

# Cayman Islands Human Rights Commission

*promoting, protecting and preserving human rights*

## Human Rights Essentials: A Guide for Places of Detention in the Cayman Islands



*“It is said that no one truly knows a nation until one has been inside its jails.  
A nation should not be judged by how it treats its highest citizens, but its  
lowest ones.”*

*-Nelson Mandela*

# Message from the Human Rights Commission

Since coming into being, the Human Rights Commission (“the Commission”) has spent a considerable amount of time addressing issues related to persons who are detained by the Cayman Islands Government (“the Government”).

Simply put, detained persons have the right to be treated with humanity and dignity. This means, amongst other things, they must be treated properly by custodial staff; held in an environment which is deemed humane; given regular meals; have access to reasonable health care; amongst other rights.

The Commission has worked wholeheartedly to address concerns within our prisons and lock-up facilities such as improving the conditions in which detained persons are held, segregation of juvenile and adult prisoners, the possible extension of the Optional Protocol for the Convention against Torture (OPCAT) to the Cayman Islands, the need to properly assess persons who are detained (including illegal migrants) and ensuring that generally, all policies and procedures are written and in compliance with the Bill of Rights.

This guide has been developed by the Commission in order to provide appropriate human rights training for those tasked with guarding some of our most vulnerable persons in places of detention throughout the Cayman Islands.

James Austin Smith  
Chairman, Human Rights Commission

# Cayman Islands Constitution Order 2009

## Part One

### Bill of Rights, Freedoms and Responsibilities

#### What is the Bill of Rights?

The Bill of Rights:

- is contained in Part One of the Cayman Islands Constitution Order 2009;
- recognises the distinct history, culture, Christian values and socio-economic frame-work of the Cayman Islands, and it affirms the rule of law and the democratic values of human dignity, equality and freedom;
- confirms or creates certain responsibilities of the government and corresponding rights of every person against the government; and
- does not, directly or indirectly, affect rights against anyone other than the government except as expressly stated.

The preamble to the 2009 Constitution details the values of the Cayman Islands upon which this legislation was drafted.

#### What rights are contained in the Bill of Rights?

1. Guarantee of Rights, Freedoms and Responsibilities
2. Life
3. Torture and inhuman treatment
4. Slavery or forced or compulsory labour
5. Personal liberty
6. Treatment of prisoners
7. Fair Trial
8. No punishment without law
9. Private and family life
10. Conscience and religion
11. Expression
12. Assembly and association
13. Movement
14. Marriage
15. Property
16. Non-discrimination
17. Protection of children
18. Protection of the environment
19. Lawful administrative action
20. Education
21. Public emergencies
22. Protection of persons detained under emergency laws
23. Declaration of incompatibility
24. Duty of public officials

# What are human rights?

Human rights are the essential rights and freedoms that belong to all individuals regardless of their nationality and status, etc. These rights are considered fundamental to maintaining a fair and just society.

## What types of rights are there?

- **Limited rights** — Government can interfere with, restrict, limit or amend such rights (e.g. liberty, expression, movement) because these rights come with expressed or implied exceptions.
- **Absolute Rights** — Government cannot interfere with, restrict or limit these rights in any way (e.g. torture, inhumane or degrading treatment, slavery).
- **Qualified Rights** — Government interference with these rights would be allowed in special circumstances, and only when necessary in a democratic society. The interference must fulfil a pressing social need; pursue a legitimate aim; and be proportionate to the aims being pursued. An example would be government restrictions on the right to assembly and association, in order to calm a riot.

## How are the rights applied?

A person's rights are only applied vertically in the Cayman Islands; i.e. they are enforced only against the Government and not against private individuals.

## What does the Bill of Rights mean for me as a public official?

- Public authorities have an obligation to act in accordance with the Bill of Rights when delivering a service directly to the public; and devising policies, procedures, and legislation.
- It is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights Freedoms and Responsibilities (“the BoR”).
- Government may restrict/limit some rights in cases where the restrictions are no greater than needed to achieve a legitimate objective; and they have used proportionality as a guide, i.e. government cannot use a “sledgehammer to crack a nut”.
- In general, the rights of one person cannot be used to ‘trump’ the right of the general public to be kept safe from a real risk of serious injury or loss of life.

