

2013

Lesbian, Gay, Bisexual, Trans, and Intersex Rights in the Caribbean: Using Regional Bodies to Advance Culturally Charged Human Rights

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Available at: <https://brooklynworks.brooklaw.edu/bjil/vol38/iss3/2>

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LESBIAN, GAY, BISEXUAL, TRANS, AND INTERSEX RIGHTS IN THE CARIBBEAN: USING REGIONAL BODIES TO ADVANCE CULTURALLY CHARGED HUMAN RIGHTS

*Toni Holness**

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INTRODUCTION

With a rising reputation for violent homophobia and an equally disturbing record of homophobic violence, the Caribbean—its music and its culture—seems to grow less synonymous with Bob Marley’s lyrical “one love” and more reminiscent of hate. International human rights advocates seeking to safeguard the human rights of sexual minorities in the Caribbean have come to expect cultural resistance from government leaders, perpetrators of human rights abuses, and even local populations. The Caribbean’s apprehension to Lesbian, Gay, Bisexual, Trans, and Intersex (“LGBTI”)¹ rights advocacy is deeply rooted in the region’s tragically oppressive colonial experience, and often advocates disparage this cultural resistance as a cumbersome and irritating barrier to ensuring human rights. As an initial matter, this paper recognizes the value of cultural resistance and presupposes the region’s apprehension to be a healthy and indispensable survival mecha-

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1. The acronym LGBTI is used throughout the article. It is intended to include other variations of the acronym, such as, LGBTQ (Lesbian, Gay, Bisexual, Trans, Queer/Questioning), and other sexual minorities.

nism. Having been enslaved, inhumanely subordinated, and stripped of its dignity, the Caribbean simply must guard its autonomy closely. To be effective, human rights advocates must respect the region's autonomy, and instead of attempting to subdue this cultural resistance, advocates must strategize efforts that take account for cultural sensitivities and resistances. This article proposes one such strategy—the use of regional bodies to advance LGBTI rights in the Caribbean.

This Article considers the use of regional bodies as an avenue for advancing LGBTI rights in the Caribbean, and more broadly, the use of regional bodies for advancing other culturally charged human rights advocacy. The purpose of this Article is not to glorify the Caribbean's regional bodies, but rather to be purely pragmatic—it responds to the challenges facing international LGBTI advocates seeking to make real change on the ground and thereby safeguard the fundamental human rights of LGBTI communities in the Caribbean.

Part I of the Article demonstrates the importance of LGBTI human rights advocacy in the Caribbean by taking stock of the dire and often worsening realities for LGBTI communities in the Caribbean. Part II gives the reader a broader context within which to consider the arguments advanced by discussing other manifestations of culturally charged human rights abuse and the accompanying philosophical debate around cultural relativism and universalism. Parts III and IV discuss the inadequacies of direct advocacy targeting LGBTI hostile states and the shortcomings of global LGBTI advocacy, respectively. Part V demonstrates the advantages of employing regional bodies to advance LGBTI rights in the Caribbean. Part VI addresses the anticipated counter-argument against regionalism—the concern for regional insularism, which theoretically may allow the region to insulate itself against outside interference and thereby become even more entrenched in its homophobic ways and immune to outside advocacy efforts. Part VII of the Article proposes avenues for international advocates to support LGBTI human rights through regional entities in the Caribbean. Finally, Part VIII recognizes the limitations of the research and concludes.

I. CURRENT STATE OF LGBTI RIGHTS IN THE CARIBBEAN

LGBTI movements in Latin America have reportedly enjoyed an “astonishing record” of recent success.² However, despite Latin America’s success, its regional neighbors in the Caribbean have seen less progress for LGBTI communities.³ At least thirteen of the Caribbean Community’s (“CARICOM”) fifteen states continue to criminalize same-sex conduct under anti-sodomy statutes, and the region shows particular resistance to any foreign suggestions to repeal these laws.⁴ In addition to clinging to its homophobic laws, the Caribbean continues to resist any social or cultural human rights advocacy.⁵ To exacerbate the problem, as sexual freedoms in the Caribbean and the wider global south continue to suffer, the resources necessary for defending human rights are dwindling.⁶

Homophobia in the Caribbean manifests itself in at least three contemporary modalities: law, music, and mob violence. Many former colonial territories in the Caribbean retain a colonial legacy of the British Imperial anti-sodomy law.⁷ For example, sections 76, 77, and 79 of the Jamaican Offences against the Person Act are derived from the British Imperial law and criminalize sex between consenting adult men.⁸ This colonial legacy will be discussed further in subsequent sections. The region’s characteristic reggae music has gained notoriety for its homophobic lyrical content, which sometimes advocates violence against the LGBTI community.⁹ Many reggae artists have been boycotted by international rights groups and in some cases the music genre has itself been blacklisted.¹⁰

2. HUMAN RIGHTS WATCH, TOGETHER, APART: ORGANIZING AROUND SEXUAL ORIENTATION AND GENDER IDENTITY WORLDWIDE 34 (2009) [hereinafter HUMAN RIGHTS WATCH, TOGETHER, APART].

3. *See id.* at 41.

4. *Id.*

5. *Id.*

6. *Id.* at 5.

7. *See generally* HUMAN RIGHTS WATCH, THIS ALIEN LEGACY: THE ORIGINS OF “SODOMY” LAWS IN BRITISH COLONIALISM (2008) [hereinafter HUMAN RIGHTS WATCH, THIS ALIEN LEGACY].

8. HUMAN RIGHTS WATCH, TOGETHER, APART, *supra* note 2, at 1.

9. *See* Camille A. Nelson, *Lyrical Assault: Dancehall versus the Cultural Imperialism of the North-West*, 17 S. CAL. INTERDISC. L.J. 231 (2008) (discussing the homophobic nature of Jamaica’s music industry).

10. *See* *Join GLAAD in Calling on the Recording Academy to Denounce Music that Promotes Murder*, GLAAD (Jan. 29, 2010),

Of greatest concern to LGBTI rights advocates are the frequent instances of violence against LGBTI persons in the Caribbean. In Jamaica, homophobic violence has increased and the government has often espoused an apologist view, permitting homophobic violence to continue unchecked.¹¹ A 2004 Human Rights Watch report documented numerous accounts of mob violence against perceived gay Jamaicans, noting that instead of protecting victims of violence, the Jamaican police force sometimes participates in the violence.¹² For example, one afternoon in 2004, a mob chased and reportedly chopped, stabbed, and stoned to death a suspected gay man.¹³ Nearby police officers first beat the victim with batons and then urged others to beat him as well.¹⁴

II. A BROADER DISCUSSION OF CULTURALLY CHARGED HUMAN RIGHTS ADVOCACY

This Article advocates the use of regional bodies as an avenue for furthering LGBTI rights in the Caribbean. Importantly, this Article sits within a broader realm of literature concerning culturally charged human rights advocacy toward the global south and human rights abuses perpetrated in the name of culture. The next few paragraphs explore the intersection of human rights abuses and cultural norms by honing in on two controversial cultural practices: female circumcision and stoning.

At the outset, the competing notions of cultural relativism and universalism must be addressed. The universalist school of thought embraces a baseline set of human rights principles from which no cultural or religious group may deviate.¹⁵ For

<http://www.glaad.org/action/join-glaad-calling-recording-academy-denounce-music-promotes-murder>. See also Stephen Jackson, *Reggae Artistes Blacklisted*, JAMAICA OBSERVER (Feb. 28, 2010), <http://www.jamaicaobserver.com/entertainment/Artistes-blacklisted>—SUNDAY (noting that Germany blacklisted at least 11 dancehall albums between 2008 and 2010 because of their homophobic and violent content).

11. HUMAN RIGHTS WATCH, TOGETHER, APART, *supra* note 2, at 41.

12. HUMAN RIGHTS WATCH, 16 HATED TO DEATH: HOMOPHOBIA, VIOLENCE AND JAMAICA'S HIV/AIDS EPIDEMIC, 18 (2004).

13. *Id.* at 20.

14. *Id.* at 20.

