

AMERICAN BAR ASSOCIATION
SECTION OF INTERNATIONAL LAW
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association recognizes that lesbian, gay, bisexual
2 and transgender (LGBT) people have a human right to be free from discrimination,
3 threats and violence based on their LGBT status and condemns all laws, regulations and
4 rules or practices that discriminate on the basis that an individual is a LGBT person;

5

6 FURTHER RESOLVED, That the American Bar Association urges the governments of
7 countries where such discriminatory laws, regulations, and practices exist to repeal them
8 with all deliberate speed and ensure the safety and equal protection under the law of all
9 LGBT people;

10

11 FURTHER RESOLVED, That the American Bar Association urges other bar
12 associations and attorneys in jurisdictions where there are such discriminatory laws or
13 incidents of targeting of LGBT people to work to defend victims of anti-LGBT
14 discrimination or conduct, and to recognize and support their colleagues who take these
15 cases as human rights advocates; and

16

17 FURTHER RESOLVED, That the American Bar Association urges the United States
18 Government, through bilateral and multilateral channels, to work to end discrimination
19 against LGBT people and to ensure that the rights of LGBT people receive equal
20 protection under the law.

REPORT

The American Bar Association (“ABA”) has a long history of actively opposing and combatting discrimination on the basis of natural status – race, gender, national origin, disability, age, and sexual orientation. The ABA has been a leader in opposing and eradicating bigotry and prejudice against LGBT people. It has adopted policies urging the repeal of all laws that criminalize private, non-commercial sexual conduct between consenting adults (1973); condemning hate crimes, including those based on sexual orientation, and urging vigorous prosecution of the perpetrators of such crimes (1987), among other things.

Although major advances have been made in recent years, and especially in 2013, in legal protections and rights afforded to LGBT People, *i.e.*, ending discrimination by the U.S. Government, as a result of *United States v. Windsor*, passage of laws or other steps enabling same-sex marriage in 17 US states and the District of Columbia, ending of discrimination against LGBT People from serving in the US Armed Forces, legalization of same-sex marriage in many European countries (Belgium, England and Wales, Denmark, France, Iceland, the Netherlands, Norway, Portugal, Spain, Sweden), Argentina, Canada, New Zealand, South Africa, Uruguay, and parts of Mexico and the United States, the same is not true in many other parts of the world.

A Human Rights Issue

Protecting the rights of LGBT People around the world is first and foremost an issue of human rights. These rights are articulated in fundamental documents to which almost all nations of the Earth subscribe and that set forth rights belonging to all, regardless of race, national origin, language, gender, or sexual orientation. They are the heritage of all people on the planet.

A sampling of the relevant texts follows.

Universal Declaration of Human Rights

The **Preamble** to the Universal Declaration of Human Rights¹ states (the “Declaration”):

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

*“Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and **freedom from fear** and want has been proclaimed as the highest aspiration of the common people, [...],*

¹ 1 U.N.T.S. XVI (1945).

114B

“Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

“Whereas Member States have pledged themselves to achieve...the promotion of universal respect for and observance of human rights and fundamental freedoms,

[...]” (emphasis added)

Article 1 of the Declaration provides:

*“All human beings are born **free and equal in dignity and rights.** [...]”* (emphasis added)

Article 2 of the Declaration provides:

*“Everyone is entitled to all the rights and freedoms set forth in this Declaration, **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.** [...]”* (emphasis added)

Article 3 of the Declaration provides:

*“Everyone has the right to **life, liberty and security** of person.”* (emphasis added).

Article 5 of the Declaration provides:

*“No one shall be subjected to **torture or to cruel, inhuman or degrading treatment or punishment**”* (emphasis added).