### What are my responsibilities as a public official?

Your responsibilities as a public official are clearly laid out in the following sections:

S.19. (1) All decisions and acts of public officials must be, lawful, rational, proportionate and procedurally fair.

(2) Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act.

S.24. It is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights unless the public official is required or authorised to do so by primary legislation, in which case the legislation shall be declared incompatible with the Bill of Rights.

# Who is being detained by the Government?

All of the human rights protected by the Bill of Rights belong to and may be relevant for people who are being detained by the Government.

However, this guide will concentrate on the fourteen human rights that are most relevant:

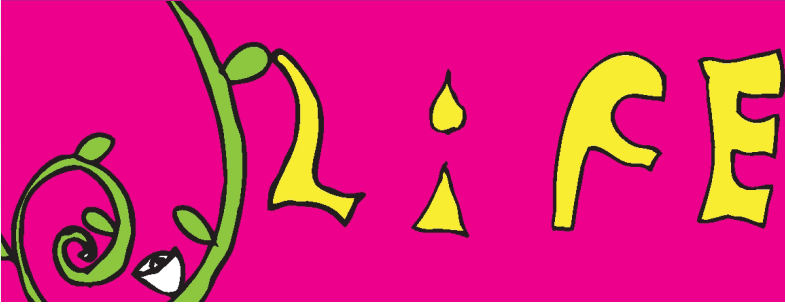
- life;
- torture and inhuman treatment;
- slavery or forced or compulsory labour;
- personal liberty;
- treatment of prisoners;
- fair trial;
- no punishment without law;
- private and family life;
- conscience and religion;
- expression;
- movement;
- marriage;
- non-discrimination; and
- protection of children.

Each right has been summarised and presented in the form of a case study, which serves to both a) provide a concrete example of how the rights are applied in the context of persons who are detained, and b) establish case-law at the highest level (from the European Court of Human Rights) as guidelines for good practice for each of the rights under examination.

The Cayman Islands have been subject to the European Convention on Human Rights since the 1950s and as such individuals have been able to obtain a remedy for breach of the provisions of this international treaty by lodging a complaint in the European Court of Human Rights. In addition, the law of the Cayman Islands previously recognised a number of human rights and fundamental freedoms under the common law and statute law.

6 November, 2012 marked Implementation Day, the day in which our own Bill of Rights, Freedoms and Responsibilities began to allow an individual to seek to remedy an alleged breach in our local courts. Individuals may also still directly petition the European Court of Human Rights, generally after exhausting domestic remedies, to seek a remedy for the decision of a public official or legislation which infringes or breaches the obligations under the European Convention on Human Rights.

## Life



### In Simple Terms

Life in this context refers to biological life (existence), not the way in which a person's life is lived.

We are all human beings. It does not matter who you are or where you are from, our lives all have the same value and we all get the same rights. The government shall not deprive anyone of his or her life, except in very narrow, limited circumstances.

Persons who are detained have the same rights to life as non-detained persons. It is noted, however, that deprivation of life may not be considered a contravention of this right in cases where such deprivation happens in order to effect a lawful arrest, or to prevent the escape of a person who has been lawfully detained and the level of force used.

Therefore, some sections of this right are absolute, while others are limited.



## Case Study: RENOLDE V FRANCE (2008)

Joselito Renolde was arrested for assault on 12 April 2000 and remanded in prison. Some months later he attempted suicide. He was treated by a Rapid Crisis Intervention Team (RCIT) after he complained of hearing voices. The RCIT reported that Renolde made a suicide attempt by cutting his forearm with a razor. RCIT was aware of Renolde's psychiatric history and he was diagnosed as having suffered an "acute delirious episode."

Renolde was prescribed antipsychotic medication and referred to the Regional Medical and Psychological Service (SMPR). He was placed in a cell under special supervision, and seen by the SMPR 10 times in the next 18 days. He was also given his medication every few days by the SMPR. On 4 July, Renolde threatened a trainee warder and threw a chair in her direction, an incident which required him to go before the disciplinary board. At the hearing Renolde was penalised with 45 days in the punishment cell, where he was detained for 23 hours a day without any television or other activities. This was the maximum penalty allowed.