15. Ann-Belinda S. Preis, *Human Rights as Cultural Practice: An Anthropological Critique*, 18 HUM. RTS. Q. 286, 288 (1996) (citing Jack Donnelly, *Human Rights and Human Dignity: An Analytical Critique of Non-Western Conceptions of Human Rights*, 76 AM. POL. SCI. REV. 303, 306 (1992)).

universalist advocates, instruments such as the Universal Declaration of Human Rights ("Universal Declaration") symbolize a fundamental baseline of inalienable rights.¹⁶

Opposite the universalist doctrine sits the cultural relativist camp, which emphasizes the right to cultural and religious autonomy, even if that autonomy protects practices that would otherwise be considered human rights abuses.¹⁷ At its extreme, this doctrine holds that cultural variations are exempt from legitimate criticism by persons outside that particular cultural group.¹⁸ Cultural relativists typically view instruments such as the Universal Declaration to be non-universal and mere codifications of distinctively Western and Judeo-Christian cultural biases.¹⁹ Cultural relativists regularly accuse universalists of imposing neo-imperialist standards on non-Western communities and thereby re-dominating developing nations by imposing yet another set of alien norms.²⁰ Whereas universalists can be expected to label the cultural relativists as apologist and ineffective in tackling human rights abuses.

Consider now the application of both schools of thought to the harsh and often fatal realities of female circumcision and stoning practices. Female circumcision and stoning practices force advocates to strategize efforts to address human rights abuses when these abuses are carried out in the name of religious or cultural freedom.

Turning to the issue of female circumcision,²¹ gender rights advocates and universalists advocate for the elimination of the

16. *Id.*

17. Aquila Mazzinghy Alvarenga, *Who Cares about the Rights of Indigenous Children? Infanticide in Brazilian Tribes*, 22 HASTINGS WOMEN'S L.J. 17, 30 (2011).

18. *Id.*

19. *Id.*

20. Erika R. George, *Virginity Testing and South Africa's HIV/AIDS Crisis: Beyond Rights Universalism and Cultural Relativism toward Health Capabilities*, 96 CALIF. L. REV. 1447, 1468 (2008).

21. Zsaleh E. Harivandi, *Invisible and Involuntary: Female Genital Mutilation as a Basis for Asylum*, 95 CORNELL L. REV. 599, 601 (2010) (defining female circumcision as the practice of cutting the genitalia of women and girls). Note that the term is a loaded one as it is usually used by proponents of the practice. Other terms, such as 'genital mutilation' or 'female genital cutting' refer to the same practice and are used by opponents of the practice. Because this Article's focus is pragmatic and not ideological, the use of 'female circumcision' does not imply that the practice is or should be accepted.

practice, holding it to be in direct contravention of fundamental human rights.²² However, the practice continues to be defended largely on the grounds of cultural identity, custom, and indigenous traditions.²³ The universalist approach to targeting genital mutilation has been largely ineffective because of its hard-line stance against the practice. For example, when the United Nations initiated a campaign to address genital mutilation in the 1980s, the Inter-Africa Committee (“the Committee”) was formed from among twenty-one African states with the purpose of abolishing the practice.²⁴ The Committee’s hard stance against the practice rendered its efforts fruitless.²⁵ Even upon its formation, the Committee was warned against “untimely haste, which would result in rash legal measures that would never be enforced.”²⁶ Subsequently, a majority of the Committee’s measures have failed.²⁷

The experience of the Committee is not uncommon; the World Health Organization and the United Nations Children’s Fund (“UNICEF”) re-ignited the Committee’s efforts in 1997 by issuing a joint statement calling upon states parties to take all effective and appropriate measures to abolish the practice.²⁸ Following the statement, the U.N. issued a three-year campaign to eliminate the practice in 1998.²⁹ Like the Inter-Africa Committee, these efforts were largely ineffective—in some cases the sweeping statements against circumcision had no impact, but in other countries the campaign incited defensiveness and protest.³⁰

22. See, e.g., World Health Organization Fact Sheet No. 241—Female Genital Mutilation, <http://www.who.int/mediacentre/factsheets/fs241/en/> (last visited Mar. 26, 2013) In this fact sheet, the WHO seems to take the universalist approach, stating “FGM is a violation of the human rights of girls and women.”

23. AMNESTY INTERNATIONAL, WHAT IS FEMALE GENITAL MUTILATION? §1, 4–5 (1997).

24. Susan A. Dillon, *Comment, Healing the Sacred Yoni in the Land of Isis: Female Genital Mutilation is Banned (again) in Egypt*, 22 HOUS. J. INT’L L. 289, 300 (2000).

25. Kirsten Bowman, *Bridging the Gap in the Hopes of Ending Female Genital Cutting*, 3 SANTA CLARA J. INT’L L. 132, 154 (2005).

26. Dillon, *supra* note 24, at 300.

27. Bowman, *supra* note 25, at 154.

28. WORLD HEALTH ORGANIZATION, ELIMINATING FEMALE GENITAL MUTILATION: AN INTERAGENCY STATEMENT 3, 8 (2008).

29. Dillon, *supra* note 24, at 301.

30. Bowman, *supra* note 25, at 154–55.

However, the cultural relativist camp cannot be credited with any more success in the struggle to safeguard the rights of women in communities practicing female circumcision. One advocate for the organization Women Living Under Muslim Laws critiqued the relativist position, pointing out that “everything can be tolerated in the name of culture.”³¹ One scholar notes that cultural relativism can be, and has been, employed to defend torture, slavery, and other now-universally disparaged human rights abuses.³² In short, the strategy of cultural relativists is more or less a non-strategy, since these advocates, at their extreme, believe that cultures have the right to exist in a vacuum, without outside interference. Moreover, cultural relativism perceives culture to be a static concept that must be preserved in its original form in order to retain authenticity. However, anthropologists agree that cultural norms are dynamic systems that are no less authentic despite their evolution to embrace human rights norms.³³ In fact, many communities that once practiced female circumcision now denounce the practice.³⁴ Therefore, the experience of female circumcision advocates evidences the need for a more nuanced advocacy strategy toward safeguarding culturally charged human rights.

Stoning practices offer a similar example. In several Muslim communities, death by stoning is a legitimate punishment for religious offenses, most often adultery.³⁵ The punishment is exacted in what is likely the harshest manner imaginable. The offender is often a woman accused of having an extramarital

31. Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. 1399, 1438 (2003).

32. Jerome J. Shestack, *Globalization of Human Rights Law*, 21 FORDHAM INT'L L.J. 558, 567 (1997).

33. *Id.* See also Amber Rose Maltbie, *When the Veil and the Vote Collide: Enhancing Muslim Women's Rights Through Electoral Reform*, 41 MCGEORGE L. REV. 967, 967 (2010) (“In the last two decades, centuries-old monarchies in the Middle East have begun to shift toward more open societies by integrating democratic rights into their laws. In an exciting move by a number of these parliaments and monarchs, women have been granted suffrage throughout the region. Qatar, Bahrain, Oman, Kuwait, and, to a limited extent, the United Arab Emirates (UAE), have each granted suffrage to women since the beginning of the Twenty-First Century.”).

34. Mark D. Kielsgard, *Critiquing Cultural Relativism: A Fresh View from the New Haven School of Jurisprudence*, 42 CUMB. L. REV. 441, 471 (2011–2012).

35. *Id.* (noting that stoning is still a legal form of capital punishment in some states).

affair or conducting another form of intimate betrayal, purportedly against her husband, family, and community.³⁶ The woman is brought to an open area, a town square, sporting arena, or marketplace and lowered into a hole in the ground. Only her head remains exposed.³⁷ Onlookers, sometimes including the woman's father, brothers, cousins, uncles, and neighbors, are invited to implement God's punishment by hurling rocks at her head until she is lifeless.³⁸

Communities that engage in stoning defend the practice on the grounds of religious and cultural autonomy, and will readily demonstrate the procedural and systematic judicial mechanisms through which guilt is determined and punishment is exacted.³⁹ In some instances, female community members endorse the practice; one scholar noted that even mothers whose daughters had been stoned to death expressed no remorse, believing that their daughters deserved their fatal punishment.⁴⁰

Universalists take a strict stance against honor killings, denouncing the practice as intolerable in all instances and advocating for a categorical ban against the practice as a violation of the universal principles of human rights. This sweeping advocacy, although brave and resolute, may ultimately prove ineffective. The drafting of the Universal Declaration gives us an example of such sweeping advocacy, and the aversion of Muslim leaders to the instrument illustrates the ineffectiveness of a hardline advocacy strategy. During the drafting of the Universal Declaration, representatives from Islamic states opposed those clauses averse to Islamic traditions, such as polygamy.⁴¹

36. See Shannon V. Barrow, *Nigerian Justice: Death-by-Stoning Sentence Reveals Empty Promises to the State and the International Community*, 17 EMORY INT'L L. REV. 1203–04 (Fall 2003) (vividly describing the stoning ritual).

