



REFORM OF DISCRIMINATORY SEXUAL OFFENCES LAWS IN THE COMMONWEALTH AND OTHER JURISDICTIONS

Case Study of Belize



THE HUMAN DIGNITY TRUST

The Human Dignity Trust is an organisation of international lawyers supporting local partners to uphold international and constitutional human rights laws in countries where private, consensual sexual conduct between adults of the same sex is criminalised. Over 70 jurisdictions globally criminalise consensual same-sex sexual intimacy, putting lesbian, gay, bisexual and transgender (‘LGBT’) people beyond the protection of the law and fostering a climate of fear, stigma, discrimination and violence.

The Human Dignity Trust provides technical legal assistance upon request to local human rights defenders, lawyers and governments seeking to eradicate these discriminatory laws.

With generous funding from Global Affairs Canada, the Human Dignity Trust has developed a series of case studies on the ways in which Commonwealth governments around the world have achieved reform of these laws and other sexual offences laws that discriminate against women, children, LGBT people and other groups, and initiated the establishment of a Commonwealth Group of Experts on legislative reform comprised of legal, political, academic and other experts with experience in reform of discriminatory sexual offences laws.

The research for this series of case studies has been possible thanks to the insight and assistance of members of the Commonwealth Group of Experts, and many others in the relevant countries who helped initiate, steer, inform and implement sexual offences law reform to bring sexual offences laws into compliance with international and domestic human rights standards.

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INTRODUCTION

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Discriminatory sexual offences laws continue to impact the lives of many Commonwealth citizens, and they particularly affect women, children and LGBT people. These laws are at odds with international and regional human rights norms and domestic constitutional law. They undermine human rights and perpetuate violence, hate crimes and discrimination, and they undermine the health and prosperity of entire societies.

Discriminatory laws are apparent in the sexual offences provisions in many Commonwealth criminal codes as well as in the absence of protective legislation. For example, many Commonwealth countries have different ages of consent for sexual relations and marriage for males and females. Rape provisions are often gender-specific, and do not cover all forms of rape including rape with objects. Marital rape remains lawful in half of Commonwealth countries. Laws protecting against sexual harassment and child sexual grooming are uneven across the Commonwealth. In two thirds of Commonwealth member states, consensual same-sex sexual intimacy in private between adults is criminalised. Many countries have laws that are used to discriminate against transgender people including cross-dressing, impersonation and vagrancy laws. Very few Commonwealth countries have legislation to recognise, prevent and punish hate crimes, including those committed on the basis of sexual orientation or gender identity.

Several countries have, however, made real progress in reforming their laws through either wholesale updating of criminal codes, allowing multiple issues to be tackled together, or through targeted reforms.

Some of the most recent examples are as follows:

- **Palau** in 2012 and 2014, with the assistance of model laws, respectively modernised its sexual offences laws and completed the wholesale updating of its penal code;
- **Belize** in 2014 enacted major reforms to its colonial-era sexual offences laws, including making rape laws gender neutral, and it achieved decriminalisation of consensual same-sex sexual acts in 2016 through the courts;

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- **Northern Cyprus** in 2014 repealed a law that criminalised consensual same-sex sexual conduct, prompted by litigation before the European Court of Human Rights, as part of a package of reforms to the sexual offences chapter of its colonial-era criminal code;
 - **Mozambique** in 2015 completed a wholesale updating of its penal code, including the modernisation of its sexual offences laws, using the Portuguese penal code as inspiration;
 - **Seychelles** in 2016 repealed a law criminalising consensual same-sex sexual intimacy between adults; and
 - **Nauru** in 2016, with international assistance, completed a wholesale updating of its criminal code, including the modernisation of its sexual offences laws.

Law reform can play a key role in advancing human rights in relation to sexual and physical integrity and health, and is an important part of a comprehensive strategy to reduce crimes, particularly sexual crimes, as well as address the persecutory and discriminatory dimensions of laws that exist on many statute books, ensuring a criminal justice regime that meets international human rights obligations and is fit for the 21st century.

The above examples demonstrate that different countries have taken diverse approaches to reforming sexual offences laws. The Human Dignity Trust has compiled a series of case studies to document the ways and means that each of these countries has achieved reform.

By showcasing these examples, it is hoped that other countries can be inspired and assisted to undertake similar reforms.



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Since the 1990s, Belize has undertaken a concerted effort to reform its sexual offences laws, particularly to strengthen legal protection for women, children and LGBT people. This has been achieved through a combination of changes to legislation and policy via the legislature, and public interest litigation via the courts.

This case study examines how Belize has reformed its laws through:

- (a) Legislative reform in 2014 – when Belize made sweeping changes to its Criminal Code, Chapter 101 of the Substantive Laws of Belize (‘Criminal Code’) to overhaul the provisions pertaining to sexual offences;
- (b) Litigation in 2016 – when the landmark case of *Caleb Orozco v the Attorney General of Belize*² (‘Orozco Case’) finally achieved the decriminalisation of private consensual same-sex sexual intimacy between adults in Belize.

The case study reflects on how those two processes – legislative reform on the one hand, and public interest litigation on the other – although unconnected, nonetheless mutually reinforced each other as frameworks for reform. Ultimately, the Belize example demonstrates that parallel action can be a strong model for achieving progressive legal and social change, and eliminating discrimination.

Legislative Reform

The Criminal Code reforms implemented in 2014 reflect a deliberate progression towards strengthening Belize’s laws to provide greater protection for women and children, and tackling discriminatory laws inherited through Belize’s British colonial history. The creation of institutions like the National Committee for Families and Children (‘NCFC’) in 1994, and the Special Envoy for Women and Children (‘Special Envoy’) a decade later in 2003, mandated as they were to address and improve the protection of women and young children, complemented the implementation of legislative reform and the introduction of new protective laws and policies, and have all been part of a progressive long-term agenda to eliminate discrimination and strengthen equality. Since the 1990s, Belize has enacted and reformed numerous pieces of legislation³ and

² *Caleb Orozco v the Attorney General of Belize (and others)*, Claim No. 668 of 2010 (available at: <https://www.humandignitytrust.org/wp-content/uploads/resources/Judgment-Orozco-v-The-Attorney-General-of-Belize.pdf>).

