

HUMAN RIGHTS ON PITCAIRN: A SACRED TRUST ...

*Kari Young**

In this paper, Kari Young reflects on the application of human rights norms in Pitcairn.

Dans cet article, Kari Young examine les modalités de mise en œuvre des dispositions légales relatives aux droits de l'Homme à Pitcairn.

During the years of Operation Unique (2000-2007) with criminal investigations, trials and imprisonment, the courts of Pitcairn kept reminding the Pitcairn men they could not call on human rights' protection from either England (the Human Rights Act 1998) or the rest of the world (the European Convention of Human Rights – ECHR) as neither had been extended to Pitcairn. Keenly aware of this disadvantage, islanders held meetings after the conclusion of the Pitcairn trials to make momentous decisions. In a July 2007 unofficial referendum, the 21 eligible voters chose to have the ECHR extended to the island.¹ In May 2012 the Pitcairn Island Council formally applied for inclusion in CEDAW and the ECHR.

The UN's declaration regarding Non-Self-Governing Territories² laid down the rules for the 'mother countries' to "accept as a *sacred trust* the obligation to promote to the utmost... the well-being of the inhabitants of these territories..."³ by ensuring "their political, economic, social, and educational advancement", and promoting "constructive measures of development".

The UN Resolutions 1514 and 1541⁴ refer to the guiding of non-self-governing territories toward either part or full independence. Urged by the UN's policy of

* Former long-term Pitcairn resident.

1 Wikipedia "2007 Pitcairnese European Convention on Human Rights referendum" <<https://en.wikipedia.org/>>.

2 Charter of the United Nations, Chapter 11, art 73.

3 Emphasis added.

4 *Declaration on the Granting of Independence to Colonial Countries on the Granting of Independence to Colonial Countries and Peoples* GA Res 1514 (1960); *Principles which should*

terminating all dependence of colonies and territories upon a 'mother country', England released her White Paper in 1999,⁵ promising partnership and prosperity to her dependencies. The implementation of the new concept came slowly to Pitcairn. Pitcairn's Mayor spoke at a UN decolonisation seminar in Fiji in June 2002:

Neither I nor anyone at home had known of the existence of the two General Assembly Resolutions (1514 and 1541) until I received the invitation to address this seminar. I have also learnt about the two international covenants which both state that the British Government should have informed us of our rights listed therein.

Because of its isolation and minute population,⁶ Pitcairn never aspired to independence, but more involvement in decision-making would have been beneficial. Until 2009, islanders never had any of the workshop training promised in the White Paper. "The Black Book", with local laws and the local 'constitution' embodied in the Pitcairn Order 1970 and the Pitcairn Royal Instructions 1970, was the only law book Pitcairnians had access to and it had not changed much in its simplicity since 1904.

In March 2004 the Minister of State, Foreign and Commonwealth Office, commented in the UK Parliament:

In respect of Pitcairn, to date human rights provisions have been taken as forming part of the territory's law. The possible application of the UK Human Rights Act to Pitcairn is currently one of the issues before the Pitcairn Supreme Court, but no decision on the matter has yet been made.

There still is no decision.

In a Pitcairn court in 2006 counsel for the Crown referred to the Court of Appeal's decision of 2 March 2006⁷ that the ECHR did not apply to Pitcairn, and he confirmed that "... there is no direct application of the European jurisprudence in Pitcairn".

In his '*Reasons for verdict*'⁸ in January 2007 Blackie CJ ruled that though the ECHR applies to UK, and some of the British laws apply automatically to Pitcairn

guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter GA Res 1541 (1960).

5 The White Paper, *Partnership for Progress and Prosperity: Britain and the Overseas Territories* (Cm 4264, 1999).

6 Around 40 as at July 2021.

7 *Christian and Others v The Queen (No 2)* [2006] PNCA 1, at [99].

