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Our Reference: FA/BR/59/17(53)

Note No. 423

The Ministry of Foreign Affairs of Belize presents its compliments to the Inter-American Court of Human Rights (IACHR) and has the honour to refer to the latter's Note No. CDH-OC-25/267 on the request for submission of written observations on the Advisory Opinion presented by the State of Ecuador to the IACHR Secretariat [Advisory Opinion OC-25 Ecuador].

The Ministry of Foreign Affairs has further the honour to enclose the written observations on the abovementioned Advisory Opinion presented by the Attorney General's Ministry of Belize.

The Ministry of Foreign Affairs of Belize avails itself of this opportunity to renew to the Inter-American Court of Human Rights the assurance of its highest consideration.



INTER-AMERICAN COURT
OF HUMAN RIGHTS (IACHR)
Washington, D.C.

9 June 2017



THE STATE OF BELIZE

WHEREAS: The statute of the Inter- American Court of Human Rights (IACHR) provides that ‘the Inter-American Court of Human Rights is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights. The Court exercises its functions in accordance with the provisions of the aforementioned Convention and the present Statute’;

AND WHEREAS: Article 2 of the Statute of the Inter- American Court of Human Rights (IACHR) gives the Court Jurisdiction to give advisory opinions pursuant to Article 64 of the Inter American Convention on Human Rights;

AND WHEREAS: Article 64 (1) and (2) of the Inter- American Convention on Human Rights provides: ‘The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court and *The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.*

AND WHEREAS: The Inter- American Court of Human Rights (IACHR) has indicated that Ecuador, a member state of the Organization of American States, has requested an advisory opinion (Advisory Opinion OC-25) regarding “the institution of asylum in its different forms and to the legality of its recognition as a human right of every individual in accordance with the principles of equality and non-discrimination”.

AND WHEREAS: Members states inclusive of Belize are to submit observations on the request made by the State of Ecuador by the 4th May, 2017 in accordance with Article 73 of the Rules of Procedure of the Inter- American Court of Human Rights which prescribes: ‘Upon receipt of a request for an advisory opinion, the Secretary shall transmit copies thereof to all of the Member States, the Commission, the Permanent Council through its Presidency, the Secretary General, and, if applicable, to the OAS organs whose sphere of competence is referred to in the request and *the Presidency shall establish a time limit for the filing of written comments by the interested parties.*

(a) The institution of asylum and recognition of the different forms

It is well established in international law that a State has a right to grant asylum. This right is seen as an expression of the State’s sovereignty. The exercise of sovereignty in this manner is not by any means an act of hostility towards any other State and as such shall be respected by all other States.¹ The inability of States to find consensus on a universally applicable position on the institution of asylum has led many States, including Belize, to adopt a very restrictive use of “asylum” to Refugees within the meaning of the Convention Relating to the Status of Refugees.² Consequently, the right of Asylum finds expression in specific manifestations of State conduct. In the Belizean context, there is a general exclusion of non-Refugee Convention refugees from the protection offered by the institution of asylum.

Nevertheless, if a State takes a much wider approach and offers protection to various manifested forms of asylum, then it is that State’s prerogative to provide such protection.

¹ Declaration on Territorial Asylum, 2312 XXII, Art. 1.

² Convention Relating to the Status of Refugees, adopted 28 July 1951, entered into force 22 April 1954.

Either of these approaches is within the sovereign right of any member State, since it is the State granting asylum which is vested with the authority to evaluate the grounds for the grant of asylum.³

On the point of recognition of the different forms of asylum, it is to be noted that “recognition” in international law is a discretionary concept. In a broad sense recognition involves the acceptance by a state of any given factual situation in its relations with other states.⁴ Generally, the state’s expression is a unilateral interpretation of a factual situation; simultaneously, it constitutes the means for a state to declare its own view of a situation, including the legal consequences. Additionally, a state can withdraw its position or change it or ultimately decide not to express a position.⁵ The underpinning principle of state sovereignty dictates that any subject of international law has the discretionary power to decide, how it interprets and construes the fact or situation that is the object of recognition.

On the other hand, in relation to the right of asylum, states have a duty to “respect” the forms of asylum granted by another state “...in the exercise of its sovereignty”.⁶ This is in tandem with the well established principle of non-intervention, which prohibits states from intervening in the domestic affairs and matters which fall in the realm of another state’s sovereign right. Non-intervention is one of the fundamental duties of a state, forming part of customary international and *ius cogens*.⁷ This prohibition on intervention allows the sovereignty of a state to be fully realized and is subject only to a few limited exceptions. As such, the *raison d’être* of the non-intervention rule is to allow states to exercise its sovereignty.