Article 6 of the Declaration provides:

*“Everyone has the right to **recognition** everywhere as a **person before the law.**”*

Article 7 of the Declaration provides:

*“All are **equal** before the law and are entitled **without any discrimination** to **equal protection** of the law. All are entitled to **equal protection** against any discrimination in violation of this Declaration and against **any incitement to such discrimination.**”*

Article 8 of the Declaration provides:

*“Everyone has the right to an **effective remedy** ... for acts violating the fundamental rights granted him by the constitution or by law.”* (emphasis added)

Article 12 of the Declaration provides:

*“No one shall be subjected to arbitrary interference with his **privacy, family, home or correspondence**, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”*

Article 20 of the Declaration provides:

*“(1) Everyone has the right to freedom of peaceful assembly **and association**.”* (emphasis added)

Additional international conventions articulating basic human rights and supporting the view that protection of the rights of LGBT People is a fundamental human right are set forth below.²

² *African Charter on Human and Peoples’ Rights (the “Banjul Charter”)*, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

The Preamble to the Banjul Charter refers specifically to the Charter of the Organization of African Unity, which stipulates that *“freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples.”*

Article 2 provides: *“Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without **distinction of any kind** such as race, ethnic group, color, **sex**, language, religion, political or any other opinion, national and social origin, fortune, birth **or other status**”* (emphasis added).

Article 3 provides: *“1. Every individual shall be equal before the law.*

*2. Every individual shall be entitled to **equal protection of the law**.”* (emphasis added)

Article 6 provides: *“Every individual shall have the right to liberty and to the **security of his person**. [...]”* (emphasis added)

International Covenant on Civil and Political Rights (“ICCPR”), 999 U.N.T.S. 171 (December 8, 1966) (available at: <http://treaties.un.org>).

The Preamble to the ICCPR specifically refers to *“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family”* as being *“the foundation of freedom, justice and peace in the world.”*

Article 3 of the ICCPR provides:

“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”

American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S., entered into force July 18, 1978.

The Preamble states, *inter alia*: *“Recognizing that the essential rights of man are not derived from one’s being a national of a certain state, but are **based on attributes of the human personality** [...]”* (emphasis added)

Article 1., “Obligation to Respect Rights”, provides: *“1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms without any discrimination for reasons of race, color, **sex**, language, religion, political or other opinion, national or social origin, economic status, birth, **or any other social condition**.”* (emphasis added)

Article 24, “Eight to Equal Protection”, provides: *“All persons are equal before the law. Consequently, they are entitled, **without discrimination**, to equal protection of the law”* (emphasis added)

114B

In addition to the basic international covenants articulating the fundamental right to protection against discrimination on grounds of status, other sources of international law relevant to this issue include the International Covenant on Economic, Social and Cultural Rights and the 1979 Convention on the Elimination of all Forms of Discrimination Against Women³, the International Covenant on Economic, Social and Cultural Rights⁴, and the Draft Policy Paper on Sexual and Gender Based Crimes of the International Criminal Court (February 2014)⁵. These sources make it clear that discrimination against LGBT People is viewed as a form of impermissible discrimination and denial of human dignity and equality before the law and as a violation of a fundamental human right under generally accepted norms of international human rights law and potentially a crime against humanity.

The Problem

According to a report of the International Lesbian Gay Bisexual Trans and Intersex Association (“ILGA”), in 2013 76 countries made homosexual acts illegal⁶; recent

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), 213 U.N.T.S., 222, entered into force Sept 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11, which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998, respectively.

Article 14, “Prohibition of Discrimination”, provides: “*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.*” (emphasis added)

³ 1249 U.N.T.S. 13 (December 18, 1979) (available at: <http://treaties.un.org>)

⁴ 993 U.N.T.S. 3 (December 16, 1966) (available at: <http://treaties.un.org>)

⁵ Paragraph 20 of the Draft Policy Paper states, among other things:

“The inclusion of article 21(3) in the Statute [of the ICC] is particularly important as it mandates that the application and interpretation of the Statute be consistent with *internationally recognized human rights* and be without any adverse distinction founded, among others, on gender, or generally ‘*other status*’. The Office [of the Prosecutor] will take into account *the evolution of internationally recognized human rights*. This provision requires the Office [...] to