On 12 July, Renolde's lawyer requested a review of his punishment on the basis of his psychological illness. On 20 July 2000, while this request was being processed by the authorities, Renolde hanged himself. Following his suicide, Renolde's sister made an application to the European Court of Human Rights, alleging breaches of articles 2 (Life) and 3 (Torture or ill-treatment) of the European Convention of Human Rights.

"The Court concluded that the authorities knew that Renolde was suffering from psychotic disorders capable of causing him to commit acts of self-harm. The Court suggested that the authorities, faced with a prisoner known to be suffering from serious mental disturbance and to pose a suicide risk, should 'take special measures geared to his condition to ensure its compatibility with continued detention'. In this respect, the Court stated that, 'in the case of mentally ill persons, regard must be had to their particular vulnerability'. The Court considered that, by failing to consider admitting Mr Renolde to a psychiatric institution and failing to supervise him taking his medication, the State had failed to satisfy its positive obligation to take preventive operational measures to protect an individual whose life is at risk."

The ECtHR therefore held that the suicide of Renolde was attributable to the authorities' failure to provide adequate medical care. This failure was a breach of the deceased's right to life and right to be free from inhuman or degrading treatment.

# Torture and Inhuman Treatment



## In Simple Terms

Protection against torture means you cannot be subjected to acts that intentionally inflict severe pain or suffering, whether physical or mental.

Protection against inhuman and degrading treatment or punishment means you cannot be subjected to acts that intentionally inflict mental or physical suffering, anguish, humiliation, fear or debasement (falling short of torture).

Government could not torture or degrade you, or allow anyone else to torture or degrade you, at any time – whether in times of war, or other public emergencies.

The right to protection from inhuman and degrading treatment extends equally to detained persons as non-detained persons.

Therefore, this right is an absolute right.

## Case Study: NAPIER V SCOTTISH MINISTERS (2001)

In a case in Scottish domestic law, Robert Napier had been a remand prisoner since 18 May 2001 facing charges of assault, robbery, abduction and attempting to pervert the course of justice.

He claimed, in his argument to the domestic court, that conditions in his prison cell were in contravention of article 3 of the European Convention on Human Rights (prohibition of torture or inhuman or degrading treatment or punishment), as he was held in overcrowded conditions, and frequently shared a cell without “integral sanitation”, i.e. prisoners used pots as toilet facilities (colloquially referred to as “slopping out”).

The judge considered the small size of his cell, the fact that it was shared, and the extent to which the applicant was confined to his cell in determining the ruling. The cell was designed for one prisoner, however it was occupied by three prisoners. It was said that Napier had suffered a worsening of his eczema as well as distress and anxiety as a result of these conditions.

The judge found that the practice of slopping out did in fact amount to inhuman and degrading treatment, and awarded Napier £2,400 in damages.

# Slavery or Forced or Compulsory Labour



## In Simple Terms

You have a right to not be treated like a slave, or forced to perform certain kinds of labour.

Being a slave means someone actually owns you, like a piece of property. It also refers to cases in which you work for little or no pay.

There are however instances where it is lawful for you to be made to work. For example:

- you could be forced to work by an order or sentence of the court;
- if you belong to a disciplined force (i.e. police or prison officers);
- if you are a prisoner, and required to carry out specific tasks to ensure where you live is clean or maintained; or
- in cases of public emergency where labour is required.

This right is an absolute right, meaning that the Government can never make you a slave or make you do forced labour.

## Case Study: FLORIOU V ROMANIA (2013)

The Complainant, Floriou, had been in and out of prison in Romania on 11 different occasions between 1978 and 2007 for a range of offences. During his time in prison he worked for a cumulative total of 5 years and 11 months, for which his compensation comprised of either monetary payment or a reduction in his sentence (in cases where the work involved assisting the day-to-day running of the prison). Both of these types of work are in accordance with the law, and prisoners are able to choose between them after being informed of the conditions of each. Floriou was not affiliated to the old-age pension scheme under the general social security system for his work at these jobs.

Floriou complained to the European Court of Human Rights that, among other things, “the management had forced him to perform various tasks which were very difficult, unpleasant and badly paid, without affiliating him to the old-age pension system,” and that this amounted to a violation of Article 4 (prohibition of slavery and forced labour) of the ECHR.

