

Message from the chair

I am delighted to have joined the Human Rights Committee as its Chair. I have been keenly interested in the work the Committee has done to date. The effort involved has been considerable; preparing reports on wide-ranging and significant issues, spearheading a timely and engaging public education campaign, raising awareness and generating discussions about issues which I believe will ensure Cayman continues to develop as a healthy, functioning, successful democracy and a wonderful place to live.

As a country, we are embarking on a process of constitutional reform. The Committee hopes to fulfil its responsibility to provide information and facilitate dialogue as we engage in this process.

As a people, we are justifiably proud of our culture and our history. It is astonishing how much we have achieved in such a short space of time and much of this can be attributed to our tolerance for new ideas and developments. We have a national talent for innovating, and for adapting. I hope we will adopt the same attitude to consideration of the important human rights issues. When we engage in national dialogue, as we must do when we contemplate the proposal to include a bill of rights in our Constitution, we will also have to consider, and talk about, our fears and concerns about how this will change our identity or impact on our culture.

It is often the case that culture acts at the same time as impetus and impediment to initiatives for human rights reform. This is not surprising and simply underlines once again the pitfalls involved in attempting to drop legal reform into a vacuum.

Of course it is true to say that, when we talk about human rights, in particular in this region (and others outside the so called Western world), there is an inevitable cultural divide. Some of us may see these as 'foreign' ideas that are being imposed on us. However, we must avoid the dangers of using culture as a cloak for injustice; there are too many examples of cultures throughout the world where, for example, the practice of female genital mutilation, the disenfranchisement of women, the abuse of certain religious

and minority groups are all seen by too many of the world's inhabitants as cultural preserves in which the human rights angels had better fear to tread.



In my view, it is important to ask questions and voice our concerns and generate conversation about them at all levels of our society. In trying to identify areas of consensus, we must avoid shutting anyone out of the process. In answering these questions, the people – all of the people – must ideally be involved in some way.

In many ways, we already have a human rights culture. In 2001, I presented a paper at the Human Rights Symposium hosted here in which I pointed out that the Caribbean has a long and resilient tradition of social co-operation between individuals and groups to meet the needs of our communities. This trend is mirrored in the Cayman Islands. The service clubs, the churches, religious groups and other NGOs of that nature are well represented here. We pride ourselves (and indeed I have seen it in much of our promotional material) on racial harmony and political stability. We have a strong common law tradition within the framework of which our judges at all levels have grappled with human rights issues, including issues arising under the Immigration Law and in relation to freedom to manifest one's religion. The existence of the Human Rights Committee and the support that many people have expressed for its work is itself a testament to our national willingness to shed light on these issues and to embark on the process of reform.

It is really only a small step to move from where we are to a culture that embraces the protection of rights as a worthwhile aspiration.

I encourage everyone to take part in the debate during the constitutional review and I look forward to the coming dialogue.

**Sara Collins,
Chair.**



Vaughan Carter, HRC Deputy Chair (left) and Ishmael Beah.

Best-Selling author and Human Rights Activist **Ishmael Beah** talks to the HRC

The innovative and inspirational selection of Ishmael Beah, to deliver the keynote address at the UCCI graduation this year, not only brought a best-selling author to the Cayman Islands; it also provided a chance to meet an individual who is making a significant impact on the lives of many young people through his advocacy for human rights.

The HRC was keen to ensure that this opportunity to once again highlight the importance of human rights did not pass the Cayman Islands by and is extremely grateful to the staff and students at UCCI for facilitating a meeting between Mr. Beah and representatives of the HRC.

Ishmael Beah is not the regular, run of the mill graduation speaker, who reflects upon experiences and lessons learnt in career usually spanning many decades. He is instead just 26 years old. However, in his relatively short life, he has had to contend with more than most people experience in a lifetime. Having lost his family in the civil war that ravaged his native Sierra Leone, he was recruited as a child soldier at the tender age of 10, forced to fight and compelled to commit atrocities that are difficult to comprehend. Rescued by UNICEF workers, he was taken to the United States, where he completed high school at the United Nations International School. Whilst studying for a Bachelor's Degree in Political Science, Beah penned the best-selling "A Long Way Gone: Memoirs of a Boy Soldier".

