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GLOBAL INITIATIVE FOR
SEXUALITY AND HUMAN RIGHTS



Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Belize: A Shadow Report

**Submitted for consideration at the 107th Session of the United
Nations Human Rights Committee (Belize)**

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Executive Summary

This report is a joint submission by the United Belize Advocacy Movement (UNIBAM) and Heartland Alliance for Human Needs & Human Rights (Heartland Alliance) to the United Nations (UN) Human Rights Committee (“HRC” or “the Committee”) on the occasion of its consideration of the State of Belize’s implementation of the *International Covenant on Civil and Political Rights* (“the Covenant” or “the ICCPR”) in Geneva, Switzerland on March 11th through 28th 2013.

The purpose of this report is to highlight the widespread and systematic human rights violations against sexual minorities in Belize. In particular, the report draws the attention of the Committee to the following breaches of the ICCPR:

- The State of Belize retains legislation criminalizing same-sex sexual conduct. The provision is discriminatory on the basis of sexual orientation, and exacerbates discrimination, violence against, and general marginalization of sexual minorities in Belizean society.
- The State of Belize has failed to implement any public policies or legislation that would rectify the extreme public stigma against LGBT individuals in Belizean society, or to counter the homophobic speech and misinformation spread by proponents of the criminalization of same-sex conduct.
- LGBT persons suffer from high levels of cruel, inhuman, and degrading treatment, including a constant threat of violence, from both State and non-State actors.
- Belize’s Immigration Act prohibits sexual minorities from entering the country.
- There is systematic and widespread misconduct against LGBT persons by law enforcement officials, including arbitrary detention, blackmails and threats, cruel, inhuman and degrading treatment, and dangerous conditions in detention facilities.
- The State of Belize fails to adequately prevent, investigate, or prosecute violence against sexual minorities.
- The State of Belize fails to adequately prevent, investigate, or prosecute killings carried out because of the victim’s sexual orientation.
- LGBT individuals suffer from high rates of discrimination within society, including in education, healthcare, and employment.

The violations referred to above are each exacerbated by the absence of systematic reporting or recording. The failure to provide concrete, disaggregated statistics in regards to violence and discrimination against LGBT individuals permits Belizean authorities to ignore, and often misrepresent, homophobic and transphobic abuse.

The extent, breadth, and severity of the State of Belize’s human rights violations amount to a clear breach of the terms of the Covenant.

I. Introduction

This shadow report on the human rights situation of Lesbian, Gay, Bisexual, & Transgender (LGBT) people in Belize was written and submitted through the collaborative efforts of UNIBAM and Heartland Alliance's Global Initiative for Sexuality and Human Rights.¹

Six of the eight principal human rights treaty bodies² as well as various independent experts working within the Special Procedures³ have consistently applied international human rights standards to address a myriad of human rights violations that occur on the basis of sexual orientation and gender identity, and have asserted that States must implement protections to combat abuses against LGBT individuals.⁴ Significantly, the Human Rights Council adopted Resolution 17/19, *Human rights, sexual orientation, and gender identity* in June of 2011, expressing grave concern about the acts of violence and discrimination against individuals because of their sexual orientation or gender identity, and commissioning a study on the issue from the High Commissioner for Human Rights (OHCHR).⁵ Relying on human rights norms and legal instruments, the OHCHR found that the core obligations of States with respect to protecting the human rights of LGBT persons are to: (1) Protect individuals from homophobic and transphobic violence; (2) Prevent torture and cruel, inhuman and degrading treatment; (3) Repeal laws criminalizing homosexuality; (4) Prohibit discrimination based on sexual orientation and gender identity; and (5) Safeguard freedom of expression, association and peaceful assembly for all LGBT people.⁶

Belize became a party to the International Covenant on Civil and Political Rights on June 10th, 1996.⁷ Belize is obligated to respect and enforce the rights guaranteed by the ICCPR for all persons within its jurisdiction. This requirement is both negative and positive in nature, and

¹ This report was authored by Melanie Todman J.D., Legal Fellow at Heartland Alliance, with significant contributions from Caleb Orozco, President of the United Belize Advocacy Movement (UNIBAM), under the supervision of Stefano Fabeni J.D., LL.M., Managing Director of the Global Initiative for Sexuality and Human Rights of Heartland Alliance (GISHR) and Marcelo Ferreyra, Latin America and Caribbean Coordinator for GISHR.

² Treaty bodies include: the Human Rights Committee; the Committee on Economic, Social, and Cultural Rights; the Committee on Elimination of Discrimination Against Women; the Committee on Elimination of Racial Discrimination; the Committee on Children's Rights; and the Committee Against Torture.

³ Special Procedures experts include but are not limited to: Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment; Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions; Special Rapporteur on Violence Against Women, its Causes, and its Consequences; Working Group on Arbitrary Detention.

⁴ See generally, International Commission of Jurists, *Sexual Orientation and Gender Identity in Human Rights Law, References to Jurisprudence and Doctrine of the United Nations Human Rights System* (April 2010), available at http://www.asiapacificforum.net/support/issues/acj/references/sexual-orientation/downloads/Jurisprudence_and_Doctrine_of_UN_Human_Rights_System.pdf (comprehensive list of human rights bodies and experts applying human rights law to sexual orientation and gender identity).

⁵ See G.A. Res. 17/19, UN Doc. A/HRC/17/L.9/Rev.1, (June 25, 2011), available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/19.

⁶ See UN Human Rights Council, *Report of the UN High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation or gender identity, delivered to the General Assembly*, UN Doc. UN A/HRC/19/41, (Dec. 15 2011) at ¶¶ 8-19, available at <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNReports.aspx>.

⁷ See OHCHR, Status of Ratifications: International Covenant on Civil and Political Rights, available at <http://www2.ohchr.org/english/law/ccpr-ratify.htm> (last visited 1 Feb 2013).

includes the duty to adopt legislative, judicial, administrative, educative, and other appropriate measures that are necessary to fulfill the ICCPR's legal obligations.⁸ In applying the ICCPR, the HRC has referred explicitly to sexual orientation in its Concluding Observations on various occasions.⁹ Belize has not submitted a country report to the HRC under Article 40 of the ICCPR. However, in the course of Belize's Universal Periodic Review ("UPR"), members of the Human Rights Council Working Group on Human Rights explicit recommendations that Belize abolish discriminatory legislation that criminalizes same-sex, sexual behavior, and provide human rights trainings that focus on vulnerable groups, particularly persons of minority sexual orientation or gender identity, to all state authorities and law enforcement officials.¹⁰

In spite of Belize's stated commitment to uphold the spirit of the ICCPR, and its "commit[ment] to protecting all members of society from discrimination"¹¹ as required by its Constitution, the Belizean government has failed to prevent numerous rights violations that have been perpetrated against LGBT individuals by both state and private actors.