Based on the evidence reviewed by the ECtHR, the Court considered that according to law prisoners needed to give consent in order to be able to work. This was the case with Floriou, for whom the Romanian National Prison Service provided evidence that he requested permission to work. Furthermore, he was not required by law to be monetarily compensated for any work which he completed “in the ordinary course of detention” (i.e. work that assisted in the day-to-day running of the prison), and that the reduction in sentence which he received for this work was sufficient and lawful.

The Court therefore found that there was no grounds to admit this case for hearing.

# Personal Liberty



## In Simple Terms

You are free to do what you want, as long as you obey the law and respect the rights of others.

If you are detained by the Government you have the right:

- to remain silent;
- to be promptly informed of the reasons for the arrest and any charge against you, in a language that you understand; and
- to have a court speedily examine and decide the lawfulness of your detention and be released if the detention is not lawful. You shall be entitled to compensation if unlawfully arrested or detained.

This right is a limited right.

## Case Study: Z.H. V HUNGARY (2012)

The complainant in this case (Z.H.) was arrested on suspicion of mugging. It is noted that he was deaf, mute, and unable to use sign language or to read and write due to a learning disability—he could only communicate through a sign-language-like method with his mother. He complained in particular that his detention on remand “for almost three months had amounted to inhuman and degrading treatment,” as he could not communicate with anyone and claimed to have been molested by other inmates.

Whilst the European Court of Human Rights found that there had been a violation of Article 3 (prohibition of inhuman and degrading treatment), the Court further held that there had been a violation of Article 5 (right to liberty and security) of the Convention.

Due to the inmate’s “multiple disabilities, the Court was in particular not persuaded that he could be considered to have obtained the information required to enable him to challenge his detention. It further found it regrettable that the authorities had not taken any truly ‘reasonable steps’ – a notion quite akin to that of “reasonable accommodation” in Articles 2, 13 and 14 of the United Nations Convention on the Rights of Persons with Disabilities – to address his condition, in particular by procuring him assistance by a lawyer or another suitable person.”

# Treatment of Prisoners



## In Simple Terms

Persons who are under arrest or detained have the right to be treated with humanity and dignity.

This means you must be treated properly by custodial staff; cells and the cell complex provide for humane treatment of prisoners; prisoners are given regular meals, and must have access to reasonable health care, to name a few.

In addition the following minimum criteria must be met:

- unconvicted prisoners shall be segregated from convicted prisoners;
- juvenile prisoners shall be segregated from adult prisoners; and
- juveniles shall have any criminal proceedings against him or her pursued with the greatest possible expedition.

This right is a mixed right, meaning that some sections are absolute, while others are limited, and others are qualified.



## Case Study: GULAY CETIN V TURKEY (2013)

This case involved a female who was detained in prison, pending trial, and then subsequently she was convicted for murder despite suffering from advanced cancer. “She alleged in particular that the authorities had refused to release her pending trial, to suspend her detention or to grant a presidential pardon, and alleged that this had exacerbated her physical and mental suffering. She died of her illness in a hospital’s prison ward and her father, mother, sister and brother pursued the proceedings she had instituted before the Court.”

The European Court of Human Rights concluded “that the conditions of the applicant’s detention, both before and after her final conviction, had amounted to inhuman and degrading treatment, contrary to Article 3 [of the ECtHR], and that she had been discriminated against in that, while in pre-trial detention, she had not been eligible for the protective measures applicable to convicted prisoners suffering from serious illnesses, in violation of Article 3 taken in conjunction with Article 14 (prohibition of discrimination) of the Convention.”

# Fair Trial



## In Simple Terms

People charged with breaking the law have the right to a fair and public trial. A trial is when someone, such as a judge, listens to what happened before deciding whether or not you have done something wrong.

The trial must be conducted by an independent and impartial court within a reasonable time.

All decisions of the court shall be announced publicly.

Under this right, you would not be compelled to give evidence at trial; and could not be re-tried for an offence after you have been legally pardoned for it unless a higher court so orders.

This right is a mixed right, meaning that some sections are absolute, while others are limited, and others are qualified.

