



Referendum on Marriage Equality

Press Statement

18 February 2016

Centre for Justice acknowledges that while there are circumstances in which referenda can be utilized to enhance civic engagement and public participation in the democratic process, they are not appropriate for deciding questions that directly impact the fundamental human rights. This is particularly so where the existence of those rights has already been established by local and international law.

The inherent dignity of all people in Bermuda is recognized not only by the Universal Declaration of Human Rights, but also by the European Convention on Human Rights and the Constitution of Bermuda. No step should be taken to deprive LGBT people from enjoying the right to life, the right to secure protection of the law, the right to protection of one's home and family life, or the right freedom of thought, religion and belief. We join with the High Commission of the United Nations in observing that:

All people, irrespective of sex, sexual orientation or gender identity, are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly.

The position of Centre for Justice on this issue accords with the guidance provided by the House of Lords Select Committee on the Constitution, in its Report on Referendums in the United Kingdom. While we understand there are constitutional distinctions between Bermuda and the United Kingdom, we also recognize our constitutional traditions have sufficient in common to make the Committee's observations apt for Bermuda.

Referenda ought only to be used for deciding fundamental constitutional issues which raise questions of principle about part of the constitution. Questions about marital equality or even civil unions do not rise to the level of being constitutional questions, which would include issues affecting whether the United Kingdom should abolish the monarchy, or independence for Bermuda, or reform of the legislature, or changing the electoral system from first-past-the-post to one of proportional representation.

Centre for Justice does not believe referenda should be used by the Government to skirt issues of controversy which affect a minority even if it is politically expedient for the Government to do so. Such action creates a dangerous precedent for future governments to abdicate their decision-making role when difficult issues arise. Giving in to popular sentiment is dangerous and irresponsible. The role of Government, in a democratic society, is to protect the welfare of the minority.

We cannot help but note that the Government has on one hand sought to push ahead with immigration reform (which engages issues of fundamental rights and Bermuda's international

legal obligations) without engaging in effective consultation, at the same time that members of the Government have freely advocated for marital equality, or the question of the acceptability of civil unions, (which also engage issues of fundamental rights and Bermuda's international legal obligations) to be made the subject of a popular vote. This inconsistency is blatant, and ought to be explained.

If the government is genuinely concerned about 'doing the right thing' and ensuring Bermuda meets international legal standards, it will not hold a referendum on the issue of marital equality or civil unions.