⁸ See U.N. Human Rights Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* [80], UN Doc. CCPR/C/21Rev.1, (26 May 2004) at ¶¶ 6, 7, 10, 13, available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

⁹ See, e.g., *Concluding Observations of the Human Rights Comm.: Barbados*, UN Doc. CCPR/C/BRB/CO/3, (11 May 2007) (requesting repeal of criminalization of same-sex consensual relations); See also *Concluding Observations of the Human RC: El Salvador*, UN Doc. CCPR/CO/78/SLV, (22 Aug. 2003) (requesting effective protection for sexual minorities).

¹⁰ See UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Belize*, UN Doc. A/HRC/12/4, (4 June 2009) at ¶¶ 67, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BZSession5.aspx>.

¹¹ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Belize, Addendum, Views on Conclusions, and/or Recommendations, voluntary commitments and replies presented by the State under review*, UN Doc. A/HRC/12/4/Add.1 (18 Sept. 2009) at ¶¶ 28, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BZSession5.aspx>.

II. Background

A. Sexual Orientation and Gender Identity

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.”¹² This term includes lesbian, gay, bisexual, and heterosexual orientations.

A person’s sexual orientation is distinct from a person’s gender identity or gender expression. Gender identity refers to:

a person's innate, deeply felt psychological identification as male or female, which may or may not correspond to the person's body or designated sex at birth (meaning what sex was originally listed on a person's birth certificate).¹³

The external manifestation of a person’s gender identity is called gender expression. Gender expression is typically associated with “masculinity,” “femininity,” or gender-variant behavior.¹⁴

Gender expression refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions. Social or cultural norms can vary widely and some characteristics that may be accepted as masculine, feminine or neutral in one culture may not be assessed similarly in another.¹⁵

Transgender is a term for people whose gender identity and/or gender expression and their sex at birth do not match.¹⁶ Transgender people generally seek to make their gender expression match their gender identity, rather than their sex at birth.¹⁷ For instance, a person whose sex at birth is male, but who has an internal sense of being female, will have female gender expression and is considered a transgender woman. Altering one’s birth sex is not a simple or short process, but rather a process that occurs over a long period of time known as “transition.”¹⁸ Steps towards transitioning may include: name and sex change on legal documents, hormone therapy, and medical treatment including surgery.

¹² International Commission of Jurists, *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, (March 2007), available at http://www.yogyakartaprinciples.org/principles_en.htm.

¹³ *Id.*

¹⁴ The Gay & Lesbian Alliance against Defamation (GLAAD), *Media Reference Guide* at 8 (8th Edition, May 2010), available at <http://www.glaad.org/reference>.

¹⁵ Human Rights Campaign, *Sexual Orientation and Gender Identity: Terminology and Definitions*, available at <http://www.hrc.org/resources/entry/sexual-orientation-and-gender-identity-terminology-and-definitions> (last visited 1 Feb 2013).

¹⁶ *See Id.*

¹⁷ *See Id.*

¹⁸ *See Id.*

B. Religious Opposition

Catholicism and Protestantism are significant religious, political, and cultural forces within Belize, with over seventy percent of Belizeans self-identifying as belonging to one of these religions.¹⁹ The religious doctrines accepted by Belizean churches view homosexuality as being contrary to natural law, and thus a sin and a moral deviation. Those who identify as gay, engage in same-sex relations, or whose gender identity differs from their birth sex are believed to have a disorder. Though dissent from these official positions does exist, this deep-seated religious and cultural perspective influences the status and treatment of LGBT people within Belizean society. These religious values reinforce traditionally held cultural mores of strict biologically-based gender roles. Machismo, a complex idea that generally refers to “exaggerated masculinity,”²⁰ is a cultural norm that men are expected to embody. Similarly, women are expected to reflect traditional concepts of femininity and domesticity in their identity and behavior. In addition, non-normative gender identification as well as homosexuality is perceived by many to be a betrayal of Belizean culture, and an unwanted imposition from wealthy, foreign countries.²¹ Homosexuality continues to be a taboo subject and the status of sexual minorities within Belizean society is precarious; there is only one active LGBT organization in the country.

While Belize’s law criminalizing same-sex sexual relations in Belize is a relic of its colonial past, with almost identical language to other laws enacted by British colonists in the Caribbean and throughout the world,²² it currently signifies a rallying point for groups leading homophobic religious and social movements within Belize. Section 53 of the Criminal Code, which criminalizes same-sex relations, is currently up for judicial review by the Supreme Court of Belize.²³ Various church authorities and groups have campaigned in opposition to overturning §53. The Belize Council of Churches has stated that it will take a firm stance against “all changes in the Constitution of Belize that will not promote the sanctity of human sexual relations as established by God.”²⁴ The mainstream Church community has been a formidable interested party in the case, providing legal counsel and significant resources towards the end of upholding §53 as it stands.

¹⁹ See Statistical Institute of Belize, *2010 Housing and Population Census*, available at http://www.statisticsbelize.org.bz/dms20uc/dm_browse.asp?pid=16. (last visited 7 Feb. 2013).

²⁰ Encyclopædia Britannica Online, “machismo”, <http://www.britannica.com/EBchecked/topic/1381820/machismo>. (last visited 7 Feb. 2013).

²¹ See, for example, Press Release, Belize Council of Churches, Christian leaders join GOB against homosexual lawsuit (May 2011), which states that the lawsuit is “heavily influenced by foreign interests who seek to impose a worldview that directly contradicts the supremacy of God as reflected in our laws, challenges our national sovereignty, and threatens our very way of life, not least by targeting our children.”

²² See Aids-Free World, *The Unnatural Connexion: Creating societal conflict through legal tools*, (28 Aug. 2011) at 16, available at http://www.aidsfreeworld.org/Our-Issues/Homophobia/~/_media/Files/Homophobia/The%20Unnatural%20Connexion.pdf.

²³ *Caleb Orozco and UniBAM v. The Attorney General of Belize*, Claim No. 668 of 2010, (Belize Sup. Ct. filed 24 Sept. 2010).

²⁴ See Press Release, Belize Council of Churches, *supra* note 21.

C. Pattern of Generalized Violence and Impunity

Belize suffers from high rates of violence. Its per capita homicide rate is 41.4 homicides per 100,000 inhabitants, the sixth highest rate in the world in 2011.²⁵ Between 2000 and 2011, homicides rates in Belize rose at least five percent during every year except for one.²⁶ Other violent crimes, such as rape, assaults, and violent robberies also occur at a high rate.²⁷ A lack of resources and training impedes the ability of the police to effectively investigate crime and apprehend serious offenders. As a result, a number of crimes against U.S. citizens in Belize remain unresolved. One study found that the conviction rate for murder in Belize is 10 percent.²⁸ Furthermore, there is a widespread lack of confidence in the justice system and a public perception of rampant corruption amongst law enforcement officials, and thus many victims that survive violent attacks do not report them to authorities. The US Department of State has noted that the police force engages in ‘excessive force,’ with the government often withholding investigative or punitive action.²⁹ In 2011, of the 238 formal complaints alleging police misconduct, 39 percent were for police brutality, 18 percent were for harassment, and 17 percent were for abuse of power.³⁰ Within this context of general violence and lack of accountability, vulnerable groups within Belizean society, particularly LGBT individuals, are subject to particularly high levels of violence that compound the problems of impunity and distrust.