³ These provide some examples: the Domestic Violence Act 1993 (available at: <http://www.belize-law.org/web/lawadmin/PDF%20files/cap178.pdf>); the Protection Against Sexual Harassment Act 1996 (available at: https://oig.cepal.org/sites/default/files/2000_biz_protectionagainsttharassment.pdf); the Families and Children’s Act 1998 (available at: https://www.oas.org/dil/Families_and_Children_Subsiary_Act_Belize.pdf); The Criminal Code (Amendment) Act 1999 (available at: 1.a of the Annex); the Domestic Violence Act 2007 (available at: https://oig.cepal.org/sites/default/files/2007_biz_act19.pdf); the Commercial Sexual Exploitation of Children (Prohibition) Act 2013 (available at: <http://humandevlopment.gov.bz/wordpress/wp-content/uploads/2016/02/CSEC-Legislation.pdf>); the Trafficking in Persons (Prohibition) Act 2013 (available at: [http://www.belizejudiciary.org/download/LAWS%20of%20Belize%20rev2011/Law%20s%20Update%202011/Data/VOLUME%206B/Cap%20108.01%20Trafficking%20in%20Persons%20\(Prohibition\)%20Act.pdf](http://www.belizejudiciary.org/download/LAWS%20of%20Belize%20rev2011/Law%20s%20Update%202011/Data/VOLUME%206B/Cap%20108.01%20Trafficking%20in%20Persons%20(Prohibition)%20Act.pdf)); the Criminal Code (Amendment) (No.2) Act 2014 (available at: 1.f of the Annex); and the Married Persons (Protection) (Amendment) Act 2017 (available at: <https://nationalassembly.gov.bz/wp-content/uploads/2017/04/Act-no.-48-of-2017-Married-Persons-Protection.pdf>).

launched multiple national policies⁴ aimed at protecting the rights of women, children and LGBT people. Many of these legislative reforms embraced and domesticated Belize's international human rights treaty obligations, such as those found in the Convention on the Rights of the Child ('CRC') and the Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW'), with the intention of bringing Belize's legislative framework into conformity with international standards.

Provenance of the Criminal Code

The Criminal Code of Belize came into force in 1888 and is a legacy of Belize's British colonial rule. As such, by modern standards some of the provisions and the language in the Criminal Code – particularly pertaining to sexual offences – were vague, outdated, pejorative and discriminatory. Although various piecemeal amendments were made to those provisions over the years as part of a wider effort to improve the protection of women and children, the substantive offences remained largely unchanged until the 2014 reform.⁵

Drivers of Reform to the Criminal Code

The objective of the Criminal Code (Amendment) (No.2) Act ('Amendment Act') was to increase the protection of children and vulnerable adults against sexual abuse and to strengthen provisions relating to other offences against children, including kidnap and abduction. The Amendment Act did not seek to decriminalise same-sex sexual intimacy.

The four driving factors which led to the introduction and, ultimately, the successful passage of the Amendment Act were:

- (a)** Belize's legislative reform context and history;
- (b)** Engagement and lobbying by national agencies;
- (c)** Cross-party consensus; and
- (d)** International supervision and fulfilling international obligations.

⁴ These include the National Gender Policy (available at: <https://www.nationalwomenscommissionbz.org/the-revised-national-gender-policy-2013/>); the National Gender-Based Violence Plan of Action 2010 – 2013 (available at: <http://scm.oas.org/pdfs/2012/CIM03206-A.pdf>); the National Plan of Action for Children and Adolescents 2004 – 2015 (available at: <https://www.mindbank.info/item/4416>); and the Sexual and Reproductive Health Policy, June 2002 (available at: https://hivhealthclearinghouse.unesco.org/sites/default/files/resources/iiep_belizesrh.pdf).

⁵ These piecemeal amendments included amending the Criminal Code to create a separate offence of marital rape; increasing the penalties for the offence of carnal knowledge of a female child; providing a mandatory sentence of life imprisonment for habitual sex offenders and making provisions for the treatment and reporting of sex offenders. Other legislative reforms include provisions to recognising common-law unions for the purpose of inheritance and property rights. The law has also placed economic value on home care and child care in instances of divorce or separation, and custody of children no longer depends on mother's private life.

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Whilst each of these factors were crucial in the creation of a social and political environment in which the reforms could progress, the engagement and lobbying of national agencies and certain key individuals were arguably the most important elements. In the years preceding the Amendment Act, a number of national agencies including the Ministry for Human Development, Social Transformation and Poverty Alleviation ('MHDSTPA'), the Special Envoy, and the NCFC placed equality and women's and children's rights at the centre of their programmes. Through the commissioning of studies, campaigning for legislative reform through various initiatives and proposing draft legislation, these agencies pushed the legislative agenda. It was ultimately the dedication of these national agencies and many others,⁶ and the individuals working within them struggling as they were with limited resources despite a packed legislative agenda, that drove the Criminal Code reforms forward and secured the enactment of the Amendment Act.

At all times, these agencies put the victims at the heart of their campaign to secure reform.

Importantly, they commissioned studies to review the compliance of domestic legislation with Belize's international obligations with respect to child protection, and sought recommendations from legal experts on how domestic policy, procedure and legislation could be amended to improve compliance with those obligations. Those studies identified that the Criminal Code in particular did not offer equal protection for male and female victims, and that there were no provisions for male victims or female perpetrators for some of the most serious sexual offences. The provisions themselves did not adequately address the full range of criminal conduct against which children should be protected, and the penalties for certain conduct were considered insufficient. The studies also identified a lack of consistency between the legal age limits for valid sexual consent, marriage, and seeking sexual health advice or treatment, which did not adequately protect children's rights.

The concerns highlighted in those studies were repeated with increasing force over a number of years by legal and child protection experts within Belize, and also by international observers who were monitoring Belize's compliance with its international treaty obligations. By the time amending legislation was before Parliament, there was already a strong consensus that the Criminal Code needed to be amended.⁷

As noted above, the process was not a quick one. Although an early draft had been circulated for consideration as early as 2006 ('Early Draft'), time and resource constraints within the legislative drafting division of the Attorney General's office meant that the finalised bill ('Amendment Bill') was not introduced to Parliament until September 2013.



"The voiceless victims, the people who are unprotected and discriminated against, who are let down by a substandard set of laws: theirs are the stories that will keep the process going."

"...the journey was not especially difficult. We needed patience and tenacity, but there were no insurmountable obstacles."

**First Lady,
Mrs. Simplis Barrow,**
Special Envoy,
Modernising Sexual
Offences Law

⁶ Including the National AIDS Commission, the National Women's Commission and the National Committee for Women and Children.

⁷ Equality & Justice Alliance, Modernising Sexual Offences Laws: Our Journey, 2019 (available at: <https://www.humandignitytrust.org/wp-content/uploads/resources/KSB-Brochure.pdf>).