In the premise even though there is an existing duty to “respect” the domestic position taken by another state on asylum, there is no correlative duty to “recognize” the different forms of asylum, by another state.

(b) The Position in Belize as it regards Asylum

³Supra at note 1, Art.1(3).

⁴Jennings and Watts, *Oppenheim’s International Law* (9th Ed); Oxford University Press, pg. 127.

⁵Ibid

⁶Supra at footnote 1, Art. 1(1).

⁷ *Case Concerning Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v U.S.A.) (Advisory Opinion) 1986 <http://www.icj-cij.org/docket/files/70/6503.pdf> accessed 8 May 2017 [202].

In Belize “the right of asylum” is not afforded constitutional protection, but is given statutory protection in the context of *Refugees Act Chapter 165*, which gave legal force to the provisions of the *Convention Relating to the Status of Refugees of 1951 and its 1967 Protocol Relating to the Status of Refugees*.⁸

In 1990, Belize ratified the *Convention on the Status of Refugees* and the *1967 Protocol* relating to the same, and in 1991 enacted the *Refugees Act, CAP 165* (“the Act”).

Generally, the Act grants a broad range of specific entitlement to those recognised as falling within its ambit. Section 4 of the Act details the basis for consideration of a person for refugee status. These are:

1. owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, he is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country;
2. not having a nationality and being outside the country of his former habitual residence, he is unable or, owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, is unwilling to return to it; or
3. owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, he is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

The Act and by extension the Convention, goes beyond the traditional position of purely a fear of persecution on political grounds, to include “a well founded fear on grounds such as race, religion, nationality and membership of a particular social group...”.

Furthermore, section 6 of the Act establishes “Refugee Eligibility Committee” (REC) which is mandated to receive and consider applications made to the Committee. According to section 8 of the Act any person who has entered Belize whether lawfully or otherwise, and who wishes to remain in Belize as a refugee, has fourteen days from the date of his arrival in Belize to apply to the Committee for recognition of his status as a refugee. Section 8(2) of said Act further stipulates a timeframe of 30 days for the Committee to consider applications. Sections 8-9 lay out the process for appeal if an applicant wishes to challenge a refusal of the Committee to recognize him as a refugee. The aggrieved person can appeal within 14 days of being notified

⁸Belize Refugee Act, Chapter 165 of the Substantive Laws of Belize, Revised Edition 2011.

of such refusal, in writing, to the Minister. If the appeal is unsuccessful, the person has three months within which to seek admission to a country of his choice. The three month period can be extended on application to the Minister.

The abovementioned is a synopsis of state practice that obtains in Belize in relation to the concept of “asylum”.

(c) Is the Right of Asylum recognized as a Right of every individual?

As mentioned above, it is the right of a state to grant asylum, this also includes the corresponding right to deny asylum to persons located within its territory. In accordance with the generally accepted international law view, the right of an individual to asylum is really a right of an individual to seek asylum vis-a-vis the State of Refuge.⁹ In essence, it is the right of an individual to leave his country of habitual residence in pursuit of asylum.

The right of a person to leave any country, including his own is protected in many regional and international instruments to which Belize is a state party. *The Universal Declaration of Human Rights (UDHR)*, Article 13(2) states that “everyone has the right to leave any country, including his own.”¹⁰ Also, *the International Covenant on Civil and Political Rights (ICCPR)* proclaims that “everyone shall be free to leave any country, including his own.”¹¹ Similarly, the American Convention on Human Rights (ACHR) states in Article 22(2) that “every person has the right to leave any country freely, including his own.”

The right of the individual to seek and enjoy asylum in other countries is also provided in regional and international instruments. Article 22(7) of the American Convention Human Rights provides “every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions.”¹²

⁹ Boed, Roman, *The State of the Right of Asylum in International Law* (1994) 5(1) Duke Journal of Comparative and International Law <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1342&context=djcil> accessed 2 May 2017.

¹⁰ Universal Declaration of Human Rights, adopted 10 December 1948, G. A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948), art. 13(2).

¹¹ International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force 23 March 1976, 999 U.N.T.S. 171., art. 12(2).

¹² American Convention of Human Rights, signed 22 November 1969, entered into force 18 July 1978, O.A.S.T.S. No. 36, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, doc.21, rev.6., art 22(7).