²⁵ See Julie Lopez, *Organized Crime and Insecurity in Belize*, INTER-AMERICAN DIALOGUE, (Jan. 2013) at 1 available at <http://www.thedialogue.org/page.cfm?pageID=32&pubID=3205>.

²⁶ See U.S. Dept. of State, *Belize; Country Specific Information*, available at http://travel.state.gov/travel/cis_pa_tw/cis/cis_1055.html.

²⁷ See U.S. Dept. of State, *Country Reports on Human Rights Practices: Belize*, (2011) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186492>

²⁸ See ABA Rule of Law Initiative, *Prosecutorial Reform Index for Belize*, at 53 (March 2011) available at http://www.americanbar.org/advocacy/rule_of_law/publications/assessments.html.

²⁹ See Julie Lopez, *supra* note 25, at 11.

³⁰ See *Id* at 13.

III. Substantive Violations

A. Article 2(1) (Nondiscrimination) and Article 26 (Equality before the Law)

Relevant Law and Jurisprudence

Articles 2(1) and Article 26 of the ICCPR obligate each State party to ensure that all individuals within its jurisdiction enjoy human rights without discrimination and with equal protection under the law.

Article 2(1) states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status.³¹

Article 26 states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status.³²

The principle of non-discrimination, together with the principles of equality before the law and equal protection of the law without any discrimination, constitute the central and guiding principles of human rights.³³ The Covenant's prohibition of discrimination limits States from instituting any distinction, exclusion, restriction or preference that has the *purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise by all persons of all rights and freedoms.³⁴ Thus, Article 2 ensures that every individual within a State's territory and jurisdiction enjoys each right that is enumerated within the ICCPR. Article 2 also requires States to adopt negative measures, specifically refraining from violation of ICCPR rights, as well as positive legislative, judicial, administrative, educative, and other appropriate measures to protect these rights from governmental and private parties. In a similar vein, Article 26 prohibits discrimination in law or in fact in any field regulated and protected by State authorities.³⁵ As

³¹ International Covenant on Civil and Political Rights, (New York Dec. 16, 1966), 999 U.N.T.S. 171 and 1057 U.N.T.S. 407, *entered into force* 23 March 1976. [hereinafter ICCPR].

³² *Id.*

³³ See Human Rights Comm., *General Comment No. 18: Non-Discrimination*, UN Doc. HRI/GEN/1/Rev.1, (11 Nov. 1998) at ¶ 1, *available at* <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

³⁴ See *Id.* at ¶ 7.

³⁵ See *Id.* at ¶ 12.

such, States are obligated to ensure that the content of *all* legislation as well as the enforcement of legislation is not discriminatory.³⁶

In the landmark HRC decision *Toonen v. Australia* in 1994, the Committee interpreted the reference to “sex” in Articles 2(1) and 26 to include sexual orientation, deeming the criminalization of consensual same-sex activity as a violation of the ICCPR.³⁷ This ruling was extended to include any distinctions based upon sexual orientation, which amount to a denial of the right to equality before law.³⁸ Thus, any governmental action or legislation that has the purpose or effect of limiting either the enjoyment of ICCPR rights on the basis of sexual orientation or the right to equal treatment under the law is prohibited, and States are required to enact proactive measures to ensure that the rights of sexual minorities within its jurisdiction are protected.

The prohibition of non-discrimination extends to immigration-related matters.³⁹ Though States may impose conditions for entry, immigrants are entitled to the same ICCPR rights as citizens, including freedom from discrimination on the basis of sexual orientation.⁴⁰ Furthermore, Article 2 obligates State parties to protect the Covenant rights for all persons in their territory or under their control by ensuring that individuals, including sexual minorities, are not extradited, expelled, or otherwise removed if there are substantial grounds for believing that there is a real risk of irreparable harm.⁴¹

Under the Covenant, the government of Belize has a legal obligation to refrain from discriminating on the basis of sexual orientation, in law or in practice, and to implement measures to protect the rights of sexual minorities from non-state actors. In Belize’s replies to the UPR recommendation that the country end its discrimination against same-sex activity between consenting adults, it pointed to protections against discrimination for all members of society⁴² and the guarantees of equality before the law and equal protection under the law⁴³ in its own Constitution. However, Belize has failed to adequately meet its obligations under the ICCPR.

Violations of Articles 2 and 26(1)

Criminalization of Same-Sex Conduct

The Belizean Criminal Code criminalizes private, consensual sex between adult men. Section 53 of the Code describes same-sex sexual relations as an “unnatural crime,” and makes it a criminal

³⁶ *See Id.*

³⁷ *See Toonen v. Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (1994).

³⁸ *See Edward Young v. Australia*, Communication No. 941/200, UN Doc. CCPR/C/79/D/941/2000 (2003).

³⁹ *See Human Rights Comm., General Comment No. 15: The position of aliens under the Covenant*, UN Doc.

HRI/GEN/1/Rev.6, (11 Apr. 1996) at ¶¶ 5-7, available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

⁴⁰ *See Id.* at ¶ 7.

⁴¹ *See Human Rights Comm., General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7)*, UN Doc. HRI/GEN/1/Rev.3, (11 Apr. 1996) at ¶ 9, available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

⁴² *See UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Belize, Addendum, Views on Conclusions, and/or Recommendations, voluntary commitments and replies presented by the State under review*, UN Doc. A/HRC/12/4/Add.1, (4 June 2009) at ¶ 28.

⁴³ *See Id.*

offense to have “carnal intercourse against the order of nature.”⁴⁴ The penalty for violation of §53 is ten years imprisonment.⁴⁵ Though “crimes against the order of nature” could ostensibly include sexual activities between heterosexual couples, this language is widely understood in Belize and throughout the world to target sexual acts between men.⁴⁶ The law violates Arts. 2 and 26 of the ICCPR, as its sole purpose is to single out same-sex sexual relations for criminalization, thereby discriminating on the basis of sexual orientation and violating the principle of equal treatment under the law. It also directly violates the right to privacy.⁴⁷

Regardless of whether §53 is enforced, the law has the effect of perpetuating discrimination and unequal treatment of LGBT individuals in Belize. As will be illustrated throughout this report, the law serves as a pretext for denying sexual minorities a range of rights to which they are entitled under the ICCPR and other human rights conventions and laws. It legitimizes the stigma of sexual minorities within Belize society, who face pervasive societal discrimination in employment, housing, health, the media, immigration, family matters, and daily life.

