

Open Letter to Ms. Lawrence, Speaker, Legislative Assembly, Cayman Islands
Sanctions for Critical Media Reporting on the Assembly

22 December 2010

The Honourable Ms. Lawrence,

We, the undersigned civil society organisations and individuals from around the world, are writing to express our serious concern over the 9 December 2010 decision by the Legislative Assembly of the Cayman Islands to revoke the privileges of Mr. Brent Fuller, a journalist with the *Caymanian Compass*, to attend the Legislative Assembly for one week. We are further concerned that the Assembly also adopted a Motion to request the Attorney General to prosecute Fuller and the *Caymanian Compass* for breaches of the Immunities, Powers and Privileges Law.[1]

We understand that these decisions are based on a report by Fuller published in the *Compass* earlier that week about plans for a subcommittee of the Assembly to meet in secret to revise the Cayman's Freedom of Information Law, and an editorial postulating that somehow the WikiLeaks saga might be used as an excuse to undermine the law.[2] Local news reports have claimed that as Speaker, you stated that these articles have impugned "the integrity of the members of the legislature" and that reporting on the Legislative Assembly is "a privilege, not a right".

We believe that both the revocation of privileges and the call for prosecution represent a breach of Fuller's right to freedom of expression as protected under both international law (see, for example, Article 19 of the *Universal Declaration of Human Rights*) and section 11 of the Cayman Islands Constitution Order 2009. The articles consist of legitimate comment on the Legislative Assembly, a key public body in the Cayman Islands. We believe that the right to engage in criticism of elected bodies, even of a trenchant or unreasonable nature, is central to a democracy.[3]

The Attorney General issued a statement on Monday, 20 December 2010, saying that no prosecutions would be instituted. We welcome this but note that the Motion passed by the Legislative Assembly is still likely to exert a chilling effect on local coverage of this important public body.

As advocates of openness, we also believe that it is inappropriate for the legislature to conduct discussions regarding reform of an access to information law in secret. International good practice dictates that such meetings should be conducted in the open and that any committee reviewing such a law should provide as much opportunity as

possible for public input. Secrecy would have to be justified with specific reasons by the chairman of such a committee.

We therefore call on you, as Speaker of the Legislative Assembly, to take such measures as may be appropriate to ensure free reporting on the Assembly, including by repealing the motion suspending Mr. Fuller and calling for him to be prosecuted. We also call on you to use your influence to ensure that legislative discussions about reform of the Freedom of Information Law are held in public, absent clear grounds for secrecy.

Yours sincerely,

Organisations

- 5th Pillar, India (Vijay Anand, President)
- Access Info Europe, Spain (Helen Darbishire, Executive Director)
- Africa Freedom of Information Centre (Gilbert Sendugwa, Coordinator/Head of Secretariat)
- African Network of Constitutional Lawyers (Fatima Diallo)
- Arab Freedom of Information Network (Said Essoulami, President)
- ARTICLE 19, United Kingdom (David Banisar, Senior Legal Counsel)
- Campaign for Freedom of Information, United Kingdom (Maurice Frankel, Director)
- Center for Independent Journalism, Romania (Ioana Avadani, Executive Director)
- Centre for Law and Democracy, Canada (Toby Mendel, Executive Director)
- Egyptians Against Corruption (Engi El Haddad and Bothaina Kamel)
- Jamaicans For Justice (Carolyn Gomes, Executive Director)
- Movement for Freedom of Information in Israel (Roy Peled, Director)
- Observatorio de la Vigilancia Social (OBSERVA), Peru (Ricardo Corcuera Molina)
- Qualicidade Institute, Brazil (Fernando Di Lascio, President)
- Rainbow Warriors Core Foundation, Aruba (Milton Ponson, President)
- Romanian Helsinki Committee (APADOR-CH) (Diana-Olivia Hatneanu, Executive Director)
- South African History Archive (Gabriella Razzano, Support Officer)
- Suma Ciudadana, Peru (Javier Casas, President)
- Transparency International Ireland (John Devitt, Chief Executive)
- Zero Corruption Coalition, Nigeria (Babatunde Oluajo, National Secretary)

Individuals

- de Silva, Lalanath, Sri Lanka (Environmental Lawyer)
- Excell, Carole, Cayman Islands (Attorney at Law)
- Goldberg, David, Scotland (Information Rights Campaigner)
- Magro, Maíra, Brazil (Journalist)
- Youm, Kyu Ho, United States (Jonathan Marshall First Amendment Chair, University of Oregon)
- Zubaidy, Elina, Bangladesh (Advocate Bangladesh Supreme Court)

[1] Section 18(2) of the Act makes it an offence to “falsely or scandalously defames the Assembly or any committee”, and is punishable by an \$800 fine and imprisonment of 12 months.

[2] The report is available at: <http://www.compasscayman.com/caycompass/2010/12/08/Closed-door-FOI-review-set/>, and the editorial is available at:

<http://www.compasscayman.com/caycompass/2010/12/08/Editorial-for-December-8--On-WikiLeaks/>.

[3] In 1993, the UK House of Lords ruled that elected bodies could not maintain a suit in defamation, in part because they need to be open to criticism. See *Derbyshire County Council v. Times Newspapers Ltd.*, [1993] 1 All ER 1011. It is also clear that, at least under international law, legislatures do not have unfettered discretion to make decisions about access by journalists. In *Gauthier v Canada*, 7 April 1999, Communication No. 633/1995, the UN Human Rights Committee made it clear that decisions that affect reporting of parliament must be “specific, fair and reasonable and their application should be transparent.”