Notably, this right is not an unqualified right and is only enforceable in Belize in the context of the provisions of the *Refugee Act* as mentioned above. The right is unqualified on the basis that there is no right to receive asylum. The *1951 Convention* and its *1967 Protocol* merely provides the framework to regulate the status of those who have been accepted as refugees by a state and in and of itself does not provide for a right of the individual to be granted asylum. The limitations on this right of the individual asylum seekers are provided for in section 4(2) of the Act. An asylum seeker is unable to acquire “Refugee Status” if he has committed a crime against peace, a war crime and any crime against humanity covered in treaties to which Belize is a state party.¹³ Additionally, *inter alia*, the asylum seeker will also be denied if he has committed a serious non-political crime prior to his admission into Belize.

Therefore, a valid state interest, in accord with the abovementioned s.4 (2) of the Act, in prosecuting the asylum seeker may supersede the right to seek and enjoy asylum. In accordance with valid extradition request under the laws of Belize an asylum seeker may thus be handed over to the competent authorities.

In Belize extradition is dealt with under the *Extradition Act, Chapter 112* and provides for extradition requests between Belize and the United States of America and Belize and Guatemala.¹⁴ The offenses for which the individual is charged must be an “Extraditable Offense” in the context of dual criminality. However, extradition will not be granted if the offence for which extradition is requested is a political or military offense.¹⁵ As a result, there is no existing conflict between Belize’s state practice in relation to granting of asylum to refugees and complying with our international obligation in relation to extradition.

In the event that extradition is sought and in the opinion of Belize, as provided for under section 14 of the Act, the asylum seeker will be subjected to persecution on grounds of race, religion, nationality, membership of a particular social group or political opinion or due to some disturbance of public order, then the asylum seeker and his/her family will not be refused entry and the extradition request will certainly be denied by Belizean authorities.¹⁶

¹³Supra at note 8, s.4(2) (a).

¹⁴Extradition Act, Chapter 112 of the Substantive Laws of Belize, Revised Edition 2011.

¹⁵Ibid.

¹⁶Supra at note 8, s. 14(1) (a) (b).

In fulfillment of our humanitarian duty not to return a person to persecution, full effect is given to the principle of non-refoulement. The principle of non-refoulement is a salient component of refugee status and asylum. This principle seeks to protect asylum seekers from returning to a country where there is a fear of persecution.¹⁷ It is widely accepted that “non-refoulement” provides the asylum seeker with a form of temporary refuge. The importance of adherence to the duty of non-refoulement is underscored by the fact that Article 42(1) of the Convention specifically designates Article 33 as one of the articles to which a state could not have made any reservations.¹⁸

Although the principle of non-refoulement provides a duty not to return an asylum seeker to a place where he may face persecution, it does not necessarily provide a duty to grant asylum or a duty not to send the asylum seeker to another country. Additionally, the principle of non-refoulement has to be reconciled with the national security’s interest of a country. Article 33(2) of the 1951 Refugee Convention lends support to the above view.¹⁹

In light of the foregoing it is our considered view that an individual has no right to be granted asylum vis-à-vis the state of refuge. Instead, the individual has a right to seek asylum and it is for Belize or another state to decide whether to grant asylum in exercise of its sovereignty. The state of affairs in international law at present constituted, *strictu sensu* does not provide for recognition of the right of an individual to be granted asylum as a fundamental human right.

(d) The Right to Seek Asylum in light of the Right to Equality and Non-Discrimination

The right of an individual to seek and enjoy asylum is afforded the protection given to human rights due to the fact of its inclusion as part of the human rights regime. As such, in deciding whether to grant or deny an application for refugee status, each applicant is treated equally before the laws of Belize, without discrimination throughout the stages of the displacement cycle.

¹⁷ Convention Relating to the Status of Refugees, signed 28 July 1951, entered into force 22 April 1954, 189 U.N.T.S.137, Art. 33(1).

¹⁸Ibid, art 42(1).

¹⁹The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of the country.

The principle of non-discrimination and equality guarantees that those in similar circumstances are dealt with equally in practice and in law and is contained in international and regional instruments to which Belize is a state party or has ratified or acceded to, such as Article 2 and Article 26 of the International Covenant on Civil and Political Rights (ICCPR)²⁰.