37. *Id.*

38. *Id.*

39. Rachel A. Ruane, *Murder in the Name of Honor: Violence against Women in Jordan and Pakistan*, 14 EMORY INT'L L. REV. 1523, 1568 (2000) (“Increasingly, government actors are using cultural relativist claims to avoid responsibility for private acts of violence against women.”).

40. Radhika Coomaraswamy, *Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women*, 34 GEO. WASH. INT'L L. REV. 483, 496 (2002).

41. Jaclyn Ling-Chien Neo, “Anti-God, Anti-Muslim and Anti-Quran”: *Expanding the Range of Participants and Parameters in Discourse over Women's Rights and Islam in Malaysia*, 21 UCLA PAC. BASIN L.J. 29, 37 (2003).

The Saudi Arabian delegate altogether abstained from the final vote because he, and many other Muslim leaders, viewed the Universal Declaration as Western ideology and non-inclusive of Islamic traditions.⁴² From this result it is clear that, like genital mutilation, the universalist approach may be similarly ineffective in addressing stoning and other culturally charged human rights abuses.

As was the case with genital mutilation, the relativist approach to stoning is again ineffective and ignores the evolving nature of culture and religion. A relativist advocate would tolerate stoning as the autonomous religious and cultural practice of Muslim communities. This approach is largely ineffective because first, it espouses tolerance to the point of inaction. Second, cultural relativism ignores the malleable and evolving nature of religion and culture. The Muslim religion is in fact evolving toward intolerance of stoning, and this evolution does not erode the religion's authenticity. In fact, many liberal Muslims consider stoning and other forms of violence to be un-Islamic.⁴³ For example, Iran enacted a ban on stoning and many Muslim leaders see the practice as an embarrassment to the religion, recognizing the need to evolve with social changes.⁴⁴ Therefore, the relativist approach ignores the legitimate malleability of religious traditions, and in doing so, may be failing the human rights community, particularly victims of human rights abuses.

The preceding discussion demonstrates the nuances of culturally charged human rights advocacy and the challenges accompanying both universalist and relativist approaches. The experience of anti-genital mutilation and stoning advocates evidence these difficulties. The preceding discussion also demonstrates the nuances of culturally charged human rights abuses and the minefield of political incorrectness and cultural backlash facing advocates. Therefore, it is clear that advocates hoping to advocate effectively against culturally charged human rights abuse must be strategic in their efforts. The remainder of this Article discusses various advocacy strategies and argues that regional bodies are best situated to account for the nuances of culturally charged human rights abuses. In particular, the

42. *Id.*

43. Kielsingard, *supra* note 34, at 471-72.

44. *Id.* at 471.

Caribbean Court of Justice and the Inter-American Commission of Human Rights are the best forums for addressing LGBTI human rights abuses in the Caribbean.

III. SHORTCOMINGS OF DIRECT ADVOCACY TOWARD LGBTI HOSTILE STATES

Before discussing the advantages of regional bodies for advancing human rights norms, we must first consider the shortcomings of direct advocacy by international LGBTI advocates targeting state leaders and homophobic or transphobic agencies or persons in a country.

International direct advocacy targeting LGBTI hostile actors often fails for at least two reasons. First, direct advocacy can be, and often is, readily rejected as cultural imperialism. Consequently, the LGBTI norms being advanced through international direct advocacy are categorically rejected as foreign norms, alien to the local population. Many LGBTI-hostile communities consider LGBTI rights advocacy to be a form of cultural imperialism. For example, Ghanaian government officials have advanced the cultural relativist argument in resistance to LGBTI rights advocacy, claiming “Ghanaians are unique people whose culture, morality and heritage totally abhor homosexual and lesbian practices and indeed any other form of unnatural sexual acts.”⁴⁵ Many Jamaicans also respond to pressure from LGBTI rights movements by viewing such demands as “foreign.”⁴⁶ This perception of cultural imperialism had real effects for the Caribbean’s LGBTI population when the United Kingdom Privy Council⁴⁷ demanded an elimination of local anti-gay laws.⁴⁸ Caribbean states refused to comply with the Privy Council ruling, arguing that homosexuality was

45. *Ghana’s Secret Gay Community*, BBC (Mar. 14, 2007), <http://news.bbc.co.uk/2/hi/6445337.stm>.

46. Nelson, *supra* note 9, at 255.

47. The Judicial Committee of the Privy Council is often simply called the Privy Council. The Privy Council is a part of the House of Lords in London, England, made up of senior judges who consider appeals from trials in lower courts. The Privy Council was once the final court of appeal for English-speaking Caribbean countries. JAMAICANS FOR JUSTICE, BROCHURE ON THE PRIVY COUNCIL AND THE PROPOSED CARIBBEAN COURT OF JUSTICE (Jun. 5, 2006), <http://www.jamaicansforjustice.org>.

48. *Caribbean Rejects UK Justice*, BBC, Feb. 15, 2001, <http://news.bbc.co.uk/2/hi/americas/1171362.stm>.

immoral and “against their culture and religions.”⁴⁹ As such, LGBTI advocacy aimed directly at local Caribbean populations has failed and will likely continue to be ineffective in bringing about actual change.

The second drawback of direct advocacy is its potential to compromise the efforts of local LGBTI advocates and invite retaliation against local LGBTI communities. Direct advocacy efforts from the international community targeting local Caribbean populations have a strong potential to muddy the waters by branding the LGBTI movement as a foreign agenda. Belizean LGBTI advocates suffered exactly this blow just as their advocacy efforts were taking flight in 2012. Local advocates campaigned against the Belizean criminal code, which criminalizes homosexual conduct.⁵⁰ Simultaneously, London-based LGBTI activists launched a campaign targeting Belize and a host of other states in which consensual same sex conduct was criminalized.⁵¹ The local Belizean community quickly took notice of the foreigners’ presence and launched a vociferous counter campaign. Religious opponents of the LGBTI movement said “The people of Belize will not surrender our constitution, our moral foundations, and our way of life to predatory foreign interests.”⁵² As a result, the foreigners’ campaign stunted the Belizean LGBTI rights movement by tainting the movement as a foreign import, rather than a grassroots Belizean effort.

Yet another example of failed direct advocacy occurred in Jamaica in 2009 when a United States-based LGBTI lobby group launched a campaign to boycott Jamaican products, such as Red Stripe Beer.⁵³ The campaign’s purported purpose was to pressure the Jamaican government to show greater respect for the rights of sexual minorities.⁵⁴ The Jamaica Forum for Lesbians, All-Sexuals, and Gays (“J-FLAG”), the nation’s leading advocacy voice for sexual minorities, criticized the boycott as inef-

49. *Id.*

50. Owen Bowcott, *Global Campaign to Decriminalise Homosexuality to Kick off in Belize Court*, *GUARDIAN* (Nov. 16, 2011), <http://www.guardian.co.uk/world/2011/nov/16/global-campaign-decriminalise-homosexuality-belize-court>.

51. *Id.*

52. *Id.*

53. See Sonia Mitchell, *Gays in US ‘Boycott Jamaica,’* *GLEANER* (Apr. 1, 2009), <http://jamaica-gleaner.com/gleaner/20090401/news/news2.html>.

