy to make a broad statement indicating its support of gender equality.

Discussion also surrounded the HRC's willingness to partner with the Ministry on International Human Rights Day on 10 December to promote CEDAW. The HRC indicated it would be willing to partner with the Ministry to promote gender equality and human rights in general but it should be noted that the HRC must at all times maintain its independence. Any partnership must ensure it does not create added confusion in that the Gender Equality Law and CEDAW are applicable throughout the Cayman Islands but the BoR only relates to the rights of private citizens against Government and Public Bodies.

### 3.7 Presentation to Members of the Legislative Assembly

The Chairman of the HRC had been requested by the Office of the Deputy Governor to meet with the newly elected members of the Legislative Assembly in June 2013 to discuss the role of the HRC. The Chairman accepted the invitation and also saw the presentation as an opportunity to provide members with background and relevant information as to the pressing issues/concerns of the HRC which have arisen over the course of the past few years. Due to the Honourable Premier and other Ministers having to travel on the date in which the Chairman was due to present the presentation was postponed.

## Civil Society

### 3.8 Caymanian Bar Association's Student Chapter

On 6 February, 2013 the HRC met with members of the CBA Student's Chapter, at their request, to discuss the parameters of a human-rights-related-project in which the Chapter was keen on undertaking during the course of the summer months. The students undertook to research the topic of a sexual offender registry with respect to human rights implications in the Cayman Islands. At the time of publishing the Annual Report, the HRC had yet to receive the research project from the Student Chapter.

## Media

### 3.9 Tasers

In February, 2013 a representative from Cayman 27 requested interviews with the HRC regarding the use of tasers by the RCIPS however it was unable to comment on the use of tasers until such time as the policy had been reviewed. The HRC corresponded with the Inspector in Charge of the RCIPS Uniform Support Group with a view of coordinating a meeting to discuss the underpinning policy regarding the use of tasers as a law enforcement tool. Unfortunately, due to scheduling conflicts this meeting was not feasible and a revised meeting date was not confirmed. Notwithstanding, the HRC does see merit in carrying out discussions with necessary RCIPS officials in addition to reviewing the policy as a means of fully grasping the scope of taser use by police officers.

### 3.10 Report on an announced inspection of HM Cayman Islands Prison Service (22–27 July 2012) by HM Chief Inspector of Prisons

Following the release of the report on the inspection which took place at the HMCI Prison Service in July, 2012 by the HM Chief Inspector of Prisons the HRC was contacted by a representative from Cayman 27 for comment in February, 2013. The HRC indicated that it was aware of the report detailing the conditions at Her Majesty's Prisons in the Cayman Islands and that it had previously indicated a desire to meet with the Inspectors during the review process however the HRC was not given the opportunity to do so. The HRC noted the concerns of the Inspectors and indicated that the content of the report speaks for itself. The HRC further expressed its desire for the then Chief Officer of the Portfolio of Internal and External Affairs to ensure remedies are sought in each of the areas as a matter of priority.

### 3.11 Decision from the Grand Chamber of the European Court of Human Rights

Following the decision from the Grand Chamber of the European Court of Human Rights on the issue of whole life sentences in June 2013 a representative from Cayman 27 requested a comment from the HRC. The Chairman indicated that the decision emphasizes how important it is for Cayman to put in place a tariff system to be used by the Grand Court when considering such a sentence. Such a tariff system should take into account Cayman's uniqueness as a small, lightly populated Caribbean Island jurisdiction. When a properly structured tariff system has been developed and legislated for in Cayman, Grand Court Judges will be in a position to hand down sentences that are compliant with the Bill of Rights Freedoms and Responsibilities.

### 3.12 First Murder Trial Following the Implementation of the BoR

Following the conclusion of the first murder trial since the implementation of the BOR a representative of Cayman 27 requested comment from the HRC on the matter. The Chairman provided the representative with an interview in August 2013 and reiterated the HRC's stance on whole-life (prison) sentences being non-compliant with the BoR.