However, once the Amendment Bill was introduced to Parliament, cross-party consensus allowed for a relatively smooth transition through the Belize National Assembly, where the Amendment Bill was approved. The process was bolstered by the support of international agencies and human rights organisations, who offered support and resources, whilst guidance from the Belizean judiciary, the Bar Association of Belize and other legal experts was sought to ensure that the Amendment Act worked within Belize's own legal framework.

Public Response

The public response to the Amendment Bill was one of suspicion. In the same year, the Supreme Court had heard the Orozco Case,⁸ and the revised National Gender Policy 2013 ('Revised National Gender Policy') had also been published. The Revised National Gender Policy recognised an individual's right not be discriminated against based on their sexual orientation, amongst other characteristics.



"We congratulate the Government of Belize for progressively working to be more compliant with the Convention on the Rights of the Child (CRC) and make this a country that prioritizes the protection of its youngest citizens."

NCFC,
'A Historic Day For
Our Belizean Children,'
29 May 2014

Being a predominantly Christian country and deeply religious, the Orozco Case and the Revised National Gender Policy caused controversy, and was met with significant resistance. Many members of the religious community were fervently opposed to the decriminalisation of private consensual same-sex sexual intimacy between adults and the recognition of sexual orientation as a characteristic to be protected. Despite the fact that the Amendment Bill did not seek to decriminalise, the timing of the Amendment Bill meant that many believed the reforms were an attempt to decriminalise surreptitiously, as part of a "gay agenda."⁹ The result was that the public greeted the Amendment Bill with an unexpected level of hostility.

In order to mitigate public resistance to the Amendment Bill, consultation meetings were held with key stakeholders (including faith groups, the judiciary, and the Bar Association of Belize). A public consultation was also held, to allow the MHDSTPA and the legal drafters to explain the purpose of the Amendment Bill and correct any misapprehensions. These public consultations were essential to countering negative discourse, and winning the support of the public. The fact that the Amendment Bill then enjoyed unanimous cross-party support is further testament to the success of this engagement and the country's ongoing commitment to improving the protection of vulnerable adults and children.

Public Interest Litigation

Prior to the 2016 landmark decision in the Orozco Case, Belize was one of 11 Commonwealth Caribbean countries that still criminalised private consensual same-sex sexual intimacy between adults.¹⁰ Prompted by growing calls from human rights defenders and HIV/AIDS experts from within Belize (and across the Caribbean region)

⁸ *Caleb Orozco v the Attorney General of Belize (and others)*, *Ibid.* n.2.

⁹ *Modernising Sexual offences Laws: Our Journey*, *Ibid.* n.7.

¹⁰ Antigua & Barbuda, Barbados, Dominica, Grenada, Guyana, Jamaica, St Kitts & Nevis, St Lucia and St Vincent & the Grenadines. Trinidad and Tobago was part of this list but decriminalised as a result of the decision of *Jason Jones v Attorney General of Trinidad and Tobago* Claim No. CV 2017-00720, 12 April 2018.

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to repeal such laws, and in the absence of political and legislative action to address the situation, regional legal experts turned to considering the viability of constitutional or public interest litigation as a strategy to achieve legal reform. Legal analyses identified Belize as having good prospects of success if a challenge were to be brought. Following broad consultations between 2007 and 2010, UNIBAM and Mr. Orozco were identified as litigants, and a collective decision was made within the LGBT community and amongst other stakeholders in Belize to launch a case in 2010.

Section 53 Litigation

On 24 September 2010, Mr. Orozco and UNIBAM filed a constitutional claim against the Attorney General of Belize in the Supreme Court on the basis that section 53 of the Criminal Code (which criminalised same-sex sexual intimacy) was unconstitutional and violated various fundamental rights and freedoms. The significance of the case generated substantial public interest, and consequently a number of Belizean churches and international organisations intervened in 2011 as “Interested Parties.”¹¹

The intervening churches were opposed to the claim and their campaign against decriminalisation extended beyond the Court proceedings into the wider public domain. As the case proceeded, it triggered significant public protest. Public campaigns, led by a number of faith groups, created a particularly hostile environment for the litigants and the LGBT community, who endured threats, public criticism and denouncement throughout the proceedings.

Following a number of preliminary hearings in 2012, the Supreme Court hearing took place in May 2013. The hearing lasted four days and during that time it dominated the national media.

After a wait of three years and three months, in August 2016, the Supreme Court handed down a historic judgment, ruling that section 53 was unconstitutional and breached the rights to privacy, human dignity, freedom of expression, equality and



¹¹ Under Rule 56.11 of the Supreme Court (Civil Procedure) Rules 2005, an Interested Party is any person or body appearing to have sufficient interest in the subject matter of the claim to be heard, whether or not served with the claim form, and who the judge believes will enhance the expeditious and just trial of the claim.

protection against discrimination. The Supreme Court ordered that the Criminal Code be amended so that section 53 no longer applies to consensual sexual acts between adults (including same-sex adults) in private.

Public Response

Despite the initial opposition to the Orozco Case and the furore surrounding the proceedings in May 2013, the government did not appeal the decision to decriminalise, although it partially appealed the judgment on discrete issues relating to freedom of expression and sex discrimination. That partial appeal was heard in October 2018 and judgment was reserved. The Catholic Church filed an appeal of the entire judgment only to withdraw it in March 2018. The widely-held view is that, despite the challenges and opposition, the personal cost and the years of waiting, the Orozco Case has played a major role in legal, political and social change in Belize.

Post-Reform Environment

The public and government response to both the Amendment Act and the Orozco Case has been somewhat muted. During the initial consultations on the Amendment Bill, it was noted that the country would benefit from a public awareness campaign to sensitise the public to the changes but, although some targeted training on the changes brought in by the Amendment Act were delivered to the judiciary and the police, no wider implementation programmes were launched. Equally, we are not aware of any government-led implementation activities resulting from the changes to section 53, although civil society has sought to fill some of those gaps.



"Importantly, Belize is now sending the right message, both domestically and internationally, about the kind of society we are: modern, rights-based, tolerant, and scrupulous in our equal protection of our citizens against sexual violence."

**First Lady,
Mrs. Simplis Barrow,**
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Lack of quantitative data makes it difficult to assess whether there has been any change in the rate of reporting, criminal charges and convictions under the amended Criminal Code, which would provide some insight into the effectiveness of the reforms. The 2014 Criminal Code reforms were undoubtedly a significant achievement and an important step forward, but the general consensus following the passage of the Amendment Act is that further reforms are needed. For example, the incest provisions require further review (as discussed further below), and many would also like to see the separate offence of marital rape repealed because it creates a confusing and artificial distinction between married and unmarried victims.

