

ALL A WI DA ONE: EQUALITY FOR SEXUAL MINORITIES IN BELIZE

Legal Review

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I. Introduction

In Belize, as in many countries around the world, people are subjected to persistent discrimination, harassment, stigmatization, persecution, hatred and violence because of their sexual orientation and gender identity.¹ As a consequence of this unrelenting mal-treatment, some within the Lesbian Gay Bi-sexual Transgender (LGBT)² community live in fear, shame and isolation. They are marginalized by others in society and are frequently under immense pressure to hide who they are and condemn themselves. However, increasing numbers of people are refusing to deny their sexual orientation and gender identity and are fighting for their right to be respected regardless of their orientation or identity. They are rejecting the discrimination and other forms of abusive treatment, claiming their self worth and are refusing to be the subject of society's scorn. There is evidence of this emerging movement in Belize as in nations in every region of the world, even when waged at great personal risk.

The Belizean public has only recently started to become sensitized to the LGBT population within its midst. Though the LGBT community is comprised of Belize's sons and daughters and has always been a part of the national family, like elsewhere there has been denial, prejudice, ignorance and fear surrounding the members of this group. The United Belize Advocacy Movement (UNIBAM) and other organizations and individuals have courageously mounted an education campaign to promote greater tolerance and advance the discussion between the LGBT and straight populations in Belize.³

Part of ending discrimination and promoting tolerance necessarily includes ensuring equal treatment of the LGBT community in law and otherwise throughout society. A legal review of what laws currently exist which ensure equality and what laws promote inequality is important in redrawing the landscape so that there is a level playing field for the LGBT population in Belize. A country's laws may advance or inhibit the fight for equality for persons of diverse sexual orientation or gender identity.

Under the international human rights law regime, governments, as duty bearers are obligated to promote, respect and fulfill the human rights of each of its citizens and all those within its borders regardless of sexual orientation and gender identity. Equality and non-discrimination are key foundational concepts in human rights. These principles undergird all of human rights and

¹ 'Sexual orientation' refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

'Gender identity' refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. (both definitions are found in the Yogyakarta Principles)

² The terms LGBT, sexual minorities and persons with diverse sexual orientation and gender identity are used interchangeably in this paper. All three terms are used in the cases and literature and are used here in an attempt to be broad and inclusive, as well as respectful.

³ Two appearances by UNIBAM president and transgender guests on TV talk show, Lik Road in 2010 were part of education campaign.

must be used to protect every human being. A country's laws should be measured against these international norms and standards.

The purpose of this paper is to review Belize's domestic laws as they relate to the LGBT population and also to discuss what legal reform is necessary so that Belize complies with international norms and standards to fulfill its obligations to its citizens of diverse sexual orientation and gender identity.

II. Review of Relevant Domestic Legislation in Belize as it Relates to LGBT Persons

Identify existing protections in the laws that promote equal protection, uphold human dignity and ensure the rights of LGBT persons

The Belize Constitution⁴ is the starting point in any review of human rights protection for any person or group of persons in Belize. The constitution, adopted at Belize's independence in September 1981, is the supreme law of the country and any law that is inconsistent with the constitution will be void to the extent of its inconsistency with the constitution. The constitution's preamble unequivocally affirms that all humans possess fundamental freedoms and rights. In addition, the constitution includes a chapter exclusively dedicated to human rights and freedoms, entitled Protection of Fundamental Rights and Freedoms. Both the spirit and the letter of the constitution's preamble as well as the chapter devoted to human rights are the progeny of the international human rights movement that took shape within and among the community of nations after World War II.

Preamble of the Belize Constitution

The preamble of Belize's Constitution states that the country of Belize is founded upon faith in human rights and fundamental freedoms. The preamble concisely states the philosophical underpinnings upon which the new nation of Belize was founded. The constitution states in its opening words that the people of Belize affirm that Belize is founded upon the supremacy of God, faith in human rights and fundamental freedoms and the dignity of the human person and the equal and inalienable rights of all members of the human family.