Beah also works actively with the influential non-governmental organisation, Human Rights Watch. Significantly, the very day of our interview was also the day on which Human Rights Watch had targeted Beah's particular passion, the elimination of child

soldiers. With an upcoming vote in the US Senate on the Child Soldier Prevention Act 2007, the US public were being urged to phone their Senator to express support for s.1175 of the Act, which would restrict US military financing, training and arms transfers to governments that are involved in the recruitment and use of child soldiers.

"Aspects of Beah's work with Human Rights Watch and its Children's Rights Division are also directly relevant to human rights issues that the HRC has encountered here in the Cayman Islands."

Aspects of Beah's work with Human Rights Watch and its Children's Rights Division are also directly relevant to human rights issues that the HRC has encountered here in the Cayman Islands. One example – the failure of the Repatriation Accord between Spain and Morocco to protect children – is of interest because of the number of Cuban migrants who arrive on these shores, some of whom are children. Beah believes that it is important to treat children caught in such situations particularly humanely. In these cases, his first inclination would be to ask "how can we help ... rather than how we can deport."

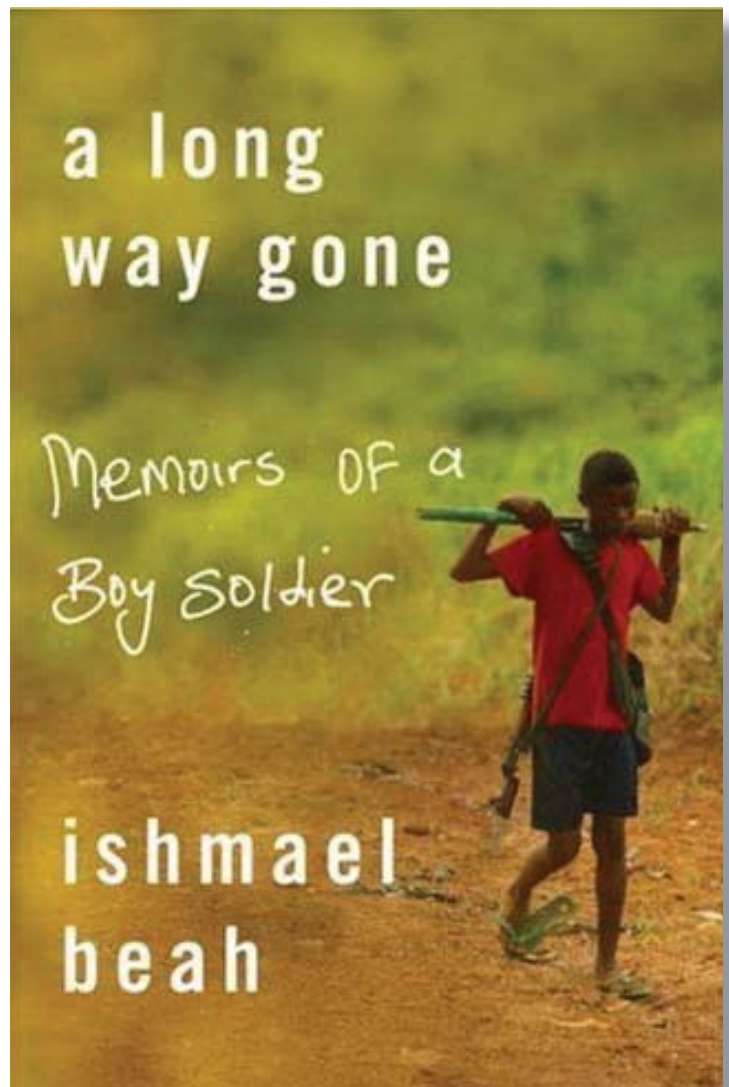


Another example is the incarceration of Omar Ahmed Khadr, who was only 15 years old when first arrested, in the US detention facility in Guantanamo Bay, Cuba. This resonates in the Cayman Islands not just because of Guantanamo Bay's proximity, but also because juveniles are sometimes held in adult prisons in Cayman, even prior to conviction. Indeed, the HRC is currently investigating a case where a child as young as 13 was held at Fairbanks Prison alongside adult prisoners. Beah's view on this also focussed on the need to protect children - "adult prisons are not the appropriate place to incarcerate children." He went on to explain that such punitive measures mitigated against rehabilitation; and without rehabilitation, children would not be able to appreciate that what they may have done was wrong, nor assess how they might change their actions for the better in the future. The detention of juveniles in adult facilities was therefore clearly in breach of the rights of the child and something that Cayman needed to address.

As an advocate for the rights of children, Beah believes that children should be awarded specific constitutional rights, including a right to education, because "where children know they have rights, it creates in them a strong conscience." Rights should also apply universally, according to Beah. Returning to his own personal experiences, he noted the dangers of diluting rights by allowing them to be too culturally relative. In his case, Beah was all too familiar with the argument that the recruitment of child soldiers is excused by cultures which believe that "when you are ten, you are a man" and therefore old enough to fight. Cultural relativism was therefore for Beah a "slippery slope" that can be used to justify abuses of fundamental rights.

Commenting on the Constitutional Modernization process underway in the Cayman Islands, Beah challenged young people to get involved and to ensure that they have a voice in government. He claimed that the inclusion of fundamental rights in the constitution would enhance Cayman's international credibility and further suggested that, whilst Cayman appeared safe, his experience had taught him that it was better to have guaranteed rights in place than to wait until something devastating comes along.