### 3.13 International Labour Organisation's Domestic Workers Convention, 2011 (No.189)

The HRC responded to a query in September 2013 in regarding the ILO Domestic Workers Convention which appeared to extend basic labour rights to domestic workers globally. The HRC indicated that the convention is intended to provide specific protection to domestic workers and as such the Convention lays down basic rights and principles, and requires States that ratify the Convention to take a series of measures aimed at making decent work a reality for domestic workers. The query surrounded what legislative changes would need to take place to ensure the Cayman Islands were in compliance with the Convention.

Through research the HRC was able to report that the UK does not intend to ratify the ILO Domestic Workers Convention for reasons set out in detail by the UK Government in the Explanatory Memorandum of April 2012. One of the main concerns with the Convention, from the perspective of the UK, is that it would extend health and safety legislation to cover the employment of domestic servants in private households. The UK Government considers this neither

proportionate nor practical, and further contends that comprehensive employment and social protections for workers currently exists within its legislation.

Whilst the UK is not in a position to ratify the Convention, the Cayman Islands HRC, as does the UK, strongly supports the principles underpinning the Convention and hopes that these principles are successful in raising standards and preventing abuses locally, regionally, and internationally.

#### 3.14 Whole Life Sentences

In November 2013 a representative of Cayman 27 conducted an interview with the Chairman to once again, obtain the position of the HRC on the matter of whole life sentences. Accordingly, the Chairman reiterated the HRC's stance that the Cayman Islands requires an urgent amendment to its sentencing regime, which currently mandates that judges must hand down a whole life order wherein the prisoner does not have any opportunity for release. As noted in the Cayman 27 report, a challenge is understood to be pending in the Grand Court on the basis that a prisoner's whole life order is a violation of the Bill of Rights, section 3 – the right not to be subjected to torture or inhuman or degrading treatment or punishment. The crux of the matter is that the penal code dictates the mandatory whole life sentence, which results in the judges giving out mandatory life sentences that are in accordance with our domestic legislation, yet in breach of the Bill of Rights.

#### 3.15 International Human Rights Day

10 December, 2013 marks International Human Rights Day which for the fourth time the HRC celebrated by releasing a statement on Human Rights and an interview on Radio Cayman, Talk Today programme.

## Chapter 4: Human Rights Education, Events and Presentations

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### 4.1 Guidance on Introducing Human Rights in Primary and Secondary Schools

The HRC continues to take a keen interest in promoting human rights education as an integrated element of the Cayman Islands' national school curriculum. In this regard, the HRC believes that human rights concepts are most effectively grasped when they are pervasively woven into the fabric of the curriculum and that it is of the utmost importance that the next generation of residents should be properly educated about human rights in the Cayman Islands. Subsequently, the HRC endeavoured to develop an activity guide focused on the BoR that can be adapted, by curriculum writers, for appropriate use by educators. The guide was forwarded to the Chief Officer in the Ministry of Education, Employment and Gender Affairs for her onward transmission to the appropriate personnel.

### 4.2 Guidance on Reasonable Accommodation of Religion in Work Schedules

At the request of the Portfolio of Civil Service (PoCS), the HRC provided research which would assist the Portfolio in drafting a policy relating to reasonable accommodation of religion in the public service that is compliant with the Bill of Rights. The report covered areas such as definitions of religion and concepts of reasonable accommodation and undue hardship. Overall it provided a broad fact-based perspective inclusive of local case law while drawing attention to other jurisdictions relative to such policies.

### 4.3 Bill of Rights: Implications for Public Officials – Informational Booklet

Following the implementation of the BoR, the HRC committed resources to researching and developing human rights educational content specifically aimed at public officials. The aim was to create an educational tool geared toward assisting public officials with regard to understanding the responsibilities placed on them in their official capacity by the BoR. The booklet seeks to inform public officials as to the general meaning of each right, and in some cases, an explanation of key words and phrases. The booklet was forwarded to the Honourable Deputy Governor for onward transmission to all Chief Officers so they may in turn disseminate the information to all Heads of Departments and Chief Executive Officers for onward dissemination to their staff.

### 4.4 Bill of Rights Informational Pamphlets

The HRC embarked on an educational initiative to present the BoR in simple terms as a means in which to empower the general public to understand the meaning of human rights in a local context. The initiative aimed to continue to build on the already existing educational resources in order to provide greater access to all persons. The informational pamphlets will be placed in display cases around Grand Cayman and Cayman Brac for public to access.

