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Aruba, Belize Signal Potential Sea Change for Gay Rights in the Caribbean

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A recent parliamentary vote in Aruba and a constitutional court ruling in Belize, both in favor of expanded gay rights, may signal a watershed moment for activists in the Caribbean. On Sep. 8, the Aruban parliament voted to legalize same-sex unions, the first Caribbean jurisdiction to do so. A month prior, on Aug. 10, Belize’s highest court struck down the country’s anti-sodomy law, which criminalized homosexual behavior.

Activists hope that the Belizean case in particular marks a turning point in efforts to overturn anti-sodomy laws—a legacy of the British colonial era—that remain on the books in 10 Caribbean countries that inherited the UK’s legal code upon independence (Noticen, Aug. 29, 2013).

Caleb Orozco, executive director of the United Belize Advocacy Movement (UNIBAM), was the plaintiff in the Belize case. He spoke at the UN last week on the sidelines of the annual meeting of the General Assembly at the invitation of the Free and Equal campaign, a pro-LGBT initiative of the UN Human Rights Office. He said that the verdict “has reverberated throughout the Caribbean and has become a beacon of hope for many.”

Constitutional change in Belize

At issue was section 53 of Belize’s Criminal Code. First promulgated by British colonial rulers, the code criminalized “buggery,” which it defined as “carnal intercourse against the order of nature.” The practice was deemed illegal for both men and women, punishable by 10 years of jail time.

UNIBAM struggled to bring the case to court because Orozco himself had not been arrested under the statute, which is rarely enforced, but finally succeeded in putting the law under the scrutiny of the country’s highest court. Chief Justice Kenneth Benjamin ultimately ruled in the plaintiff’s favor, using as precedent a South African case that determined that “a law which punishes a form of sexual expression for gay men degrades and devalues gay men in our broader society.”

Consequently, the court ruled that the law violated Orozco’s human dignity, privacy, and freedom of expression, as well as his rights to non-discrimination, equality, and equal protection under the law—all values enshrined in Belize’s Constitution. Section 53 now excludes “consensual sexual acts between adults in private.” The court went on to add “sexual orientation” to the Constitution’s non-discrimination clause.

LGBT and human rights activists worldwide praised the outcome. “We are thrilled for our partners at UNIBAM and the entire LGBT movement in Belize,” said Human Rights First’s Shawn Gaylord. “This is the result of years of activism to advance the human rights of LGBT people and this ruling represents a key victory for justice and equality. Let us hope that this step may inspire neighboring Caribbean countries to take action to end the criminalization that only serves to marginalize groups of citizens who simply seek equality and respect.”
However, the victory will not go untested. UNIBAM was ultimately demoted from plaintiff to “interested party” because, the court determined, organizations themselves cannot engage in sexual acts. On the other side of the issue, Catholic, Anglican, and Evangelical church networks were also named as interested parties and have already indicated their intention to appeal.

“We protest this unjust judgment, not for our sake. We protest for the sake of the little ones,” the Belize Prayer Network, an Evangelical network that joined the case as an interested party, said in a statement on its website. “Many little ones will fall into this sin if LGBT promoters push them. And we also protest for the sake of the LGBT promoters themselves. For their sin will be multiplied by every abused child that they push into sodomy.”

As a result of church-led pushback, Orozco, who has received death threats and installed security cameras at his office, was more sober than jubilant in his UN talk. “The government is in the process of creating a new mechanism dubiously called the ‘Church-State Morality Commission,’” he warned. “Should the Morality Commission come into realization, it will not only be the rights of the LGBT community that come under attack—it will be the rights of all Belizeans that the commission deems as immoral.”

**Same-sex marriages in Aruba**

The checkered colonial history of the Caribbean creates wildly divergent legal systems, even among neighboring islands. In Aruba, a constituent country of the Kingdom of the Netherlands, same-sex sexual activity has long been permitted under Dutch law. However, other than same-sex marriages conducted in the Netherlands, same-sex unions were not recognized by the state. That changed with a parliamentary vote on Sep. 8, when a two-and-a-half-year campaign by deputy Desiree de Sousa-Croes, who is openly gay, reached a successful conclusion. The legislature voted 11-5 to grant civil partnerships to same-sex partners.

