

REPORT ON PGA'S STRATEGY SESSION ON THE ROLE OF PARLIAMENTARIANS IN PROMOTING NON-DISCRIMINATION BASED ON SEXUAL ORIENTATION & GENDER IDENTITY

On November 29, 2015, Parliamentarians for Global Action (PGA) convened a **Strategy Session on the Role of Parliamentarians in Promoting Non-Discrimination based on Sexual Orientation & Gender Identity** in the sidelines of its Annual Parliamentary Forum 2015 in San Salvador, El Salvador. This year's forum addressed the *Role of Parliamentarians in support of Peace and Security* and was co-organized with the Legislative Assembly of El Salvador.

The Strategy Session on SOGI, held a day before PGA's Annual Forum, brought together Commissioner Tracy Robinson, Rapporteur on the Rights of LGBTI Persons at the Inter-American Commission for Human Rights, Parliamentarians from 17 countries: Argentina, Aruba, Austria, Brazil, Costa Rica, Dominican Republic, El Salvador, European Parliament, Fiji, Ghana, Guatemala, Honduras, Nepal, Sweden, Tanzania, Trinidad & Tobago, and Uruguay respectively; Maria Tallarico from the Latin American and Caribbean regional office of the United Nations Development Programme (UNDP), and six representatives from civil society in Latin America and the Caribbean.

The objectives of the session were:

1. To share best practices and effective strategies among Parliamentarians from different regions of the world, human rights practitioners and NGO representatives to advance non-discrimination based on sexual orientation and gender identity (SOGI); and
2. To review, discuss and provide input to a draft version of a user-friendly, Parliamentary Handbook on Human Rights and SOGI prepared jointly by PGA and UNDP, and expected to be published in early 2016.

To this aim, the Strategy Session on SOGI was structured in two sections allowing for a first informal discussion where participants had three minutes to offer their perspective on opportunities and challenges to equality and non-discrimination in their countries and, where available, were paired with a representative from the country or region.

Dip. Minou Tavárez Mirabal from Dominican Republic & PGA's President moderated the first section. In her welcoming remarks, Dip. Tavárez gave a brief overview of *PGA's Global Parliamentary Campaign against Discrimination on the basis of Sexual Orientation and Gender Identity* and updated participants about the advocacy work begun in 2013 on this field in her country. The drafting of the project of General Law on Non-Discrimination or for Equality of Treatment (Anteproyecto de Ley General Antidiscriminación o de Igualdad de Trato, in Spanish) has just concluded and it will be presented for consultations among all vulnerable communities to ensure the project adequately reflects their demands and needs. After this process, it will be introduced in the Dominican Congress for its review, discussion and subsequent approval (expected: early 2016). The [Santo Domingo Plan of Action](#), adopted in 2013 by PGA Members in the Chamber of Deputies and from Parliaments abroad, encouraged this process.

Dip. Tavárez thanked the presence of all participants and reminded them that although changing entrenched attitudes and behaviors was not an easy task, there is a responsibility as Parliamentarians to guarantee the defense of human rights of all individuals, to find spaces for collaboration with civil society that assist in building trust on both sides, and to stop all physical and emotional violence, and its impunity, as well as discrimination and marginalization against lesbian, gay, bisexual, trans and intersex persons (LGBTI) in their countries.

Colin Robinson, Executive Director of Caiso: making sexual and gender diversity part of Trinidad & Tobago's national identity and member of the Secretariat of CariFLAGS, presented the participants with a

question to a remark on human rights to spark a conversation. He underlined that human rights require fulfillment: “we all have them, but not all of us enjoy them.” Leadership, and particularly, parliamentary leadership are crucial to promote and defend rights of LGBTI persons. Mr. Robinson offered six actions members of Parliament (MPs) can take:

- Engage in dialogue;
- Recognize LGBTI persons in law, policy and custom;
- Include all and treat all equally in protection; repeal punitive and discriminatory provisions;
- Remove barriers to enjoyment of rights;
- Ensure redress/justice for violations; and
- Promote LGBTI rights and their defense.