The Constitution of Belize therefore from its inception provides human rights protection for all people. It makes no exceptions; thus, it clearly includes those who are sexual minorities in Belize. It would be difficult for anyone to argue that the words "all members of the human family" in the preamble of the country's constitution somehow excluded persons of diverse sexual orientation and gender identity. In fact as recently as 2001, the constitution was amended to include the words "gender equality"⁵ in the descriptive categories that should not be relied

⁴ Chapter 4 of the Laws of Belize, Revised Edition 2000.

⁵ *(e) require policies of state... which eliminate economic and social privilege and disparity among the citizens of Belize whether by race, ethnicity, colour, creed, disability or sex; which ensures gender equality; which protect the rights of the individual to life, liberty, basic education, basic health, the right to vote in elections, the right to work and the pursuit of happiness; which protect the identity, dignity and social and cultural values of Belizeans, ...the establishment of a just and equitable international economic and social order in the world with respect for international law and treaty obligations in the dealings among nations; (emphasis added)*

upon as the basis for invidious discrimination. Since the word “sex” was already in this list, the inclusion of “gender equality” arguably refers to a broader concept than the disparities between males and females in the society.

Chapter II of the Belize Constitution- Protection of Fundamental Rights and Freedoms

Part II of the Belize Constitution entitled, *Protection of Fundamental Rights and Freedoms*, is the part of the Constitution that sets out the human rights and freedoms guaranteed to all persons in the country of Belize. It delineates in a summary fashion at section three everyone’s basic rights, including life, liberty, privacy, movement, conscience, expression, work, assembly and association. These same rights and freedoms are described in more detail in the subsequent provisions of Part II, sections 4 through 17.⁶ Section 20 of the Belize Constitution is the enforcement section that provides that if a person believes that his or her human rights as set out in this part of the Constitution are being violated or may be violated, he or she may seek a remedy from the Supreme Court of Belize.

Part II of the Belize Constitution, just as the preamble, promotes equal protection, prohibits discrimination, upholds human dignity and thus ensures the rights of all persons in Belize. Again, these provisions in the constitution should be read and interpreted to include everyone, regardless of sexual orientation and gender identity.

The recognition and protection of each right or freedom in Part II of the Constitution is limited or restricted by reasonable provisions that are required in the interests of defence, public safety, public order, public morality or public health. Additionally, limitations and restrictions of constitutional rights are permissible if the limitation or restriction is required for the protection of the rights and freedoms of other persons.⁷

Other domestic legislation

Moving from the supreme law of the land to other domestic legislation, there is little recognition in the laws of Belize that persons of diverse sexual orientation or gender identity exists, much less require and deserve protection from the particular forms of discrimination to which they are subjected. This is not surprising since many of Belize’s laws are antiquated and have been in place since early colonial days, reflecting the mores and sensibilities of a different era. Only in the last decade and a half have revisions been made to update certain laws; but, even in those cases, the rights of the LGBT population have not been taken into account.

⁶ 3. Fundamental rights and freedoms. 4. Protection of right to life. 5. Protection of right to personal liberty. 6. Protection of law. 7. Protection from inhuman treatment. 8. Protection from slavery and forced labour. 9. Protection from arbitrary search or entry. 10. Protection of freedom of movement. 11. Protection of freedom of conscience. 12. Protection of freedom of expression. 13. Protection of freedom of assembly and association. 14. Protection of right of privacy. 15. Protection of right to work. 16. Protection from discrimination on the grounds of race, etc. 17. Protection from deprivation of property. 20. Enforcement of protective provisions.

⁷ Ibid.