Failure to prevent hate speech

The policies instituted by the Belizean government, particularly the criminalization of same-sex sexual conduct, have reinforced the general contempt for sexual minorities within Belizean society. State authorities have done nothing to reverse this trend. Currently, there is a constitutional challenge against §53 of the Criminal Code pending with Belize’s Supreme Court.⁴⁸ The case has ignited widespread debate within Belize, and a number of mass media mediums in Belize publish and disseminate hate speech, spread misinformation about homosexuality, and incite discrimination against LGBT persons. For instance, the Belize News published an article titled “Belizeans stand up and say ‘no’ to the homosexual agenda” in which it states that “[i]t has been established that this is an imported agenda – an international agenda – brought in from beyond our national borders.”⁴⁹ *Amandala*, a very widely circulated tabloid newspaper, has printed a number of biased, homophobic articles regarding homosexuality and the effort to overturn §53. The following excerpts are from *Amandala*:

An editorial in the newspaper claimed:

“in reality it is the [homosexual community] against the people of Belize. If their suit succeeds, the people lose; and if it fails, the people win...the people are never wrong and, it is the people who support the law which makes homosexual acts criminal.”⁵⁰

The Editor-in-Chief, Russell Vellos, wrote in an *Amandala* column:

⁴⁴ Belize Criminal Code, 2000 Chapter 101 § 53.

⁴⁵ *See Id.*

⁴⁶ *See Unnatural Connexion*, at 17.

⁴⁷ *See discussion infra* Section D.

⁴⁸ *See generally, Caleb Orozco and UniBAM v. The Attorney General of Belize*, (Belize Sup. Ct. filed 24 Sept. 2010).

⁴⁹ *Belizeans, Stand up and Say ‘No’ to Homosexual Agenda*, THE STAR NEWS, (19 June 2011), available at <http://belizenews.com/thestar/cayostar277.pdf>.

⁵⁰ *Ideas and Opinions - Unibam vs People of Belize*, AMANDALA, (21 Oct. 2011), available at <http://amandala.com.bz/news/ideas-and-opinions-unibam-vs-people-of-belize>.

“this particular column is not for the faint-hearted. I am going to deal with homosexuals, and I’ll use strong language...homosexuals prey on young children, and teenaged boys...I can think of no more obscene, disgusting, evil, wicked and perverted act that one man could do to another...Good Belizeans, don’t just sit there and do nothing. Get up and help fight this evil in our midst. The homosexuals are serious, very serious. We have to be just as serious, very serious, in fighting this scourge of wickedness.”⁵¹

In another column, Vellos wrote:

“I’ve got news for these homos. I won’t budge a millimeter from my stand against them. They can call me anything they like... theirs will still be a nasty, despicable, God-forbidden way of life until the heavens crumble, and even afterward... An individual wrote me a very short note in support of my previous article, and his remark against homosexuals was, “not even my dogs do this!”⁵²

Another article in *Amandala* republished a homophobic and clearly false statement within a church pamphlet:

“They’re after the kids. The UK approved same-sex marriage years ago; now they’re having court battles to lower the ‘age of consent.’ ...This proves that they’re after the kids. Homosexuals cannot reproduce; therefore, they must recruit.”⁵³

Many of the comments posted in the ‘comment sections’ of articles regarding §53 of the Criminal Code are extremely hateful. Examples of these comments include:

First of all lets all be proud as belizean but lets not be proud on those \$#!% they trying to bring to our beloved country, belize it or not they will die one by one if gay rights are being ... believe me they will die just like how jamaica do with them. SO SAY NO TO ALL GAYS AND NO TO UNIBAM LET THEM BURN!!!⁵⁴

no, no, no to goddarned homosexuals. Get scarce or better yet disappear. Zero tolerance to this attitude or actions. I will not state any reason simply NO!⁵⁵

pack dem up and the rest of nasty people and n drop dem out a sea pas the reef.... and let the sharks eat their body parts that they don’t know how to use.”⁵⁶

⁵¹ Russell Vellos, Editorial, *Of This and That*, AMANDALA, (17 Nov. 2011), available at <http://amandala.com.bz/news/of-this-and-that>.

⁵² Russell Vellos, Editorial, *Of This and That*, AMANDALA, (25 Nov. 2011), available at <http://amandala.com.bz/news/of-this-and-that>.

⁵³ Stacey Kelly, *Decriminalizing homosexuality will have dire effects: Churches*, AMANDALA, (25 Nov. 2011), available at <http://amandala.com.bz/news/decriminalizing-homosexuality-will-have-dire-ripple-effects-churches>.

⁵⁴ Posting of Walls to Channel5Belize, <http://edition.channel5belize.com/archives/64205>, (8 Dec. 2011, 14:11 CST).

⁵⁵ Posting of Marco to Channel5Belize, <http://edition.channel5belize.com/archives/63728>, (29 Nov. 2011, 10:17 CST).

⁵⁶ Posting of General to Channel5Belize, <http://edition.channel5belize.com/archives/63396>, (17 Nov. 2011, 10:28 CST).

These articles and comments appear regularly in Belizean media. However, the Belizean government has not taken any measures to curb this incendiary and violent speech. It has failed to embark on any public education or awareness campaigns to promote the full enjoyment of human rights for all people, including for those people targeted because of their sexual orientation or gender identity, as is required by the ICCPR.⁵⁷ Additionally, no government officials have publicly condemned or sought to prevent these hateful comments. In fact, one public official, the Minister of Human Development, Social Transformation and Poverty Alleviation Minister Anthony "Boots" Martinez, stated publicly on television: "my position is that God never placed anything on me for me to look at a man and jump on a man...I'll fight tooth and nail to keep that law."⁵⁸

Immigration Act's exclusion of Sexual Minorities

Section 5(1)(e) of Belize's Immigration Act includes "homosexuals" as "prohibited persons" for immigration purposes.⁵⁹ Sexual minorities that are foreign nationals may be denied entry into Belize or deported after entry. The law is discriminatory on its face as sexual orientation and gender identity may be invoked as the sole reason for prohibiting entry into Belize. The provision also violates the principle of non-refoulement, another key human rights principle relating to immigration.⁶⁰

The law has also been used by immigration officers, who enjoy wide discretionary decision-making power, to intimidate sexual minorities seeking entry into Belize. In one documented incident on November 16th 2011, two women travelling together, Xenia Paz Bardalez of Honduras and Yolanda Pineda Castillo of Mexico, were detained at the Belizean border. Ms. Castillo lost her passport, and thus was attempting to cross with other legitimate legal documents. Noting that the women shared an address and ascertaining that they were not related and were in a relationship, the immigration officials seized their immigration documents and detained them without any expressed reason. During the detention, one of the women was subject to derogatory comments and sexual advances from an officer. The women were not released and given back their documents until they paid an extortion of 10,000 Mexican pesos. One immigration officer, Eneida Morales, asserted that the women were detained because "the Honduran national could not be trusted."⁶¹ Other episodes follow a similar pattern. In 2007 two men travelling together into Belize were arrested, had their property confiscated by law enforcement officials, and were transported to the local police station. Authorities did not provide a reason for the detention, and though the incident was reported to the International Investigation Branch, the government did not take any action.⁶² In a similar incident, a group of transgender Russians were detained upon arrival in Belize because they were dressed in female

⁵⁷ *General Comment No. 31*, *supra* note 8, at ¶ 7.

⁵⁸ Zoe Williams, *Gay Rights: a world of inequality*, THE GUARDIAN, (13 Sept. 2011), available at <http://www.guardian.co.uk/world/2011/sep/13/gay-rights-world-of-inequality>.

⁵⁹ Belize Immigration Act, 2000 Chapter 156, § 5(1)(e).