- [...]
- consider not only acts of violence and discrimination based on sex, but *also those related to socially constructed gender roles*;
- apply an understanding of the intersection of factors such as sex, gender, race, colour, class, age, ethnicity, nationality, disability, other identities and factors which may give rise to multiple forms of discrimination and social inequalities; [...]” (emphasis added)

The last bullet point *supra* specifically refers, in footnote n°16, to the “efforts of the UN Human Rights Council and the Office of the High Commissioner for Human Rights (OHCHR) *to put an end to violence and discrimination on the basis of sexual orientation and gender identity*: The Free & Equal Initiative of the OHCHR at <https://www.unfe.org/> and statement of 26 September 2013 by the High Commissioner for Human Rights Navanethem Pillay and several world leaders to end violence and discrimination *against lesbian, gay, bisexual and transgender (LGBT) persons* at <https://www.unfe.org/en/actions/ministerial-meeting>. (emphasis added)

⁶ Lucas Paoli Itaborahy and Zhu, Jingshu, “State-Sponsored Homophobia: A world survey of laws: Criminalisation, protection, and recognition of same-sex love.” International Lesbian, Gay, Bisexual, Trans and Intersex Association, May 2013, at 22. Available at http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf.

developments have added India to that list⁷; and homosexual acts are unofficially proscribed in Iraq and numerous other jurisdictions.⁸ Those countries retain the laws regarding the prohibition of homosexuality or homosexual acts, with penalties ranging from jail time and fines to life imprisonment with hard labor or capital punishment.

Although some of the laws involved may be an unfortunate legacy of colonial times, more recently new laws and legal developments targeting rights to expression and association as well as conduct have been considered or implemented.

The following is a list, by region, of such countries where homosexual acts or identity are prohibited, for members of at least one gender:

Africa/Indian Ocean area:

Algeria⁹, Angola¹⁰, Botswana¹¹, Burundi¹², Cameroon¹³, Comoros¹⁴, Egypt¹⁵, Eritrea¹⁶, Ethiopia¹⁷, Gambia¹⁸, Ghana¹⁹, Guinea²⁰, Kenya²¹, Lesotho²², Liberia²³, Libya²⁴, Malawi²⁵, Mauritania²⁶, Mauritius²⁷, Morocco²⁸, Mozambique²⁹, Namibia³⁰, Nigeria³¹, São Tomé and Príncipe³², Senegal³³, The Seychelles³⁴, Sierra Leone³⁵, Somalia³⁶, South

⁷ “India Bans Gay Sex: Judgment in Full.” Wall Street Journal, 11 December 2013. Available at <http://blogs.wsj.com/indiarealtime/2013/12/11/india-bans-gay-sex-judgement-in-full/>.

⁸ Itaborahy and Zhu, *supra* n.8, at 22.

⁹ Art. 338, Algeria Penal Code, Ordinance 66-156 of June 8, 1966.

¹⁰ Angola: Penal Code of September 16, 1886, as amended in 1954.

¹¹ Botswana: Penal Code, Chapter 8:01, §§ 164-165.

¹² Burundi: Law No. 1/05 of 22 April 2009 concerning the revision of the Penal Code.

¹³ Cameroon: Penal Code of 1965 and 1967, § 347, as amended in 1972.

¹⁴ Art. 318, Penal Code of the Federal Islamic Republic of Comoros.

¹⁵ See Law 10/1961 (to combat prostitution); Penal Code art. 98w (contempt for religion); Penal Code art. 278 (shameless public acts).

¹⁶ Arts. 600, 105, Penal Code of 1957.

¹⁷ Arts. 629, 630, 106, Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004.

¹⁸ Art. 144, Gambian Criminal Code of 1965, as amended in 2005.

¹⁹ Ghana Criminal Code, 1960 (Act 29), as amended in 2003.

²⁰ Art. 325, Penal Code of 1998.

²¹ Cap. 63 Penal Code, §§ 162, 163, 165, as amended by Act No. 5 of 2003.

²² Itaborahy and Zhu, *supra* n.8, at 50.

²³ Liberian Penal Law, § 14.74, 1976 Revised Liberian Statutes.

