

CHARITY COMMISSION

The Human Dignity Trust – review of a decision to refuse registration as a charity.

Final Decision of the Commission made on 3 October 2013.

Decision Review

1. The Commission has given full and careful consideration to the application for a review of its decision dated 28 June 2012 to refuse registration of the Human Dignity Trust (HDT) as a charity.

Decision

2. Having considered the governing document and supporting evidence, submissions, including a note dated 31 May 2012 prepared by the advisors to HDT and the law, and having had the benefit of a meeting on 17 May 2013 with the advisers to HDT to discuss the issues the Commission is not satisfied that HDT is established for exclusively charitable purposes for the public benefit and, as a matter of law, is unable to enter it on the register of charities. The detailed reasoning for the decision is set out below. The Commission acknowledges that this decision will be disappointing to the trustees of HDT. The Commission recognises the aspirational and valuable philanthropic work of the HDT in seeking to remedy what it considers to be instances of injustice; however, the issue in this case is whether the organisation is charitable according to the law of England and Wales. *“The mere fact that an organisation may have philanthropic purposes of an excellent character does not by itself entitle it to acceptance as a charity in law.”*¹
3. The Commission recognises the importance and value placed by Parliament on human rights by the inclusion of the advancement of human rights in the list of descriptions of purpose which may be charitable under the Charities Act 2006. However, in so doing Parliament required, as with all other potentially charitable purposes, that to be charitable, such a purpose must fall within the descriptions of charitable purposes and be for the public benefit. It is a long standing and important rule in charity law that political purposes cannot be charitable purposes, as changes to the law or government decisions, either in this country or abroad, cannot necessarily be seen as beneficial and therefore meeting the public benefit requirement. Given that the purposes of human rights organisations may be directed towards such aims, whether the public benefit requirement is met is also an issue in considering the charitable status of such bodies.

Reasons for the decision

4. In determining whether HDT is a charity or not, the following issues have been considered:

¹ *McGovern and Others v. Attorney-General and Others* [1982] Ch. 321 at Page 330

- a. What are the purposes of HDT?
- b. Are the purposes of HDT exclusively charitable?
 - (i) Do the purposes fall within the description of purposes set out in section 3 of the Charities Act 2011?
 - (ii) Are the purposes for public benefit?

What are the purposes of HDT?

Objects

5. Clause 2 of the articles of HDT, a company limited by guarantee and incorporated on 16 December 2010 (“the company”), provides:

2. The objects of the company are for the public benefit:

2.1 to promote and protect human rights (as set out in the Universal Declaration of Human Rights and subsequent United Nations conventions and declarations) throughout the world, and in particular (but without limitation):

2.1.1 the rights to human dignity and to be free from cruel, inhuman or degrading treatment or punishment;

2.1.2 the right to privacy and to personal and social development; and

2.1.3 to promote the sound administration of the law”

6. By letter dated 31 May 2013 the trustees have indicated that they are willing to revise the objects to attempt to address some of the concerns raised by the Commission with regard to the wording of the objects and have indicated that they would be willing to adopt the following:

2.1 The objects of the company are for the public benefit:

2.1.1 To promote and protect human rights (as set out in the Universal Declaration of Human Rights and subsequent United Nations conventions and declarations and other relevant regional human rights conventions) throughout the world, including in particular:

(a) the rights to human dignity and to be free from cruel, inhuman or degrading treatment or punishment;

(b) the rights to privacy and to personal and social development; and

(c) the right to be free from unlawful discrimination;

2.1.2 To promote the sound administration of the law; by any charitable means, including in particular by providing legal advice and assistance to individuals seeking redress, relief or protection in law on the grounds

that their human rights have been infringed or are under threat.

