

Constitutional Modernization and Human Rights

It is notable that in this edition of Right On! there are articles on two different regional human rights systems. Due to its constitutional relationship with the United Kingdom, on the one hand, and its geographical proximity to the American continent on the other, the Cayman Islands has an interest in the work of both the European and Inter-American human rights systems. However, whilst regional systems can play an important role in supplementing national arrangements for the protection of human rights, they can never be a substitute for the national arrangements. This is why the HRC, notwithstanding its approval of the reintroduction of the right of individual petition to the European Court of Human Rights, has stated that the inclusion of a fundamental rights chapter in a new constitution remains its primary goal.

To this end, on the 10th December last year, as part of its recognition of Human Rights Day, the HRC identified the next Human Rights Day in 2007 as the deadline for significant progress towards the inclusion of human rights in the constitutional arrangements of the Cayman Islands. The HRC therefore views this intervening year as a crucial period and accordingly, it is encouraged by the recent commitment to constitutional modernisation and the engagement of Professor Jeffrey Jowell QC to help facilitate this process.

Professor Jowell is a renowned expert on human rights, who has advised many countries, including South Africa during the formation of its new constitution. In addition to the European and Inter-American influences, Professor Jowell will therefore also bring an African perspective. This should allow the people of the Cayman Islands every opportunity to draw inspiration from innovations in a

number of regions, as opposed to simply replicating the Euro-centric model, and to fashion these various ideas into wide-ranging and modern human rights chapter.

As the Chair of the HRC, the Hon. Alden McLaughlin, has explained, "human rights go beyond the basic rights of civil society and include things such as collective rights and the rights to economic and social development as well as rights to intergenerational equity and sustainability.

Other examples of third-generation rights include environmental rights and rights to administrative justice."

Commenting on this very point, the HRC's Deputy Chair, Vaughan Carter, elaborated:

"This debate is not about diluting core human rights, or picking and choosing which of the basic rights contained, for example in the United Nations International Covenant on Civil and Political Rights are appropriate, as these are for the most part, save some minimal drafting nuances, non-negotiable. Rather, it should be about where historically limited international treaties, like the European Convention on Human Rights, can be augmented and improved; and it is in this developmental process that local traditions should prove instructive."

The key to success therefore, as Professor Jowell has articulated, is to "reflect the local traditions and shared experiences", whilst at the same time combining "stability with a capacity to change." Striking this balance in the Cayman Islands will require extensive public input and the HRC encourages everybody to engage in this hugely important debate.



Professor Jeffrey Jowell
QC, Constitutional and
Human Rights Expert

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New Inter-American Court of Human Rights Appointed

On the 22nd January 2007 a new Inter-American Court of Human Rights (IACHR) was appointed in San José, Costa Rica, consisting of judges from 7 different jurisdictions, namely Costa Rica, Chile, Peru, Dominican Republic, Argentina, Mexico and Jamaica.

As an autonomous judicial institution, the purpose of the court is to implement and interpret the American Convention on Human Rights and other related treaties. The court has no direct jurisdiction over the Cayman Islands, however is significant in defining the scope of human rights in the region. According to Complaints Commissioner Dr. John Epp, who attended the court's 74th session on the 30th January, "Though the decisions of the IACHR are not binding on courts in the Cayman Islands, they are influential in the development of human rights here and throughout the Caribbean and Central America". Furthermore, Dr. Epp pointed out that "the appointment of a judge from

Jamaica to the IACHR is an indication of increasing awareness of human rights issues in the Western Caribbean".



Caymanian launches 1st petition to the ECtHR

The first petition launched from the Cayman Islands to the European Court of Human Rights was recently filed on behalf of Mr. Kurt Ebanks, by Mr. Robin McMillan and Mr. Andre Ebanks of Appleby Hunter Bailhache. The petition alleges breaches of Mr. Kurt Ebanks's right, under articles 6 (1) and (3) of the European Convention on Human Rights, to a fair trial and entitlement to effective legal representation. The alleged breaches occurred in 2001, when Mr. Kurt Ebanks was convicted in the Grand Court of murder. Mr. Ebanks thereafter appealed on the grounds of certain procedural irregularities at his trial to the Cayman Islands Court of Appeal and the Judicial Committee of the Privy Council in London. Despite the conviction being upheld in the Privy Council by a majority of 3 judges to 2; Lord Steyn, dissenting, stated that the Court of Appeal had failed to accord Mr. Kurt Ebanks "due process" and that there had also been "a material irregularity". A further statement by Sir Swinton Thomas, also dissenting, affirmed that "there is a real risk that there has been a miscarriage of justice in this case".

The European Court of Human Rights in Strasbourg has acknowledged receipt of the petition which will be dealt with 'as soon as practicable'.

This is the first occasion in which this avenue of recourse has been exercised since the recent reintroduction of the right of individual petition to the territory. Mr. Nicolas Joseph, litigation partner at Appleby, expressed how pleased he was that his firm had had an opportunity to undertake the carriage of such an important and innovative area of the law of the Cayman Islands.

For more information on the right of individual petition to the European Court of Human Rights, visit the HRC's guidance, which is available at www.humanrights.ky.