²⁴ Art. 407, Libyan Penal Code of 1953.

²⁵ Malawi Penal Code Cap. 7:01, Laws of Malawi, § 153.

²⁶ Art. 308, Mauritania Penal Code of 1984.

²⁷ Mauritius Criminal Code of 1838, § 250.

²⁸ Art. 489, Morocco Penal Code of November 26, 1962.

²⁹ Arts. 70, 71, Mozambique Penal Code of September 16, 1886, as amended in 1954.

³⁰ Itaborahy and Zhu, *supra* n.8, at 54.

³¹ Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990, §§ 214, 215, 217.

³² Arts. 70, 71, Penal Code of September 16, 1886, as amended in 1954.

³³ Art. 319:3, Penal Code of 1965.

³⁴ Seychelles Criminal Code of 1955, § 151.

³⁵ Offences against the Person Act 1861, § 61.

³⁶ Arts. 409-410, Penal Code, Legislative Decree No. 5/1962.

114B

Sudan³⁷, Sudan³⁸, Swaziland³⁹, Tanzania⁴⁰, Togo⁴¹, Tunisia⁴², Uganda⁴³, Zambia⁴⁴, Zimbabwe⁴⁵.

The Americas and Caribbean:

Antigua and Barbuda⁴⁶, Barbados⁴⁷, Belize⁴⁸, Dominica⁴⁹, Grenada⁵⁰, Guyana⁵¹, Jamaica⁵², Saint Kitts and Nevis⁵³, Saint Lucia⁵⁴, Saint Vincent and the Grenadines⁵⁵, Trinidad and Tobago⁵⁶

Asia/Middle East:

Afghanistan⁵⁷, Bangladesh⁵⁸, Bhutan⁵⁹, Brunei⁶⁰, Gaza/Palestinian Territories⁶¹, India⁶², Iran⁶³, Kuwait⁶⁴, Lebanon⁶⁵, Malaysia⁶⁶, Maldives⁶⁷, Myanmar⁶⁸, Oman⁶⁹, Pakistan⁷⁰, Qatar⁷¹, Saudi Arabia⁷², Singapore⁷³, Sri Lanka⁷⁴, Syria⁷⁵, Turkmenistan⁷⁶, United Arab Emirates⁷⁷, Uzbekistan⁷⁸, Yemen⁷⁹.

³⁷ Laws of the New Sudan: The Penal Code Act, 2003, at § 318.

³⁸ Sudan Penal Code 1991 (Act No. 8 1991), § 148.

³⁹ Itaborahy and Zhu, *supra n.8*, at 59.

⁴⁰ Tanzania Penal Code of 1945, § 154, as amended by the Sexual Offences Special Provisions Act, 1998.

⁴¹ Art. 88, Togo Penal Code of 13 August 1980.

⁴² Art. 230, Tunisia Penal Code of 1913.

⁴³ Uganda Penal Code Act of 1950 (Chapter 120) (as amended), §§ 145, 146, 148. *See also* Anti-Homosexuality Bill 2009, *supra n.1*, which would add the death penalty for homosexual acts.

⁴⁴ Zambia Penal Code Act, 1995 Edition, §§ 155, 156, 158.

⁴⁵ Zimbabwe Criminal Law (Codification and Reform) Act (Effective July 8, 2006), § 73.

⁴⁶ Sexual Offences Act of 1995 (Act No. 9).

⁴⁷ Sexual Offences Act 1992, Chapter 154.

⁴⁸ Criminal Code of Belize, § 53, as revised in 2000.

⁴⁹ Sexual Offences Act 1998, § 14, § 16.

⁵⁰ Art. 431, Criminal Code of 1987, as amended in 1993.

⁵¹ Criminal Law (Offences) Act, §§ 352-354.

⁵² Arts. 76-79, The Offences Against the Person Act.

⁵³ Offences Against the Person Act, The Revised Laws of St. Christopher, Nevis and Anguilla (1964).

⁵⁴ Criminal Code, No. 9 of 2004, §§ 132-133.