2.2 *When providing legal advice and assistance as described in Article 2.1, the Company shall only engage in or support litigation of the following kinds:*

2.2.1 *Litigation before domestic courts or tribunals of a state, in relation to rights that are justiciable under the domestic law of that state;*

2.2.2 *Litigation against a state before international courts and tribunals, the jurisdiction of which has been accepted by the state against which a remedy is sought, in relation to rights that are justiciable under the human rights instruments referred in Article 2.1.*

7. The powers of the company, in part, identify the means by which the objects may be furthered and include the following:

3.1 provide and assist in the provision of legal advice and legal representation before courts and tribunals;

3.2 bring and assist in bringing legal challenges and judicial review proceedings before courts and tribunals.

8. In addition, the powers include a power to organise conferences and other educational activities (article 3.4); to publish books (article 3.5); to commission research (article 3.6); and to provide counselling and guidance (article 3.7).

9. The company's objects refer to human rights as set out in the Universal Declaration and in particular to "the rights to human dignity...and social development". However, the Universal Declaration contains no express right to dignity or to social development. Although the Declaration makes several references to "dignity", it appears to draw a distinction between dignity and rights. Article 1, for example, provides that "All human beings are born free and equal in dignity and rights". The Preamble to the Declaration recites

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"

and that the peoples of the United Nations have "reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women ..."

10. Where the purposes are unclear and public benefit uncertain, the Commission follows the approach of the courts in considering the relevant factual background and the actual and proposed activities of the organisation in order to ascertain the

purposes and determine whether those purposes are charitable and are for public benefit.² .

11. The applicants explain “*the right to human dignity*” is based on “*a substantial body of law identifying the right to dignity as both a justiciable right in and of itself and as a fundamental value underlying and informing the correct interpretation and protection of all other human rights.*”³ The Commission has not been directed to any case in which it has been held that a free-standing right to dignity arises under the Universal Declaration. However, the applicants have provided evidence to show a body of authority for the proposition that the concept of human dignity underpins all human rights.
12. The company’s website⁴ states that the concept of dignity gives meaning to the human rights framework:

“Human dignity goes to the heart of human identity, including a gay, lesbian, bisexual, transgendered and intersex identity, hence the name of the trust.

Without dignity none of the protections of the various legal human rights mechanisms can have real meaning, which is why the concept has held, and continues to hold, a central place in the international human rights framework

Criminalising private and consensual sexual activity also violates the right to respect for private life, and may amount to inhuman and degrading treatment. The criminalisation of some people’s private consensual sexual activity has been held to be arbitrary, as well as discriminatory and in breach of equality principles.

Additionally, wider notions of economic and social rights such as the right to the highest attainable standard of health can be violated by the criminalisation of private and consensual sexual activity.”

13. The activities of the company are set out on its website and this is consistent with the information provided by the applicants in support of their application:

“The Trust works with selected lawyers in each of the jurisdictions which continue to criminalise consensual same sex sexual conduct and offers them the legal assistance that they may require to bring about a successful challenge to those laws...

These are the main ways in which the Trust seeks to meet its aims and objectives, although other tools relating to these aims, such as training, education and research may also, from time to time, form part of the Trust’s strategy.”

14. Having regard to the governing document and the information provided by the company in support of its application, the sole focus of the company is, as the

² *Helena Partnerships Limited v HM Revenue and Customs Commissioners* 2011 STC 1307 at page 1318

³ Letter of 19 October 2011 from HTD to the Commission

⁴ <http://www.humandignitytrust.org/>

applicants acknowledge, to bring and assist in bringing legal proceedings either in foreign jurisdictions or international courts to seek to change domestic legislation in foreign jurisdictions which criminalise homosexuality. Accordingly, it is arguable from the relevant background information that the most significant element of the company's purpose is directed towards procuring changes in such laws of foreign countries. Alternatively if it is not the purpose, the evidence supports the fact that this is its "*sole intended activity*".⁵

Are the purposes of HDT exclusively charitable?