Belize Criminalizes Consensual Sex Between Adult Males

Undoubtedly, the most glaring law that discriminates against those of diverse sexual orientation and gender identity is found in Belize's Criminal Code.⁸ Section 45 of the Code criminalizes consensual sex between adult males and is called "unnatural crime." Earlier this year, UNIBAM lodged a constitutional challenge of the unnatural crime law as it relates to consenting adults. Their case is pending in the Supreme Court of Belize.⁹

There are more than 80 countries worldwide that maintain laws similar to Belize's law, making same sex consensual relations between adults a criminal offence.¹⁰ As in Belize, this law in many of these countries is on the statute books but is rarely, if ever, enforced. In the case of *Toonen v Australia*,¹¹ the complainant, Nicholas Toonen, a gay man and gay rights advocate in Tasmania, brought a challenge of the sodomy law in Tasmania before the United Nations Human Rights Committee. He claimed that the continued criminalization of adult consensual sex between males in Tasmania, even though rarely enforced, had "profound and harmful impacts on many people...and that it fuels discrimination and harassment of, and violence against, the homosexual community of Tasmania."¹²

The legal challenge of Belize's sodomy law is one of the country's first major tests of its desire and will to apply its constitutional guarantee of nondiscrimination to all within its borders, regardless of sexual orientation and gender identity.

Belize Does Not Criminalize Hate Speech and Hate Crimes Against Sexual Minorities¹³

It is curious that on one hand Belize's Criminal Code criminalizes consensual same sex between adults but on the other hand the Code fails to recognize hate speech and hate crimes against persons of diverse sexual orientation or gender identity. There is no offence and penalty in the law for targeting and victimizing a person because of his or her actual or perceived sexual orientation or gender identity. Much as in the pre-DVA era when a domestic violence victim was limited to charging her abuser with assault ignoring that the crime was of a peculiar nature requiring peculiar remedies, here too a person targeted because of sexual orientation or gender identity is restricted in the type of criminal charge that may be levied against his attacker and the relief available.

Hate speech is criminalized in some countries in an effort to prevent the dissemination of hatred but also to prevent speech inciting violent conduct against the targeted group. In Canada, France and Denmark, for example, the hate speech provisions in their Criminal Codes prohibit hate speech against an identifiable group, including those of diverse sexual orientation. Belize has no law prohibiting hate speech.

⁸ Chapter 101 of the Laws of Belize, R.E. 2000.

⁹ Supreme Court of Belize Claim No. ___ of 2010.

¹⁰ *Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles* by Michael O'Flaherty and John Fisher, HRLR 8 (2008). p.210.

¹¹ Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

¹² *Ibid.*, paragraph 2.7.

¹³ The law in Belize does not recognize any type of hate crime, regardless of the category of the victim.

Laws and Policies Related to Identity, Family, Property, Employment and Benefits

The Registration of Births and Deaths Act,¹⁴ dating back to 1894, mandates the registration of the birth or death of any person within a time period and in a specific manner. The law further defines a “parent” as the father in the case of a legitimate child. Where the father is dead or absent or where the child is illegitimate, the law defines the parent as the mother. As might be expected, there is no provision in the law for non-traditional parents. The first schedule of the act is the format of the Register of Births for a district, showing where to indicate the birth date, place of birth, name and sex of the child, among other information about the child. The law is silent as to the registration of the sex of an intersex child.

In Belize, a birth certificate is a legal document that may not be altered, with the exception of correcting errors, even after an adoption or a name change. A person may legally change his or her name by lodging a deed poll at the Department of Vital Statistics (also called the Births and Deaths Registry). The ability to legally change one's name may be of particular assistance where a person has undergone gender re-assignment or in other circumstances relating to gender identity.

In 1998, the Belize legislature enacted the Families and Children Act¹⁵ (FACA) to consolidate and modernize laws related to families and children, including paternity, custody, guardianship access, maintenance, and adoption. Significantly, this effort to codify a comprehensive family law makes no acknowledgment of or provisions for same sex relationships with respect to any of the areas dealt with by the law.

Under FACA, a guardian may be selected by a child's parent to assume parental responsibility for the child upon the parent's death or for another reason. The Department of Human Services may also select and ask the Court to appoint a guardian for a child. On the face of it, a person may become the legal guardian of a child, regardless of that person's sexual orientation or gender identity.