What is clear is that Belize remains committed to progressing the rights of its citizens. With respect to equal protection of the law and respect for diversity, the NAC is currently undertaking consultations with a view to tabling a draft anti-discrimination bill, and some have called for hate crime legislation to be added to the legislative agenda. Internationally, in the third cycle of the United Nations Human Rights Council's Universal Periodic Review ('UPR') Belize adopted 13 of the 17 of the recommendations relating to sexual orientation and gender identity, and 32 of the 35 recommendations relating to the protection of rights of women and children (including prevention of human trafficking).¹²

¹² United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Belize*, A/HRC/40/14, 18 December 2018 (available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/442/10/PDF/G1844210.pdf?OpenElement>).

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Lessons Learned

The process of legal reform Belize underwent serves as an inspiring example to other countries that aspire to implement a progressive and rights-based legislative framework when presented with the challenge of limited resources. The case study identifies seven lessons from the passage of the Amendment Act and the Orozco Case, which may be of use to other countries considering reforming their criminal codes and sexual offences laws:

- 1.** Legislative reform and public interest litigation can complement one another. Whilst the two processes can cause friction, they can also be mutually beneficial and ultimately facilitate more systemic and holistic reform.
- 2.** In this specific case, presenting the Criminal Code reforms through the prism of child protection made it very difficult for opponents to raise credible arguments that the Amendment Bill should not be passed. Placing real victims at the heart of the campaign gave it a human element that surpassed the importance of moral principles as argued by more conservative opponents of the Amendment Bill.
- 3.** To achieve legislative reform within a reasonable timescale with accurate technical drafting, an adequately resourced and funded legislative drafting department is vital, and full use should be made of international support and guidance. When legislative reform is intended to incorporate international obligations, both local and international legal experts should participate in the drafting exercise.
- 4.** The backing of the public is vital to achieving reform, and timely consultation (both public as well as private engagements) prior to introducing any bill to Parliament will facilitate a smoother, quicker legislative process. Engaging the support of international partners, such as the UN, can be invaluable in terms of supporting reforms prior to enactment as well implementing the substantive reforms going forward.
- 5.** To maximise success when seeking to implement new reforms or judicial decisions, comprehensive implementation programmes should be considered and developed, including public awareness and educational campaigns, to ensure that the reforms are effective and that criminal justice system and the wider public understands how the law has changed and how it affects them.
- 6.** Top-level government (i.e., cabinet minister) backing and high profile champions are crucial and, in many cases, could expedite efforts to introduce a draft bill to parliament. Securing government buy-in through the sign-off of policies, which include commitments on legislative reform, will also make it easier to engage government interest in progressing reforms.



"After all, when you are going the right way, all you have to do is keep moving forward."

**First Lady,
Mrs. Simplis Barrow,**
Special Envoy,
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7. Adequate data-capture and analysis of relevant statistics (such as conviction rates) makes it much easier to demonstrate the need for reform in certain areas. The absence of quantitative data on sexual offences and the relatively low rates recorded for reports of sexual offences made it much more difficult to persuade the public in Belize that the sexual offences provisions needed to be reformed. In addition, a lack of quantitative data going forward presents challenges for monitoring the effectiveness of criminal law reform.

Conclusion

The passage of the Amendment Act in Belize offers a strong example of government, state agencies, civil society and the international community working together to achieve legislative reform. This case study also demonstrates the importance of striking a balance between protecting the societal right to observe and practice faith and religion in countries in which religion plays a significant role in peoples' lives, and protecting the rights of individuals to live their lives free from discrimination. Both the 2014 Criminal Code reforms and the Orozco Case reflect a progressive and inclusive approach to achieving that balance. Belize's ongoing commitment to increasing the protection of women, children and LGBT people is clear. Recent efforts to develop anti-discrimination legislation are yet another positive indicator that Belize is on the right path to eliminating discriminatory practices.¹³

¹³ Modernising Sexual offences Laws: Our Journey, *Ibid.* n.7.



COUNTRY OVERVIEW

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Location and Population

Belize is a small Central American country located on the Caribbean coast of the Yucatan Peninsula, bordering Mexico to the north and Guatemala to the west and south. The country has a total land mass area of 22,965 km² (8,867 square miles),¹⁴ comprised of 95 per cent mainland and five per cent islands and coral cayes. The total national territory, including the territorial sea is 46,620 km².¹⁵

Belize has a national population of 374,681,¹⁶ with approximately 44 per cent of the country living in urban areas.¹⁷ Belize is both culturally and ethnically diverse. The largest ethnic groups are the Latino, Creole, Maya, Garifuna and Mennonite populations. They are largely of mixed African, Carib Indian, African-European, Maya Indian or Spanish ancestry.¹⁸ Five major languages are spoken in Belize: English, Spanish, Mayan, Garifuna and Creole. English is the official language, although Creole is the most commonly spoken first language.¹⁹

Belize is member state of the Caribbean Community ('CARICOM'), an organisation comprising 20 states in Central and South America that are considered developing countries.²⁰ CARICOM strives to promote functional cooperation amongst its members, with a focus on economic integration, foreign policy coordination, human and social development and security.²¹

Belize is a member of the Commonwealth, a voluntary association of 53 independent and equal sovereign states spanning Africa, Asia, the Americas, Europe and the Pacific.²² The Commonwealth supports and partners with the institutions and

¹⁴ The Statistical Institute of Belize, *Belize Population and Housing Census – Country Report 2010*, 2013, (available at: http://sib.org.bz/wp-content/uploads/2017/05/Census_Report_2010.pdf).

¹⁵ Ministry of Forestry, Fisheries, and Sustainable Development, Belize, United Nations Department of Social and Economic Affairs, United Nations Development Program, *Belize National Sustainable Development Report* (available at: <https://sustainabledevelopment.un.org/content/documents/1012belize.pdf>).

¹⁶ United Nations, *World Population Prospects – Key Findings & Advance Tables*, 2017 Revision (available at: https://esa.un.org/unpd/wpp/Publications/Files/WPP2017_KeyFindings.pdf).

¹⁷ *Belize National Sustainable Development Report*, *Ibid.* n.15.

¹⁸ Belize Independent Travel and Country Guide, *Belize Demographics and Population Data*, (available at: <https://belize.com/belize-demographics/>).

¹⁹ Travelbelize.Org, *Facts about Belize*, (available at: <https://www.travelbelize.org/facts-about-belize>).

²⁰ CARICOM.Org, *Who we are*, (available at: <https://caricom.org/about-caricom/who-we-are>).

²¹ CARICOM.Org, *Who we are*, *Ibid.* n. 20.

