

Human Rights Commission
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P.O. Box 391 Grand Cayman KY1-1106
(345) 244-3685

Donovan Ebanks
Honourable Deputy Governor
Fourth Floor Government Administration Building
Grand Cayman
CAYMAN ISLANDS KY1-9000

18 March, 2010

Dear Mr. Ebanks,

As per our correspondence with you dated 11 March, 2010 regarding the introduction of new legislation with potential human rights connotations and specifically, our immediate concerns with the recent Criminal Evidence (Witness Anonymity) Bill 2010 (the Bill), we wish to take this opportunity to offer constructive feedback on the Bill.

In accordance with our assigned and independent advisory role per Section 116 of the 2009 Constitution Order, the Human Rights Commission (HRC) must make the necessary preparations to ensure all new legislation is drafted and implemented in accordance with specified human rights accountabilities as per Section 1 – The Bill of Rights, Freedoms and Responsibilities and all relevant international human rights treaties currently extended to the Cayman Islands.

The HRC respects the Government's motivation behind implementing the Bill and recognizes the importance of protecting the rights of victims and witnesses in criminal proceedings. However, we do believe there are important areas for concern in the Bill and will address them accordingly below. In doing so, we wish not only to support the Government's endeavor to effectively implement the Bill of Rights in 2012 but we hope our advisements regarding legislation prevent not only the need to amend laws proven incompatible to the Constitution after their initial enactment, but allow for great cost -effective efficiency and transparency of governance over the long term..

The Bill has been largely based on the UK Act of the same name passed in 2008 as renewed and amended by Coroners and Justice Act 2009. The first UK Act was limited to a one year term of validity because of its primary role as emergency legislation enacted to reverse a decision by the House of Lords in the "Davies case". In this UK Act we see the same review and reporting requirement as found in Section 23 of the Bill.

The HRC asserts that the right of those being prosecuted to know who is making the accusation against them is a fundamental one. But the HRC also recognizes the fact that it is only in very few and often exceptional circumstances that the need for witnesses to be granted anonymity in criminal proceedings exists.

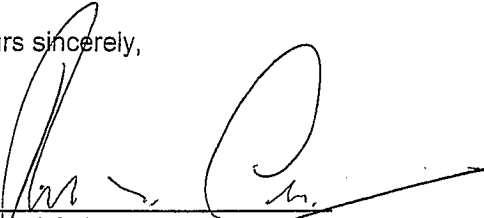
Therefore, the HRC would like to call attention to the following sections of the Bill that are concerning from Cayman's constitutional, legislative and applicable human rights perspectives:

Part II, Section 4: Qualifying Offences

In the United Kingdom, the list of qualifying offences is limited to Murder and Manslaughter committed using a gun or knife, whereas the Cayman Islands law includes a number of so called 'lesser' offences. These qualifying 'lesser' offences include murder, robbery, attempted robbery

While the HRC understands the reasons for the speed with which this Bill was passed through the Legislative Assembly, we believe that in the future a bill that raises such serious human rights concerns deserves thorough debate. Should you require any additional information or clarification on the foregoing, please do not hesitate to contact us for further discussion. It would be appreciated if you could share the contents of this letter with members of the Cabinet and other Government Officials as you see fit.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Richard Coles', written over a horizontal line.

Richard Coles
CHAIRMAN
HUMAN RIGHTS COMMISSION