54. See *id.*

fective and ignorant to the local dynamic.⁵⁵ Among other factors, J-FLAG noted that Red Stripe had actually supported the LGBTI community by withdrawing corporate support for homophobic entertainers.⁵⁶ In fact, J-FLAG had advised the United States-based campaign against moving forward with the boycott, but the U.S. activists chose to disregard the interests of the local LGBTI community.⁵⁷ In a statement against the boycott, J-FLAG described the foreign campaign's toll on local advocacy efforts:

The misguided targeting of Red Stripe does tremendous damage to a process of change that we began almost 11 years ago. The boycott call has now left us not only with our persistent day to day challenges but with a need to engage Red Stripe and attempt damage control as a result of actions that we did not take.⁵⁸

Like the Belizean experience, foreign advocacy directly targeting Jamaica was not only ineffective, but actually reversed the progress of local LGBTI advocacy efforts.

Although regionally dissimilar, Ugandan LGBTI activists experienced similar setbacks when an Internet hacking group, Anonymous, hijacked a Ugandan government website and posted on it a pro-LGBTI message, including:

Your violations of the rights of LGBT people have disgusted us. ALL people have the right to live in dignity free from the repression of someone else's political and religious beliefs. You should be PROUD of your LGBT citizens, because they clearly have more balls than you will ever have.⁵⁹

Val Kalende, a well-known Ugandan LGBTI activist expressed concern for "the manner in which Anonymous claim to speak on behalf of Uganda LGBT activists with no consultation

55. *See id.*

56. *See id.*

57. *See id.*

58. *JFLAG releases another statement against Boycott Jamaica*, BILERCO PROJECT (Apr. 15, 2009), http://www.bilerico.com/2009/04/jflag_releases_another_statement_against.php.

59. *Uganda Government Websites Hacked by Anonymous in Defense of Gay Pride, LGBT Rights*, HUFFPOST GAY VOICES (Aug. 16, 2012), http://www.huffingtonpost.com/2012/08/16/uganda-government-websites-hacked-anonymous-gay-rights_n_1789623.html.

whatsoever.”⁶⁰ Furthermore, Kalende noted, “Those well-meaning interventions can cause severe backlash for activists on the ground.”⁶¹ Another online comment criticized the Internet hack because Anonymous “presumed to place themselves—outsiders with little at stake—as the protector and [defender] of Uganda’s LGBT community.”⁶²

The experiences of Belizean, Jamaican, and Ugandan LGBTI advocates demonstrate the limitations of international direct advocacy aimed at LGBTI hostile states and therefore demand that foreign advocates employ other advocacy strategies for supporting local LGBTI rights.

IV. SHORTCOMINGS OF GLOBAL LGBTI HUMAN RIGHTS ADVOCACY

LGBTI advocacy efforts on the global scale prove ineffective for the same reasons that universalist approaches generally come up short—the global LGBTI rights dialogue continues to be dominated by the few elite voices of Western Europe and the United States. As a result, global human rights bodies enjoy limited buy-in from the developing world. The developing world’s lack of engagement was perhaps first evident in the drafting of the Universal Declaration. The Saudi Arabian delegate to the U.N. criticized the Universal Declaration for including “only the standards [recognized] by Western civilization.”⁶³ As a result, the Universal Declaration is largely viewed as being comprised of Westernized norms, foreign to the developing world. Similarly, LGBTI rights advocacy on the global scale will also receive little buy-in from the developing world, which already views LGBTI rights to be foreign norms.

V. ADVANTAGES OF USING REGIONAL BODIES TO ADVANCE LGBTI RIGHTS IN THE CARIBBEAN

Taking account for the above-discussed limitations of direct LGBTI advocacy and global LGBTI advocacy, regional bodies

60. *Hackers Attack Ugandan Government Websites to Protest Homophobia*, ADVOCATE.COM (Aug. 15, 2012), <http://www.advocate.com/politics/2012/08/15/hackers-attack-ugandan-government-websites-protest-homophobia>.

61. *Id.*

62. *How Not to Support LGBT People of Uganda*, BOX TURTLE BULLETIN (Aug. 16, 2012), <http://www.boxturtlebulletin.com/2012/08/16/47720>.

63. Ling-Chien Neo, *supra* note 41, at 37.

are more suitable forums for advancing LGBTI rights for at least four reasons. First, the lower membership rates of regional bodies substantially reduce collective action obstacles and therefore allow state participants to reach consensus agreements more quickly. Second, cultural similarities among regional neighbors make it easier for neighboring states within a region to reach a consensus agreement for moving forward with human rights progress. Third, participants in regional bodies enjoy more equitable power dynamics, which in turn creates a more balanced power dynamic for collectively bargaining for human rights advances. Finally, the geographic accessibility and low transaction costs of regional bodies allow local LGBTI communities to play a more instrumental role in advocating for the human rights protections that affect their lives.

A. Collective Action Obstacles Are Substantially Reduced with the Lower Number of State Participants

Regional organizations necessarily enjoy a smaller membership pool than global bodies, such as the United Nations. This lower membership renders regional bodies more ideal for advancing culturally sensitive human rights advocacy. Legal scholars have long studied the collective action obstacles associated with large group involvement. There are at least three easily identifiable advantages of using smaller regional bodies instead of larger, global organizations to advance culturally charged human rights. First, fewer participants mean fewer voices at the negotiating table and therefore fewer interests that must be reconciled to produce a consensus result. Particularly with regard to policy decisions, the presence of fewer participants implies less discordance among member opinions and therefore a greater probability of reaching an agreement.⁶⁴

Second, organizations with fewer members experience lower rates of free ridership. The term free rider refers to a participant who fails to contribute to the group's work, but nonethe-

64. See Jed S. Ela, *Law and Norms in Collective Action: Maximizing Social Influence to Minimize Carbon Emissions*, 27 UCLA J. ENVTL. L. & POL'Y 93, 97 (2009) (“[W]hen it comes to social norms solving collective action problems, it seems that size matters: smaller groups are better, while the largest ones may be hopeless.”).

less benefits from the group's progress.⁶⁵ In smaller groups, the participation and contribution of individuals is more readily apparent and measurable.⁶⁶ Therefore, in smaller groups, members are more likely to genuinely participate and contribute to the organization's mission. Smaller membership rates also boost the ability of members to coerce noncompliant members into complying.⁶⁷

Although the notion of freeriding is typically discussed in the realm of international trade or security,⁶⁸ it is also possible to have free riding in the human rights arena. An emerging consensus recognizes that respect for human rights norms cultivates measures of stability, such as conflict-prevention and market participation.⁶⁹ Accordingly, the failure to uphold human rights norms while benefiting from the resultant stability of other states' compliance constitutes a form of free riding.⁷⁰ Therefore, a state's failure to respect LGBTI rights, while enjoying the stability it cultivates is a form of free riding. A very concrete example of this exists in immigration law. Some LGBTI-friendly states grant refuge to individuals who suffered persecution on the basis of their LGBTI status.⁷¹ The home countries from which these persecuted individuals are driven indirectly benefit from the receiving country's respect for

65. A "free rider" is someone who "obtains an economic benefit at another's expense without contributing to it." BLACK'S LAW DICTIONARY 676 (7th ed. 1999)

66. See Jonathan Cannon, *Checking in on the Chesapeake: Some Questions of Design*, 40 U. RICH. L. REV. 1131, 1141 (2006). See also Tom Laughlin, *Evaluating New Federalism Arguments in the Area of the Environment: The Search for Empirical Measures*, 13 N.Y.U. ENVTL. L.J. 481, 484 (2005).

67. *Id.*

68. For example, non-participating states free ride (i.e., benefit from without contributing to) international trade and security measures. See, e.g., Kenneth Anderson, *United Nations Collective Security and the United States Security Guarantee in an Age of Rising Multipolarity: The Security Council as the Talking Shop of the Nations*, 10 CHI. J. INT'L L. 55, 68 (2009) (discussing the free-ridership problem facing NATO).

69. Timothy K. Kuhner, *Human Rights Treaties in U.S. Law: The Status Quo, Its Underlying Bases, and Pathways for Change*, 13 DUKE J. COMP. & INT'L L. 419, 452 n.167 (2003).

70. *Id.*

71. See generally Nicole LaViolette, *'UNHCR Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity': A Critical Commentary*, 22 INT'L J. REFUGEE L. 173 (2010).

LGBTI rights. In this sense, the home country free rides on the LGBTI rights compliance of other nations.