### 4.5 Human Rights Impact Assessment Tool for Environmental Protection

Following on from the review of the Assessment of Environmental Protection Frameworks in the UK Overseas Territories, produced by The Foundation for International Environmental Law and

Development (FIELD) and The Royal Society for the Protection of Birds (RSPB), and the continued concerns with the lack of compliance with s.18 – Protection of the Environment, the HRC developed a flow chart to assist public officials in creating policies and taking decisions that comply with the Right to Protection of the Environment. The Flow Chart was forwarded to the Honourable Minister with responsibility for Financial Services, Commerce and Environment and also copied to the Honourable Premier and the Honourable Deputy Governor as the HRC recognises that this issue cuts across various other Ministries, Departments and Statutory Authorities.

#### 4.6 Human Rights Impact Assessment Tool for Legislation

In February, 2013 the HRC communicated with the Honourable Attorney General indicating that one way in which it seeks to fulfil its constitutional mandate to promote understanding and observance of human rights in the Cayman Islands is to avail itself of opportunities to review draft legislation which may have human rights implications. The HRC indicated that sometimes draft legislation is forwarded to it by Ministries or Departments but it is on a very haphazard basis and there are instances where Draft Bills are sent which clearly have no human rights implications whereas others which clearly do are not received. The HRC enquired as to whether the Attorney General's Chambers has given any guidance to Ministries and Departments on this matter or indeed whether it was more appropriate for the Legal Draftsman to be the focal point to liaise with the HRC. Additionally the HRC queried whether the Government has a mechanism whereby all draft legislation is scrutinized for compliance with the BoR and if so is the result of such scrutiny available to Cabinet and MLA's prior to the Bill being read and debated.

Following on from this enquiry the HRC developed a Human Rights Impact Assessment tool to be used only as a guide, when assessing the human rights impact of new legislation or amendments to existing laws to ensure compliance with the BoR. The guide seeks to assist persons involved in legislative drafting, consultation, and input to devise legislative bills that exemplify the obligatory constitutional criteria of 'legality', 'legitimate aim', and 'proportionality' and is intended to assist the Cayman Islands Government to mitigate risks with respect to inadvertently creating laws that unjustifiably infringe on persons' human rights and ultimately result in declarations of incompatibility. The guide was forwarded to the Honourable Deputy Governor for onward transmission to all Chief Officers so they may in turn disseminate the information to all Heads of Departments and Chief Executive Officers for onward dissemination to their staff.

#### 4.7 Human Rights Presentation – Brac Lodge

The Chairman was asked to give a presentation on the BoR to members of the Brac Lodge. Accordingly, the Chairman provided an introductory session on the BoR which was well received.

#### 4.8 Human Rights Presentation – University College of the Cayman Islands

The Chairman made a presentation to business study students during the course of their studies on human resources at the University College of the Cayman Islands at the Professor's request in February 2013. The presentation offered information pertaining to human rights in general as well as

specific information concerning the Cayman Islands Bill of Rights, how it affects the everyday lives of citizens and the role of the HRC.

#### 4.9 Human Rights Presentation – St. Ignatius Catholic School

Member Alistair Walters made a presentation on the BoR to students at the St. Ignatius Catholic School at the Teacher's request. The presentation offered information pertaining to human rights in general as well as specific information concerning the Cayman Islands Bill of Rights, how it affects the everyday lives of citizens and the role of the HRC.

#### 4.10 Request for Human Rights Presentation – Inmate Council HMP Northward

The Inmate Council at HMP Northward requested a presentation by the HRC on a wide range of topics which they viewed as being relevant to human rights. The Manager of the Commissions Secretariat met with the Inmate Council in November, 2013 and provided the Council with an overview of the requested information.

#### 4.11 Past, Present and Future: Illustrations for the Bill of Rights, Freedoms and Responsibilities

In commemoration of Implementation Day on 6 November, 2012 and as part of the HRC's mandate to provide education on human rights, the HRC produced a book titled *Past, Present and Future: Illustrations for the Bill of Rights, Freedoms and Responsibilities* for primary school aged children. The book depicts the first twenty rights in the Bill and is beautifully illustrated by local artists and accompanied by simplified text explaining each of the rights in ways that are applicable to children's lives. Funded by the Foreign and Commonwealth Office, the HRC was able to supply each child attending school in years 1-6 across the Cayman Islands with a copy. While most presentations of the book were made in 2012 by HRC members the final distribution of books was made in February 2013 to students at Cayman International School by Member Alistair Walters.