²² Commonwealth Secretariat, *About us*, (available at: <http://thecommonwealth.org/about-us>; <http://thecommonwealth.org/member-countries>).

organisations in the Commonwealth network to improve the well-being of all its citizens and advance their shared interests globally.²³

Legal system

The Constitution is the supreme law of Belize and was enacted in 1981. Article 2 of the Constitution provides that, to the extent any other law is inconsistent with it, “that other law shall, to the extent of the inconsistency, be void.” The legal system in Belize is based on English common law and has an independent judiciary consisting of the Supreme Court, the Court of Appeal and the magistrates’ courts. Since 2010, the Caribbean Court of Justice located in Port of Spain, Trinidad and Tobago has served as the final court of appeal in Belize for both civil and criminal matters, replacing the Privy Council in the United Kingdom.²⁴

Political system

In 1871, Belize was declared a British colony known as “British Honduras.” Belize attained constitutional independence from the United Kingdom in 1981 and was established as a parliamentary democracy and constitutional monarchy that recognises Queen Elizabeth II as head of state, represented by a Governor-General.²⁵ The current Governor-General of Belize is Sir Colville Norbert Young. Belize remains part of the Commonwealth.

The National Assembly of Belize is a bicameral legislature and is divided into a House of Representatives elected in a general election and a Senate appointed by the Governor-General of Belize. Ministers of Government are appointed from among the members of the House and the Senate.²⁶ The Cabinet, which consists of the Prime Minister and the Ministers, directs the policy of the government and is collectively responsible to the National Assembly. The current Prime Minister of Belize is Hon. Dean Oliver Barrow.

²³ Commonwealth Secretariat, *About us*, *ibid.* n.22.

²⁴ Commonwealth Of Nations, *Belize*, (available at: <http://www.commonwealthofnations.org/country/americas/belize/>).

²⁵ Commonwealth Of Nations, *Belize*, *ibid.* n.24.

²⁶ The National Assembly of Belize, *National Assembly*, (available at: <https://www.nationalassembly.gov.bz/national-assembly/>).

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Governance in Belize

The Government of Belize has committed to the United Nations Millennium Development Goals and has demonstrated a strong political commitment to sustainable development. The Economic and Sustainable Development Council, a senior leadership advisory body appointed by the Prime Minister, was established to provide input on priorities and implementation of sustainable development goals. In addition, the Ministry of Forestry, Fisheries and Sustainable Development was created to coordinate key sectors critical to sustainable development: forestry, fisheries, environment, and protected areas. Additionally, the Government of Belize created a ministry with responsibility for science and technology, to address the human capacity needs of the country and to ensure innovation and competitiveness in the country's sustainable development future.

Economy

The economy of Belize is supported primarily by its agricultural resources and a growing tourism sector. Belize's gross domestic product ('GDP') per capita grew by 36 per cent between 1999 (USD \$3,045.6) and 2010 (USD \$4,153) and hit USD \$4,315 in 2017.²⁷ The service industry, provides almost two thirds of all jobs in Belize and the retail sector provides one fifth of all jobs.²⁸

Belize's Country Poverty Assessment of 2009 took a multi-faceted approach to measuring poverty, considering a range of factors affecting economic, social, psychological and spiritual well-being.²⁹ In the living standards measurement survey, one of the four principle components of Belize's country poverty assessment of 2009, researchers collected data on over 2,000 households in Belize, including household expenditure and income, housing, labour force, education, and disability, and found that 41 per cent of the Belizean population was considered poor (i.e., household expenditures below the general poverty line), 14 per cent were classified as vulnerable to poverty (i.e., household expenditures within 25 per cent above the general poverty line) and around 43 per cent were not poor (i.e., household expenditures more than 25 per cent above the general poverty line).³⁰

Religion

Belize is predominantly a Christian society and religion plays an important role in Belizean life. The Roman Catholic Diocese of Belize City-Belmopan was originally established in 1888 as the apostolic prefecture of British Honduras and was subsequently promoted and renamed. It is part of the worldwide Roman Catholic Church and serves almost 145,000 parishioners in Belize.³¹ The Anglican Diocese

²⁷ World Bank Country Report, *Belize*, (available at: <https://data.worldbank.org/country/belize>).

²⁸ Commonwealth Of Nations, *Belize*, *Ibid.* n.24.

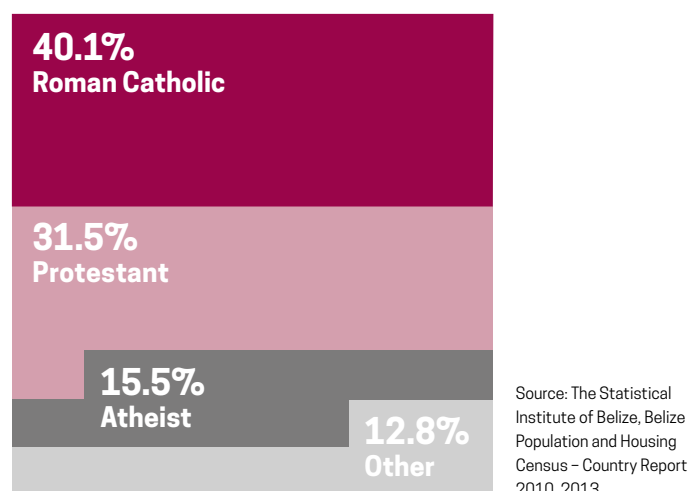
²⁹ National Human Development Advisory Committee, *2009 Country Poverty Assessment*, August 2010 (available at: <http://www.ncabz.org/wp-content/uploads/2015/05/Country-Povert-Assessment.pdf>).

³⁰ *Belize Population and Housing Census – Country Report 2010*, *Ibid.* n.14.

³¹ GCatholic, *Diocese of Belize City-Belmopan*, (available at: <http://www.gcatholic.org/dioceses/diocese/beli0.htm>).

of Belize was originally established in 1883 as member of the Church of the Province of the West Indies. Today, the diocese is comprised of 31 churches and operates schools across Belize, in partnership with the Government of Belize. The Anglican Diocese of Belize is engaged in missionary outreach on a national and international scale.³²

Main Religious Denominations in Belize



Media

The Constitution of Belize guarantees media freedom. Prominent newspapers in Belize include *Amandala*, *The Reporter* and *The San Pedro Sun*. Some newspapers are subsidised by political parties, such as the *Belize Times* (supported by the People's United Party) and *The Guardian* (affiliated with the United Democratic Party).