This and other manifestations of human rights free riding are less likely in smaller groups, which are better able to monitor compliance.⁷² For this reason, smaller, regional bodies are more ideal for advancing LGBTI rights advocacy, as compared with universal bodies such as the United Nations.

Third, smaller groups enjoy lower transaction costs and members perceive greater rewards than do members of larger groups.⁷³ Even at first glance, the logistical cost of organizing the international community far exceeds the costs of organizing the members of a regional group. These costs include communication expenses, such as telephone costs and in-person conferences, which are typically lower when states need only travel to neighboring countries, as opposed to the U.N. headquarters. With regard to the perceived benefits, members of smaller groups also perceive a greater stake in the outcome of the negotiations because there are fewer participants.⁷⁴ Therefore, smaller groups generally enjoy greater success in reaching policy agreements and this likelihood of success can be employed to the advantage of international human rights advocacy. Looking specifically to the various regional organizations that are available to advocates attempting to advance LGBTI rights in the Caribbean, we can consider the Organization of American States (“OAS”) and CARICOM. The OAS boasts the participation of all thirty-five independent countries of the Americas.⁷⁵ CARICOM enjoys the participation of twenty members and associate members.⁷⁶ The OAS is headquartered in Washington, D.C., and has as its judicial arm the Inter-American Commission on Human Rights (“IACHR”).⁷⁷ CARICOM’s judicial organ is the Caribbean Court of Justice (“CCJ” or “Caribbean Court”),

72. Jonathan Turley, *Transnational Discrimination and the Economics of Extraterritorial Regulation*, 70 B.U. L. REV. 339, 356 (May 1990).

73. *Id.*

74. Laughlin, *supra* note 66, at 484.

75. See ORGANIZATION OF AMERICAN STATES, *Who We Are*, http://www.oas.org/en/about/member_states.asp (last visited Oct. 7, 2012).

76. See *CARICOM Member States*, CARIBBEAN COMMUNITY (CARICOM) SECRETARIAT, http://www.caricom.org/jsp/community/member_states.jsp?menu=community (last visited Oct. 7, 2012).

77. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, <http://www.cidh.oas.org/DefaultE.htm> (last visited Oct. 7, 2012).

discussed in more detail in Part VI below. Therefore, for our discussion, the IACHR and CCJ are most relevant. Given their focus on human rights and their lower membership rates, these bodies present more ideal forums for advancing LGBTI rights, compared with the U.N.

B. Regional Similarities Make it Easier to Negotiate Common Ground and Reach Human Rights Agreements

Although the sheer numbers speak to the advantage of smaller regional bodies, the sociocultural commonalities among regional neighbors also render regional bodies more amenable to reaching culturally charged agreements. Similarities in ethnic, cultural, and religious beliefs, as well as shared histories and socio-political resemblances bolster the capacity of regional neighbors to reach agreements, especially regarding culturally charged matters such as LGBTI rights. In the Caribbean, the religious and legal similarities of the region's states are particularly relevant.

The shared colonial history of Caribbean countries is an appropriate starting point. With regard to LGBTI rights, this shared colonial history brought a shared inheritance of homophobic laws. As of 2008, more than eighty nations criminalized consensual homosexual conduct and more than half of these countries inherited their anti-sodomy laws from former colonial powers.⁷⁸ The specific provision at issue here is Section 377 of the British penal code, which states:

Unnatural offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for term which may extend to ten years, and shall also be liable to fine.⁷⁹

Section 377 was "a colonial attempt to set standards of behavior, both to reform the colonized and to protect the colonizers against moral lapses."⁸⁰ It became a model penal code for the British territories, influencing Asia, the Pacific Islands, Africa, and almost all former British colonial territories.⁸¹ Many of these British territorial laws went as far as to prescribe

78. HUMAN RIGHTS WATCH, THIS ALIEN LEGACY, *supra* note 7, at 4–5.

79. *Id.* at 18.

80. *Id.* at 5.

81. *Id.*

death for sodomy.⁸² Although the penal systems of the respective territories of the British Empire varied somewhat, most are rooted in Section 377 and homophobic laws persisted even after countries gained independence from the British Empire.⁸³ Ironically, some Caribbean cultures generally deride remnants of colonialism, but nonetheless embrace their colonial penal laws “as if the colonial masters were still looking on, as if to convey legitimate claims to being civilized.”⁸⁴

Alongside the legislative legacy of colonialism came a religious legacy. This religious, primarily Christian, legacy is especially relevant in light of the faith-based justifications for homophobia. Colonial powers forcefully used religion as a means of subordinating the peoples of the Caribbean and other colonized territories. Not only was Christianity imposed upon Caribbean peoples, but in fact, their African-based religions were actively persecuted as an integral part of the Trans-Atlantic slave trade.⁸⁵ For example, in Haiti, African magic was strictly prohibited under colonial order, which drove the Voodoo religion underground; it was practiced at night to avoid punishment.⁸⁶ Slaves found practicing Voodoo were subject to beating, hanging, or imprisonment.⁸⁷ Additionally, legislation in Barbados imposed execution or exile for the practice of African religions until the nineteenth century.⁸⁸ The religious oppression and forced conversion to Christianity has severely disadvantaged the LGBTI population of the Caribbean. Some historians have noted that particularly in the former British territories, “Christian-based homophobia has damaged many cultures in which sexual contacts and relationships between men and between women used to be tolerated and even accepted.”⁸⁹ For example,

82. John D’Emilio, *SEXUAL POLITICS, SEXUAL COMMUNITIES: THE MAKING OF A HOMOSEXUAL MINORITY IN THE UNITED STATES, 1940–1970*, at 14 (2d ed. 1983).

83. See, e.g., HUMAN RIGHTS WATCH, *HATED TO DEATH: HOMOPHOBIA, VIOLENCE AND JAMAICA’S HIV/AIDS EPIDEMIC* 6 (2004).

84. Nelson, *supra* note 9, at 260–61.

85. Danielle Boaz, *Introducing Religious Reparations: Repairing the Perceptions of African Religions Through Expansions in Education*, 26 *J.L. & RELIGION* 213, 216–18 (2010–2011).

86. *Id.* at 218.

87. *Id.*

88. *Id.*

89. James D. Willets, *International Human Rights Law and Sexual Orientation*, 18 *HASTINGS INT’L & COMP. L. REV.* 1, 5–6 n.8 (1994).

in Uganda, now notorious for homophobic violence, many Ugandans have reported that homosexuality has been historically tolerated in their villages.⁹⁰

It should also be noted that Christian influences are not entirely distinct from the colonial legislative legacy. In fact, the Christian Bible largely laid the foundation for British common law⁹¹ and continues to influence perceptions of homosexuality.⁹² Judicial decision making, as recently as the late-nineteenth century, deferred to Christianity as the source of law.⁹³ The legal term “sodomy” is itself a Biblical reference to the cities of Sodom and Gomorrah, which were allegedly destroyed by God as an act of purging sexual deviation.⁹⁴

It is important to note here that although indigenous forms of homophobia may have predated colonialism, documentation and historical records evidencing historical indigenous homophobia remain elusive. Moreover, the earliest record of homophobia may be the homophobia espoused by slave-owners who incentivized heterosexuality for the profitable purpose of procreation to produce more slaves. Even this early homophobia is sourced in colonialism and is not indigenous to the Caribbean.⁹⁵ Therefore, without concrete evidence of indigenous homophobia, this Article assumes that homophobia is not indigenous to the Caribbean.

The benefits of regional, cultural, and religious similarities became evident in Brazil's 2003 attempt to pass a Resolution on Human Rights and Sexual Orientation in the U.N. Commis-

90. Jeffrey Gettleman, *Remembering David Kato, a Gay Ugandan and a Marked Man*, N.Y. TIMES (Jan. 29, 2011), <http://www.nytimes.com/2011/01/30/weekinreview/30gettleman.html>.

91. James Wilets, *Conceptualizing Private Violence Against Sexual Minorities as Gendered Violence: An International and Comparative Law Perspective*, 60 ALB. L. REV. 989, 1028 (1997) (“In Asia and Africa the extensive list of countries with sodomy laws can be traced back to the lingering effects of colonialism and Christianity, Islam, and Marxist-Leninism.”).