The section of FACA that deals with adoption, refers to the “adopter” as the person authorized by a court order to adopt a child. It is gender neutral so presumably would include anyone who met the criteria to adopt, regardless of that person's sexual orientation or gender identity. The definition of “adopter” also includes spouses who jointly apply to adopt. The law restricts the ability of any two persons to jointly adopt a child unless those two persons are spouses of each other. In the current state of the law in relation to marriage, this provision prohibits a same sex couple from jointly adopting a child. However, arguably an individual, otherwise suitable, regardless of sexual orientation or gender identity, may adopt in Belize.

The Marriage Act¹⁶ establishes Marriage Officers and Marriage Districts in Belize as well as dictating the minimum marital age, licence fees and other requirements to marry. The act sets out at the start of the chapter that a man is legally prohibited from marrying anyone listed on the annexed schedule and likewise that a woman is legally prohibited from marrying persons listed

¹⁴ Chapter 15 of the Laws of Belize, R.E. 2000.

¹⁵ Chapter 173 of the Laws of Belize, R.E. 2000.

¹⁶ Chapter 174 of the Laws of Belize, R.E. 2000.

in a separate column on the same schedule. The schedule of persons a man may not marry includes those who are related to him by blood, such as mother or sister and in the case of a woman, she may not marry her father or brother, among others related to her. Although the act has no explicit language saying that marriage is exclusively between a man and a woman, it is clear that this is the unexpressed intention and presumption of the law.

The Women's Movement in Belize advocated for the adoption of a law to address the soaring levels of domestic violence, primarily targeted at females by male partners. The 1992 Domestic Violence Act¹⁷ (DVA) was the result. Although considered a victory, there were many limitations in the DVA, for example, the law did not cover abuse by a boyfriend of a girlfriend if the couple had no children together or who had never cohabitated. Recent amendments in 2007 have attempted to fill some of the gaps; however, again, the amendments do not cover those within the LGBT community who may be victims of domestic violence by same sex or other partners that do not fall neatly into the definitions of the DVA.

The DVA is often touted as a gender neutral law because a man could access its protection as well as women but it appears that the law is gender neutral only to the extent that one's partner is of the opposite sex. The law's definition of an applicant is a person who applies to the Court for an order under the Act. However, the law goes on to say that the applicant may seek an order if the applicant is suffering prohibited conduct (threats of violence, violence, etc.) at the hands of a spouse or the father of her children. Spouse is then defined as including a *de facto* spouse which means "a person of the opposite sex" who is living with the applicant as the person's husband or wife although not legally married. Thus, under the current DVA in 2010, a person living in a same sex relationship cannot access its protection, to obtain a protection or occupational order from the Court.

The law governing divorce is found in Matrimonial Causes and Matters in the Supreme Court of Judicature Act.¹⁸ This part of the act not only deals with the grounds and time restrictions for petitioning for divorce but also sets out provisions for the division of marital property upon separation or divorce. This section was amended to include criteria for division of property for persons in common law relationships of five or more years. Once more a progressive amendment in recent years failed to consider persons who are in same sex long term relationships who separate and have property disputes to be resolved, as with any other couple.

Belize is one of the only countries in the Commonwealth Caribbean region to enact a sexual harassment law. The law covers not only sexual harassment in the workplace but also in educational and other institutions. Unlike, the Domestic Violence Act, the Protection Against Sexual Harassment Act¹⁹ is truly gender neutral. On its face, anyone may seek the protection of the sexual harassment law against unwelcome and offensive sexual comments, gestures, and conduct regardless of the sex or sexual orientation of the offender and the victim. The law is progressive yet in its 14 years on the statute books, it has rarely, if ever, been used.

¹⁷ Chapter 178 of the Laws of Belize, R.E. 2000.

¹⁸ Chapter 91 of the Laws of Belize, R.E. 2000.

¹⁹ Chapter 107 of the Laws of Belize. R.E. 2003.

Also, addressing discrimination in the workplace, is the HIV/AIDS Workplace Policy for the private sector instituted by the Labour Department. The policy is aimed at HIV/AIDS education and eliminating discrimination in the workplace against persons with HIV or AIDS. Although the policy is not geared to discrimination against persons based on sexual orientation and gender identity, the policy undoubtedly sensitizes recipients to the general principle of equality. In an evaluation of the policy, the following was said,

Recognizing that HIV/AIDS can have serious social and economic impacts at all levels of society, the Government of Belize, in collaboration with the International Labour Organization (ILO) and the United States Department of Labour (USDOL), launched an HIV/AIDS Workers Education Project in Belize. The primary objectives of this project were to contribute towards the reduction of HIV/AIDS risk behaviour among the target group and to reduce the level of employment related discrimination against People who are HIV positive.