During the conversation, Sen. Wade Mark, Leader of the Opposition Business in the Senate of Trinidad & Tobago, said that he understands that everyone is entitled to equality based on this principle of law. However, being equal in different situations is a simplification. We are all different, but we can achieve equal results. Maria Tallarico from UNDP said that in reality, LGBTI persons do not enjoy this principle and thus, there is a need to defend and protect it. “We need to promote protective legislation that in turn will impact culture. This is the key role of making laws.”

Mr. Robinson concluded by urging all participants to keep asking and learning about this issue. Please refer to the resource section for his presentation.

Section 1: Sharing experiences from various regions: Parliamentarians and LGBTI civil society reflect on challenges and opportunities

Latin America and the Caribbean

Discussions revealed differences within regions as well as within areas in the same country. While South American countries such as Argentina, Brazil and Uruguay have established legislation to protect the rights of LGBTI persons, in Central America, Guatemala and Honduras have backtracked in equality gains and legislation has become more conservative.

Dip. Cristina Cornejo from El Salvador noted the importance of the recent modification to the Penal Code to increase the sanctions to hate crimes motivated on the basis of race, ethnicity, political views, religion, gender, gender identity and expression, sexual orientation or any other equivalent. “This is an important step forward as it makes evident discrimination.” Now, the question is on how this change is going to be enforced. It is crucial that those in the courts and the judicial system are sensitized on these matters to make this a reality. **Karla Avelar, Director of Comcavis-Trans** and representative of the Discussion Table on LGBTI rights established by the Attorney General’s Office for Defense of Human Rights in El Salvador, noted that this change to the Penal Code was promoted from the transgender community to the benefit of all society. She mentioned that the reform is significant given that violence against LGBTI persons increases daily; at some point it was estimated at 500 cases. Discrimination is a daily occurrence.

In Honduras, Dip. Jorge Cáliz, stated that before the coup d’état in 2009, the Constitution granted equality to all citizens and, for example, marriage was protected as a right without specifying that it had to be between a man and a woman, as it currently is. After the coup, there has been a setback in rights and international commitments have been ignored. A second obstacle to LGBTI persons is their impossibility to inherit property from partners. The media also portrays these communities as responsible for the violence they are subjected.

In Argentina, the debate on this issue originated from civil society and LGBTI persons avoided a direct confrontation with the Church. “It was through telling their stories and testimonies of humiliation and discrimination that the discussion arrived at the Argentinean Congress,” said **Dip. Margarita Stolbizer**. In

2010, Argentina adopted the marriage equality law, which does not specify marriage between heterosexual partners and inscribed children through fertilization. Then, the gender identity law granted the right to live with the identity that is chosen without a judicial process or a medical decision. There is a recent reform regarding hate crimes on the basis of race, gender, or gender identity that reflects a zero tolerance on discrimination and violence in any of its forms. This is not enough though. Exclusion can only be tackled through education, public policies and collaboration with the media.

Dep. Jean Wyllys from Brazil highlighted the need to raise awareness about the multiple forms of discrimination present when a person is Afro-descendant, lives in poverty, and is a woman. Differentiate between specific violence and how it increases based on other categories. There is a growing political organization of the LGBTI community as a result, in part, of soap operas and ads that elevate their public esteem. However, this positive gain faces a strong evangelical fundamentalism that controls the economic and political means. There are projects of law on marriage equality, gender identity, and criminalization of homophobia in the Chamber of Deputies and he will continue fighting to guarantee the rights of these communities.

Speaking from civil society, **Tieneke Sumter, Chair of the LGBT Platform Suriname**, said that in her country, a new law - article 711 - states no one should be discriminated for their sexual orientation. However, partners are not granted any rights from the current social laws. There is a need to enact comprehensive laws and to harmonize these, so that there is clarity. She concluded by questioning what would happen if LGBTI persons stop paying taxes to demonstrate the power that the community has.