⁶⁰ See discussion *infra* Section C.

⁶¹ *Women Claim wrongdoing by immigration officers*, (Love FM radio broadcast 8 Dec. 2011), available at www.lovefm.com/ndisplay.php?nid=15209&fromsrch=1.

⁶² Email from Caleb Orozco, President, UniBAM to Marcelo Erbesto Ferreyra, Latin America Coordinator, GISHR (22 Feb. 2008, 8:03 CST) (on file with author).

clothing. Immigration officials claimed that their appearance did not match that of the pictures in their documents, and thus they were deported back to Russia.⁶³

Discrimination by Government Officials

Other governmental officials are also guilty of discriminating against people on the basis of their perceived sexual orientation or gender identity. In one report, an employee of the Land and Surveys Department, who was tasked with processing and marking the land of a landowner, repeatedly subjected the landlord to highly offensive and homophobic epithets, and refused to complete the land survey over the course of a year. The incident was not investigated by governmental authorities and the employee was not reprimanded for his behavior.⁶⁴ Other instances of governmental discrimination, particularly by police officers, are discussed *infra* Sections B and C.

LGBT individuals experience discrimination because of their sexual orientation or gender identity on a daily basis. Section 53 of the Criminal Code institutionalizes homophobia, legitimizing other human rights abuses and creating very dangerous conditions for sexual minorities. Violations are grossly underreported because of the culture of fear and mistrust within the LGBT community towards law enforcement, and the general marginalization of the community within Belize.

B. Article 6 (Right to Life) and Article 7 (Freedom from Cruel, Inhumane or Degrading Treatment)

Relevant Law and Jurisprudence

The HRC has affirmed that the right to life is the supreme right from which no derogation is permitted.⁶⁵ Article 6 states that: “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of...life.”⁶⁶ Article 7 protects both the inherent dignity and the physical and mental integrity of every human being. It provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁶⁷ In addition to refraining from active human rights violations, the State is also required to enact positive measures to ensure that private citizens do not violate these fundamental rights. The HRC notes that parties to the ICCPR must take measures to prevent and punish deprivation of life by enacting and prosecuting under criminal legislation.⁶⁸ This duty includes “closely monitor[ing] allegations of extrajudicial killings,” and ensuring that allegations are “investigated in a prompt and effective manner with a view to eradicating such crimes,

⁶³ See UniBAM, *Cumulative Report on Homophobia in Belize*, (26 Feb. 2009), available at <http://www.asylumlaw.org/countries/index.cfm?fuseaction=showDocuments&countryID=0&&offset=1485>.

⁶⁴ See Email from Caleb Orozco, President, UniBAM to Wilbert Vallejos, Commissioner of Lands and Survey, Ministry of Natural Resources and the Environment, (4 Oct. 2011) (on file with author).

⁶⁵ See Human Rights Comm., *General Comment No. 6: The Right to Life*, UN. Doc. HRI\GEN\1\Rev.1, (30 Apr. 1982) at ¶ 1, available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

⁶⁶ ICCPR, § 6.

⁶⁷ ICCPR, § 7.

⁶⁸ See *Id.*

bringing perpetrators to justice and hence fighting impunity and providing effective remedies to victims.”⁶⁹ Similarly, to ensure freedom from cruel, inhuman, and degrading treatment for every person, the State must implement legislative and administrative protections against actions prohibited by Article 7 of the ICCPR.⁷⁰ In particular, the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment has noted that members of sexual minorities are “disproportionately subjected to torture and other forms of ill-treatment ... and have been subjected to harassment, humiliation and verbal abuse relating to their real or perceived sexual orientation or gender identity and physical abuse, including rape and sexual assault.”⁷¹

In addition, the HRC has asserted Articles 6 and 7 prevent States from exposing individuals to the danger of torture or cruel, inhuman or degrading treatment upon return to another country by way of their extradition, expulsion or refoulement.⁷²

Violations of Articles 6 and 7

Violence Against LGBT Persons

Sexual minorities in Belize live in the midst of hostile societal conditions, and are frequently victims of violent physical attacks and sexual assaults, which are often not reported or investigated by the police.

There are several documented incidents of homophobic violence in Belize. In one reported incident, a transgendered individual was walking in the village of San Jose, in the Orange Walk district of Belize when a group of young men began throwing bottles at her. She reported the assault to the local police, who laughed at her and failed to take the incident seriously.⁷³ A similar reported incident occurred on February 8th, 2012 when Caleb Orozco, a well-known gay rights activist and human rights defender who has been leading the challenge against §53, was assaulted by a group of men when walking down the street. The men shouted anti-gay slurs at him, and threw a beer bottle in his face causing bruises and damage to his teeth. Though he filed a report to the police, no investigations of the incident have been pursued.⁷⁴ Law enforcement officers have also participated in violence against LGBT individuals. In May of 2006, two gay men were beaten and stripped of their clothing in Dolphin Park (a public park) by a police officer. They were transported to the police station, where their clothes were returned to them. One of the victims reported the abuse to the police internal affairs office in Belize City, but there

⁶⁹ Human Rights Comm., *Concluding Observations: Jamaica*, UN Doc. CCPR/C/JAM/CO/3 (2004) at ¶ 16.

⁷⁰ See *General Comment No. 20*, at *supra* note 39, at ¶ 2.

⁷¹ *Report of the Special Rapporteur on the question of torture and other cruel, inhuman, or degrading treatment or punishment*, U.N. Doc. No. A/56/156 (3 July 2001) at ¶ 3, available at <http://www.un.org/documents/ga/docs/56/a56156.pdf>.

⁷² See *General Comment No. 20*, *supra* note 39, at ¶ 7.

⁷³ See Caribbean Vulnerable Communities, *Case Study Report on Transphobia in Belize*, (30 March 2011) at 6.

⁷⁴ See Letter from Ali Jernow, Senior Legal Advisor, Sexual Orientation and Gender Identity Project, International Commission of Jurists to Special Rapporteur on the Situation of Human Rights Defenders, (undated) (on file with author); see also *Gay Rights Activist Physically Attacked*, (Love FM radio broadcast 8 Feb. 2012), available at <http://www.lovetv.com.bz/2012/02/08/gay-rights-activist-physically-attacked>.

has been no follow-up or investigation into the incident.⁷⁵ Other incidents involve LGBT individuals being threatened with murder and chased with machetes after trying to order food at a restaurant,⁷⁶ approached and punched by another patron while sitting at a bar⁷⁷ and even doused with gasoline and lit on fire.⁷⁸ In each of these instances, police dismissed the complaints of these individuals, even laughing and expressing that the victims had brought this treatment on themselves.