⁵⁵ Criminal Code, 1990 Edition, § 146, § 148.

⁵⁶ Sexual Offences Act 1986, Consolidated Version 2000, § 13, § 16.

⁵⁷ Art. 427, Afghanistan Penal Code of 1976.

⁵⁸ Penal Code, 1860 (Act XLV of 1860), § 377.

⁵⁹ Penal Code 2004, Chapter 14, §§ 213-214; Chapter 2, § 3.

⁶⁰ Penal Code, Chapter 22, § 377, as revised in 2001.

⁶¹ British Mandate Criminal Code Ordinance, No. 74 of 1936, § 152(2).

⁶² Indian Penal Code, § 377.

⁶³ Islamic Penal Code of Iran of 1991, various provisions of Part 2, Chapters 1-2, and Part 3.

⁶⁴ Art. 193, Penal Code, Law No. 16 of June 2, 1960, as amended in 1976.

⁶⁵ Art. 534, Penal Code of 1943.

⁶⁶ Penal Code, Consolidated Version 1998, § 377(a-d).

⁶⁷ Itaborahy and Zhu, *supra n.8*, at 74 (noting that uncodified Islamic Sharia law regulates sexual conduct).

⁶⁸ Penal Code, Act 45/1860, Revised Edition, § 377.

⁶⁹ Arts. 33 and 223, Omani Penal Code of 1974.

⁷⁰ Penal Code (Act XLV of 1860), § 377.

⁷¹ The Penal Code (Law No. (II) of 2004.

⁷² Itaborahy and Zhu, *supra n.8*, at 75 (noting that Saudi Arabia applies strict Islamic Sharia Law).

⁷³ Penal Code, Chapter 22, § 377A (Revised Edition 2008).

⁷⁴ Art. 365, Penal Code, as amended by the Penal Code Act, No. 22, of 1995.

Europe:

Turkish Republic of Northern Cyprus (unrecognized state)⁸⁰.

Russia⁸¹

Oceania:

Cook Islands (New Zealand Associate)⁸², Kiribati⁸³, Nauru⁸⁴, Palau⁸⁵, Papua New Guinea⁸⁶, Samoa⁸⁷, Solomon Islands⁸⁸, Tonga⁸⁹, Tuvalu⁹⁰

Conclusion

The rights of LGBT people are, and must be treated as, basic human rights deserving of the same sort of dignity, respect, and enforcement as any other human right defined, for example, in the Universal Declaration of Human Rights.

Secretary of State Hillary Clinton, in June 2010, went on record, saying: “Gay rights are human rights, and human rights are gay rights, once and for all.”⁹¹

The purpose of the proposed Resolution is to put the American Bar Association on record as recognizing such rights as basic human rights and opposing such laws, regulations, customs, and practices that proscribe these rights, and urging an end to them. It would also put the Association on record, perhaps for the first time, as supporting the rights of LGBT people all over the world to live securely, safely, without fear and able to exercise

⁷⁵ Art. 520, Penal Code of 1949.

⁷⁶ Art. 135, Criminal Code of 1997.

⁷⁷ Itaborahy and Zhu, *supra* n.8, at 78 (noting that all sexual acts outside of heterosexual marriage are illegal, and that different laws apply in various Emirates states).

⁷⁸ Art. 120, Criminal Code of 1994.

⁷⁹ Arts. 264, 268, Penal Code 1994.

⁸⁰ Arts. 171, 173, Criminal Code, Chapter 154.

⁸¹ The Russian Federation adopted a law, just prior to the Olympic Games staged there this year, outlawing “gay propaganda”. We do not have a citation for this law. Technically this law does not fall within the purview of this Recommendation and Report, because it does not outlaw or criminalize same-sex relations. But by outlawing “propaganda” for “non-traditional” relationships, it clearly aims at stigmatizing LGBT People.

⁸² Crimes Act 1969, §§ 154-155.

⁸³ Penal Code (Cap 67), §§ 153-155, Revised Edition 1977.