15. To be charitable, a purpose must fall within the descriptions of purposes set out in section 3(1) of the Charities Act 2011 ("the Act") and it must be for the public benefit. The descriptions of purposes in section 3(1) include at subsection (h) the advancement of human rights.⁶
16. Section 3(3) of the Act provides that, where any of the terms used in section 3(1) has a particular meaning in charity law, the term is to be taken as having the same meaning in section 3(1). It is by no means clear that the term "the advancement of human rights", has developed a particular meaning in charity law. There is no specific case law relating to this charitable purpose, as such, and little information available to the Commission to determine how Parliament intended the advancement of human rights to be charitable (and whether human rights are to be defined by reference to the domestic law in England and Wales or extend also to internationally accepted codes), leaving to one side the question of the extent to which, if at all, the Commission could, pursuant to relevant authorities, properly take this into account.
17. In its guidance on the advancement of human rights as a charitable purpose (RR12 *The Promotion of Human Rights*) published before the implementation of the Charities Act 2006, the Commission accepted the advancement of human rights as a purpose capable of being charitable and it was recommended that a human rights charity should specify in its stated purposes the human rights to be advanced and ways in which it will promote human rights. The Commission recognised that the pursuance of such purposes would need to be confined within the limitations prescribed by the court which prevent charities from undertaking political purposes and that political activities should not be the dominant method of furthering its purpose.
18. It is considered that the Commission is bound to follow existing case law in this area in so far as it is relevant to assessing the charitable status of HDT. The Commission should not speculate on the extent to which, Parliament, by including the advancement of human rights as a description of purpose which,

⁵ The note of 31 May 2013 says at para 6 "*At the time of HDT's incorporation and at all subsequent times, its sole intended activity was and is to support litigation aimed at determining whether legislation in overseas countries which purports to criminalise private non-violent consensual sexual acts between homosexual adults is itself unlawful as being contrary to justiciable and superior fundamental rights (principally the rights to dignity, privacy and non-discrimination).*"

⁶ s3(1)(h) Charities Act 2011 - *the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity*

subject to the public benefit requirement being met, was capable of being a charitable purpose, was altering the boundaries of the common law in this respect.

- 19.. In determining charitable status the Commission must consider the purposes as set out in the constitution of HDT. If the rights, in particular, to human dignity, privacy and to personal and social development are not “human rights” as such then the objects of HDT do not fall within the advancement of human rights in the Charities Act 2011.
20. The objects of the company (as revised) identify the body of human rights to be advanced by reference to “the Universal Declaration of Human Rights and subsequent United Nations conventions and declarations and other regional human rights conventions” and the powers identify the means to further those rights. However, there is some uncertainty as to whether the rights to dignity and social development have the status of a human right and can reasonably be said to fall within the scope of human rights within the United Declaration, subsequent United Nations conventions and declarations and other such relevant regional human rights conventions.
21. The right to privacy and personal development may possibly fall within the scope of the Article 8 of ECHR (The right to respect for private and family life). However, the right to social development is less clear. There is no right which is expressed in this way. Social development may mean different things to different people. The applicants refer to the cluster of rights contained within the UDHR Articles 22-27 identifying economic, social and cultural rights. The Commission considers that it is not evident that there is a common consensus or understanding of what is meant by the right to social development.
22. As identified above the right to dignity appears to have the status of a fundamental value underpinning human rights as opposed to a fully articulated right. It is not entirely clear whether promotion of the right to human dignity falls within the scope of the advancement of human rights in charity law.
23. The Commission accepts that a purpose to promote the sound administration of the law is capable of being a charitable purpose (*Incorporated Council of Law Reporting for England and Wales v AG*⁷; *Inland Revenue Comrs v City of Glasgow Police Athletic Association*⁸). However, there is comparatively little case law on the scope of this charitable purpose. In the *Glasgow Police* case, the court held that the Association was established for the purpose of promoting the efficiency of the police and consequently enforcing the law generally. In the *Law Reporting* case, the court held that the provision of law reports to judges and those administering the law served to promote the sound administration of the law. Picarda *The Law and Practice Relating to Charities (Fourth Edition)* p.240 gives examples of cases where a trust to aid the enforcement of some particular law has been upheld as charitable, such as a trust to promote prosecutions for

⁷ [1971] Ch 626

⁸ [1953] 1 All. E.R. 747

cruelty to animals, or to reward policemen for doing their duty (*Re Vallance*⁹; *Re Herrick*¹⁰). These examples seem to also promote a recognised charitable purpose.