LGBT individuals in Belize are also frequently the victims of sexual assault and rape. In 2005, a transgendered individual in Guinea Grass village, in the Orange Walk district of Belize, was raped by a man she knew. She did not report the sexual assault to her local police or tell her family out of fear that she would be disgraced.⁷⁹ In 2010 a transgender woman in Guinea Grass village, in the Orange Walk district of Belize, was raped by an inebriated man wielding a machete. She did not report the sexual assault to her local police or tell her family for fear of shaming herself and her family.⁸⁰

Sexual minorities have also been murdered because of their sexual orientation or gender identity. As governmental officials do not keep a record of whether the victim was killed because of their sexual orientation or gender identity, and media accounts often omit this detail out of respect for families, killings specifically committed because of a victim's sexual orientation or gender identity are grossly underreported. There have been a few visible accounts of such murders. On June 18th, 2012 a prominent Guatemalan doctor was bludgeoned to death in his apartment. It was widely known within the community that he was gay, and had been out with other gay men the evening of his murder.⁸¹ In 2010, a prominent politician was found murdered in his bathroom, with trauma to his head and chest. Again, it was known within the community that he was gay.⁸² Other horrific reports include a gay man that was stabbed, castrated, and set on fire,⁸³ and another whose throat was slit after an evening out with other gay men.⁸⁴ There are several other media accounts of LGBT individuals being murdered.⁸⁵ Less high-profile murders of LGBT

⁷⁵ See Sexual Rights Initiative and UniBAM, *Report on Belize – 5th Round of the Universal Periodic Review*, (May 2009) at ¶ 10, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/BZ/UNIBAM_SRI_BLZ_UPR_S5_2009_UnitedBelizeAdvocacyMovement_theSexualRightsInitiative_JOINT.pdf.

⁷⁶ Telephone Interview by UniBAM with anonymous source, 20 Jan. 2013 (transcript on file with author); see also Email from Caleb Orozco, President, UniBam to Asad Magana, Monitoring and Evaluation Officer, UNDP Belize, et al, (21 Jan. 2013, 16:58 CST) (on file with author).

⁷⁷ Interview by UniBAM with anonymous source, (28 Oct. 2012) (transcript on file with author).

⁷⁸ See *Cumulative Report on Homophobia in Belize*, *supra* note 69.

⁷⁹ See *Case Study Report on Transphobia in Belize*, *supra* note 69.

⁸⁰ See *Id.*

⁸¹ See Guatemalan Doctor murdered, (Channel5Belize television broadcast 18 Jun. 2012), available at <http://edition.channel5belize.com/archives/71829>.

⁸² See Former Secretary General of P.U.P., Carlos Espot, murdered (Channel 5 Belize television broadcast 7 Sept. 2010), available at <http://edition.channel5belize.com/archives/38016>.

⁸³ See Stabbed, castrated, then set on fire in a quiet village, (Channel 5 Belize television broadcast 27 July. 2010), available at <http://edition.channel5belize.com/archives/36167>.

⁸⁴ See Brutal Murder in Orange Walk; Throat Slit & Beaten with Bat, (7 NewsBelize television broadcast 13 Feb. 2009), available at <http://www.7newsbelize.com/sstory.php?nid=13346&frmsrch=1>.

⁸⁵ See, e.g., Cayo Teacher murdered in his home, (Channel 5 Belize television broadcast 14 May 2012), available at <http://edition.channel5belize.com/archives/70381>; See also Carlos Espot murder sent to the Supreme Court, (Channel 5 Belize television broadcast 3 Feb. 2012), available at <http://edition.channel5belize.com/archives/66486>;

individuals often go unresolved due to weak investigative and prosecutorial mechanisms, all but ensuring that the perpetrators of most of these crimes are never brought to justice.

Many victims of these attacks do not seek recourse because of the law criminalizing same-sex activity, as well as the fear of reprisal and general societal hostility towards them. Those that do report these incidents are often ignored by state authorities or ridiculed with more anti-gay hostility. The true extent of violence against LGBT individuals in Belizean society is difficult to ascertain due to the lack of reporting through official government channels.⁸⁶ Therefore, these homophobic incidents against the LGBT population are woefully underreported. These individuals are being denied their right to effective remedies and recourse by Belize because of its failure to investigate these crimes, and hold the perpetrators accountable. Additionally, government has not provided police trainings or instituted policies that would address high incidents of violence against sexual minorities.

Immigration Act's Blanket Prohibition of Sexual Minorities

The Immigration Act's prohibition of LGBT persons entering the country is also problematic in regard to those seeking asylum or refugee status due to persecution in their country of origin. Sexual minorities from many parts of the world have a well-founded fear of torture, inhuman or degrading treatment or punishment, and even death. Refoulement back to country of origin – as Belize's Immigration Act would require – could result in numerous human rights violations, including the prohibition of torture and the right to life.

C. Article 9 (Right to Liberty and Freedom from Arbitrary Detention) and Article 10 (Treatment of Individuals Deprived of Their Liberty)

Relevant Law and Jurisprudence

Article 9 of the ICCPR enumerates the right of every individual to liberty and freedom from arbitrary detention⁸⁷. In addition, the HRC asserts that Article 10, which states that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person,”⁸⁸ is also a fundamental and universally applicable rule.⁸⁹ In accordance with Article 9, State parties must ensure that all detentions and deprivations of liberty result from legitimate suspicion or evidence that a violation of a legal statute has occurred and not in

see also Respected Teacher Killed Inside Home in Corozal, (7 News Belize television broadcast 5 Oct. 2009), available at <http://www.7newsbelize.com/sstory.php?nid=15178&fmsrch=1>; *see also* Dr. Enrique Guerra dead after severely beaten by robbers, (Channel 5 Belize television broadcast 8 June 2011), available at <http://edition.channel5belize.com/archives/55708>.

⁸⁶ *See Country Reports on Human Rights Practices: Belize*, *supra* note 27.

⁸⁷ ICCPR, § 9.

⁸⁸ *Id* at § 10.

⁸⁹ Human Rights Comm., *General Comment No. 21: Replaces general comment 9 concerning humane treatment of persons deprived of liberty*, UN Doc. HRI/GEN/1/Rev.6, (4 Nov. 1992) at ¶ 1, available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

retaliation for exercising rights guaranteed under the ICCPR.⁹⁰ Furthermore, States must implement effective remedies for individuals that claim that they have been deprived of their liberty in violation of the Covenant.⁹¹ Article 10 imposes a positive obligation on States to protect people who are particularly vulnerable in detention facilities, complementing the ban on torture or other cruel, inhuman or degrading treatment contained in Article 7. The right must be respected without regard to distinctions of any kind, including race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status. These principles should form an integral part of the instruction and training of personnel who have authority over persons deprived of their liberty. Due to the fundamental nature of this right, the HRC has noted that it cannot be dependent on the material resources available to the State party.⁹²

Violations of Articles 9 and 10

Arbitrary Detention and Conditions of Detention

While the criminal prohibition of consensual, same-sex remains enforceable, sexual minorities are vulnerable to state authorities using the law as a pretext for infringing on other human rights. In particular, the law has been used to arbitrarily detain individuals based on their sexual orientation or gender identity.