## Case Study: ESCOUBET V BELGIUM (1999)

Alain Escoubet is a French citizen who was living in Belgium. On the evening of 16 June 1994 he was involved in a road accident. Police officers were called to the scene and ordered Escoubet's "driving licence to be immediately withdrawn on the ground that he was presumed to have been driving with a blood-alcohol level of over 0.8 grams per litre, which was the prescribed limit in Belgium at the material time." Escoubet disputed that presumption as he was unable to carry out a breath test at the scene of the accident, a blood test was carried out over an hour later. Escoubet was not informed of the result until July 1994 which "revealed an alcohol level of 2.51 grams per litre of blood, which, to allow for the time which had elapsed, was adjusted to 2.70 grams per litre at the time of the accident."

As Escoubet was not carrying his driving licence on the night of the accident, the police came to his house the next day to seize it. "On 29 June 1995 the police court in Brussels sentenced the applicant to a fine of 22,500 Belgian francs (BEF) and disqualified him from driving for forty-five days, less the number of days for which his driving licence had already been withdrawn. The court also made the reinstatement of his right to drive conditional on his being medically certified fit to drive."

Escoubet "argued that the immediate withdrawal of his driving licence ordered by the Crown prosecutor with no possibility of an effective appeal to a judicial body had deprived him of his right to a 'tribunal' for the purposes of Article 6 & 1 of the Convention (right to a fair trial)." However, "Article 6's requirements of judicial procedure do not cover the 'pre-charge' phase of a prosecution, and in particular the process of criminal investigation prior to charging." Preventative measures that come before the laying of a "charge", such as the removal of a driving licence from a suspected drunk driver, and measures taken outside the "determination" of a "criminal charge" – such as arrest on suspicion of commission of a criminal offence or public-safety measures such as in the case of Escoubet, are not capable of attracting the procedural safeguards set out in Article 6.

# No Punishment Without Law



## In Simple Terms

This right means that you cannot be found guilty of a crime which was not against the law when you did it.

Under this right crimes and penalties can only be prescribed by law. Such law must be clear in its definition so that people know what acts or omissions are criminal in nature.

It is also against the law for the courts to give you a greater sentence than was prescribed by the law at the time you committed an offence.

This right is a limited right.

## Case Study: R V SECRETARY OF STATE FOR THE HOME DEPARTMENT, EX PARTE UTTLEY (2004)

"A man convicted of various sexual offences, including rape, was sentenced to 12 years' imprisonment. He was released after serving two-thirds of his sentence, subject to licence conditions (rules that must be followed after early release from prison) that applied for three-quarters of the original sentence. Had he been convicted and sentenced at the time the offences took place, however, the legal provisions then in force would have entitled him to temporary release without conditions. He argued that his licence conditions represented a heavier penalty than was applicable at the time his offences were committed, and that his right to no punishment without law had been breached.

"The House of Lords disagreed. They held that human rights law would only be infringed if a sentence exceeded the maximum penalty available under the law in force at the time the offence was committed. That was not the case here because, even at the date of the offences, the maximum sentence for rape was life imprisonment. The intention of the right to no punishment without law was not to punish an offender in exactly same way as would have been the case at the time of the offence. It simply ensures that a person is not punished more heavily than the maximum penalty applicable at the time of the offence. In this case, the imposition of licence conditions did not make the sentence heavier than it would have been under the earlier regime."

# Private and Family Life



## In Simple Terms

Under this right, the respect of your private and family life, your home, and your correspondence is protected.

The concept of “private life” is broad. In general, it would mean you have the right to live your own life, with reasonable personal privacy in a democratic society, taking into account the rights and freedom of others.

In cases of detained persons this right may (depending on the case) be engaged in a number of ways:

- freedom to associate with others;
- limitations on physical integrity, such as mandatory blood and urine tests by court order, or strip searches in certain cases; and
- reasonable protection of correspondence, including letters and telephone calls; etc.

This right is a qualified right.

## Case Study: S AND MARPER V UNITED KINGDOM (2008)

The case involved two males who went to court in the UK to get records of their DNA and fingerprints destroyed, and their records removed from the relevant databases, after criminal proceedings against them broke down. One was a juvenile (who cannot be named for legal reasons) who was charged with attempted robbery but acquitted. He was aged 11 when he was arrested. The other was an adult, Michael Marper, who was charged with harassment but whose case did not go to court as the charges were dropped. The DNA and fingerprints were held according to UK domestic law at the time, which stated that police could permanently retain the details of anyone after their arrest.