Underlying all that Ishmael Beah had to say in the time that the HRC spent with him was the clear belief that everyone's life is precious and deserved protection. Rather than allowing the harrowing experiences of his childhood; where lives were all too easily and senselessly taken away; to control or restrain him in adult life, Beah instead confronts them head-on. They serve as his inspiration, as he campaigns to eliminate the exploitation of children in warfare and champions the human rights cause for young people in particular.



Never too young for Human Rights

Head of Early Childhood Services in the Department of Education Services, Kate Marnoch, recently attended a seminar in Jamaica, which looked specifically at human rights in early childhood. On her return, she provided her thoughts on the human rights of our youngest people for the HRC.

Rights of the Young Child

In the Convention on the Rights of the Child, a child is recognized as a person under 18, and a young child is someone under the age of 8. What rights do such young children have you might ask. Talking about the rights of such young child seems to get some parents, teachers, child care practitioners and policy makers in a state of anxiety.

It might be because we feel uncomfortable with the idea of young children having rights, as if they might judge us – the adults- and find us lacking for not providing those rights. It might be because we don't understand how we are supposed to ensure that our youngest children get their legal entitlement to their rights. It might be because we are afraid that giving children rights empowers them and we might not be happy with them having power. There are probably lots of different reasons why talking about young children's rights can make us nervous. However if we understood a little better what the rights of the young child are then maybe we could start to relax.

We would, hopefully, all agree that babies and young children are entitled to be fed, nurtured, protected from harm, loved and stimulated. We would want our babies and young children to be cared for by people who like them, who enjoy their company, who will feed them good food, keep them clean and safe, who know a range of songs and stories, people who will be positive role models for our children.

We want all these things whether or not we are looking after our babies and young children ourselves or if our helper is, our Aunt is or a formal day care centre is. These are all rights of the young child that I don't think anyone of us would disagree with. These are rights that babies and young children should just have; they

don't have to give anything back. It would be lovely if all babies slept through the night from a young age but if they don't they will still get their milk in the middle of the night with as much good grace as tired parents can manage.

People often talk about rights and responsibilities but what responsibility does a baby or young child have? We may prefer it if they cried a little less and smiled a little more, if they didn't spit their food out or throw their spoons on the floor and didn't soil quite so many diapers. However, when we think about it logically, we don't really place any responsibilities onto the shoulders of babies and young children.



