

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

14 July, 2010

Dear Mr. Bulgin,

Thank you for your letter dated 22 June, 2010 which was received by our offices on 1 July, 2010. On behalf of the Human Rights Commission (HRC) please find enclosed our feedback as requested on the Bills seeking to amend the Evidence Law (2007 Revision) and the Criminal Procedure Code (2006 Revision).

Proposed Amendments to the Evidence Law (2007 Revision)
Section 37 (1)

The proposed provision adds the following criteria for being qualified to give evidence through television links –

“(c) the witness is to give evidence as to a violent or sexual offence”

Section 37 (2)

The proposed provision adds another instance in which evidence can be given through television links which is as follows –

“(e) preliminary inquiries.”

The resulting effect of these two additions does not bring with it any concerns for human rights in the Cayman Islands, in fact the addition strengthens the states ability to provide security of an individual and by extension protection to an individuals right to life, by allowing that individual to avoid providing evidence in person in cases that involve a violent or sexual offence.

Part IIIA – 41A-41M

The addition of this new Part provides for special measures in relation to vulnerable and intimidated witnesses. These measures include order for special protection of witnesses, the giving of evidence in chief via video recording, cross examination and re-examination by video recording or live television links and the giving of evidence screened from the accused.

In the Part the eligibility requirements for persons wishing to receive the special measures are prescribed. In addition it allows for the cross-examination and re-examination of witnesses and therefore maintains the standards prescribed by the Bill of Rights for receiving a fair trial.

Section 41C(5)

This section gives the Governor-in-Cabinet the authority to make such amendments to Part IIIA as he considers appropriate, including the addition of any new measure or removal of any measure.

This section does cause some concern to the HRC as it could potentially exclude the Legislature from participating in its Constitutional right of making laws for the peace, order and good government of the Cayman Islands as prescribed by section 59(2) of the Cayman Islands Constitution Order 2009.

Overall Comments

Section 7(2)(e) of the Cayman Island Constitution Order 2009 requires that persons have the right *"to examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her"*.

However the Constitution also allows for a restriction of that right in subsection (10) where the court has the right to exclude from the proceedings persons (witnesses) where it is considered necessary or expedient in the interests of justice, or the interests of public morality, defence, public safety, public order, the welfare of minors or the protection of commercial confidence or the private lives of persons concerned in the proceedings.

The Evidence (Amendment) Bill, 2010 seeks to prescribe measures for handling vulnerable and intimidated witnesses during court proceedings without breaching section 7(2)(e). This Bill contains similar provisions in relation to the special measures to those found in the United Kingdom's Criminal Procedures Rules 2010.

Proposed Amendments to the Criminal Procedure Code (2006 Revision)

There appears to be no breach of human rights standards, specifically of those set out in Part One of the Cayman Islands Constitution Order 2009 in clauses 1- 18 and clauses 21-26.

Clauses 3-18 remove the right to a committal hearing in category 'A' offences which as a consequence move directly to trial. In the case of other indictable offences these clauses remove the right to a long form Preliminary Enquiry or Committal Hearing and provide for only the alternative short form or committal on written statements. This truncated procedure has the advantage of a speedier route to trial but the disadvantage of not testing the oral evidence of the prosecution at an early stage in the proceedings. Does the Attorney General's chambers have the statistics to show how many accused persons opt for a long form committal with depositions (as is their present right)? It would also be interesting to know in how many cases these long form committals resulted in the Magistrate deciding that there was insufficient evidence to commit the matter for trial to the Grand Court.

Clauses 19 and 20 cause some concern to the Human Rights Commission as these clauses now make it mandatory for all firearm offences to be tried by a Judge alone. The right to be tried by a jury of one's peers has always been regarded as fundamental. The total power and authority of the Judge alone to make decisions on the case at hand where the defendant has not chosen to be tried this way, may raise questions regarding the individual's right to a fair trial. Because this form of trial will be mandatory there is no requirement for the prosecution to show a "real and present" danger of jury tampering (as is the case to the best of my knowledge in England). It nevertheless could be said that there seems to be a level of proportionality that justifies the actions of these clauses and as long as there can be an assurance given of the Judge's discretion and competent procedural rules of the Court this should minimise the potential for the breach of any human rights. However it should be noted that where "Judge alone" trials have taken place in the past in other Jurisdictions (e.g. Northern Ireland) their use was severely criticised.

Should you require any additional information or clarification on the foregoing, please do not hesitate to contact us for further discussion.

Yours sincerely,



Richard Coles
Chairman, Human Rights Commission

cc: Honourable Deputy Governor