#### 4.12 HRC Website and Facebook Page

The HRC continues to ensure that information is readily available in an electronic format for persons to easily access through its website ([www.humanrightscommission.ky](http://www.humanrightscommission.ky)) and Facebook page ([www.facebook.com/cihrc](http://www.facebook.com/cihrc)). These sites provide links to the Cayman Islands Constitution, responses to legislation and policy, guidance on creating human rights compliant legislation and policies including those which affect protection of the environment, educational material in the form of videos, pictures, student/teacher resources and a list of international human rights treaties extended to Cayman, topics of interest to the HRC, responses to media and public enquiries, details of local human rights cases, answers to frequently asked questions, and information on filing a complaint and accessing the HRC.

## Chapter 5: Alleged Breaches or Infringements of Human Rights

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6 November, 2013 marked the implementation of the final clauses of the BoR signifying the allowance of any individual to remedy an alleged breach or infringement of the BoR in our local courts. Individuals may also still directly petition the European Court of Human Rights, after exhausting domestic remedies, to seek a remedy for the decision of a public official or legislation which infringes or breaches the obligations under the European Convention on Human Rights.

The HRC can now receive and investigate complaints that decisions or actions of a public official have breached or infringed the Bill of Rights, Freedoms or Responsibilities or that local legislation violates human rights and freedoms. As such, the HRC will receive 1) all complaints of breaches of infringements of any section of the Bill of Rights, Freedoms and Responsibilities committed by a public official; 2) all complaints of breaches or infringements of common law and statutory human rights and freedoms committed by public officials; and 3) all complaints that any international human rights treaty extended to the Cayman Island has been breached or infringed by the actions of public officials or by legislation to which the treaty applies.

It is important to note that the HRC will only accept complaints of alleged breaches of the Bill of Rights, Freedoms and Responsibilities which have occurred after 6 November, 2012. This may be a one off event that has occurred after 6 November 2012 or may be a continuing infringement of a right. In all cases, unless there is clear evidence that the alleged infringement is continuing, the HRC will not accept a complaint in relation to an alleged infringement that has taken place more than one (1) year prior to the date of the complaint.

During the reporting year, the HRC received twenty-six (26) complaints from members of the public alleging breaches by public officials of their human rights. Of those cases eight (8) remain open at the end of this reporting year.

*N.B.: In maintaining the confidentiality of the complainants, detailed information pertaining to complaints is not published by the Human Rights Commission.*



## Chapter 6: Moving Forward

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2014 will bring with it new members to the HRC as terms of appointment of three members including the Chairman came to an end as of 1 January, 2014. In addition, a fourth vacancy exists as one position on the HRC has remained vacant for an entire year since the term of appointment for previous member Cathy Frazier expired on 1 January, 2013. All HRC members wish to take this opportunity to thank the members of our community for having engaged with the Human Rights Commission and in many instances share, in confidence, personal, sensitive, and private information with respect to complaints of a human rights nature. The HRC will remain welcoming of the opportunity to interact with our diverse population and encourages all persons to take an active appreciation of the Bill of Rights and the Constitution as a whole.

We would also wish to make special mention of the exemplary professionalism exhibited by Mr. Bruce Smith, Deputy Chief Immigration Officer in dealing with enquires from HRC in general and in particular with the manner in which he speedily resolved an urgent immigration matter involving a minor.

At the heart of the Human Rights Commission's plan for continued success is a dedication to embracing, promoting, and strengthening democracy and the rule of law for the benefit of all persons in the Cayman Islands. In this regard, the HRC's overarching goal is to remain active in executing its constitutional mandate with an emphasis on providing greater access to human rights and raising awareness, observation, and positive action thereon.

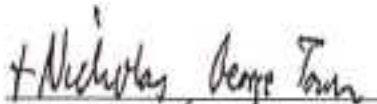
Dated this 31<sup>st</sup> day of December, 2013



Richard Coles (Chairman)



Sara Collins



Bishop Nicholas Sykes



Alistair Walters

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