24. The revised object 2.1.2 is to promote the sound administration of the law “by any charitable means”. The Commission considers that the insertion of the phrase “by any charitable means” cannot have the effect of transforming something that is not charitable into something that is charitable. The way in which this object is to be promoted is by providing legal advice and assistance to individuals who have had their rights infringed. This is charitable where such persons cannot afford legal advice and assistance otherwise it may extend the boundaries of what is charitable.
25. In considering whether a purpose directed at the advancement of human rights through clarification of the law might potentially be charitable as falling within the relevant description of purposes set down in Section 3(1) of the Act, the Commission considered that this might be possible if the human rights seeking to be advanced were those which have been accepted under the law of England and Wales. However this was less clear in relation to human rights law which was applicable in a foreign jurisdiction, whether or not those rights in that country had constitutional authority and were supported by reference to international conventions. In any event in such cases the public benefit requirement still had to be met.
26. Under charity law a purpose directed towards changing the law or changing decisions or policies of government or government authorities either in this country or in foreign jurisdictions is not charitable, and as such would not fall within any of the descriptions of purposes set out in section 3(1) of the 2011 Act; *McGovern v Attorney General* following House of Lords authorities *National Anti-Vivisection Society v Inland Revenue Commissioners*¹¹ and *Bowman v Secular Society Ltd*¹². The rationale for this approach being said to be that the courts must proceed on the basis that the law is right as it stands and that the court would have no means of judging whether any change in the laws be for the public benefit. Further, even if the court were to be able to conclude prima facie that a change in the law was desirable, such changes are a matter for the legislature not the courts who in the last resort may need to administer charitable trusts. To take any view would usurp the function of the legislature.
27. These principles were explained and applied by Mr Justice Slade in *McGovern*, in relation to a purpose directed towards changing the law of a foreign state as not being charitable, because “*the court will have no adequate means of judging whether a proposed change in the law of a foreign country will or will not be for the public benefit.*”¹³ Even if the court is able to form a view on the evidence it would be bound to consider the consequences for this country as a matter of public policy. “*The court would have no satisfactory means of assessing the*

⁹ [1876] 2 Seton’s Judgments (7th edn) 1304

¹⁰ [1918] 52 ILT 213

¹¹ [1948] A.C 41

¹² [1917] A.C 406

¹³ [1982] Ch 321 at 338.

extent of such risk, which would not be capable of being readily dealt with by evidence and would be a matter more for political than for legal judgment."¹⁴

28. Consistent with the legal principles in *McGovern*, if the purpose of the relevant organisation is, at least in part, directed towards procuring changes in the laws or changing decisions of government or governmental authorities in a foreign state, it cannot be charitable as public benefit cannot be demonstrated

The principles in *McGovern v Attorney General*

29. The Commission has considered the applicant's legal argument that the reasoning in *McGovern* does not apply. The company seeks to distinguish HDT from *McGovern* on the basis that *McGovern* was not concerned with the enforcement of justiciable rights before constitutional courts or international tribunals; the activities are materially different. In addition, it says that *McGovern* was decided at a time when the advancement of human rights was not recognised by statute as a charitable purpose as it has been since the introduction of the *Charities Act 2006*. The two lines of argument are presented as follows: (1) by characterising the company's purpose as essentially about enforcing human (or constitutional) rights, rather than as attempting to change domestic law; and (2) asserting that enforcing a country's constitution must always be for the public benefit or at least where there is a manifestation of universal human rights as enshrined in that constitution. They conclude that an English court could conclude that it is charitable to promote human rights for the public benefit provided the litigation is to advance rights that are justiciable in the domestic courts (by reference to constitutional law) or an international tribunal to whose jurisdiction that country had submitted (by reference to international law).
30. The first consideration is whether the company's purpose is concerned to change the law of foreign countries. The application states that the company's "*sole initial focus*" will be "*to establish whether the criminalisation of homosexuality is lawful under international law and the domestic laws of various countries which currently criminalise it*". The company confirms its purpose is directed towards bringing domestic legislation into line with domestic constitutional principles founded on human rights. The letter of 19 October 2011 states "*The trustees also confirm that their activities are not aimed at advocating for change to a country's law and policy or assisting others to do so. On the contrary, the Trust is concerned with upholding the international and constitutional norms which preclude the criminalisation of private, non-harmful, consensual homosexual conduct between adults.*" The argument is developed that "*to uphold a constitutional right is not to 'change the law' even if its consequence is to declare some lower level provision (e.g. criminalising private consensual adult*