92. See Andrew H. Friedman, *Same-Sex Marriage and the Right to Privacy: Abandoning Scriptural, Canonical, and Natural Law Based Definitions of Marriage*, 35 HOW. L.J. 173, 179–87 (1992) (discussing the heavy influence of Christian philosophers on Anglo-American law).

93. David A. Skeel, Jr., *The Paths of Christian Legal Scholarship*, 12 GREEN BAG 2D 169, 170 (2009).

94. See *Genesis* 19:1–38.

95. Nelson, *supra* note 9, at 258.

sion on Human Rights (“The Brazil Resolution”).⁹⁶ The Brazil Resolution simply reaffirmed preexisting international legal rights for sexual minorities; it did not seek to add any new rights to existing international jurisprudence. The resolution expressed “deep concern at the occurrence of violations of human rights all over the world against persons based on . . . their sexual orientation,” and stressed that “human rights and fundamental freedoms . . . should not be hindered in any way on the grounds of sexual orientation.”⁹⁷

The global discord on LGBTI rights was one of the primary forces causing the demise of the resolution. Islamic and Christian-influenced states, including the Holy See, formed a vociferous alliance opposing the measure based on religious grounds.⁹⁸ Therefore, Brazil’s attempt to establish a global LGBTI rights instrument failed largely because of the religious discord of the world’s nations. Regions like the Caribbean do not experience such religious diversity and are therefore better able to reach an agreement on LGBTI rights without having to overcome such extreme religious diversity.

The Caribbean’s shared sociocultural characteristics enhance the region’s ability to reach consensus LGBTI human rights agreements for at least two reasons. First, Caribbean states experience largely the same contemporary cultural manifestations of homophobia—homophobic music and mob violence. The shared homophobic indicators allow advocates to narrowly tailor human rights strategies to address the region’s shared social ills. The myriad and diverse homophobic manifestations occurring worldwide force international advocates to take a more dilute, broad-based or catchall advocacy approach in order to address all forms of homophobia. The particularized homophobic expressions of the Caribbean allow advocates to narrowly tailor their efforts to address these specific social expressions and thereby design and execute a more effective LGBTI rights campaign. A regional advocacy strategy that employs bodies such as the Inter-American Commission on Human

96. U.N. HUMAN RIGHTS COMMISSION, RESOLUTION ON SEXUAL ORIENTATION AND HUMAN RIGHTS 3 (Apr. 25, 2003), <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/213-1.pdf>.

97. *Id.*

98. Timothy Garvey, *God v. Gays? The Rights of Sexual Minorities in International Law as Seen Through the Doomed Existence of the Brazilian Resolution*, 38 DENV. J. INT’L L. & POL’Y 659, 670–71 (2010).

Rights and the Caribbean Court can dedicate itself exclusively to targeting homophobic music and violence. Whereas an international body, like the U.N., is forced to cast a wider, more dilute strategic net, in order to address the many sources and manifestations of worldwide homophobia.

In addition to the contemporary expressions of homophobia, the Caribbean's shared colonial legacy of anti-sodomy laws presents another, more historic and entrenched, common denominator. At first glance, the region's anti-sodomy laws paint a dismal picture for LGBTI advocates. However, the imperialistic source of the laws can and has been employed as an advocacy strategy. Time and again, J-FLAG and other advocacy groups strive to raise local awareness of the culturally imperialistic nature of the laws—demonstrating that these laws, far from indigenous, were actually implanted by the former British rulers. Therefore, the region's shared source of anti-sodomy laws offers advocates the opportunity to take a tailored approach to address the singular root of the region's homophobic laws—the British imperial legacy.

C. Regional Bodies Enjoy More Equitable Power Dynamics, Which Promote Collective Bargaining

The vast power differential among the world's nations creates a coercive environment in which to conduct global negotiations regarding human rights. Regions, however, especially Latin America and the Caribbean, enjoy greater socioeconomic likeness. To understand the gravity of global economic disparity, one need only consider that the world's richest 250 persons control as much wealth as the world's poorest 2.5 billion.⁹⁹ Consider also that economic disparity between countries has increased in the last century.¹⁰⁰ One measure of global socioeconomic disparity is the United Nations Development Program's ("UNDP") Human Development Indicator ("HDI").¹⁰¹ The HDI

99. Mark A. Drumbl, *Poverty, Wealth, and Obligation in International Environmental Law*, 76 TUL. L. REV. 843, 903 (2002).

100. INTERNATIONAL MONETARY FUND, GLOBALIZATION: THREAT OR OPPORTUNITY? (Apr. 12, 2000), <http://www.imf.org/external/np/exr/ib/2000/041200to.htm>. See also Drumbl, *supra* note 99, at 903.

101. FRANCES P. HADFIELD, RECENT CUSTOMS LITIGATION DEVELOPMENTS AND THEIR IMPACT ON THE ADMINISTRATIVE PRACTICE n.3 (Feb. 25, 2010), *available*

of a nation is a composite measure of life expectancy, educational attainment, and income.¹⁰² The HDI is considered a breakthrough measurement because of its capacity to represent both social and economic development in a single statistic.¹⁰³ Even a cursory look at the UNDP's graphical representation of the world's HDIs shows that the world's nations vary widely in socioeconomic progress (see Appendix I). However, the HDI trends for Latin American and Caribbean nations seem to progress in lockstep, resulting in a more balanced socioeconomic power dynamic (see Appendix II). The Latin American-Caribbean region enjoys far less economic disparity as compared with the world.

Latin America and the Caribbean's socioeconomic similarities make the region a better forum for LGBTI advocacy because it enjoys a more level playing field. In contrast, the stark power differences between the world's nations undermines global human rights advocacy in at least two respects. First, less powerful, developing nations have little or no ability to enforce compliance. Second, developing nations do not enjoy the same level of participation in the international norm-development process due to structural biases. These two factors weaken whatever human rights advances global bodies are able to achieve.

Regarding non-compliance, global human rights mechanisms subject developing nations to enforcement by more powerful countries, but leave these nations toothless to demand compliance by powerful countries. With developing countries making up the majority of the world's states, scholars have noted the clear dysfunction of a system that deprives the majority of members from obtaining compliance from other members.¹⁰⁴ For example, the United States often promotes the enforcement of treaties abroad, but refuses to demand compliance within its own borders.¹⁰⁵ Note also that smaller bodies are better able to

at 2010 WL 956091 (defining the Human Development Index as a measure of quality of life around the world on a scale from 0 (low) to 1 (high)).

102. UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT INDEX (HDI), <http://hdr.undp.org/en/statistics/hdi/> (last visited Oct. 7, 2012).

103. *Id.*

104. René Guilherme S. Medrado, *Renegotiating Remedies in the WTO: A Multilateral Approach*, 22 WIS. INT'L L.J. 323, 325 (2004).

105. William M. Carter, Jr., *The Mote in Thy Brother's Eye: A Review of Human Rights as Politics and Idolatry*, 20 BERKELEY J. INT'L L. 496, 510 (2002).

detect non-compliance and police its membership into conformity.¹⁰⁶ Therefore, regional bodies have greater policing capacity as a result of both their socioeconomic similarities as well as their smaller membership size.

In addition to heightened police power, regional bodies enjoy greater buy-in from their states parties, due largely to fewer bureaucratic obstacles that often hinder small-country participation on the global scale. Consider, for example, the World Trade Organization (“WTO”), which enjoys a membership of 153 nations.¹⁰⁷ As of 2004, not a single country designated as “least developed” had sought to resolve a trade dispute using the WTO’s dispute settlement system.¹⁰⁸ This low participation rate from developing countries is not because these countries do not need the settlement process, it is due to the structural difficulties posed by an organization of such vast magnitude.¹⁰⁹ Regional bodies, such as the IACHR and Caribbean Court, pose fewer bureaucratic obstacles to developing nations and are more accessible and promising avenues for human rights advocacy.

Therefore, regional bodies are more advantageous for advancing LGBTI rights because these bodies enjoy a more balanced power dynamic, which fosters greater compliance enforcement and these bodies are also more accessible to developing states.