⁸⁴ Criminal Code of Queensland in its application to Nauru on 1 July 1921, §§ 208-209, 211.

⁸⁵ Palau National Code; Penal Code, § 2803.

⁸⁶ Criminal Code 1974, §§ 210, 212, as amended in 2002.

⁸⁷ Crimes Ordinance 1961, Consolidated Acts of Samoa 2007-2008, § 58(D-E).

⁸⁸ Penal Code (Revised Edition 1996), §§ 160-162.

⁸⁹ Laws of Tonga, Criminal Offences (Cap 18), 1988 Edition, §§ 136, 139, 140, 142.

⁹⁰ Laws of Tuvalu, Penal Code (Cap 8), Revised Edition 1978, §§ 153-155.

⁹¹ As stated in a U.S. Department of State Bulletin, “*Diplomacy in Action*” (December 6, 2011): “U.S. leadership in advancing human rights for LGBT people is consistent with the Obama Administration’s policy of principled engagement with the world and our commitment to uphold universal standards that apply to everyone. By supporting the inherent dignity of each person we help to foster a just world for all people and we lead by example, enhancing U.S. strategic interests as we advance our values.”

114B

the rights, privileges, and immunities of any other citizen without regard to their sexual orientation or gender identity. It also urges the US Government to take steps through diplomatic channels to support such rights.

Respectfully Submitted

Gabrielle M. Buckley, Chair
Section of International Law

Myles V. Lynk, Chair
Section of Individual Rights and Responsibilities

James J.S. Holmes, Chair
Commission on Sexual Orientation and Gender Identity

GENERAL INFORMATION FORM

Submitting Entities: Section of International Law, Section of Individual Rights & Responsibilities (“IRR”), ABA Sexual Orientation and Gender Identity Commission (“SOGI”)

Submitted By: Section of International Law

1. Summary of Resolution(s). The proposed Resolution is to put the American Bar Association on record as recognizing the rights of LGBT people as basic human rights and opposing laws, regulations, customs, and practices that discriminate against them, because of their sexual orientation and urging an end to them. It would also put the Association on record as supporting the right of LGBT people to live securely, safely, without fear, and able to exercise the rights, privileges, and immunities of any other citizen without regard to their sexual orientation. It urges peer associations of lawyers and individual colleagues at the Bar to help LGBT people vindicate their rights through legal redress and support those of their colleagues at the Bar that do so. It also urges the US Government to take steps through diplomatic channels to support such rights.
2. Approval by Submitting Entities. The Council of the Section of International Law approved this recommendation and resolution at its Meeting on April 5, 2014; the Council of the Section of Individual Rights and Responsibilities approved this recommendation and resolution at its Meeting held April 26, 2014; the ABA Center for Human Rights is due to meet and vote on its support for this recommendation and resolution in May 2014; the Sexual Orientation and Gender Identity Commission is expected to vote to support this recommendation and resolution on April 10, 2014.
3. Has this or a similar resolution been submitted to the House or Board previously? No
4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? Existing Association policies regarding non-discrimination on the basis of sexual orientation would be strengthened by this recommendation. Among them are the overwhelming approval by the House of Delegates in February 1989 of a policy urging the enactment by federal, state, and local governments of legislation prohibiting discrimination on the basis of sexual orientation; of a policy in 1973 urging repeal of all laws criminalizing private, non-commercial sexual conduct between consenting adults; of a policy in 1987 condemning hate crimes, including those based on sexual orientation, and urging vigorous prosecution of the perpetrators of such crimes. This Association has also taken concrete steps in recent years to reach out to like associations and colleagues at the Bar to support furtherance and extension of respect for human rights and dignity