Gender issues and issues around homophobia were addressed through the training programmes and there was some evidence of a breakdown in gender stereotypes, for example the use of men as Peer Educators. Homophobic attitudes remain a problem in Belize.

Addressing gender and sexuality issues should remain a high project priority for the future.²⁰

The National AIDS Commission was appointed by the Cabinet and established in Belize in 2000.²¹ Besides, coordinating the national response to the disease, the Commission's major efforts are in reducing stigma and discrimination. Here as with the workplace policy, the work against stigma and discrimination has a wider application than for only those living with HIV and AIDS. The discussion of groups that are high risk for infection has necessarily included MSM, men who have sex with men. The open acknowledgement of the existence of MSM in Belize is a significant step, considering that homosexual intercourse is outlawed.

The Married Persons (Protection) Act²² is a 1953 law that essentially permits legal separation, including maintenance and custody, for husbands or wives based on grounds of desertion, habitual drunkardness or cruelty. The law offers no protection for those who are not lawfully married, thus excludes persons in same sex intimate relationships.

The Administration of Estates Act²³ is another law on the books dating back to 1953. It governs the devolution of estates upon the death of a person. Where a person dies leaving a will, assuming there are no issues with respect to soundness of mind, the estate will go to whomever the testator designated as beneficiaries. In this instance, the law will protect, for example, the gay or lesbian partner of a deceased who left a will. However, where a deceased person dies intestate, a partner does not have the protection of the law in Belize. The law establishes a hierarchy of

²⁰ ILO Evaluation Summaries.

²¹ www.nacbelize.org.

²² Chapter 175 of the Laws of Belize, R.E.2000.

²³ Chapter 197 of the Laws of Belize, R.E. 2000.

next of kin in these circumstances and a gay or lesbian partner of a deceased, regardless of the longevity of the relationship will not receive any part of his or her partner's estate. This is not true for a heterosexual common law partner whose mate has died intestate. The law was amended to protect common law wives and husbands who had resided with their partners for five or more years at the time of the partner's death as long as no lawful spouse existed. These long term partners benefit from the estate of their deceased mate in the same manner that a lawful spouse would.

The Social Security Act²⁴ in the benefits section provides that maternity benefits are for an insured woman who gives birth or for an insured man in respect of his wife's confinement after pregnancy. The Social Security Act also includes sections on funeral grants and survivors' benefit for wives and other dependents. These benefits are critical for a person who was dependent on the deceased or requires assistance in burying a loved one. This law does not cover same sex partners or the child of a same sex partner that has not been adopted by the surviving partner.

Both the Widows and Children Pensions²⁵ and the Pensions Act²⁶ limit benefit coverage to traditional family members, spouses and children of the public officer. These laws exclude the possibility of a same sex partner receiving any benefit after the death of his or her mate who was public officer. Interestingly, the Widows' and Children's Pension Act defines what constitutes a widow for purposes of receiving the prescribed benefit in cases where polygamy lawfully subsists. This shows that the legislators have the capacity to acknowledge a different cultural familial norm than what is traditionally accepted in Belize.

Recommendations on existing legislation that need to be repealed or modified

The most obvious piece of legislation that should immediately be repealed is the provision in the Criminal Code that criminalizes consensual sex between adult males. Despite the fact that this law is rarely enforced against consenting adults, it looms large like a hammer hovering over a portion of the population causing minimally fear and anxiety. It wrongfully segregates a portion of the population defined only by their intimate relations as consenting adults and legitimizes societal discrimination against this group. As stated above, a legal challenge of this part of the Criminal Code has been mounted and is pending before the Court.