Articles from the Convention on the Rights of the Child say that young children have the right to their own name, to live with their parents, to be kept safe and protected, to be well fed and nourished. Young children have the right to health and medical care, to attend school and to learn, to leisure time, to play and sing and pray.

I think most of us would agree with these rights and realise that for the majority of children in Cayman we are providing them with these rights. Having realised that maybe we won't feel so scared acknowledging the Rights of the Young Child.

Policy makers have additional responsibilities to parents. They have to ensure that children have access to these basic rights wherever they are, at home, pre-school, school or church.

The Early Childhood Services is responsible for making sure that pre-schools and day care centres are providing children with high quality care and early education. That the staff are promoting these rights and in doing so show how they value the children in their care. The Early Childhood Services does this through regular monitoring and training, by offering advice and support to staff and parents. The more the Early Childhood Services can work in partnership with staff and parents, the better the outcomes for Cayman's youngest children.

HRC interviews UNHCR Senior Protection Officer Ms. Grainne O'Hara (on world refugee day)



On World Refugee Day, Danielle Coleman of the Human Rights Committee (“HRC”) met with Ms. O’Hara who was recently assigned the post of Senior Protection Officer for the United Nations High Commissioner for Refugees (“UNHCR”).

HRC: How did World Refugee Day come about and what are its objectives? What is the relevance of World Refugee Day in the Caribbean and in particular in the Cayman Islands?

Ms. O’Hara:

On the occasion of the 50th anniversary of the founding of the UNHCR and as an expression of solidarity with Africa, which hosts a very large number of refugees, and which traditionally has shown them great generosity, a UN General Assembly Resolution was unanimously adopted in 2000 which designated 20 June every year as World Refugee Day.

June 20, 2001 marked the first ever universal Refugee Day and was celebrated by countries across the globe. Many countries have previously celebrated a refugee day, but 2001 marked the first internationally celebrated day. The objectives of World Refugee Day are many and varied but primarily it is an opportunity to draw attention to the plight of refugees, to recognize their suffering but also to celebrate and acknowledge their contribution to the societies that host them.

World Refugee Day gives refugees an opportunity to have a day that is their own; a day on which despite all the difficulties they face, they can come together as refugees, or returnees (refugees

who have voluntarily returned to their home countries) and enjoy social activities with their fellow refugees and the communities which host them. It is equally an opportunity for people around the globe to express their solidarity with refugees and to highlight the need for renewed action to find solutions to refugee crises. The Caribbean region hosts relatively few refugees in terms of the overall global numbers but the objectives of World Refugee Day are as valid and as relevant in this region as they are anywhere else in the world.

HRC: Bearing in mind the different conditions that sometimes play an important role in compelling people to leave their country of their birth; is the definition of a “refugee” subject to change in the near future?

Ms. O’Hara:

The international legal definition of the term ‘refugee’ is found in the UNHCR’s Statute dating from 1950 and in the subsequent 1951 Convention relating to the Status of Refugees. The definition found in the 1951 Convention is subject to both temporal and geographical limitations which with the passing of time, proved restrictive so the international community later opted to broaden the term through the adoption of the 1967 Protocol to the 1951 Convention.

There are additionally numerous complementary sources of law which have over time lead to a broader understanding of the range of circumstances provoking refugee flight, for example the 1969 Convention of the Organization of African Unity governing refugee situations on the African continent. The UNHCR consid-

ers the 1951 Convention to be a 'living document' and the full extent of the meaning of the term 'refugee' has evolved over time as a matter of interpretation (through recommendations of the UNHCR's Executive Committee and the determinations of national courts and tribunals).

There is however, no intention to broaden the legal definition through the revision of the 1951 Convention, and contemporary concepts such as 'environmental refugees' and 'economic refugees,' as used to describe the varying motivations for forms of forced displacement not envisaged under the 1951 Convention, are not strictly speaking legal terms. They are terms which have entered into common usage but which in fact have little bearing on the international legal framework governing the treatment of refugees.