For instance, on the evening of April 30th, 2011 two police officers detained two transgendered patrons at a bar. Immediately upon entering the bar, one of the officers directed derogatory questions towards these individuals such as “are you girls?” and “why are you dressing like that if you are a man?” The police officers physically detained them and, when asked for a reason, answered “because you look suspicious, you confuse me.” During the car ride to the prison, the transgendered individuals were subjected to offensive and humiliating language from the officers, which continued upon arrival at the prison, with one police officer insinuating that these individuals should be murdered and dumped on a nearby highway. Other prison inmates threatened sexual violence against the detainees, and one was forced to expose herself. They were released the next morning, with no charges brought against them, and have not filed charges out of fear of reprisal.⁹³

In another incident, a British transgender individual reported a robbery to the San Ignacio Town Police station. She was told by police officials to bring evidence back to the station. Upon returning, Corporal Sanchez ordered her detained. During her detention, she was subjected to homophobic comments such as “you have brought disease to us...” and “I’ll make a man out of you.” She was locked up for three hours without her diabetic medication, and was only released

⁹⁰ See UN Human Rights Council, *Report of the Working Group on Arbitrary Detention: addendum*, UN Doc. A/HRC/16/47/Add.1, (2 March 2011) available at <http://www.unhcr.org/refworld/docid/4e8d525a2.html>

⁹¹ See Human Rights Comm., *General Comment 8: Right to liberty and security of persons*, UN Doc. CCPR/C/21/Rev.1, (30 June 1982) at ¶ 1, available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

⁹² See Human Rights Comm., *General Comment 21: Replaces general comment 9 concerning humane treatment of persons deprived of liberty*, UN Doc. A/47/40, (10 Apr. 1992), available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

⁹³ Telephone Interview by UniBAM with anonymous source, (30 April 2012) (transcript on file with author).

when another prisoner told officers that she was ill. The police confiscated her passport, which was recovered only after multiple visits to the police station.⁹⁴

Blackmail

Section 53 of the Criminal Code also provides the opportunity for unscrupulous state authorities to blackmail sexual minorities with threats of arrest. For instance, in February of 2011, in the village of Esperanza (Cayo district) four police officers pulled up beside a car that two gay men were driving. The officers kicked the door of car, insulted the men, and demanded that they both pay \$200 to the police officers or be arrested.⁹⁵ Another incident occurred on September 24th, 2008. A police officer demanded that a man pay him \$50 or he would arrest him and his partner.⁹⁶ LGBT persons face a constant threat of being detained for merely existing, a clear violation of the rights to liberty and arbitrary detention.

D. Article 17 (Right to Privacy)

Relevant Law and Jurisprudence

Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with their privacy. The Article further provides that the State must adopt legislative and other measures to give effect to the “prohibition against...unlawful attacks on...honor and reputation”⁹⁷ by both public officials and private individuals. In *Toonen v. Australia*, the HRC found that laws criminalizing same-sex sexual conduct violated the ICCPR’s right to privacy on the basis of sex, stating that “it is undisputed that adult consensual sexual activity in private is covered by the concept of ‘privacy.’”⁹⁸ The HRC also noted that the law was not a reasonable response to moral and public health considerations,⁹⁹ particularly if the law is not enforced and thus “is not necessary [under] the circumstances.”¹⁰⁰

Violations of Article 17

Criminalization of Same-Sex Conduct

Section 53 of the Criminal Code states “[e]very person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years.” The provision has similar language and an identical purpose to §§122 and 123 of the Tasmanian Criminal Code, which the HRC found in violation of the ICCPR in *Toonen v. Australia*. The criminalization of sexual relations between men authorizes Belizean law enforcement officials to investigate intimate details regarding private life and to detain homosexual men if they engage in

⁹⁴ *Report on Belize – 5th Round of the Universal Periodic Review*, *supra* note 69, at ¶ 10.

⁹⁵ Interview by UniBAM with anonymous source, (Feb. 2011) (transcript on file with author).

⁹⁶ *Report on Belize – 5th Round of the Universal Periodic Review*, *supra* note 69, at ¶ 10.

⁹⁷ ICCPR, § 17.

⁹⁸ *Toonen v. Australia*, *supra* note 35, at ¶ 8.2.

⁹⁹ *See Id* at ¶¶ 8.5 – 8.6.

¹⁰⁰ *Id* at ¶ 8.3.

sexual activities that contravene §53. It is an illegitimate interference with private sexual life that is protected under the right to privacy.

E. Article 19 (Freedom of Expression)

Relevant Law and Jurisprudence

Article 19 of the Covenant affirms the rights of free expression and opinion.¹⁰¹ The Committee has stated that this article represents the “foundation stone for every free and democratic society.”¹⁰² The right extends to expression of “information and ideas of all kind, as well as the freedom to ‘seek’ and ‘receive’ them ‘regardless of frontiers’ and in whatever medium, ‘either orally, in writing or in print, in the form of art, or through any other media of his choice.’”¹⁰³ The Committee has used broad language to the effect that freedom of expression embraces every form of idea and opinion capable of transmission to others.¹⁰⁴ Expressions of identity through speech and appearance, including those that indicate sexual orientation or gender identity, fit comfortably within this broad right.

Violations of Article 19

The stigmatization of LGBT people has led to discrimination based on gender identity, dress, bodily characteristics, and other forms of protected expression. On October 1st and 5th, 2009 a 19-year-old transgender student in Campolite (Young Bank) was threatened with expulsion and ultimately dismissed from the Belmopan Baptiste School of Adult Continuing Education because, according to the school, he “acts like a girl,” “dresses effeminately,” and “uses the female bathroom.”¹⁰⁵

F. Article 23 (Right to Family Life)

Relevant Law and Jurisprudence

Article 23 provides that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”¹⁰⁶ The HRC recognizes the existence of various forms of family, and has asserted that family planning policies adopted by the state should not be discriminatory.¹⁰⁷ It has also called upon States to grant the same benefits to non-married

¹⁰¹ See ICCPR, § 19.

¹⁰² See Human Rights Comm., *General Comment No 34: Article 19: Freedom of opinion and expression*, UN Doc. CCPR/C/GC/34, (12 Sept. 2011), at ¶ 2.

¹⁰³ Human Rights Comm., *General Comment 10: Freedom of Expression*, UN Doc. CCPR/C/GC/10, (29 June 1983) at ¶ 2.

¹⁰⁴ See *General Comment No. 34*, *supra* note 87, at ¶ 11.

¹⁰⁵ See Letter from Norman Willacey, Principal of Baptist School of Adult Continuing Education to Jose Garcia (1 Oct. 2009) (on file with author).

¹⁰⁶ See ICCPR, § 23.

¹⁰⁷ See Human Rights Comm., *General Comment 19: Protection of the family, the right to marriage and equality of the spouses*, at UN Doc. CCPR/C/GC/19, (27 July 1990), at ¶ 2, 5.

homosexual couples as are already available to non-married heterosexual couples,¹⁰⁸ and has affirmed in *Young v. Australia*¹⁰⁹ and *X v. Columbia*¹¹⁰ that excluding same-sex partners from certain state-sponsored benefits that opposite-sex partners enjoy is discriminatory.