D. Regional Bodies Give the Domestic LGBTI Community a Greater Voice in the Movement Toward LGBTI Equality

Regional bodies, more localized in nature, are more advantageous for furthering LGBTI rights because local bodies allow LGBTI persons themselves to play a more central role in advancing global LGBTI equality. This notion is based simply on the principle of proportionality—the fewer members a group has, the greater proportion of the group’s decision is credited to each player. Accordingly, smaller regional bodies give LGBTI

106. Noah Bialostozky, *Overcoming Collective Action Failure in the Security Council: Would Direct Regional Representation Better Protect Universal Human Rights?*, 15 BUFF. HUM. RTS. L. REV. 1, 12–13, 22 (2009).

107. *Understanding the WTO: The Organization—Members and Observers*, WORLD TRADE ORG., http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Oct. 7, 2012).

108. Medrado, *supra* note 104, at 324.

109. *Id.* at 325.

communities a proportionally larger stake in the bodies' decision-making. This amplified role of local stakeholders—including homophobic stakeholders—is necessary to ensure a successful and sustainable human rights campaign.

The importance of local stakeholder involvement came to light in the global campaign to end female circumcision in some African communities. Anti-circumcision campaigns have largely failed because they neglect to incorporate domestic African stakeholders.¹¹⁰ Without consulting the local stakeholders, anti-circumcision campaigns effectively alienate the communities that engage in the practice and therefore create a confrontational and ineffective dynamic between the advocates and the targeted communities.¹¹¹

In a very concrete sense, the engagement of states and local populations is integral to furthering culturally charged human rights advocacy, such as LGBTI rights. The failure of the Brazil Resolution, discussed in Part V.b. above, was partially due to Brazil's failure to engage with states prior to its introduction. Brazil introduced the resolution in the final days of the Human Rights Commission's 2003 session, with virtually no prior warning to member states.¹¹² A number of states, who might otherwise have supported the instrument, abstained from the voting process simply because they had not been engaged in the drafting process.¹¹³ Had Brazil introduced the instrument to a regional body, engaging the region's most relevant states for LGBTI advocacy as well as engaging the LGBTI populations of those states, the resolution may have enjoyed greater success. Therefore, the LGBTI advocacy community risks similar alienation and eventual demise if the Caribbean's LGBTI hostile states and LGBTI communities are not engaged in the advocacy process.

To briefly conclude, the smaller size and local nature of regional bodies render them more accessible to local stakeholders and therefore establish more promising avenues for pursuing community-centered advocacy strategies toward LGBTI equality in the Caribbean. Through a community-centered approach,

110. Chi Mgbako, Meghna Saxena, Anna Cave, Nasim Farjad & Helen Shin, *Penetrating the Silence in Sierra Leone: A Blueprint for the Eradication of Female Genital Mutilation*, 23 HARV. HUM. RTS. J. 111, 112–13 (2010).

111. *Id.*

112. Garvey, *supra* note 98, at 670.

113. *Id.*

LGBTI advocates can avoid alienating the relevant local community and therefore engage in a more interactive and promising dialogue and proceed more effectively toward LGBTI equality.

VI. THE INSULARISM PROBLEM

Perhaps the most common, and anticipated, counterargument against this Article lies in the potential immunity that accompanies regionalism. Specifically, if LGBTI rights are left to the regional realm, there may be no internal pressure to enact and enforce LGBTI rights, particularly within a relatively homophobic region. In this respect, opponents of regionalism may argue that only global strategies can counteract regional homophobia.

However, the Caribbean experience with human rights norm development does not indicate a threat of insularism. The Caribbean Court's death penalty jurisprudence speaks to the issue of regional insularism. The Caribbean Court, created in 2001, is an independent adjudicatory body governed by the Agreement Establishing the Caribbean Court of Justice.¹¹⁴ The Court's very purpose centered on breaking away from the United Kingdom Privy Council, which was the final court of appeals for English-speaking Caribbean countries.¹¹⁵ Caribbean citizens and politicians viewed the establishment of the CCJ as a symbolic breakaway from the former colonial power.¹¹⁶ For many, the CCJ symbolized the "end of the final vestiges of colonialism" in the English-speaking Caribbean.¹¹⁷ Another major impetus for the Court's formation was the Privy Council's decision in *Pratt and Morgan v. Attorney General for Jamaica*, in which the Privy Council held that a prolonged delay in issuing appellate decisions in death penalty cases was unlawful.¹¹⁸ The *Pratt* decision was the first of a line of Privy Council decisions

114. *About the CCJ*, CARIBBEAN CT. JUST., <http://www.caribbeancourtjustice.org/about-the-ccj> (last visited Oct. 7, 2012).

115. JAMAICANS FOR JUSTICE, *supra* note 47.

116. Leonard Birdsong, *Formation of the Caribbean Court of Justice: the Sunset of British Colonial Rule in the English Speaking Caribbean*, 36 U. MIAMI INTER-AM. L. REV. 197, 200 (2005).

117. *Id.* at 200–01.

118. *Pratt & Morgan v. Attorney General for Jamaica*, [1993], 3 W.L.R. 995 (Jam.).

critical of the Caribbean's death penalty record.¹¹⁹ Therefore, when the CCJ was formed in the interest of fostering regional autonomy, human rights advocates feared that the CCJ would amount to no more than a "hanging court," to delegitimize the Privy Council's anti-death penalty jurisprudence.¹²⁰ For human rights advocates, the CCJ represented the region's "antidote to the Privy Council's supposed hostility towards the death penalty."¹²¹ It was therefore surprising when the CCJ, in one of its very first decisions, upheld a challenge to the death penalty, in what appeared to be the same tradition of the Privy Council.¹²² Therefore, regionalism in the Caribbean does not appear to have fallen prey to any insularism that would permit unfettered human rights abuses.

VII. RECOMMENDATIONS

This Article concludes that regional bodies are more advantageous for culturally charged human rights advocacy and more uniquely tailored for LGBTI rights advocacy in the Caribbean. Taking account for this conclusion, the next few paragraphs make three recommendations to LGBTI advocacy communities seeking to advance LGBTI rights in the region.

A. Strengthen the Democratic Mechanisms Available to the Caribbean LGBTI Community

Progress within the Latin American community is largely credited to the utilization of "democratic openings."¹²³ Together with Latin America's example, the earlier discussed advantages of working within smaller, more similar regional groups, suggest that LGBTI advocates may realize substantial progress by strengthening the democratic mechanisms already

119. Margaret A. Burnham, *Indigenous Constitutionalism and the Death Penalty: the Case of the Commonwealth Caribbean*, 3 INT'L J. CONST. L. 582, 587 (2005).

120. *Caribbean Rejects UK Justice*, BBC (Feb. 15, 2001), <http://news.bbc.co.uk/2/hi/americas/1171362.stm>.

121. Phillip Dayle, *Caribbean Court of Justice: A Model for International Courts?*, GUARDIAN (Sept. 10, 2010), <http://www.guardian.co.uk/law/2010/sep/10/caribbean-court-judges-selection>.

122. *Id.*

123. HUMAN RIGHTS WATCH, *supra* note 2, at 34.

available to the Caribbean's LGBTI population. These mechanisms include the OAS, IACHR, CARICOM,¹²⁴ and the CCJ.¹²⁵

LGBTI advocates may consider bolstering the resources available to these bodies, whose missions include providing an example of independent judicial decision making that is "worthy of emulation by the courts of the region."¹²⁶ By supporting the independence of the IACHR and Caribbean Court, advocates can improve at least two avenues available for the Caribbean's LGBTI community seeking redress from homophobic human rights violations.

With regard to the relative value of supporting the IACHR and the Caribbean Court, the Caribbean Court is more advantageous in at least two respects. First, it enjoys closer geographic and cultural proximity to the population at issue, the Caribbean LGBTI community. Second, unlike the IACHR, the Caribbean Court exercises both original and appellate jurisdiction. The IACHR is generally a forum of last resort, with the exception of certain types of cases.

