

FOR IMMEDIATE RELEASE

THE PETITION FILED BY COLOURS CAYMAN TO THE EU PARLIAMENT: AN UPDATE

Colours Cayman filed a Petition with the EU Parliament in May 2017 in which it was requested that the following pre-conditions be imposed on the United Kingdom ["UK"] for the entry into negotiations over any trade agreements upon its exit from the European Union ["EU"] and for any trade agreement agreed thereof to remain valid and enforceable:

1. that the Government of the UK must rectify non-compliance with the European Convention on Human Rights ["ECHR"], either by it or any of its territories to which the ECHR has been extended; and
2. that the Government of the UK must remain party to the ECHR and must covenant ongoing compliance with the ECHR and acceptance of the jurisdiction of its court.

The Petition was declared admissible in October 2017 and since then *Colours Cayman* has been lobbying Members of the European Parliament, in particular the Members of the Committee of Civil Liberties, Justice and Home Affairs and of the Committee on Constitutional affairs where *Colours Cayman's* Petition is being considered.

An Update

Colours Cayman updated the members of the committees currently studying the Petition that, since the Petition was filed, further serious violations of the ECHR have been taking place in Bermuda and the Cayman Islands:

1. The Bermuda Legislature has passed a Bill the effect of which is to cancel the judgment of the Supreme Court of the jurisdiction which ruled that marriage in Bermuda must be available to same sex couples [see *Godwin-DeRoche v The Registrar General et al* [5 May 2017]] according to Bermudian Law. The Bill, if it becomes law, exempts the Marriage Law from having to comply with the Human Rights Law of Bermuda. This result in the taking away of an existing legal framework in circumstances where no alternative framework exists. The Governor of Bermuda, who is appointed and takes instruction from London, has, under section 35 of the Constitution of Bermuda, the power to withhold assent or, at the very least, to refer the Bill to London for the UK government to make a decision, i.e. 'to reserve the Bill for the signification of Her Majesty's pleasure'. We understand that the UK is not going to instruct the Governor of Bermuda to exercise any of these constitutional powers in the lawmaking process. Furthermore, we note that even though a new legal framework is being put in place exclusively for same-sex couples named Domestic Partnership, in compliance with the minimum requirements established in ECHR's decision in *Oliari v Italy* [ECtHR, 21 July 2015], it is too late as it would result in the withdrawal of legally established rights from a section of its population, as the court of law of Bermuda stated clearly that the prohibition of discrimination of Bermuda's Human Rights Law *requires* equal marriage. It is shocking that this can happen under the UK's watch and control. In effect, this amounts to legal segregation, which, as we know from modern history, can have profound social and psychological consequences.
2. In the Cayman Islands, the Caymanian Status and Residency Board of the Immigration Authority has rejected in two different instances—one on 27 July 2017 and the other on 23 October 2017—the applications of two married same-sex couples—both have appealed to the Immigration Appeal Tribunal—to be granted, in each

case, the right to reside in the Cayman Islands as the spouse of a Caymanian. The grounds of such rejection are exceptionally concerning. The Immigration Authority decided that an immigration case decided by the Immigration Appeals Tribunal of the Cayman Islands in July 2016, which allowed same-sex spouses of foreign workers to reside in the Cayman Islands as dependents, does not extend to benefit Caymanian nationals (whom are also UK nationals). The practical effect of this rejection is that the Immigration Authority is recognising the rights of foreigners before Caymanians by forcing Caymanian people out of their homeland in order to live with the person they have legally married. In effect, the Immigration Authority is deporting Caymanians to live overseas where they can live as a family. This may sound like a joke, but it's the appalling effect of the rejection, which, in addition, is in breach of the ECHR's unanimous decision in *Taddeucci and McCall v. Italy* [ECtHR, 30 June 2016]. One of the aforementioned couples is now forced to live in Canada where their legal marriage *is* recognised.

Colours Cayman submitted to the Members of the EU Parliament that these new developments evidence more than just a failure of these British Overseas Territories to comply with the ECHR. These developments, along with those submitted earlier in May of this year with the Petition already, actually evidence an attitude of the UK in its British Overseas Territories which demonstrate that the UK government, ultimately responsible under the ECHR, has no respect for human rights in its territories, particularly in the Caribbean, because even though the UK has the constitutional powers to stop or redress these breaches, it has chosen to do nothing.

Colours Cayman argued to the Members of the EU Parliament that the situation for lesbian, gay, bisexual, transgender, queer, intersex and asexual (“LGBTQIA+”) people in the British Overseas Territories of the Caribbean should matter to the EU, notwithstanding Brexit, because the UK is and will remain geographically neighbouring the EU countries. In this context, the EU should be wary of a country such as the UK, which, although bound by the ECHR, is still capable of breaching (or neglecting to redress the breaches of) the rights under the ECHR of LGBTQIA+ individuals. For this reason, the 27 remaining member states of the EU should consider carefully what the UK would be capable of doing (or neglecting to do) if they were to denounce the ECHR after leaving the EU in March 2019. In doing so, *Colours Cayman* asked the EU to keep firmly in mind that:

1. the UK is the only country in the EU with no written constitutional code, which means that Parliament is empowered to do as it pleases without either the constraints of a written constitutional code or judicial control of acts of Parliament; and
2. the UK has one of the most deficient electoral systems of the western hemisphere in terms of democratic representation, which means that a third of the electoral role in the UK could elect a political party with a comfortable majority in Parliament to change any laws in any way that such political party deems appropriate without any constitutional constraint or judicial control.

Colours Cayman concluded that in this context and in circumstance in which the UK political leaders are willing to lead its population to its own demise and likely pauperism by leaving the EU, notwithstanding that only 37% of the electoral role voted for exiting the EU, it seems rather self-evident that denouncing the ECHR by the same political class, which has already expressed its wishes to do so, is a matter of ‘when’ rather than a matter of ‘if’.

ABOUT COLOURS CAYMAN

Colours Cayman is a grassroots organisation, founded by Billie Bryan, that aims to promote visibility of, provide education to and foster dialogue surrounding the topics that matter to the people in the Cayman Islands of any underrepresented gender identity or sexual orientation.