Radio and TV outlets are a primary source of news and information for many Belizean citizens and are privately-owned.³³ Belize has three national TV channels. Channel 5 airs mostly American and Caribbean programs, Channel 7 typically focuses on national issues and PlusTV is a Christian based television station. Additionally, Belize has a range of local TV channels and cable networks.³⁴ The main national radio stations include Positive Vibes FM, LOVE FM, KREM FM and WAVE Radio.³⁵

Internet usage in Belize is limited by infrastructure and there were an estimated 200,020 internet users (approximately 52 per cent of the population) in 2017.³⁶ Facebook remains the leading social media platform.

³² Anglican Diocese of Belize, (available at: <http://anglicandioceseofbelize.com/>).

³³ BBC News, *Belize profile – Media*, (available at: <https://www.bbc.com/news/world-latin-america-18727131>).

³⁴ Guide to Belize, *Belize TV Stations & Channels*, (available at: <http://www.guidetobelize.info/en/media/belize-tv-television-channel-guide.shtml>).

³⁵ Streema, *Belize Radio Stations*, (available at: <https://streema.com/radios/country/Belize>).

³⁶ Internet World Stats, *Belize Internet usage, broadband and telecommunications reports* (available at: <https://www.internetworldstats.com/am/bz.htm>).

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Key Organisations

National Women's Commission ('NWC')

The NWC was established by the government in 1982 and has since served as an advisory body to the Government on issues relating to women. At present, the NWC oversees Belize's implementation of CEDAW, the Convention of Belem do Para (Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women), the Revised National Gender Policy and the National Gender-Based Violence Plan of Action 2017-2020 ('GBV Action Plan'). The NWC comprises of members appointed by the Minister of Human Development and Social Transformation and ultimately seeks to achieve gender equality, equity and women's empowerment in Belize.³⁷

Special Envoy

The post of Special Envoy was created in 2003 with a mandate to work alongside the Ministry of Human Development³⁸ and the NCFC in safeguarding the rights of children.³⁹ The Special Envoy works primarily to improve the lives of women and children through advocating for developments to social policies and legislation. This includes advocating for the implementation of programmes and initiatives that benefit children and families and to promote their rights. The Special Envoy is currently the First Lady, Mrs. Simplis Barrow.⁴⁰

National AIDS Commission ('NAC')

The NAC was established by the government in 2000 and has since coordinated and facilitated the national response to HIV/AIDS. The NAC provides information on HIV to people living with HIV, at-risk groups, health professionals and other stakeholders working on the response to HIV. It also has responsibility for advocacy, mobilising resources and developing policy on issues related to HIV/AIDS, including implementing the Belize Health Sector Strategic Plan 2014-2024, which was published by the Ministry for Health.⁴¹ By 2020, the NAC seeks to have overseen a reduction in the rates of HIV, the development of infrastructure to help respond to the HIV epidemic and a reduction in discrimination against individuals with HIV.⁴²

³⁷ NWC, *About us*, (available at: <https://www.nationalwomenscommissionbz.org/about-nwc-2/>).

³⁸ Special Envoy, *About us*, (available at: <https://www.specialenvoy.bz/about-us>).

³⁹ United Nations Human Rights Council, *Report of the Working Group on the UPR: Belize*, A/HRC/12/4, 4 June 2009, paragraph 20 (available at: <https://www.right-docs.org/doc/a-hrc-12-4/>).

⁴⁰ Special Envoy, *About us*, *Ibid.* n.38.

⁴¹ Belize Ministry of Health, *Belize Health Sector Strategic Plan 2014-2024*, April 2014 (available at: <http://health.gov.bz/www/attachments/article/801/Belize%20Health%20Sector%20Strategic%20Plan%202014-2024-April%202014.pdf>).

⁴² NAC, *About us*, (available at: <http://nacbelize.org/>).

Ministry for Human Development, Social Transformation and Poverty Alleviation

The MHDSTPA was established as a department of the government and plays the lead role in human development in Belize.⁴³ It is the government department with primary responsibility to co-ordinate programmes and services for the protection of children.⁴⁴ The MHDSTPA collaborates with partners in order to facilitate policy development and to implement programmes that promote social justice and equity. Ultimately, the MHDSTPA seeks to help people realise their full potential, by becoming self-sufficient, responsible and productive citizens.⁴⁵ The MHDSTPA is also the government ministry tasked with reporting to international supervisory bodies pursuant to Belize's membership of the international community and in regards to its obligations under international human rights treaties and conventions, including reporting to the UN as part of the UPR process.⁴⁶ It includes a Women and Family Support Department, which focusses on promoting gender equality and equity, facilitating economic development and empowerment of women and tackling gender-based violence.⁴⁷

National Committee for Families and Children

The NCFC was established in 1994 and serves as a mechanism to coordinate and monitor efforts to implement the CRC and the Belizean Families and Children Act.⁴⁸ The NCFC focuses on advocating and contributing to legal reform that positively impacts on the wellbeing of children and their families. The NCFC ultimately seeks to protect the rights of every family and child in Belize.⁴⁹

The NCFC replaced the National Consultative Committee on Children ('NCCC'), which had been established in 1992.⁵⁰ The principle complaint levelled at the NCCC was that it had been ineffective because of poor implementation of decisions,⁵¹ and

⁴³ Belize Government, *Home*, (available at: <http://www.belize.gov.bz/87cMnMmUGkle200616fBmwfkCxQEt9d78a.in>).

⁴⁴ Diana Shaw for the MHDSTPA, *The Child Protection System – Belize, C.A.: A Vulnerability Analysis*, 2004, p.2. A copy can be found at section 2.b of the Annex.

⁴⁵ MHDSTPA, *About us*, (available at: <http://humandevlopment.gov.bz/#>).

⁴⁶ The CEO of the MHDSTPA, Ms. Alpuche, led the Belize delegation at the UPR meetings held in 2009 and 2013: *Universal Periodic Review: Report of the Working Group on the UPR: Belize*, A/HRC/12/4, *Ibid.* n.39, paragraph 1; and United Nations Human Rights Council, *Report of the Working Group on the UPR*, A/HRC/25/13, 11 December 2013, paragraph 1 (available at: <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>).

⁴⁷ MHDSTPA, *Women and Family Support Department*, (available at: <http://humandevlopment.gov.bz/index.php/service-units-2/womens-department/>).

⁴⁸ United Nations CRC, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Second periodic report of States parties due in 1997: Belize*, CRC/C/65/Add.29, 13 July 2004 (available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2F65%2FAdd.29&Lang=en).

⁴⁹ NCFC, *Mission/Vision/Guiding Principles*, (available at: <http://ncfc.org.bz/who-are-we/mission-vision>).

