



Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

Ref: HRC-RES-ELECTIONS

Mr. Wesley Howell
Supervisor of Elections
P.O. Box 10120
George Town, KY1-1001
CAYMAN ISLANDS

Mr. Neil Lavis
Director of Prisons
P.O. Box 1807
George Town, KY1-1109
CAYMAN ISLANDS

VIA EMAIL: welsey.howell@gov.ky and neil.lavis@gov.ky

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Dear Sirs,

The Commission was copied into correspondence dated 20 June 2016 from prisoner Shane Connor addressed to the Supervisor of Elections. In this correspondence, Mr. Connor expresses concerns related to the issue of prisoners' eligibility to vote in the 2017 General Elections.

The overarching legal provision which needs to be considered in this particular case is s.91(1)(a) of the Constitution which reads:

"A person shall not be entitled to be registered as an elector in any electoral district who –

(a) subject to subsection (2), is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him or her by a court in any country or substituted by competent authority for some other sentence imposed on him or her by such a court, or is under such a sentence of imprisonment the execution of which has been suspended."

In essence, Mr. Connor's letter raises four separate issues:

1. Ensuring that all prisoners who are eligible to vote are able to register to vote or update their registration information;

2. Guaranteeing that practical arrangements are in place to enable prisoners to vote by mobile or other absentee ballots;
3. Agreeing the electoral district in which each prisoner is able to cast his vote; and
4. Determining whether the provisions of our laws which disqualify certain prisoners from voting (namely those serving sentences of more than 12 months) are in breach of such person's human rights.

The Commission recognises that there should already be policies and procedures in place, based on the Elections Law 2008 ("the Law") which resolve the first two issues raised by Mr. Connor. We would wish to note that the ability of prisoners to register to vote, and cast their votes, necessarily raises the further issues of guaranteeing that prisoners are allowed access to information (concerning the eligibility and the registration criteria and processes) and are able to access the necessary documents in order to participate.

With regards to the third issue the Commission is unsure whether there are any written policies or procedures in place to address this, however none were evident from our local research. The issue of whether the prison is considered the voters home (and as such they should vote in the electoral district that the prison is located in) or whether the voter should be able to vote in the electoral district where they would normally be resident has, however, been considered in other crown dependencies research¹:

Guernsey

"Jersey's sister Bailiwick introduced full enfranchisement in 1996.^[3] Prisoners at Les Nicolles vote by post, or in person if the Lieutenant Governor permits it. A prisoner in Guernsey votes in the district where he or she is inscribed on the electoral roll, i.e. where he or she was ordinarily resident prior to incarceration."

Isle of Man

"It is understood that prisoners in the Isle of Man may choose to register either at their home address or at the address of the prison. Prisoners cast their vote using the absent voter procedure. A prison officer may be appointed as certifying officer for as many constituencies as necessary to collect all the votes and deliver them to the appropriate Returning Officer."

¹ Meiklejohn, S. (2014). Hustings in HMP La Moye? *Jersey & Guernsey Law Review*. Available at: https://www.jerseylaw.je/publications/jglr/Pages/JLR1402_Meiklejohn.aspx. [Accessed on 12 July 2016.]

Practically, there are likely to be concerns in small jurisdictions such as our own (where the prison eligibility population is large relative to the total voting population) that the votes of prisoners may distort election results for the electoral district in which prison is physically located. Such concerns have been raised in the UK:

“... prisoners are often imprisoned in areas they do not have any previous connection with, and so it would not be right for them to have a vote for that area. The draft UK Bill confirms that if the UK were to allow any prisoners to vote, then such prisoners would be permitted to register to vote in areas in which they previously resided or where they have a local connection².”

It appears to be the most sensible course that prisoners in the Cayman Islands are permitted to vote in the electoral district where they would normally be resident. We would respectfully recommend that written policies or procedures which detail the allowance of prisoners to vote in the district in which they lived prior to incarceration are developed, if none currently exist.

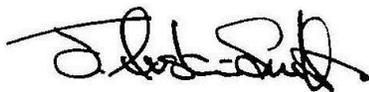
In light of our comments above, it is recommended that the Elections Office and the Prisons Service collaborate to ensure that issues 1 - 3 are managed as per the Law and any policies and procedures already in place. In the event that no such written guidance exists, the Commission recommends the same be developed as a matter of urgency to ensure those person’s serving a sentence of less than twelve months are not adversely affected, nor are their rights breached.

In regards to the fourth issue, the Commission has begun carrying out in-depth research to give it due consideration before commenting.

A copy of this letter will be provided to Mr. Connor for his information.

The Commission would be grateful for your response to this correspondence and recommendations contained therein within seven business days following which, in accordance with the Commission’s obligations under the Constitution, this letter will be published on our website.

Yours sincerely,



James Austin-Smith
Chairman, Human Rights Commission

² Ibid.