¹⁴ "*The question whether a purpose will or may operate for the public benefit is to be answered by the court forming an opinion on the evidence before it ... No doubt in some cases a purpose may be so manifestly beneficial to the public that it would be absurd to call evidence on this point. In many other instances, however, the element of public benefit may be much more debatable. Indeed, in some cases the court will regard this element of being incapable of proof one way or the other and thus will inevitably decline to recognise the trust as being of a charitable nature*". Slade J in *McGovern v AG* [1982] Ch 321 at 333-4

homosexual conduct) invalid, or to require it to be read in a particular way. It is, instead, the paradigm example of litigation which results in the law being upheld.”

31. The Commission considers there may be some merit in that argument, but there is evidence which indicates that the company starts from the position of seeking to secure the decriminalisation of homosexual activity and that is an outcome to which the company’s purposes are clearly directed. The company’s website identifies “*the problem*” as “*Decriminalising Homosexuality by Upholding International Law*”, and “*the solution*” as “*The Guarantee of an Identity Requires Decriminalisation of Homosexuality. The Human Dignity Trust works for the decriminalisation of consensual, private same-sex sexual conduct between adults through the application of settled, existing human rights law.*”

32. The Commission acknowledges that the company’s purpose is concerned with enforcing constitutional law and international conventions. Mr Justice Slade in *McGovern* accepts that a trust to enforce the existing law may qualify as a charitable trust:

*“Counsel for the plaintiffs pointed out that one of the underlying principles of the purposes set out in the preamble to the Statute of Elizabeth is the relief of human suffering and distress. This proposition I have already accepted in general terms. He submitted, in effect, that the line of cases relating to captives shows that a trust to secure the release of prisoners of conscience would be well within the spirit and intendment of the statute, provided only that its particular terms were not such as to offend against public policy. He pointed out that the definition of prisoners of conscience specifically excludes persons lawfully imprisoned in the United Kingdom and that, so far as it may relate to persons unlawfully imprisoned there, it can be regarded as a trust to enforce the existing law. (Cases such as *Inland Revenue Comrs v City of Glasgow Police Athletic Association* [1953] 1 All ER 747, [1953] AC 380 illustrate that trusts connected with the enforcement of the existing law of this country may well qualify as charitable trusts.)”¹⁵*

33. There is sparse authority on the extent to which enforcing existing law is charitable. Picarda¹⁶ comments that “*A distinction must be drawn between opposing a change in the law and seeking to have the law enforced. The former is an example of bringing pressure to bear on the legislature, which is political. But adherence to the law is the duty of every citizen and is not political.*” However this does not address the issue of a possible conflict between a country’s domestic law and principles derived from its constitutional law or international conventions.

34. The Commission considers that it is arguable that challenges to foreign domestic law by reference to constitutional law and international conventions may fall within the remit of the legal principles established in *McGovern* precluding purposes seeking such challenges from being charitable, which the Commission is bound to follow. Even if our court could decide that the challenge to the foreign

¹⁵ [1982] Ch 321 at page 346.