HRC: What is the purpose of your visit on this occasion? How many times has the UNHCR visited the Cayman Islands in the last 10 years?

Ms. O'Hara:

The main purpose of my visit was to undertake fact-finding and familiarize myself with all aspects of the Cayman Islands's asylum system. Most of my time was spent meeting with government counterparts to discuss issues of common concern, such as the training needs of immigration staff, detention conditions, access to asylum and the quality of analysis and determination of individual claims. I also had the opportunity to meet with asylum-seekers in the Detention Centre and recognized refugees living in the community, as well as exchanging ideas with the Human Rights Committee and other people with an interest in asylum issues.

The UNHCR's Regional Representation for the United States and the Caribbean based in Washington DC, assumed operational responsibility for the Cayman Islands in January 2007, a responsibility we carry out in close collaboration with our colleagues in Geneva and in London.

Before this current visit, UNHCR colleagues were last in the Cayman Islands in January 2006 and in October 2005. Country visits are a very important part of our work. Nothing beats direct interaction, allowing for in person contact with government counterparts and with refugees and asylum-seekers but with 22 countries and territories under our remit and a limited budget at our disposal, we combine our missions with other means of contact. Between visits, work goes on through phone and e-mail contact and in recent years the participation of Cayman Islands officials, in joint conferences organized by the UNHCR and the

International Organisation for Migration, has provided another practical avenue for effective working contacts.

HRC: What issues have prompted the UNHCR to visit Cayman? What advice has the UNHCR given the Cayman Islands and in particular, what advice has the UNHCR given the Immigration Authorities?

Ms. O'Hara:

No specific issue motivated this visit. Rather I am taking advantage of the long-standing invitation we enjoy with the Cayman authorities to work co-operatively with them on refugee issues. In accordance with the Statute of the Office of the High Commissioner and the specific terms of the 1951 Convention, the UNHCR has a mandated role to provide support and assistance to States on all aspects of asylum – the term 'supervisory responsibility' is often used to describe the range of activities that fall under our remit.

The 1951 Convention was extended to Cayman as an Overseas Territory on the 25th October 1956. The Cayman Islands' authorities have always acknowledged their obligations under the 1951 Convention and made it clear that their intention is to abide by its terms. The UNHCR's engagement with the Cayman authorities, in helping them to fulfil these obligations, is very broad. As mentioned before, the provision of training, technical advice on legislation relevant to asylum issues, information specific to the countries of origin of people seeking asylum in the Cayman Islands and any other assistance useful for the determination of individual cases, are all elements of the working relationship between the UNHCR and national authorities.

In the specific case of the Cayman Islands we are currently in discussions with Immigration and other relevant government authorities to identify more clearly specific issues on which Cayman would welcome more support and input from the UNHCR. These consultations are a work in progress which will lead to more concrete activities in the future.

HRC: Is the UNHCR entirely satisfied with the responses of the Cayman authorities? Are there any additional improvements that the Cayman Islands should be making?

Ms. O'Hara:

Responding adequately to the challenges of asylum is complex. There are international standards which must be respected but there is no fool-proof global blueprint for meeting them – 'no one size fits all asylum system'. The asylum policies and practices of individual countries vary and tend to reflect national and regional

realities. The asylum system here is certainly not perfect but we are very satisfied with the level of openness and co-operation shown by the Cayman authorities in discussing ways to improve it. There is clearly a willingness on their part to work constructively with the UNHCR. Various aspects of the asylum system are currently under discussion and we are confident that improvements will be achieved over time. It will only be with the passing of time and the strengthening of cooperation at a practical level that we will be able to jointly evaluate the overall effectiveness of the Cayman Islands' asylum procedures.

HRC: Are you aware of the work of the HRC and in particular, are you aware of the HRC's Final Report on CIHRC Case 1/06 Luarca?