This case was appealed up to the European Court of Human Rights, which held that the blanket retention of DNA samples of individuals who are arrested but later acquitted, or have the charges against them dropped, failed to strike a fair balance between protecting an individual's privacy and protecting the public from crime. This was particularly relevant with DNA records which hold extensive personal information not only about the individual concerned but about their relatives also. It was therefore concluded that there had been a violation of Article 8 (right to privacy) under the European Convention on Human Rights.

# Conscience and Religion



## In Simple Terms

You are free to hold particular beliefs, and to practice your religion.

No one can tell you what to think or believe about God or religion, unless your beliefs could harm others.

You have a choice. You should take the time to understand the differences among religions and respect the choices of other people.

This right protects you, and your children, from being forced to receive religious instruction that does not follow your, or their, personal beliefs.

This right is a qualified right.



## Case Study: JAKOBSKI V POLAND (2010)

The applicant, Janusz Jakóbski, was a Polish national serving an eight-year prison sentence for rape, for which he was convicted in 2003. The applicant observed that other religious groups in the prison were allowed special diets, while he, a Buddhist, was consistently refused the meat-free diet required by the Mahayana Buddhist dietary rules he follows. He noted further that refusal of the food offered would have been regarded as beginning a hunger strike, resulting in disciplinary punishment.

The European Court of Human Rights held unanimously that there had been a violation of Mr. Jakóbski's Article 9 rights (freedom of thought, conscience and religion), but no need for a separate examination under Article 14 (prohibition of discrimination). The ECtHR reasoned that removing meat from the applicant's diet, which diet could be seen as motivated or inspired by a religion, would not entail disruption to the management of the prison or decline in the standard of meals served to other prisoners.

Under Article 41 (just satisfaction), the Court held that Poland should pay EU 3,000 in non-pecuniary damage to the applicant.

# Expression



## In Simple Terms

You have the right to voice opinions and express your views, either by yourself or in a group, unless doing so would breach the rights of other persons.

This right includes the freedom to receive information and ideas. You have the right to hold opinions and express your views, either as an individual or with others. "Expression" includes—

- speaking aloud or producing works of art;
- publishing articles, books or leaflets; and
- making television or radiobroadcasts.

Under this right, you have freedom from Government interference with your correspondence or other means of communication.

This right shall not prevent the Government from requiring the licensing of broadcasting, television, or cinema enterprises.

This right is a qualified right.

## Case Study: R V SECRETARY OF STATE FOR JUSTICE (2012)

In this domestic UK case, the British Broadcasting Corporation (BBC) brought forth judicial review proceedings regarding the Secretary of State's refusal to grant permission to interview a prisoner, Babar Ahmad (a British citizen), face-to-face, and broadcast the interview.

Ahmad's case was a high-profile one. He had been detained for over seven years awaiting extradition to the US on various terrorism charges for which he had not yet stood trial. In separate but related civil proceedings surrounding his arrest, it was admitted by the Metropolitan Police that he was physically abused by the arresting officers; he later received £60,000 in damages. The delay in his extradition was caused in part by an indication by the European Court of Human Rights that he should not be extradited before they were able to give due consideration to the filing he made to them. Additionally, he was the subject of a public petition to have his case tried in the UK instead of the US, which gained 140,000 signatures.

The Court took into account the public interest in the prisoner's freedom of expression and held that, given the exceptional circumstances of the case, the Secretary of State's refusal amounted to a disproportionate interference.

# Movement



## In Simple Terms

This right allows people who are lawfully in the Cayman Islands to move freely throughout the country.

Under this right you are able to choose where to live within the Cayman Islands, and you are able to leave the country as well.

Your freedom of movement may be lawfully restricted if—

- You are lawfully detained by authorities;
- You are restricted through bail conditions or sentence imposed by the courts;
- You are a public officer and leaving the island would prevent performance of a necessary duty; or
- You are removed from the Cayman Islands to be tried or punished in some other country for a criminal offence under the law of that country.

This right is a mixed right, meaning that some sections are limited while other sections are qualified.