⁵⁰ United Nations CRC, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Initial Report of States parties due in 1992 to the CRC: Addendum, Belize*, CRC/C/3/Add.46, 7 February 1997, paragraph 12 (available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2F3%2FAdd.46&Lang=en).

⁵¹ *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Initial Report of States parties due in 1992 to the CRC: Addendum, Belize*, CRC/C/3/Add.46, *Ibid.* n.50.

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lack of direct access to cabinet ministers.⁵² The NCFC was created with an expanded mandate which includes:

- promoting the implementation of the CRC;
- promoting improved coordination, planning and implementation of efforts on behalf of families and children by Government and other non-governmental agencies; and
- supporting the collation, circulation and discussion of accurate information on the situation of families and children.⁵³

Human Rights Protections

The Constitution

The Constitution provides for the protection of certain fundamental rights and freedoms including:

- i. human dignity (Art. 3(c));
- ii. personal privacy (Arts. 3 (c) and 14 (1));
- iii. equality before the law, equal protection of the law (Art. 6(1)); and
- iv. protection from discrimination on the grounds of sex, race, place of origin, political opinions, colour or creed (Art.16(1)) provides that “...no law shall make any provision that is discriminatory either of itself or in its effect.”⁵⁴

Ombudsman

The Office of the Ombudsman was established in 1999.⁵⁵ The Ombudsman receives and investigates complaints by any individual who claims to have sustained injustice, injury or abuse or other wrong doing by a state authority.⁵⁶ The Office has investigative jurisdiction to act as an independent check on governmental abuses.⁵⁷ According to the Office’s Annual Report for 2018, the Office received and recorded for investigation 106 new complaints of corruption, wrongdoing, injustice, injury or abuse. Of those new complaints, 41 complaints (38.7 per cent) had been investigated or resolved or were under investigation, 24 complaints (22.6 per cent) were withdrawn or excluded from the Office’s jurisdiction, and the remaining 41 complaints (38.7 per

⁵² In interview, Ms. Alpuche, CEO of the Ministry for Human Development acknowledged that having direct access to ministers made efforts to introduce the reforms much easier.

⁵³ *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Initial Report of States parties due in 1992 to the CRC: Addendum, Belize, CRC/C/3/Add.46, Ibid. n.50.*

⁵⁴ Constitution of Belize, 1981, article 3(c), 6(1), 14(1), 16(1) (available at: https://www.constituteproject.org/constitution/Belize_2011.pdf?lang=en).

⁵⁵ Office of the Ombudsman, *History of the Office*, (available at: <http://ombudsman.gov.bz/history-of-office/>).

⁵⁶ Office of the Ombudsman, *Welcome to the Office of the Ombudsman of Belize*, (available at: <http://ombudsman.gov.bz>).

⁵⁷ Ombudsman Act, December 2000 (Revised edition), section 12 (1) and (2) (available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=37955&p_country=BLZ&p_count=156&p_classification=01&p_classcount=25).

cent) were unresolved.⁵⁸ In 2018, 45 new complaints (42.5 per cent) were against the Belize Police Department, down from 51 new complaints in 2017.⁵⁹

Human Rights Commission of Belize

The Human Rights Commission of Belize ('HRCB') is an independent, non-governmental organisation established in 1987 and partly funded by the United Nations Human Rights Council.⁶⁰ The HRCB focuses on promoting and defending human rights in Belize through education programmes and advocacy for public policy changes. The HRCB holds public seminars and workshops educating the public about human rights and is noted for publishing media reports of human rights violations.⁶¹ The HRCB has not been active in recent years. However, it is hoped that with the election of the new board this will change in the future.

Belize has ratified or acceded to a number of international and regional human rights treaties

- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment

17 March **1986**

- Convention on the Rights of the Child

2 May **1990**

- Convention for the Elimination of All Forms of Discrimination Against Women

16 May **1990**

- The International Covenant on Civil and Political Rights
N.B. The Optional Protocol and Second Optional protocol have not been signed

10 June **1996**

- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women
"Convention of Belem do Para" (A-61)

25 November **1996**

⁵⁸ Office of the Ombudsman, *Eighteenth Annual Report* (available at: <http://ombudsman.gov.bz/annual-reports/>).

⁵⁹ Office of the Ombudsman, *Eighteenth Annual Report*, *Ibid.* n.58.

⁶⁰ U.S. Department of State, *U.S. Department of State Country Report on Human Rights Practices 2000 - Belize*, 26 February 2001 (available at: <https://www.refworld.org/docid/3ae6aa938.html>).

⁶¹ *U.S. Department of State Country Report on Human Rights Practices 2000*, *Ibid.* n.60.

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- Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors (B-48)
- Inter-American Convention on the International Return of Children (B-54)
- Inter-American Convention on International Traffic in Minors (B-57)

11 June **1997**

- The International Labour Organisation Committee of Experts – Worst Form of Child Labour Convention 1999

6 March **2000**

- The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

1 December **2003**

- The Convention on the Rights of Persons with Disabilities

2 June **2011**

- The International Covenant on Economic, Social and Cultural Rights

9 March **2015**

LEGISLATIVE REFORM

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Sexual Offences Law Prior to Reforms

Summary of the Prior Criminal Code of Belize

The criminal justice system in Belize is based on the principles of English common law. Sexual offences are primarily addressed in the Criminal Code, which was originally drafted by R.S Wright, an English barrister who was tasked in 1870 with drafting a criminal code for Jamaica, to be used as a model for the Caribbean colonies. The original code was based on the Indian Penal Code and was brought into force in Belize on 15 December 1888.⁶²

Since Belize's independence in 1981, the Criminal Code has been updated on a piecemeal basis, rather than by way of any wholesale reform.⁶³ For example, and in respect of the country's sexual offences, in 1999 the Criminal Code was amended in order to extend the offence of rape to include marital rape and increased the penalty for carnal knowledge of a female child under 16.⁶⁴

Prior to the adoption of the Amendment Act, the Criminal Code was criticised for its: (i) lack of gender neutrality and inadequate protection of males, particularly boys, as victims, (ii) exclusion of women as perpetrators of sexual offences, (iii) insufficient particularisation of offences and definitions, especially with respect to rape and penetrative offences, that did not address the full range of sexual crimes, and (iv) inconsistent penalties.

Prior to the reforms, sexual offences could only be charged as one of six principal offences ('Principal Offences'). The Principal Offences and maximum penalties under the old law are set out in the table below.



"What we read were antiquated values written in Victorian English for colonial Britain. Nothing in this so-called rulebook resembled what we knew of modern-day society in Belize, where priority lied in respecting and valuing the equality and rights of all our citizens, male and female, young and old, able-bodied and disabled."