A coalition of human rights advocacy groups led by the NGO Igualdad Aruba supported de Sousa-Croes’ efforts with an online petition that eventually netted 20,000 signatures—roughly 20% of the population.

“It is so beautiful to have people tell you that you are an example for the rest of the Caribbean,” said de Sousa-Croes. “We are a small island, but this has so much impact on the rest of the Caribbean. Aruba has set the tone, and now the other Caribbean islands can follow.”

The amended civil law now provides benefits such as pensions and medical rights. It puts Aruba at the forefront of independent and quasi-independent Caribbean territories on the issue of LGBT rights. France’s overseas possessions—Martinique, Guadeloupe, Saint Martin, Saint Barthélemy, and French Guiana—recognize same-sex marriage because they follow French law. Likewise, last year’s US Supreme Court ruling subsequently legalized same-sex marriage in Puerto Rico and the US Virgin Islands.

**Next wave**

Emboldened by recent victories, activists are setting their sights on some of the countries with the most entrenched homophobic attitudes. “The feedback from the community is that the win is a win for the region,” said Dane Lewis, executive director of the Jamaica-based LGBT rights lobby group J-FLAG. That sense of shared victory comes from the similarity of legal systems between Belize and its fellow Anglophone Caribbean countries, as well as the ruling’s jurisprudence. Rodje Malcolm, of
Jamaicans for Justice, noted on Twitter in the aftermath of the ruling: “IMPORTANT: #OrozcoCase ruling reminds that ‘buggery laws’ are not ONLY ‘gay issues’ but impact privacy 4 all couples.”

Maurice Tomlinson, a Jamaican lawyer living in Toronto, is the leading legal expert pushing the envelope on the laws still on the books. Last year, he testified before the Caribbean Court of Justice (CCJ) in an attempt to strike down immigration laws in Belize and Trinidad and Tobago, which by statute prevent homosexuals from entering the country. As the bearer of a CARICOM passport from Jamaica and a graduate of the University of the West Indies, Tomlinson argued that the laws violated his right to free movement under Article 45 of the revised Treaty of Chaguaramas, the foundational document of the Caribbean political and economic union.

Ultimately these challenges did not succeed in overturning the laws on the books. Earlier this year, the CCJ ruled that Tomlinson successfully entered both Belize and Trinidad and Tobago on multiple occasions without hindrance. As such, the suit was deemed unnecessary because the laws were, in effect, not enforced.

In the course of legal proceedings, representatives for both Caribbean governments did nevertheless admit that the mere fact of being a homosexual does not make Tomlinson a “genuine, present, and sufficiently serious threat affecting one of the fundamental interests of society,” such that he is not classified as an “undesirable person” under the terms of a 2007 CARICOM agreement on movement within the union. The CCJ conferred and called the laws discriminatory.

Tomlinson’s biggest battle, however, remains his home country. Jamaica is considered among the most dangerous places in the world for openly gay people. Two prominent gay activists were killed in the last two years. “Jamaica is the worst any of us has ever seen,” said Rebecca Schleifer, an international health and human rights consultant.

Tomlinson filed a challenge to the country’s anti-sodomy law, similar to UNIBAM’s challenge to Belize’s law, in February. In July, the Jamaican Supreme Court dealt him a difficult legal hand by allowing nine religious groups to serve as “interested parties” in the case, entitled to make legal arguments. This number exceeds the three religious-based interested parties in the Belize case. In turn, a public defender known to be LGBT friendly was blocked from participating in the case.

“This is truly a David and Goliath situation, requiring me to respond to not only the government’s, but also the religious groups’ arguments,” Tomlinson said after the ruling was handed down. A full hearing is not expected until next year.

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