For additional information on the European Convention on Human Rights, visit: <http://www.echr.coe.int/ECHR>.



Human Rights Lecture

In recognition of its 25th Anniversary, the Cayman Islands Law School welcomed its first Director of Legal Studies, Professor Peter Rowe back to the Cayman Islands. On the 8th March, as part of the activities to commemorate 25 years of legal education in the Cayman Islands, Professor Rowe delivered a lecture entitled "The Human Rights Act 1998 and its Applicability to UK Armed Forces Overseas: A Conflict of Jurisdictions" Members of the HRC were in attendance and thanks to the consideration of the Cayman Islands Law School and Professor Rowe, who kindly provided a copy of his presentation; the HRC will be able to bring this interesting and thought-provoking lecture to a wider audience. To view the PowerPoint presentation, visit www.humanrights.ky.

HRC Supports Stand against HIV

A HRC representative recently attended an informative lecture hosted by the Cayman AIDS Foundation. The objective of the lecture was to raise awareness amongst religious leaders, government policy makers and private representatives, so that they might introduce or adapt existing procedures to improve or include HIV/AIDS prevention. From a human rights perspective, such efforts also assist in reducing discrimination against persons living with HIV/AIDS.

On a similar note, the HRC would also like to recognize the work of the Red Cross in raising awareness of HIV/AIDS discrimination.

HRC Supports Stand against HIV/AIDS Discrimination

The International Day for the Elimination of Racial Discrimination was established in 1966, following the tragic massacre of 69 young students peacefully protesting in Sharpsville against racially discriminatory laws, adopted by the South African Government. This event is now commemorated on the 21st March each year.

The theme for this year's commemoration of the International day was "Fighting everyday racism" which challenges us to take meaningful steps to fight commonplace discriminatory practices in our society.

As a party to the Convention on the Elimination of All Forms of Racial Discrimination, the Cayman Islands is obliged to do precisely this. However, in addition to the legal guarantees, it is important, especially in a society that now comprises some 104 different nationalities, that education, designed to develop awareness and encourage tolerance is positively encouraged.

The HRC therefore supports all efforts to celebrate different cultures and nationalities, including for example, the recent activities observing Black History Month.



The photographic work for the Red Cross' "stand against discrimination" campaign was donated by Mr. Patrick Broderick.

HRC Celebrates International Women's Day

On March 8th, the Cayman Islands Human Rights Committee (HRC) joined with human rights groups around the world to recognize and celebrate International Women's Day (IWD), as a day when women of different ethnic, linguistic, cultural, economic and political backgrounds can come together to commemorate decades of struggle for equality, justice, peace and development.



Looking beyond the Cayman Islands, the HRC noted the progress that has been made in recent years. Women's access to education and proper health care has increased; their participation in the paid labour force has grown; legislation that promises equal opportunities for women and respect for their human rights has been adopted in many countries; the world also has an ever-growing number of women participating in society as policy-makers. However, the HRC also draws attention to the fact that daily life for the majority of the world's women remains a difficult and sometimes dangerous struggle. Further steps still need to be taken to address the issues and difficulties that women, in particular, face.

"We are extremely pleased with the number of government and non-government agencies that have partnered with us or have facilitated events on their own in commemoration of International Women's Day and Honouring Women Month. Receiving support from diverse agencies such as the Department of Sports, National Museum, Cayman Islands Investment Bureau, Cayman Islands Human Rights Committee, University College of the Cayman Islands, and various businesses in the private sector, the Women's Resource Centre was able to create a schedule of events and provide information during HWM that spoke to the diversity of women's lives in the Cayman Islands."

Tammy Ebanks-Bishop



The HRC therefore supported the United Nations in its IWD message for 2007:

"We must recognize that peace and social progress require the active participation and equality of women, and to acknowledge the contribution of women to peace and security. Until men and women work together to secure the rights and full potential of women, lasting solutions to the world's most serious social, economic and political problems are likely to be found."

When asked what IWD meant to him, the Hon. Alden McLaughlin, the HRC's Chair, replied:

"International Women's Day provides all of us in Cayman with an opportunity to reflect upon the contributions of women over the years to the establishment of our country. In particular, from a human rights perspective, we think of the ground-breaking achievements of women like the Hon. Sybil McLaughlin – our National Hero; the first speaker of the Legislative Assembly and a long-time supporter of the rights of women; of Mary Evelyn Wood – the first woman elected to the Legislative Assembly in 1962; and of the many groups of women throughout the Cayman Islands who campaigned for the rights of women to vote in and stand for public election. At the same time, we should also use International Women's Day to look forward with a view to the full realisation of equal rights for all women, not just in the Cayman Islands, but throughout the world. As Chair of the Cayman Islands Human Rights Committee, however, this body would certainly not want me to let International Women's Day 2007 pass without urging that the United Nations Convention on the Elimination of All Forms of Discrimination against Women be extended to the Cayman Islands at the earliest possible opportunity."

In its press release, the HRC also emphasized this point:

"The HRC believes that this ratification, backed up by any necessary local legislation to ensure that the Cayman Islands is in full compliance with CEDAW, would make a significant impact upon the human rights of women in this jurisdiction."