¹⁶ Hubert Picarda, ‘*The Law and Practice Relating to Charities*’, Fourth Edition, page 240

law would be for public benefit being consistent with human rights law enshrined in the law of England and Wales, it may be contrary to public policy for our court, (which would ultimately be responsible) to control and enforce trusts aimed at changing the law in another jurisdiction. It would seem to fail the crucial test of the competence of the court to control it. The English court would, it is considered, have no way of assessing how a foreign court might seek to construe its own constitution or treaty obligations; in particular in the light of relevant social, religious and cultural circumstances in that jurisdiction.

35. The Commission recognises that promoting human rights will frequently involve challenges to the law, policy and administrative decisions of government and there is some uncertainty in determining the extent to which human rights charities may engage in such activities within the parameters of charity law. It is acknowledged that *McGovern* was decided when the Universal Declaration was not incorporated within UK law, and before the advancement of human rights was recognised as a description of charitable purposes in the Charities Act 2006. It may be that such changes in the legal landscape do impact upon the law in this area, but the Commission, despite its constructive approach to the law, considers it is bound by the legal authority in *McGovern*; the principles of which were acknowledged more recently in *R v Radio Authority; ex parte Bull*¹⁷).
36. The position might well be different within the United Kingdom with the enactment of the Human Rights Act 1998 incorporating the European Convention on Human Rights with such rights being justiciable within the UK domestic and European courts and with a consequential developing jurisprudence. However, the intervention in the legal processes in a foreign state is not so straight forward. Such interventions would lead to a number of complex considerations. These would include how the legal argumentation is to be put and in what form, what particular legal remedy will be sought and considerations of how to approach and deal with any challenge within the legal process by the state in question or its law officers to what will be a change in domestic law. These considerations all bear on changing the law, not by the legislature but by the courts, which arguably fall within the scope of the court's rationale against political purposes being charitable as set out in *McGovern*. It may amount to changing the law of a foreign state. It cannot be assumed, the promoter's second point, that these interventions are necessarily for the public benefit because they aspire to align domestic law with constitutional law or international conventions where binding on the foreign state in question. For any purpose falling within the description of purposes set down in the Charities Act 2006 to be charitable, it has to be for the public benefit in the way recognised in case law¹⁸.

Are the purposes for public benefit?

37. *McGovern* upheld the principle in *Bowman v Secular Society*¹⁹ and *National Anti – Vivisection Society v IRC*²⁰ that trusts for political purposes are not charitable

¹⁷ [1996] QB 169, DC; [1998] QB 294, CA

¹⁸ *ISC v Charity Commission* [2011] UKUT 421 (TCC) at Par 84

¹⁹ [1917] AC 406

²⁰ [1948] AC 31

because the public benefit is incapable of proof and considered there were “overwhelming reasons why such a trust still cannot be regarded as charitable”. Those reasons are cited at paragraphs 26 and 27 above.

38. The company asserts that, “to uphold a constitutional right (here the rights to privacy, dignity and equality) is, by definition, for the public benefit. This is because, as a matter of law and constitutional theory, any domestic Constitution represents the definitive statement as to what is for the public benefit”
39. In support the company has evidenced an overwhelming weight of legal argument which favours the decriminalisation of same sex sexual activity. We have also been provided with a copy of a letter to HDT from the United Nations High Commissioner for Human Rights dated 24 October 2011 which states “Regardless of prevailing popular opinion or cultural or religious values, all States have an obligation to repeal laws that criminalise homosexual conduct and to introduce effective legal protections against discrimination on grounds of sexual orientation and gender identity... Your proposal to focus on strategic litigation to secure the over turning of offending laws provides an important element”.
40. The Commission has considered whether the public benefit is so overwhelmingly obvious in this case that a court would be able to find that the company’s purposes are for the public benefit. In *McGovern*, the judge explained the difficulty that confronts the court:

“Let it be supposed that a trust were created of which the object was to secure the abolition of the death penalty for adultery in those countries where Islamic law applies, and to secure a reprieve for those persons who have been sentenced to death for this offence. The court, when invited to enforce or to reform such a trust, would either have to apply English standards as to public benefit, which would not necessarily be at all appropriate in the local conditions, or would have to attempt to apply local standards, of which it knew little or nothing. An English court would not, it seems to me, be competent either to control or reform a trust of this nature, and it would not be appropriate that it should attempt to do so.”²¹

41. The judge recognised that in relation to the laws of a foreign state:

“There can be no obligation on the court to decide on the principle that any foreign law is ex hypothesis right as it stands; it is not obliged for all purposes to blind itself to what it may regard as the injustice of a particular foreign law.”.