## Case Study: FÖLDES AND FÖLDESNE V HUNGARY (2006)

“Mr Földes and Ms Földesne, a married couple at the time, were charged with fraudulent bankruptcy. Criminal proceedings were instituted against Mr Földes and he was interrogated as a suspect. The proceedings were later extended to include his wife. In 1994 the Passport Office of the Ministry of the Interior withdrew Mr Földes’ passport until the termination of the criminal proceedings in order to secure his availability for justice. The applicants were convicted in 2006.

“The Court noted that the prohibition against Mr Földes leaving the country had remained unaltered for some ten years, until May 2004 when it had become possible for the applicant to travel within the European Union solely with a national identity card. The travel ban had amounted to an automatic, blanket measure of indefinite duration and had run contrary to the authorities’ duty to take appropriate care that any interference with the right to leave one’s country should be justified and proportionate. While the Court found that the aim was legitimate, the way in which it was carried out was not. It was characterised by automaticity and constituted a measure of indefinite duration, thus a breach of the right [freedom to leave a country]”.

# Marriage



## In Simple Terms

A consenting unmarried man, or consenting unmarried woman, has the right to marry a person of the opposite sex.

However, you cannot be forced to marry.

If you choose to get married, you will share equal rights and responsibilities in relation to your spouse and your children.

Sometimes a judge will help decide what is in the best interests of your children if you no longer live with your spouse.

For detained persons the right to marriage may be engaged if restrictions are put in place which hinder them (temporarily or otherwise) from exercising their right to marriage.

This right is a qualified right.

## Case Study: FRASIK V POLAND (2010)

In this case Frasik was a remand prisoner who had been detained on charges of rape and battery of a woman. He and the woman had been in a relationship for some 4 years previously at which point the relationship had been terminated. At some point during the course of the criminal proceedings Frasik and the woman reconciled and decided to get married. Their request was refused (among other reasons) on the grounds that there was doubt as to whether the couple's intention was genuine, and that the remand centre was not deemed an appropriate location for a marriage ceremony.

Upon hearing the case the European Court of Human Rights considered that personal liberty is not a necessary pre-condition to exercise the right to marry. Detained persons do not forfeit their right guaranteed by Article 12 (marriage) merely because of their status as incarcerated.

The Court held that the Polish authorities' decisions were arbitrary and failed to strike a balance among the various public and individual interests at stake. It ruled therefore that there had been a violation of the applicant's right to marriage.

# Non-discrimination



## In Simple Terms

Discrimination means treating people differently, without justification, when they are in similar situations.

This right gives you protection from the government acting in a discriminatory manner in relation to all other Rights that the Bill of Rights guarantees. This right cannot be applied on its own and must be considered in conjunction with another right.

“Discriminatory” means affording different and unjustifiable treatment to different persons on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, age, mental or physical disability, property, birth or other status.

This right is a mixed right, meaning that some sections are limited while other sections are qualified.



## Case Study: X V TURKEY (2012)

This case concerned a homosexual prisoner who had been sentenced to prison for 10 years for various offences such as forgery, deception, credit card fraud and misrepresentation in official documents. After complaining about acts of intimidation and bullying by his fellow inmates he was placed in a solitary confinement cell (7 sq. m.), which was typically used as a disciplinary measure, for a total of over 8 months. He was not allowed out to exercise or socialise, except to speak with his lawyer or for hearings.

The European Court of Human Rights took the view that these detention conditions had caused the prisoner mental and physical suffering (including a length of time at a psychiatric facility), and a feeling that he had been stripped of his dignity, thus representing “inhuman or degrading treatment” in breach of Article 3 of the Convention. It further found that the primary reason for the applicant’s solitary confinement had not been his protection but rather his sexual orientation. It took the view that the prison authorities had not performed a sufficient assessment of the risk for the applicant’s safety, despite insisting that his isolation was “to protect him from bodily harm”. Because of his sexual orientation they had simply believed that he risked serious bodily harm.

The ECtHR thus concluded that there had been discriminatory treatment in breach of Article 14 (prohibition of discrimination) of the Convention.

# Protection of Children



## In Simple Terms

Children are protected under the Bill of Rights just as adults are. However, the Bill of Rights specifically outlines a section of rights pertaining just to children. A “child” is defined as a young person under the age of eighteen years old.