John Waters, Co-Chair of the Centro de Orientación e Investigación Integral (COIN/CVC) in Dominican Republic, shared there are two initiatives spearheaded by his organization:

1. A human rights observatory to report on gender-based violence and to collect hard data on the cases of violence. This observatory is composed of grassroots organizations; and
2. An LGBT Tourism Project, in collaboration with the Ministry of Tourism and the private sector, to develop a strategy to attract LGBTI tourists to the country.

Ms. Desirée de-Sousa Croes, MP from Aruba, noted that although Aruba is part of the Kingdom of the Netherlands, the latter cannot force the country to pass laws. Parliament has to adopt them as in any other country. There is absolute acceptance of LGBTI persons in the country and 16 people so far have been registered as trans to get assistance for their passports and other official documents without a judicial sentence and/or medical intervention. On December 10, Aruba will review a Law on Equality and a Law on Non-Discrimination. In March 2016, Ms. De-Sousa Croes will introduce a civil union bill.

Mixair Nolasco, Network of Transgender People in Panamá, noted that governments usually paint a rosy picture about human rights of LGBTI persons in their countries at the Inter-American Commission or the United Nations. To counteract their positions and demonstrate the reality, NGOs have to conduct investigations and collect data. It is key that MPs separate their private life from their public one to serve all of their constituents and also to be aware that rights are not under a specific political party, religious belief or current administration in government. There is also a need for better and more specific handbooks on rights and needs of LGBTI persons.

Dip. Marvin Atencio from Costa Rica shared that there are two projects of law in the Legislative Assembly: a Law of Cohabitation, and a reform to the Family Code to allow marriage equality. He said that the experience of Argentina was very helpful and he would take some of the strategies to review and discuss these laws in his Assembly. Lastly, civil society is introducing a law on the recognition of identity in the upcoming weeks.

Africa

Ms. Ursula Owusu-Ekufu, MP from Ghana, stated that the country criminalizes homosexuality and discussing this issue is not relevant for society. “Ghana is an ultraconservative society.” There is a huge leap to think about a same-sex couple exhibiting their affection in public. Many groups face discrimination and if there is a topic in which all Ghanaians unite, is in preserving the statute on criminalization of same-sex relations. The best approach to address this issue in Ghana is from a human rights approach.

Ms. Pindi Chana, MP from Tanzania & PGA’s Chair of International Council, said that Tanzania is fully supportive and committed to human rights and non-discrimination and is signatory to several human rights international treaties. There is no marriage equality law due to tradition and strong cultural beliefs. “We still need to learn from other countries.” The law does not categorically rule against homosexuality, but it is silent.

Asia

Mr. Prem Singh, MP from Fiji, expressed that all individuals are granted the same rights in the Constitution and no specific mention to LGBTI persons has been incorporated in their laws. Non-discrimination legislation relies heavily in laws from other countries.

Mr. Ramesh Lekhak, MP from Nepal, shared his experience in the recent adoption of a new Constitution that incorporates this topic: a) citizenship allowing any Nepalese citizen regarding of gender identity to obtain official documentation; and b) fundamental rights enshrined in the Constitution for sexual and gender minorities, guaranteeing non-discrimination. Mr. Lekhak highlighted the importance of respecting gender identity and its impact in building a more tolerant and inclusive Nepalese citizenry.

Interactive discussion

Dip. Berta Sanseverino from Uruguay highlighted that in her country, the society has been building an equality that is coveted and highly valued and recognizes that is fundamental to enact positive/affirmative measures and actions. Civil society has been a key partner and who has been promoting all these changes. However, lately, there have been cases where judges and doctors have opted for conscientious objection when faced with marrying a same-sex couple or practicing an abortion. These are a clear and worrying setbacks.