In the Final Report on Luarca, the HRC suggests that the Cayman Islands, whilst meeting basic requirements, could make greater efforts to reach the aspirational goals also contained in the Refugee Convention. Do you think this is appropriate and realistic?

"The HRC Final Report takes full account of the input provided by the UNHCR and constitutes an important contribution to the better understanding of both the letter and the spirit of the 1951 Convention."

Ms. O'Hara:

Yes the UNHCR is aware of the work of the HRC and very much welcomes the proactive engagement and serious and balanced examination of asylum related matters in the work of the Committee to date. The work of the HRC in this regard is vital to the kind of informed public debate that underpins the evolution of fair and effective policies and practices.

During the course of the HRC's consideration of Dr. Luarca's complaints, the UNHCR provided comments on the interpretation of specific articles of the 1951 Convention. The HRC Final Report takes full account of the input provided by the UNHCR and constitutes an important contribution to the better understanding

of both the letter and the spirit of the 1951 Convention. The report provides sound analysis of the relevant legal standards and serves as a concrete point of reference for the full and correct implementation of all relevant aspects of the 1951 Convention in the Cayman Islands.

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HRC: What in your view are the major issues facing the Cayman Islands in relation to Cuban migration? In the Final Report of CIHRC Case 8/06 The "Balseros" Case (Cuban Migrants Arriving by Sea), the HRC identified a number of challenging issues. How would you as the UNHCR's representative, approach these?

Ms. O'Hara:

My visit to the Cayman Islands coincided with the publication of the Final Report, in The 'Balseros' Case and I was fortunate enough to receive a copy hot off the press. The report provides a wealth of valuable commentary, analysis and recommendations. It is essential reading for anybody interested in the dynamics of mixed migration flows, not only towards the Cayman Islands but throughout the Caribbean region. The issues tackled by the report are complex and broad reaching, including some areas of public policy which go beyond the asylum remit of the UNHCR, and on which it would not be appropriate for us to comment.

We honed in on the asylum-specific recommendations and found that the picture painted by the HRC accurately reflects the challenges facing the Cayman Islands. Many of the practical issues highlighted for improvement are already on the joint UNHCR and Cayman Immigration working agenda. Training for immigration officials scheduled for later in the year should yield improvements in the quality of interviewing and overall processing of asylum claims, something to which the Cayman authorities are fully committed. Other more far reaching recommendations of

the report such as the establishment of an independent statutory board or independent asylum adjudicator to deal with asylum applications, and on policies of detention and return are worthy of further detailed discussion. The Report does not necessarily give all the answers but it certainly raises all the right questions and as such it provides a very valuable framework for follow up on all the issues it addresses.

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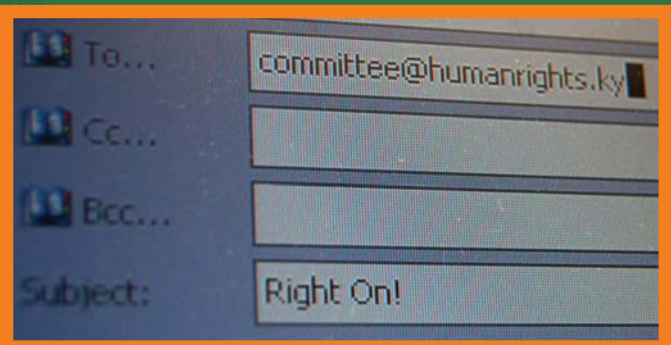
The HRC would like to take this opportunity to thank Ms. O’Hara for giving us an insight into the UNHCR’s work in the Caribbean and in particular, here in the Cayman Islands.

If you would like to learn more about asylum issues and rights relating to Refugees here in Cayman, please visit our website at www.humanrights.ky or contact us at: committee@humanrights.ky

Write in to Right On!

Please write to Right On! with your views on human rights in the Cayman Islands. The most interesting submissions will be published in Right On! and the featured authors will receive a HRC “Keep the Torch Alight” t-shirt. So, send your t-shirt size with your submissions to:

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