B. Provide Greater Resources for LGBTI Individuals Seeking Redress in Regional Courts

On the other side of litigation, LGBTI advocates can also support the Caribbean's LGBTI population by lending resources to individuals or groups attempting to access the Courts (either the IACHR or the Caribbean Court). A recent Human Rights Watch report notes that resource-shortage is a major obstacle for the Caribbean's LGBTI population.¹²⁷ For example, many domestic groups lack "resources to support lawyer's fees."¹²⁸ External support can take a range of forms, including development and distribution of "how to" manuals for individuals petitioning the courts that include procedural

124. See Caribbean Community (CARICOM) Secretariat, http://www.caricom.org/jsp/community/member_states.jsp?menu=community (last visited Oct. 7, 2012).

125. CARIBBEAN COURT OF JUSTICE, <http://www.caribbeancourtsofjustice.org/> (last visited Oct. 7, 2012).

126. *Annual Report 2008/2009*, CARIBBEAN COURT OF JUSTICE 2 <http://chooseavirb.com/ccj/wp-content/uploads/annualreports/2008-9/1-Mission&Vision.pdf>.

127. HUMAN RIGHTS WATCH, *supra* note 2, at 42.

128. *Id.*

guidelines for litigating in international courts and indexes of international case-law relevant to LGBTI rights litigation.

For those advocates seeking a more interactive role in LGBTI litigation, there are many opportunities for lending pro bono legal assistance. Several organizations already exist for the very purpose of connecting attorneys with communities in the developing world.¹²⁹ Pro bono legal assistance in the researching and drafting of court filings would certainly be helpful to the Caribbean's LGBTI populations who may not have access to expensive legal resources. Legal support can even occur more independently, with the filing of *amici curiae* briefs in support of existing cases being heard by the Courts. Logistically, advocates may also raise financial support for the LGBTI community to assist with the travel costs and other expenses associated with international litigation.

Although advocates may consider supporting information campaigns aimed at raising awareness about the Commission and the CCJ, such an effort should be pursued cautiously. A public information campaign by foreigners supporting these bodies risks associating the bodies with foreigners and therefore stripping the Commission and CCJ of their domestic advantages. Therefore, with the exception of the information campaign, support for individuals petitioning regional bodies presents a promising avenue for foreign LGBTI advocates to support the efforts of the Caribbean's LGBTI community.

C. Collaborate More Closely with the Caribbean's LGBTI Population

Finally, the most crucial element in LGBTI advocacy toward the Caribbean is the engagement of the Caribbean's LGBTI community in the planning phase of advocacy strategies geared toward improving their livelihoods. The engagement of the domestic population offers advocates a window into the cultural nuances that must be considered in designing an effective human rights campaign. For an example of the benefits of local involvement we can turn our attention once more to the case of

129. See, e.g., LAWYERS WITHOUT BORDERS, <http://www.lawyerswithoutborders.org/Pages/Default.aspx> (last visited Oct. 7, 2012); NATIONAL LAWYERS GUILD INTERNATIONAL COMMITTEE, <http://www.nlginternational.org/news/article.php?nid=393> (last visited Oct. 7, 2012).

female circumcision. A Texan, Mollie Melching, designed a successful advocacy program toward abolishing female circumcision in Senegal.¹³⁰ Before designing the program, Melching lived in Senegal for twenty-three years.¹³¹ During her in-country residency, Melching consulted hundreds of communities and finally found that story-telling and proverbs were an ideal avenue for advancing her cause.¹³² Melching's program is conducted in Wolof, the local language, and is run by Senegalese citizens.¹³³ The campaign does not directly criticize female circumcision, but instead emphasizes the health risks associated with the practice.¹³⁴ The program's success is self-evident: thirty-one Senegalese villages now renounce female circumcision and the campaign is being implemented in another 250 communities.¹³⁵ Melching has since been invited to develop similar programs in other parts of West Africa.¹³⁶

Melching's experience evidences that there is a role for foreign advocates in the advancement of culturally charged human rights. However, her experience also confirms that engagement with the target community is crucial to designing a campaign that is cognizant of the cultural undertones that must be accounted for, if the campaign is to be effective.

CONCLUSION AND LIMITS OF THE RESEARCH

The conclusions drawn here are subject to at least three limitations. The first limitation concerns the enforcement of LGBTI rights norms. At the moment, the enforcement powers of the Caribbean Court and the IACHR remain unclear. Therefore, use of these regional bodies to advance LGBTI rights may be undermined by the bodies' inability to enforce its rulings. Note, however, that the enforcement powers of international bodies, such as the U.N., are also uncertain. Therefore, the regional bodies' lack of enforcement power may not necessarily be prejudicial, especially in light of the U.N.'s shared shortcoming.

130. Bowman, *supra* note 25, at 159.

131. *Id.*

132. *NPR All Things Considered: Female Circumcision Educators*, NPR (July 22, 1998) <http://www.npr.org/programs/atc/archives/1998/980722.atc.html>.

133. Bowman, *supra* note 25, at 158.

134. *Id.* at 159.

135. Dillon, *supra* note 24, at 305.

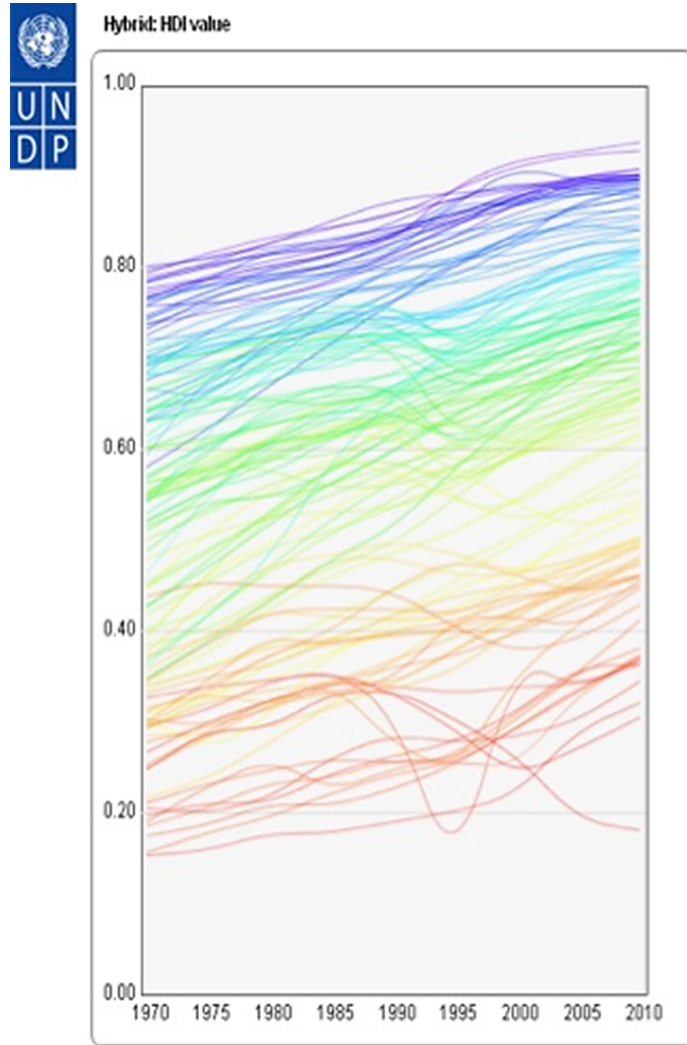
136. Bowman, *supra* note 25, at 159.

Second, the term LGBTI has been used very loosely throughout this Article. Although the LGBTI community is the focus of this research, discrimination against the LGBTI population is understood to reflect a broader sentiment of hate toward sexual minorities. The LGBTI population, its sub-communities, and offshoots, make up a diverse body with diverse interests and needs. Therefore, the conclusions drawn here may not necessarily be generalizable to all sexual minorities.

Finally, the recommendations made are not intended to be exhaustive of all avenues available to advocates using regional bodies to advance LGBTI rights.

Taking account for the above limitations, this research concludes that, relative to global advocacy and direct advocacy, regional bodies are more advantageous for promoting culturally charged human rights norms. More narrowly, bodies such as the Inter-American Commission on Human Rights and the Caribbean Court of Justice are more advantageous for LGBTI rights advocacy in the Caribbean.

APPENDIX I: GLOBAL HDI TRENDS



APPENDIX II: LATIN AMERICA AND THE CARIBBEAN HDI TRENDS

