

Closing Statement of the Human Rights Committee At the second round of constitutional talks

16 January 2009

Introduction

The HRC is the national, independent institution vested with competence to promote and protect human rights in the Cayman Islands. The HRC remains grateful for the opportunity to participate in these talks, particularly the proposals relating to the bill of rights. The HRC's objective in these talks remains: to seek the best protection of rights for the people of the Cayman Islands.

In this regard, the HRC has been able to successfully advocate and negotiate during these talks for:

- clearer and more positive rights for our children;
- an aspirational right of education;
- an aspirational right of protection of the environment; and
- the establishment of a human rights commission.

Outstanding areas of concern

Nonetheless, the HRC still has significant concerns in relation to the following five matters, particularly:

1. The drafting and language of the bill of rights: needs significant improvement to be easier for all persons in the community, including children, to understand. The current draft is cumbersome and is written in unduly formal legal language. The bill of rights must be written in plain English, in order to have the most value and benefit to our people.

2. The inclusion of aspirational rights of healthcare and housing: the bill of rights should include aspirational rights of housing and healthcare for our people: and these can be implemented in a progressive way as we were able to do in relation of the aspirational right to protection of the environment.
3. Weakened right to non-discrimination: The HRC is gravely disappointed by the proposal to significantly restrict the right of non-discrimination.

The right of non-discrimination as it currently stands also affects and relates to many other groups and types of vulnerable people, including: the elderly; children; mentally and physically handicapped persons; and women. None of the grounds of non-discrimination, apart from sexual orientation - generated any controversy or public debate. However, in an effort to remove any protection for one group - namely homosexuals and transsexuals - it is now proposed to limit the right of non-discrimination for all these other persons as well. This is a retrograde and appalling move.

Personal statement of behalf of the Chair of the Human Rights Committee, Sara Collins who could not be here for the closing of these talks, as she is travelling on business:

“In relation to the right of non-discrimination, I regret any attempt on our part to move towards compromise on issues which cannot and should not be the subject of ‘horse-trading’ - such as the dignity and right to equal treatment of the citizens and residents of the Cayman Islands in all areas of their daily life. To the extent that the impression was given that any attempt to compromise would be a legitimate exercise, it is important to clarify that the HRC’s position is clear, strong and unmovable on this point - that there should be equality for all.

We struggled with the larger question of the importance of this process as a whole and an attempt not to jeopardise the outcome: but no process is more important than a single soul, black or white, gay or straight, male or female. No one among us has the right to diminish the lives of our fellow law-abiding residents.

My personal view, held with great sadness, is that we have not done justice in this process because the HRC, and the views it represents, have literally been pushed aside. In the process, it seems that some of us have shown ourselves prepared to do harm to many to avoid doing good for a few.

History will judge us for what comes out of this process. We should be judged, therefore, on an accurate record. I speak for myself and the Committee in saying that we will not support a Bill of Rights which is not built on the principle of equality for all. I speak for myself, and wish it to be on the record, when I say that we should be clear that this includes homosexuals, for all purposes.

I hope this clarifies the position and serves to withdraw any contrary impression that may have been given in an attempt to find compromise during these talks.”

While the Government is correct in noting that the UK itself does not, other overseas territories such as the BVI have given their people a constitutional free-standing right of non-discrimination. It is certainly open to us to give the Caymanian people the same protection, and we deserve no less.

The HRC remains firmly of the view that it is ill-conceived and morally repugnant for the Government to constitutionally discriminate against any group of people, much less to do so while sacrificing the better constitutional protection which was being given to everyone else in our community.

4. Inclusion of a Right of self-determination: Having stated emphatically that there is no desire by the Caymanian people for independence, the HRC considers it nonetheless prudent to expressly reserve the right to self-determination. This right appears in two international treaties, which have been extended to Cayman: the UN International Covenant on Civil and Political Rights as well as the UN International Covenant on Economic, Social and Cultural Rights. It seems sensible and prudent that we should formally reserve this

important right in our constitution: see HRC's position papers dated 7 April 2008 and 29 September 2008.

We look forward to a full discussion on the inclusion of the right of self-determination in the coming weeks.

Lastly,

5. Treatment of juvenile offenders: the HRC is also gravely concerned by the proposal to defer the implementation of sections of the bill of rights relating to the treatment of juvenile offenders. The government's obligations to develop proper facilities for juvenile offenders (as well as mentally ill persons) is of vital importance to the Cayman Islands and sorely needs to be addressed as soon as practicable.

The current practices of incarcerating youth offenders (including girls as young as 13) at an adult prison, while making no provision for treatment or education – is a disgraceful state of affairs: see HRC Report Case 3/07 at www.humanrights.ky. The HRC is concerned to ensure that the issues are addressed by government without undue delay and will issue a separate statement on this matter at a later date.

The HRC will continue to give further input on the foregoing points, as part of our commitment to towards bringing positive constitutional change for the people of the Cayman Islands and its future generations.

End.