The Domestic Violence Act should be amended to extend its protection to anyone in an intimate relationship who is a victim of domestic abuse regardless of the sexual orientation or gender identity of the victim and perpetrator. Aspects of FACA should also be amended to, *inter alia*, permit otherwise suitable established partners to adopt children (such an amendment would also be applicable to long term heterosexual common law spouses). The majority of countries, even some with progressive LGBT laws, do not permit adoption by all, regardless of sexual orientation and gender identity. In South America and the Caribbean, only Argentina, Brazil, Mexico and Uruguay permit adoptions by gay or lesbian singles and same sex couples. Hence, in

²⁴ Chapter 44 of the Laws of Belize, R.E. 2000.

²⁵ Chapter 32 of the Laws of Belize, R.E. 2000.

²⁶ Chapter 30 of the Laws of Belize, R.E. 2000.

a legislative reform agenda, adoption may be an area that will be changed in the longer rather than shorter run in Belize.

Besides being protected and treated equally regardless of your sexual orientation or gender identity at home and in family situations, the law must also protect all in educational institutions and at work. The recent case of the treatment of a transgender youth in a Belize City high school captured the national attention and sympathy of many. It highlighted the need for strong laws to be in place so that sanctions will be imposed if a student or employee or anyone else is treated unfairly because of their sexual orientation or gender identity.

Lobbying for the inclusion of hate speech and hate crime legislation is another aspect of legal protection for sexual minorities that should be seriously considered. Criminal law reflects societal values and concerns. Criminal law changes as do the values and concerns of society evolve over time. Crimes are codified in the public interest so that all will know the limits of acceptable conduct and will additionally know the consequences of trespassing those identified boundaries. Hate crime laws not only punish heinous and discriminatory victimization of people because of their sexual orientation or gender identity but also conveys the message that the dignity and personal security of all are valued and will be equally protected, regardless of sexual orientation or gender identity.

III. Identify International Instruments, including Yogyakarta principles and best practices from other jurisdictions on legal protections for persons of diverse sexual orientation and gender identity

The Yogyakarta Principles

Prominent among existing international human rights standards that address sexual orientation and gender identity is the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (the Yogyakarta Principles). Prior to the Principles, there was a need for a comprehensive articulation of how international human rights applied to the experiences and issues raised by those of diverse sexual orientation and gender identity throughout the world. The Principles, launched on the 26th of March 2007, are approaching their fourth year and steadily growing in worldwide acceptance as the guide for States' treatment of the LGBT populations in their countries. There are 29 principles and additional recommendations.

The Introduction to the Principles state,

All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible and interrelated. Sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse.²⁷

²⁷ www.yogyakartaprinciples.org/principles-en.htm.

The Principles affirm, among other things, the fundamental rights to life, liberty, expression, privacy, assembly and association, freedom from arbitrary detention and torture in addition to economic rights of employment, health care, education and social security.

The Principles have been called an “important document to focus international attention on the need for a more systematic approach to protection.”²⁸ Nations have called the Principles a ‘blueprint’ and a ‘guideline’ for countries in ensuring the equal treatment of all persons, regardless of sexual orientation and gender identity.

The Yogyakarta Principles address a broad range of human rights standards and their application to issues of sexual orientation and gender identity. The Principles affirm the primary obligation of States to implement human rights. Each Principle is accompanied by detailed recommendations to States. The experts also emphasize, though, that all actors have responsibilities to promote and protect human rights. Additional recommendations are addressed to other actors, including the UN human rights system, national human rights institutions, the media, non-governmental organisations, and funders.

The experts agree that the Yogyakarta Principles reflect the existing state of international human rights law in relation to issues of sexual orientation and gender identity. They also recognise that States may incur additional obligations as human rights law continues to evolve.

The Yogyakarta Principles affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfill that precious birthright.

The Principles are being used as an advocacy tool for NGOs and others as well as the standard against which governments may measure their laws, practices and policies as they relate to sexual minorities.

Other international conventions and standards that protect the LGBT population

Previous to the adoption of the Yogyakarta Principles, the international response to human rights violations based on sexual orientation and gender identity was “fragmented and inconsistent.”