Dip. Ronny Monge from Costa Rica mentioned that we are all human beings, but the reality is that these rights are not applied to everyone equally. He recognized that if Costa Rica has a debt is towards the LGBTI community. LGBTI persons continue to be marginalized even if some rights, such as property rights, have been granted.

Dip. Edgar Herrera from Guatemala requested that the rest of the countries in the Central American region pull Guatemala towards more progressive policies since it is the most conservative society in the region. The religion has an enormous impact in the society.

From the European perspective, **Ms. Margareta Cederfelt, MP from Sweden & PGA’s Treasurer**, noted that laws in her country have advanced much further. The country has enacted marriage equality and adoption bills and individuals have the right to change genders. **Ms. Barbara Lochbihler, Member of the European Parliament**, shared that she has been trying to table a resolution on discrimination against LGBTI persons.

Lastly, **Sen. Wade Mark from Trinidad and Tobago** recognized that even in the conservative Caribbean region, the decision of the US Supreme Court of Justice on marriage equality would eventually trickle down to more conservative countries in Latin America and the Caribbean. He encouraged Mr. Robinson to bring LGBTI issues to the attention of the Joint Committee on Equality, Human Rights and Diversity of the country’s Parliament.

Section 2: Consultation on Draft Parliamentary Handbook on Human Rights, Sexual Orientation and Gender Identity

In the second section, Francisco Berreta, PGA's Non-Discrimination Campaign Advisor, responsible for drafting the handbook, provided an overview of the document and its purpose as an introduction to the discussion.

Subsequently, **Commissioner Tracy Robinson, Rapporteur on the Rights of LGBTI Persons at the Inter-American Commission for Human Rights**, facilitated the discussion on a draft version of the Parliamentary Handbook on Human Rights and SOGI inquiring biggest challenges in advancing LGBTI rights from both NGOs and Parliamentarians' perspective, entry points that have proven successful to addressing LGBTI rights in Parliament, sections of the draft that were more and less useful to Parliamentarians, and strategies used within regions that can be offered as guidance to neighboring countries.

Main points discussed:

- Importance of education and continuous sensitization of Parliamentarians on these topics: sexual orientation, gender identity, gender expression, and bodily diversity;
- The leadership role that an MP plays is key to this agenda. It is not only through non-discrimination that behaviors are changed, but more importantly through open, public and positive actions and statements;
- Seeking and maintaining alliances with key stakeholders, including other sides of the political structure and representatives of civil society, is fundamental to advancing human rights of all individuals;
- Create awareness around the multiple forms of discrimination and invisibility of certain communities. Afro-descendants, people living in poverty, and trans and intersex persons are subjected to an increased level of discrimination and violence;
- Functionality versus principled approach in human rights: should MPs choose to legislate on SOGI based on what they may gain (recognition, more votes, etc.) or should they do so on the basis of promoting human rights? Always frame conversations within international obligations and the commitment to domesticate/harmonize at the national level.
- LGBTI persons have to be at the discussion table to set accountability mechanisms as well as the appropriate language to name and identify needs and challenges.
- Significance of presenting positive examples in conservative regions (for example, cases in Bahamas, St. Lucia and Dominica in the Caribbean).
- Being mindful that some topics are polarizing and thus, "unpacking" the debate is helpful, i.e. take issues that have a broader support/impact in society.

PGA is very grateful for the interesting and active discussion of all participants as well as their invaluable input and contributions to strengthen this first draft of a Parliamentary Handbook on Human Rights, Sexual Orientation and Gender Identity.

The Parliamentary Handbook on Human Rights, Sexual Orientation and Gender Identity, a joint initiative of UNDP and PGA, will be published and widely circulated after all contributions and revisions have been made; the expected date is mid-2016.

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PGA would also like to thank UNDP for facilitating the participation of LGBTI civil society representatives in this consultation.