8 *R v Z Pitcairn Islands Supreme Court T 65-80/2006.*

as statutes of general application,⁹ the Human Rights Act is a statute of specific application:

[24] Despite Mr Illingworth's strong contention that this Court make a determination that the European Convention on Human Rights, which is now part of English law, can be extended to apply to Pitcairn Island, it is not possible to do so. The matter has already been determined at a higher level by the Court of Appeal. That determination appears to be accepted. It was not the subject of further appeal to the Privy Council.

[25] In the Crown's submission, it is unnecessary for this Court to re-determine the issue because the right relied upon by the accused to a fair trial exists under, and is protected by, the common law. The Crown accepts that the Court is entitled to take into account the principles of the European Convention on Human Rights in applying the common law rights.

[26] The Crown further submits that the Human Rights Act is not a statute of general application – it is a statute of specific application: it arises under and applies only to the treaty obligations of the United Kingdom – not its dependent territories, unless specifically extended. The Convention is a treaty entered into by the United Kingdom. Under article 56, the United Kingdom may extend the convention to apply to territories outside the UK:

Any State may ... declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall ... extend to all or any of the territories for whose international relations it is responsible.

[27] The step to extend the convention has never been taken. The same position applied to South Georgia, as stated by the House of Lords in the case now reported as *R (Quark Fishing Limited) v Foreign Secretary* [2006] 1 AC 529.

In October 2009 the Pitcairn Governor in Wellington, New Zealand, gave the green light for Pitcairn's first real constitution. A group of islanders worked on a copy of St Helena's Constitution, adapting it to Pitcairn's circumstances. In March 2010 Pitcairn's Constitution was signed by the Governor. But in spite of legislation and human rights provisions in the Constitution,¹⁰ it seemed islanders were still not qualified for the ECHR or the UK Human Rights Act. Since they had released the "Human Rights Year 1968" stamp issue some years back, islanders had taken it for granted that they were under the banner of human rights like all other people in the

9 Eg UK's Sexual Offence Act 1955 under which the Pitcairn men were charged by. See also Constitution of Pitcairn 2010, ss 42(1) and (2).

10 Constitution of Pitcairn 2010, ss 2–26.

civilised world, but found instead that they were no closer to human rights than the penguins of South Georgia.

Defence counsel during a 2014 court procedure questioned why the Pitcairn Islanders suffered this discrimination of having no access to human rights. In practice this meant that islanders could not demand a jury at their trials, neither could they expect legal counsel of their own choice, and certainly could not appeal to the European Court of Human Rights in Strasbourg. When asked by the judge how far along the Pitcairners were to being able to go to the Court of Human Rights, the Deputy Governor replied that there was no formal application from the Pitcairners, but they were working on it. Any application of human rights has been by a case by case decision by the presiding judge.

The UK has signed off various English and international laws on Pitcairn's behalf and ratified several human rights charters for the islands. The ECHR was adopted in its entirety for all the other populated overseas territories in January 2006,¹¹ but not for Pitcairn. The ICCPR was however extended to Pitcairn; it contains important rights, even for Pitcairners, providing among other things for legal assistance of one's own choosing – something denied to them at the trials.

The working paper of UN's Decolonisation Committee makes it clear that:¹²

...individuals subject to Pitcairn jurisdiction have direct rights of recourse to the United Nations Human Rights Committee, as a result of the accession by the Government of the United Kingdom on behalf of Pitcairn to the Optional Protocol to the International Covenant on Civil and Political Rights.

It is apparent, given the lack of permanent population in BAT and BIOT and the support in Pitcairn for the ECHR, that the decision not to extend the application of the ECHR in these cases is not driven by concern for the local population, but is, rather, a decision taken by Central Government in the UK, which results in human rights black holes in British territories.¹³

11 ECHR, art 56 (for territorial application).

12 Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples *Pitcairn* UN Doc A/AC.109/1999/1 (1 June 1999) at s II, para 17.

13 Island Rights Initiative "Mapping UK's responsibilities for Human Rights in Crown Dependencies and Overseas Territories (CDOTS)" (December 2018) <www.islandrights.org>.