In the years leading up to the Yogyakarta Principles, various treaty bodies within the UN human rights system slowly began to address the treatment, and in particular the discrimination against, persons of diverse sexual orientation and gender identity. The Human Rights Committee, the body created by the International Covenant on Civil and Political Rights (ICCPR), was among the treaty bodies that dealt with this issue. The Human Rights Committee stated in *Tooten v*

²⁸ *Supra* at n.10, p. 242.

Australia that it interpreted the ICCPR's reference to "sex" in articles 2 and 26 of the ICCPR (the prohibition of discrimination articles) to include sexual orientation.²⁹

The Committee on Economic Social and Cultural Rights (CESCR) places sexual orientation in the "other status" catch-all category prohibiting adverse discrimination based on membership in any group not specifically set out in the covenant.³⁰ The "other status" category acknowledges that the drafting committee was aware that they could not envision all or list all of the bases upon which people may be discriminated against. For example, the earlier covenants did not explicitly include mental or physical disabilities as a category upon which invidious discrimination may be based; however, the Covenant certainly does not suggest that this group should not enjoy full economic social and cultural rights. Similarly, sexual minorities must be protected by universal human rights even though they are not explicitly mentioned in the treaty.

The Committee on the Rights of the Child (CRC) likewise issued a General Comment that the discrimination provision in the Convention on the Rights of the Child includes prohibiting discrimination based on a child's sexual orientation. The Committee said that all persons under 18 had the right to enjoy all of the rights in the CRC without discrimination based on race, colour, sex, language, religion, political or other opinion, national, ethnic, or social origin, property, disability, birth or other status. The Committee stated, "These grounds also cover, *inter alia*, sexual orientation."³¹

Compile existing knowledge and best practices from other jurisdictions on legal protections for persons of diverse sexual orientation and gender identity

Nine countries in Europe permit marital or legally recognized unions for same sex couples. These unions are entitled to the same financial and legal rights that spouses in heterosexual marriages have. Various states within the United States have been debating their position on creating same sex marriages or some level of legal union for persons of diverse sexual orientation and gender identity. Argentina is the first country in South America and the tenth in the world to legalize gay marriage. On the 30th of July 2010, two men married each other in Argentina, becoming the first same sex Latin American couple to marry.

Sweden is perhaps the country with the most advanced laws and policies regarding the LGBT population. Same sex intimate relations between consenting adults became legal as far back as 1944. The legal age of consent in Sweden is 18 years. In 1972, Sweden granted the right to change one's legal gender. Gays and lesbians have served openly in the Swedish military since 1976 and there have been anti-discrimination laws and laws prohibiting hate speech since 1987. Despite these exceptional moves, legal protection of transgender identity or expression only became legal since 2009. Civil unions have been recognized since 1997 but full marriage rights for all regardless of sexual orientation only became Sweden's law in May 2009.

²⁹ Supra at n.11, para. 8.7.

³⁰ Committee on Economic Social and Cultural Rights, General Comment No. 18: The Right to Work, E/C.12/GC/18, 24 November 2005.

³¹ Committee on the Rights of the Child, General Comment 4 of 2003, Adolescent health and development in the context of the CRC, 1st July 2003, CRC/GC/2003/4.

Although many countries in the world continue to criminalize sexual relations between consenting adults of the same sex, there is a steady number of countries changing their laws to recognize that this is a form of unlawful discrimination. In this vein, homosexuality was decriminalized in 2009 in India, the second most populated nation in the world.

In the workplace, by 2005 half of the Fortune 500 companies in the United States had domestic partner health benefits, setting a positive example of equality for employees, regardless of sexual orientation. A lesser percentage of these successful companies included protections for transgender workers in their non-discrimination policies. The private sector may institute this type of best practice without the need for controversial legislative changes and can lead the way for equal treatment.

IV. Outline the social, ethical and economic impact of the recommended legislative changes.

The analysis of domestic laws in this paper demonstrates that currently the laws of Belize, with the exception of the supreme law of the land, either ignore the existence of the LGBT population or discriminate against them. Most of the laws related to marriage, family and other human relations disregard those of diverse sexual identities, excluding this group of people from the coverage of the law and further marginalizing them in society.