114B

around the world and application of the basic human rights and freedoms set forth in the Universal Declaration of Human Rights. As the foremost association speaking for the organized Bar in the United States, the motto of which is “Defending Liberty, Pursuing Justice”, it is appropriate for this Association to take a stance and go on record as supporting the human rights of LGBT people around the world as a basic human right.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? NA
6. Status of Legislation. (If applicable) NA
7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. If this recommendation and resolution are approved by the House of Delegates, the sponsors will use that approval to help work with groups around the world to promote the rule of law and respect for the human rights of LGBT people around the world. The approval of this recommendation and resolution will greatly enhance the ABA’s and the Sponsors’ credibility in reaching out to, and contacting, peer associations and groups and individual practitioners in other countries active in this difficult area. It will also greatly strengthen the position and resolve of our colleagues at the Bar working in isolation in this sensitive and vulnerable area outside the “developed West” to know that one of the premier associations of lawyers in the world supports them.
8. Cost to the Association. (Both direct and indirect costs) The adoption of this recommendation and resolution may result in minor indirect costs associated with staff time devoted to receiving reports and disseminating them to interested groups
9. Disclosure of Interest. (If applicable) There are no conflicts of interest.
10. Referrals. This recommendation and resolution has been referred to all Sections and Divisions.

11. Contact Names and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address):

Allin C. Seward, III, c/o Paul Hastings (Europe) LLP, 96, boulevard Haussmann, 75008 Paris, tel: +33.6.14.69.35.62; email: chipseward2011@hotmail.com.

Prof. Mark E. Wojcik, The John Marshall Law School, 315 S. Plymouth Court, Chicago, IL 60604 USA (312-987-2391) email 7wojcik@jmls.edu

Paul E. Johnson, Esq., Robert Half Legal, 1401 I Street NW, Suite 400, Washington, DC 20005, email: pejohnson2@gmail.com

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Glenn P. Hendrix
Arnall Golden Gregory LLP
Suite 2100
171 17th Street, N.W.
Atlanta, GA 30363
404/873-8692
glenn.hendrix@agg.com

Jeffrey B. Golden
London School of Economics
Houghton Street
London, WC2A 2AE
+44 (77) 85500811
j.b.golden@lse.ac.uk

EXECUTIVE SUMMARY

1. Summary of the Resolution

The proposed Resolution is to put the American Bar Association on record as recognizing the rights of LGBT people as basic human rights and opposing laws, regulations, customs, and practices that discriminate against them, because of their sexual orientation and urging an end to them. It would also put the Association on record as supporting the right of LGBT people to live securely, safely, without fear, and able to exercise the rights, privileges, and immunities of any other citizen without regard to their sexual orientation. It urges peer associations of lawyers and individual colleagues at the Bar to help LGBT people vindicate their rights through legal redress and support those of their colleagues at the Bar that do so. It also urges the US Government to take steps through diplomatic channels to support such rights.

2. Summary of the Issue that the Resolution Addresses

This proposed Resolution addresses the issue of the violation of the human rights of LGBT people in many countries around the world where their sexual orientation has been criminalized and punished, thereby turning an entire class of people into criminals just for being who and what they are. The criminalization of homosexuality and advocacy and defense of rights of LGBT people is now a criminal offense in 76 countries around the world (carrying the death penalty in some cases). The enactment of such laws has led to an upsurge in violence against LGBT people.⁹²

3. Please Explain How the Proposed Policy Position will address the issue

The proposed Resolution would put the ABA on record as opposing such treatment of LGBT people and as recognizing the right of LGBT people to live in security, safety, and peace openly and freely as a basic human right entitled to the same kind of protection as is afforded the rights set forth in the Universal Declaration of Human Rights in countries that promote the rule of law. Oppressed people, along with those who represent them and fight for their rights, still look to the United States as a beacon of human rights and the rule of law. The adoption of this Resolution by the ABA House of Delegates would send a strong message to LGBT people around the world who suffer from such discrimination and live in fear for their lives just because of who they are, that this Association has not forgotten them. It would also send a strong message to our colleagues at the Bar who represent such people and try to obtain protection for their rights that they are not alone, and that the organized Bar in the United States supports and admires their courageous defense and advocacy of the rights of an oppressed minority.

4. Summary of Minority Views

⁹² See “New Torment for Nigeria Gays,” *The International New York Times*, Feb. 10, 2014, at 1.