When the Legislature undertakes to enact laws that provide every child with facilities as to aid in their growth and development, law-makers shall proceed on the basis that a child’s best interests are of paramount importance in every matter concerning the child.

Additionally, in cases where children must be detained, it should be as a measure of last resort, for the shortest possible duration, and should be in a manner proportionate to their age.

This right is a mixed right meaning that some sections are absolute, while others are limited.

## Case Study: GUYEC V TURKEY (2009)

The detainee, Guvec, who was aged 15 at the pertinent time, had been tried in an adult court and was subsequently “found guilty of membership of an illegal organisation. He was held in pre-trial detention for more than 4.5 years in an adult prison, where he did not receive medical care for his psychological problems and made repeated suicide attempts.”

The European Court of Human Rights considered that a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights had occurred due to the detainee’s age, “the length of his detention with adults and the authorities’ failure to provide adequate medical care or to take steps to prevent his repeated suicide attempts.”

The Court concluded therefore that the applicant had been subjected to inhuman and degrading treatment.

*\*NB: The ECHR does not provide a stand-alone right to the “protection of children” as the Cayman Islands Bill of Rights does, therefore there is no equivalent statute from which to draw case law examples. However, as can be seen in the study above, some cases present features which could similarly amount to violations of s.17 of Cayman’s Bill of Rights—Protection of children.*

# Education



## In Simple Terms

Children have the right to go to school and learn so that they can work towards achieving all of the things they would like to when they are adults.

Parents would have the right to make sure that the teaching provided by public authorities respects their religious and philosophical beliefs.

If the subjects are usual for the school to teach, parents could not stop the subjects from being taught.

Juveniles who are detained continue to have the right to education and therefore places of detention must provide these opportunities.

This right is a mixed right, meaning that some sections of the right are limited while other sections are qualified.

## Case Study: VELYO VELEV V BULGARIA (2014)

The case concerns a 26 year old man who was detained on remand for over 2 years on suspicion of unlawful possession of firearms. During this period, he made numerous requests to attend the school operating within the prison in order to complete his secondary education, all of which were refused. The reasons given were that remand prisoners were not entitled to education in prison and that prisoners with prior convictions, like the applicant, could not be mixed with prisoners without prior convictions.

The European Court of Human Rights went on to state that “Although Article 2 of Protocol No. 1 [right to not be denied education] does not impose a positive obligation to provide education in prison in all circumstances, where such a possibility is available it should not be subject to arbitrary and unreasonable restrictions.”

Regarding the reasons provided, the Court found the explanation that remand prisoners must be excluded from education in prison in order to protect them against harm inflicted by convicted prisoners to be unsubstantiated. Secondly, the Court found the fact that the length of pre-trial detention is uncertain at the start cannot be justification for depriving remand prisoners of educational facilities. Thirdly, the applicant should be kept separately from other prisoners because of the risk that he would be sentenced as a recidivist is considered incompatible with the presumption of innocence.

The Court subsequently determines that on the balance of the equation is the “applicant’s undoubted interest in completing his secondary education”, the value of which (both to the individual and to society) cannot be understated. The Court therefore concluded that there had been a violation of Article 2 Protocol 1.

## What is the Human Rights Commission (“HRC”)?

The HRC was established under section 116 of the Constitution as an independent body responsible for promoting understanding and observance of human rights in the Cayman Islands.

## What do I do if my rights have been breached or infringed?

The Commission will receive 1) all complaints of breaches or infringements of any section of the Bill of Rights, Freedoms and Responsibilities committed by a public official; 2) all complaints of breaches or infringements of common law and statutory human rights and freedoms committed by public officials; and 3) all complaints that any international human rights treaty extended to the Cayman Islands has been breached or infringed by the actions of public officials or by legislation to which the treaty applies.

It is important to note that the Commission will only accept complaints of alleged breaches of the Bill of Rights, Freedoms and Responsibilities which have occurred after 6 November, 2012. This may be a one off event that has occurred after 6 November 2012 or may be a continuing infringement of a right. In all cases, unless there is clear evidence that the alleged infringement is continuing, the Commission will not accept a complaint in relation to an alleged infringement that has taken place more than one (1) year prior to the date of the complaint.

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