It is important to note that the grounds for non-discrimination under Article 2 of the ICCPR are similar to the grounds enumerated in section 16(3) of the Belize Constitution.²¹ As such, the right of non-discrimination is constitutionally protected

However, it is important to note that not every distinction or difference in treatment will amount to discrimination. In general international law, a violation of the principle of non-discrimination arises if: a) equal cases are treated in a different manner; b) a difference in treatment does not have an objective and reasonable justification; or c) if there is no proportionality between the aim sought and the means employed.²²

In the local case of *Caleb Orozco v. Attorney General of Belize et al*²³, the Chief Justice made the following pronouncement:

It has been judicially pronounced that the Constitution is a 'living instrument' (see: **Boyce v R** (2004) 64 WIR 37 (para.24) and **R v Lewis** (2007) 70 WIR 75 (para.74). The Belize Constitution owes its provenance to the European Convention on Human Rights which in turn was influenced by the United Nations Declaration on Human Rights. As such, decisions in relation to human rights issues have been informed by developments in international law (See: **Boyce** per Lord Hoffman (at para. 27). Indeed, the final appellate court of Belize, the Caribbean Court of Justice has acknowledged the application of the jurisprudence from international bodies to domestic law (See: **AG v Jeffery et al** – CCJ Appeal No. CV 2 of 2005 (at para.106).

In construing the human rights provisions of the Constitution in these proceedings, I have taken the liberty of examining the jurisprudence of international bodies as an aid to interpretation. It cannot be now gainsaid that the streams of domestic law and international law ought to flow in the same direction in establishing fundamental norms applicable to the right conferred by the Constitution.

²⁰ International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force 23 March 1976, 999 U.N.T.S. 171. Belize acceded to the ICCPR on the 10th of June 1996.

²¹ The Belize Constitution Act, Chapter 4 of the Substantive Laws of Belize, Revised Edition 2011.

²² Inter-American Court of Human Rights(Advisory Opinion) OC-4/84 Jan 19, 1984, Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, para.57.

²³ *Caleb Orozco v. Attorney General of Belize and Others* Claim No. 668 of 2010.

It follows that the right of non-discrimination with respect to refuge/asylum seekers is given full effect throughout the assessment process in determining whether to grant or deny asylum.

Similarly, the right to equal protection of the law is constitutionally protected, section 6 of the Constitution provides:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law”

The local court has assisted in the interpretation of this right. In *Melissa Belzaire Tucker v Attorney General of Belize et al*²⁴. The judge opined,

“...with this approach in mind, the facts of the instant case can now be assessed in the context of a breach of the right of protection of the law, particularly in terms of the recognized and affirmed classification of the right as ‘broad and pervasive’ and the fact that the reference to ‘law’ goes beyond only written law and includes principles of natural justice and fairness.”

Accordingly, the principle of equality is applied across the board once within the territory of Belize. Our legislations are subject to the general principles of non-discrimination and equality and must provide the same fundamental protections. Under the provisions of the Refugees Act, recognised refugees and their immediate family members are issued an identification card and given residence status, even if the family is outside of Belize.²⁵ Also, they are given access to social services, subjected to the laws of Belize and are afforded a reasonable opportunity to work and contribute to the development of Belize.²⁶ They and their minor child or children have access to public education and even where the recognised refugee may have died or his dependents cease to be dependents, they are still offered the fundamental protection in accordance with the Act.²⁷ Similarly, where there has been a denial of refugee status the asylum seeker is allowed to appeal the process and if his appeal to the Minister is unsuccessful a further three (3) months is

²⁴ *Melissa Belzaire Tucker v. Attorney General of Belize and Chief Executive Officer of the Ministry of Education* Claim No 305 of 2014 and Claim No. 199 of 2015.

²⁵ *Supra* at note 8, s.11 and 12.

²⁶ *Supra* at , s. 13.

²⁷ Refugee Act, s.12.

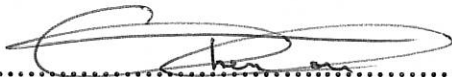
given along with reasonable facilities to allow the asylum seeker to seek entry into a country of his choice.²⁸

The above position exemplifies the fairness of the process before Belizean authorities and the fact that no discriminatory measures are applied to an asylum seeker on any of the enumerated grounds in the Belizean Constitution or those listed in Article 2 and Article 26 of the ICCPR.

The State of Belize respectfully submits that the Laws of Belize are in compatibility with our international obligations in relation to the institution of asylum in the context of the 1951 Convention and its 1967 Protocol. We therefore request that our observation be accepted with the highest consideration.



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²⁸Supra at note 8, s.9.



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