



## Cayman Islands Human Rights Commission

*promoting, protecting and preserving human rights*

Ref: HRC-ENQ-2019-002

Ms. Cindy Jefferson-Bulgin  
Registrar General  
General Registry  
PO Box 123  
Grand Cayman KY1-9000  
CAYMAN ISLANDS

Via E-mail: [Cindy.Jefferson@gov.ky](mailto:Cindy.Jefferson@gov.ky)

3 November 2020

Dear Ms. Jefferson-Bulgin,

The Commission has received a submission from a member of the public alleging a breach of their human rights as it relates to s.9 (private and family life) of the Constitution, as well as Articles 7 (a child's right to a legally registered name and nationality, etc.) and 8 (a child's right to a name, a nationality and family ties) of the United Nations Convention on the Rights of the Child, which the Cayman Islands is party to. The complainant alleges these breaches occur due to the issuance of different birth records for adopted children.

Based on the information provided the Commission has identified the following prima facie concerns:

1. Individuals appear to be treated differently on the basis of being adopted, wherein an individual who is adopted receives a "Certificate of Birth" ("the Certificate") (Form D of the Births and Deaths Registration Law (2007 Revision) ("the Law")) whilst all others receive a "Birth Registration Form" ("the Form") (Form A of the Law). Both the Certificate and the Form provide the individual's name and sex, and date and place (including district) of birth. The Form, however, also provides additional relevant details such as the name of the physician or registered midwife in attendance, the names of the child's birth mother and father (including the mother's maiden name), their ages at the time of the child's birth, their occupation(s), and their birthplace(s).
2. As the Certificate does not provide the additional identifying (and relevant) information that is provided in the Form, adopted persons must provide a certified copy of their entry in the Adopted Children Register in order to prove their nationality. In these instances (e.g. to obtain a passport, register for school, apply for a scholarship, open a bank account, etc.) an adopted child has no option but to disclose that he/she has been adopted.

3. Further, the family's right to decide when and if to tell their child that they were adopted is compromised given the difference in birth records.

Based on initial research conducted by the Commission on the matter, it appears that other jurisdictions, including the United Kingdom, make similar provisions to those in the Cayman Islands. The potential for human rights breaches, however, may be increased in the Cayman Islands due to a) the small size of the population increasing the risk of inappropriate exposure of this sensitive information, and b) the specific way in which nationality/Caymanian status is evidenced in this jurisdiction requiring more frequent disclosure of identifying information for proving heritage.

The Commission acknowledges that this issue is not straightforward. Based on our research there are several options to remedy this situation including 1) the removal of the birth parents' names from the birth record; or 2) the option to receive an 'integrated' birth certificate<sup>1</sup> (which includes the names of both the biological and adoptive parents). Each of these options poses difficulties. The removal of the birth parents' names is thought by some to erase the child's identity and remove the child's ability to trace their biological heritage once they become an adult. It is noted, however, that section 24(7) of the Adoption of Children Law requires the registrar to keep a record to make traceable the connection between with birth and the adoption. On the other hand, the provision of an 'integrated' birth certificate would not address the issue of privacy in a small jurisdiction. In considering options, the state has a duty to ensure a balance between the rights of the family to privacy and the rights of the child to access their records after the age of 18.

It is notable that the Law was amended in 2006 to include provisions allowing for the re-registration of children whose parents had not been married at the time of birth, and where parentage was proved after registration. There appears to be no equivalent provision for the re-registration of a child born in the Cayman Islands after an adoption has been finalised. A further amendment to the Law (which, for the avoidance of doubt, should be retroactive) to include such a provision may provide a possible solution to the complainant (and others in this situation).

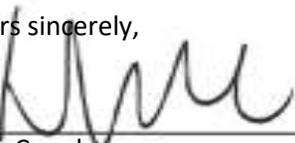
According to the complainant their child has struggled with this issue and has in fact specifically asked that the names of the adoptive parents be listed on the birth record (i.e. that the family be provided with a Form as opposed to a Certificate). Based on the complexity of the issue and the impact on the complainant's child the Commission recommends that the General Registry take advice from the Attorney General's Chambers to offer a solution which is compliant with human rights instruments for those affected families.

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<sup>1</sup> Victorian Law Reform Commission, 2017. Review of the Adoption Act 1984: Report, Chapter 6: Birth Certificates of Adopted People. Retrieved on 15 September 20320 from <https://www.lawreform.vic.gov.au/content/executive-summary-adoption-report-0>.

In accordance with s.116(7) we will publish this correspondence to our website (in seven business days) along with any responses from the General Registry/Cayman Islands Government.

Yours sincerely,



Dale Crowley  
Chairman

Encl.

cc: Attorney General's Chambers  
Solicitor General