The moral and conceptual case for extending nondiscrimination protection to gay men, lesbians, and other sexual minorities is overwhelming.³²

The criminalization of consensual sex between adult males is the most obvious example of a law in Belize that overtly discriminates against the LGBT population. The implications of a law that states that an adult cannot engage in intimate relations with another adult because both are males are far reaching. The criminalization of the most private aspect of an adult person's life is brutally painful. The law is saying to an entire group of people that an intrinsic part of their human identity is so wrong that it is a criminal offence.

Besides the sodomy law, there is wide spread deep seated discrimination against sexual minorities in Belize. It is well accepted that discrimination against any group in society impacts not only the group but the whole of society. When any particular group cannot equally access education, health care or employment or any other right or benefit because of the characteristics of that group, it necessarily has negative implications for members of the group but also for the larger population. The implications are economic, social and political, preventing a portion of the populace from fully contributing and participating. This weakens the fabric of a nation.

Other than economic, social and political effects, discrimination also produces intangible effects. The emotional and psychological impact of being treated as a lesser being is enormous and incalculable. Anyone who has been the subject of discrimination can understand, if not articulate the damage suffered.

³² Universal Human Rights in Theory and Practice (2nd edition) by Jack Donnelly, p. 237

Archbishop Emeritus Desmond Tutu, in speaking about the lessons of apartheid and advocating equality said,

Whenever one group of human beings is treated as inferior to another, hatred and intolerance will triumph. It should not take hundreds more deaths and beatings to convince us of this truth. It is up to all of us to demand equality for all our fellow human beings, regardless of their sexual orientation or gender identity.”³³

Conclusion

It is important to vigorously pursue the legislative aspect of the struggle for equality for those of diverse sexual orientation and gender identity. Progressive changes in the law that expand the human rights protective net is an ongoing process in Belize and internationally. The Judicial Committee of the Privy Council has described this expansion of the understanding of human rights protection as the law keeping a step with society’s “evolving standards of decency.”

It has often been said that despite the critical need to advocate for and adopt progressive changes in law, deeply entrenched societal attitudes and beliefs cannot be legislated. Thus, even with amended and revised laws, there will remain many challenges and obstacles in changing the majority attitudes that, in turn, will genuinely transform the reality of the lives of LGBT persons. It is a daunting yet rewarding undertaking that increasing numbers, both within and outside of the LGBT population, will embrace.

³³ Archbishop Tutu, Decriminalizing Homosexuality, a video message for Human Rights Day 2010, found at www.ohchr.org/humanrightsday

TERMS OF REFERENCE

Consultancy to conduct LGBT legal review for the United Belize Advocacy Movement

Through the Project “**Legal Empowerment: Improving the Advocacy Power of Sexual Minorities to lead a Watchdog Unit for Justice**” sponsored by Australia AID, the United Belize Advocacy Movement invites applications for the following short term consultancy. One of the United Belize Advocacy Movement’s key focuses is policy analysis that includes ensuring that a full review of legislation and policy is done to aid in proposing legislative and policy changes that affect LGBT rights in the country.

The consultant will:

- (a) Review all relevant laws for the purpose of recommending legislative change that is reflective of the needs of the LGBT population in Belize.
- (b) Identify existing protections in the laws that follow the principle of equal protection, that uphold human dignity and promote the rights of LGBT persons.
- (c) Provide recommendations on existing legislation which needs to be repealed, modified or added.
- (d) Identify convention, covenants and regional mechanism that may give legal protection to LGBT concerns about equitable treatment in national laws.
- (e) Review the Yogyakarta principles and other legislation from other jurisdictions and identify areas which are relevant and adaptable to the Belizean context.
- (f) Compile existing knowledge and best practices in the area of LGBT sexual rights and sexual and reproductive rights issues.
- (g) Outline the social, ethical and economic impact of the recommended legislative changes.
- (h) Suggest the wording of draft provisions for major legislative amendments