Violations of Article 23

A corollary to the criminalization of same-sex sexual activity is that the government cannot acknowledge same-sex partnerships (at least between men) without contradicting §53. Thus, as compared to heterosexual relationships, same-sex relationships are systematically unrecognized and devalued under Belizean law. The Married Persons (Protection) Act, which permits legal separation on the grounds of desertion, habitual drunkenness, and cruelty, and outlines the legal guidelines for alimony and custody for the petitioning spouse, offers no protection for common law couples or couples who are not lawfully married, thus excluding same-sex couples.¹¹¹ Furthermore, sexual minorities, and partners of the same sex and their families, are denied a broad range of entitlements that are available to their unmarried, heterosexual counterparts. The Administration of Estates Act governs the transfer of assets upon the death of a person. If a decedent with a partner of the same sex dies intestate, failing to designate beneficiaries in his or her will, the living partner will not receive any part of the estate, regardless of the longevity of the relationship. However, the Act does protect common law husbands and wives who have resided with their partners for five years or more in the same way that it protects lawfully married couples.¹¹² The Social Security Act provides survivor's benefits and funeral grants for spouses and dependants of deceased people. Again, same-sex couples are not eligible to receive these benefits.¹¹³ The Widows and Children Pensions Act¹¹⁴ and the Pensions Act¹¹⁵ limit benefit coverage to traditional family, spouses, and children of public officers. Finally, the Domestic Violence Act, which was adopted to address soaring levels of domestic violence, does not protect victims of domestic violence who are in same-sex relationships.¹¹⁶ The exclusion of same-sex partners from receiving these benefits is discriminatory on the basis of sexual orientation, violating the sacred right to family, and further marginalizing a group that is already vulnerable within Belizean society.

G. Article 24 (Special Protection of Children)

Relevant Law and Jurisprudence

Article 24 recognizes “the right [of every child] to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”¹¹⁷

¹⁰⁸ See *Concluding Observations of the HRC: Japan*, UN Doc. CCPR/C/79/Add.102, (19 Nov. 1998), at ¶ 29.

¹⁰⁹ *Young v. Australia*, *supra* note 36.

¹¹⁰ *X v. Columbia*, Communication No. 1361/2005, U.N. Doc CCPR/C/89/D/1362/2005 (2007).

¹¹¹ See generally, Belize Married Persons (Protection) Act, 2000 Chapter 175.

¹¹² See generally, Belize Administration of Estates Act, 2000 Chapter 197.

¹¹³ See generally, Belize Social Security Act, 2000 Chapter 44.

¹¹⁴ See generally, Belize Widows and Children Pensions Act, 2000 Chapter 32.

¹¹⁵ See generally, Belize Pensions Act, 2000 Chapter 30.

¹¹⁶ See generally, Domestic Violence Act, 2000 Chapter 178.

¹¹⁷ ICCPR, § 24.

Violations of Article 24

LGBT Youth

Discrimination and other human rights abuses against LGBT individuals are particularly troubling when the victim is a child, as they are particularly vulnerable. There are no special protections for LGBT children in Belize. Many of the violations against children occur in school settings, places where they should receive the utmost protection. For instance, one child was suspended from high school for uploading a video (outside of school) on YouTube (a video-sharing website) that expressed support for UniBAM's position in the pending Supreme Court decision. This action clearly violated the right to expression and right to education.¹¹⁸ Similarly, another high school student also reported that he was threatened with expulsion from school authorities because of his sexual orientation.¹¹⁹ In another incident, a six year old child was denied admission to a school based on the sexual orientation of the parents.¹²⁰ This treatment of children is in direct violation of protected rights under the ICCPR.

Family Life

The Families and Children Act (FACA) codifies family law within Belize. None of the provisions within the act acknowledge same-sex relationships. Of particular concern is Part VI of the FACA, which regulates adoptions. Section 133 defines 'adopters' as the persons or spouses that are authorized to adopt a child as their own.¹²¹ Though the law is gender neutral on its face, only married spouses are allowed to file a joint application for adoption. This effectively prohibits same sex couples from adopting a child together, as they cannot marry, and thus only one person in the relationship may adopt the child. Compounding this issue is the Registration of Births and Deaths Act, which requires that each birth is registered with the state.¹²² The law defines the 'parent' as the father and, if the father is absent, defines the parent as the 'mother.' There are no provisions recognizing nontraditional families. Thus, only one person within a same-sex couple may be listed as the child's parent. By failing to formally recognize these families the Belizean government is infringing on the human rights of children within these familial structures. The refusal to recognize and honor children's relationships with their parents causes trauma to children (and parents), and can deprive children of stability and critically important emotional and financial support.¹²³ Furthermore, the lack of formal recognition stigmatizes the children within these families in Belizean society, leaving them vulnerable to further human rights violations. There are practical concerns as well. As is true between same-sex couples generally, a non-adoptive parent cannot make critical judgments, such as medical or educational decisions, on behalf of his or her child.

¹¹⁸ Personal written statement by anonymous source to UniBAM (5 Feb. 2012) (on file with author).

¹¹⁹ See *Cumulative Report on Homophobia in Belize*.

¹²⁰ See *Id.*

¹²¹ See Belize Pensions Act, 2000 Chapter 30, §133.

¹²² See generally, Registration of Births and Deaths Act, 2000 Chapter 157.

¹²³ See Lambda Legal, *Adoption and Parenting*, available at <http://www.lambdalegal.org/issues/adoption-and-parenting>.

IV. Final Observations and Recommendations

As a State Party to the ICCPR, Belize is bound to uphold the rights contained within the Covenant for all of its citizens, regardless of sexual orientation or gender identity. Yet, as illustrated in this report, Belize is currently failing to comply with its obligations under the ICCPR with respect to sexual minorities. In order to comply with the Covenant, Belize must adopt legislative, administrative and judicial measures to ensure protection and promotion of human rights. To that end, the Human Rights Committee should recommend to be Belize that it should:

1. Repeal Section 53 of the Criminal Code (law criminalization same-sex sexual conduct).
2. Take immediate action to end all violence committed against individuals on the basis of their actual or perceived sexual orientation or gender identity. In particular, Belize should introduce a comprehensive system of laws that criminalize hate crimes and provide protections and remedies for vulnerable populations, including LGBT individuals.
3. Take action to end impunity for individuals that violate the human rights of LGBT individuals. Belize should institute comprehensive measures to fully investigate alleged crimes committed because of the sexual orientation or gender identity and, where appropriate, such crimes should be prosecuted and punished.
4. Produce a comprehensive ‘White Paper’ assessing how it will follow through on its legal responsibilities towards LGBT citizens, and making specific commitments regarding the implementation of legislative, administrative, and educative measures that will have the purpose of protecting the LGBT community from violence and discrimination in Belize.
5. Enact legislation prohibiting discrimination on the basis of sexual orientation and gender identity in all realms including employment, housing, education, and access to health services.
6. Provide equality and human rights training, particularly in regards to vulnerable populations including LGBT persons, for governmental officials and law enforcement officers.
7. Embark on public awareness campaigns to educate the public on the necessity of protecting the human rights off all citizens, including sexual minorities.
8. Review and amend current legislation so that individuals in same-sex relationships receive the same public benefits as those in opposite-sex relationships.