However, he concluded that the principles referred to above continued to apply. Assuming, as he did, that the public benefit in question was one to the community of the United Kingdom as opposed to that of the foreign state, he considered the court in applying the relevant principles:

²¹ [1982] Ch 321 at pages 339-40.

“...would still be bound to take account of the probable effects of attempts to procure the proposed legislation, or its actual enactment on the inhabitants of the country concerned, which would doubtless have a history and a social structure quite different from that of the United Kingdom. Whatever might be its view as to the content of the relevant law from the stand point of an English lawyer, it would, I think, have no satisfactory means of judging such probable effects on the local community.”

He added, as indicated in paragraph 26 above, that the court would also:

“...be bound to consider the consequences for this country as a matter of public policy. In a number of such cases there would arise a substantial prima facie risk that such a trust, if enforced could prejudice the relations of this country with the foreign country concerned”

And that the court would have no means of judging this.

42. The applicant's submit that *“If an English court were asked to control a charity with HDT's purpose, it would not be necessary for the English court to decide whether it would be for the public benefit for private non-violent consensual sexual acts between homosexual adults to be declared lawful in any particular country. The question for the English court would be whether it would be for the public benefit to advance human rights by supporting litigation in which the domestic court in a particular country, or an international tribunal to whose jurisdiction that country had submitted, would decide whether legislation which purported to criminalise private non-violent consensual sexual acts between homosexual adults was itself unlawful. Common sense and judicial comity would cause the English court to refrain from seeking to decide the question the domestic court or international tribunal would be asked to decide. It would simply, as already stated, decide whether supporting litigation referable to justiciable rights was for the public benefit”*

43. However, as indicated in paragraph 41 above, in *McGovern* the court held that it would be bound to take into account *“the probable effects”* of a change in law on the inhabitants of the country in question. The applicant's submissions also do not take account of the difficulties set out at paragraph 37 above.

Conclusion

44. The Commission's view is that both the existing and proposed purposes of the company allow in scope for non-charitable purposes to be furthered and are not exclusively charitable.

45. In addition it is the Commission's view, that the *McGovern* principles can apply in the case where the purposes of an organisation is to intervene in the judicial process of a foreign state in order to attempt to align its domestic law with a perceived construction of its constitutional provisions or binding international obligations.. Those purposes cannot be demonstrated as being for the public benefit however worthy the aspirations given the complexity of the cultural, social,

religious dimension in the legal framework of a foreign state. In addition, in the last resort, it would be invidious for the courts of England and Wales to supervise such a trust to be so involved in the affairs of a foreign state in such circumstances.

What to do if you think our decision is wrong

This is the final decision of the Commission. If you think our decision is wrong, you may wish to challenge the decision in the First-tier Tribunal (Charity). You may find it helpful to visit the Tribunal's website for more information about time limits, form of notice of appeal and how to make an application:

<http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/charity/appeals.htm>

There are time limits to making an application to the Tribunal. Your application to the Tribunal should be made within 42 days of the date on which the notice of our decision was sent to you. If you are not the subject of the decision you have 42 days from the date when the decision was published. In both cases weekends and bank holidays are included in the 42 days.

Further details about the First-tier Tribunal (Charity) can be found on our website at:

<http://www.charitycommission.gov.uk/how-to-complain/complaining-about-a-decision-we-have-made/>

The Commission has found this a very difficult decision to make and we are sorry to give a disappointing reply.