**First Lady,
Mrs. Simplis Barrow,**
Special Envoy,
Modernising Sexual
Offences Law

⁶² *Caleb Orozco v the Attorney General of Belize (and others)*, paragraph 9, *ibid.* n.2; M.L. Friedland, *R.S. Wright's Model Criminal Code: a forgotten chapter in the history of the criminal law*, 1 Oxford J. Legal Studies (1981), pp.307-346.

⁶³ There has been a series of legislative amendments to the Criminal Code and the Substantive Laws of Belize focused on improving child protection and enhancing the rights of women. Among the most notable amendments are: (i) the Criminal Code (Amendment) Act 1999, which extended the offence of rape to include marital rape and increased the penalties for carnal knowledge of a female child under 16; (ii) the 2013 Commercial Sexual Exploitation of Children Act, which criminalised the facilitation of prostitution of children under the age of 18; and (iii) the 2013 Trafficking in Persons (Prohibition) Act, which criminalised child sex and labour trafficking, expanded the range of offences punishable and defined them more clearly, and set stringent minimum penalties for offences. The Criminal Code more generally was reformed in 1980, 1987, 1989, 1994, 1998, and more recently by the Criminal Code (Amendment) Act, 2017. The Criminal Code (Amendment) Act, 2017 amend the Criminal Code to, amongst other things, specify new parole terms for offenders sentenced to life imprisonment for murder (available at: <https://nationalassembly.gov.bz/wp-content/uploads/2017/04/Act-No.-22-of-2017-Criminal-Code-Amendment-Act-2017.pdf>).

⁶⁴ Criminal Code (Amendment) Act 1999. A copy can be found at 1.a of the Annex.

Principal Offences under the Criminal Code prior to the reforms

Offence	Victim	Maximum Penalty
Aggravated assault of an indecent nature	Any person, male or female, of any age	Two years
Rape	Females only, of any age	Life
Carnal knowledge of a female child under 16*	Females only, under the age of 16	<ul style="list-style-type: none"> ▪ Victim was under the age of 14 – life ▪ Victim was over 14 but under 16 – 10 years (life if the defendant had two or more convictions for the offence)
Carnal intercourse against the order of nature (section 53)	Any person, male or female, of any age	10 years
Incest by males (of any age)	Females only, of any age	<ul style="list-style-type: none"> ▪ Victim was under 12 – life ▪ Victim was over 12 years – seven years
Incest by females (over the age of 16 only)	Males only, of any age	Seven years



“We were horrified to learn that the judge granted bail, initially attempting to make it a condition [of bail] that the perpetrator marries his teenage victim.”

First Lady, Mrs. Simplis Barrow,
Special Envoy,
Modernising Sexual
Offences Law

* It was a defence to show that, at the time of the offence, the perpetrator was married to the victim (‘Marriage Defence’).⁶⁵ If a marriage was void because the child was under 14, it was still a defence if the perpetrator could prove that he reasonably believed he was legally married to the child.

The Marriage Defence in particular presented serious difficulties in practice. Mrs. Simplis Barrow and Ms. Alpuche both described a case involving a 14-year old victim, in which a man had been charged with the offence of carnal knowledge of a female child.

⁶⁵ Under the Marriage Act (in force as at 31 December 2000), it was legal to marry a child under the age of 18 but over the age of 14 with the consent of the child’s parents.

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There were also provisions to protect against the procurement of girls under the age of 18 for the purpose of offering them as a prostitute; permitting the use of one's property for the commission of the offence of unlawful carnal knowledge of a female; and coercing or inciting a female through threats, false representation or drugs to have sexual intercourse ('Ancillary Offences').

Rape

Before it was amended in 2014, section 46 of Criminal Code stated:

*“Every person who commits rape or marital rape shall on conviction on indictment be imprisoned for a term which shall not be less than eight years but which may extend to imprisonment for life.”*⁶⁶

Section 71(1) of the Criminal Code defined “rape” as the “carnal knowledge of a female of any age without her consent,” which notably excluded male victims. “Carnal knowledge” is described in section 73 to be “deemed complete upon proof of any or the least degree of penetration only.”

It was not clear whether “rape” could include penetration of parts of the body other than the vagina or penetration using objects or parts of the body other than the penis. “Carnal knowledge” is generally understood to only capture penile-vaginal penetration. The Criminal Code therefore likely failed to cover rape by penetration of other body parts or the insertion of objects.”

Child Abuse and Exploitation

Section 47 of the Criminal Code, which penalises sexual intercourse with children, previously only provided protections for female victims of unlawful “carnal knowledge” by male perpetrators, stating:

“(1) Every person who carnally knows a female child under the age of fourteen years, with or without her consent, shall on conviction on indictment be imprisoned for a term which shall not be less than twelve years but which may extend to imprisonment for life.

(2) Every person who:

(a) unlawfully and carnally knows any girl who is of or above the age of fourteen years but under the age of sixteen years; or

(b) unlawfully and carnally knows any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the crime that the woman or girl was an idiot or imbecile

⁶⁶ Criminal Code, Belize, Chapter 101, Revised Edition 2000, section 46. A copy can be found at section 1.b of the Annex.

shall be guilty of an offence and on conviction thereof be imprisoned for a term which shall not be less than five years nor more than ten years...

(3) Where a marriage is void in consequence of one of the parties thereto being under the age of fourteen years, a person charged with a crime under this section, or with indecent assault upon a girl with whom he went through the ceremony of marriage, may exonerate himself if he proves that, at the time when the crime is alleged to have been committed, he had reasonable cause to believe that the girl in respect of whom it is alleged to have been committed was his wife.”⁶⁷

Section 47 did not define the range of activities that would constitute “carnal knowledge”. The provisions also did not contemplate other types of sexual offences against children, such as: (i) causing a child to engage in sexual activities, (ii) engaging in sexual activities in the presence of a child, (iii) sexual offences committed by children, or (iv) arranging or facilitating sexual offences involving a child.

The Amendment Act did not amend section 47 to include protections for children who are aged 16 or 17 years, and they are currently not protected as victims under this section.

Section 48, which was not amended by the Amendment Act in 2014, stipulates a mandatory term of life imprisonment for individuals found guilty of:

“the offence of rape, or of the offence of carnal knowledge of a female child under the age of fourteen years, or of the said offences combined together, on more than two occasions.”⁶⁸

This provision continues to only apply to female child victims of rape or carnal knowledge by male perpetrators.

Aggravated Assault

Section 45 of the Criminal Code creates an offence of aggravated assault which previously included:

“(g) assault upon any male child or any female of such a nature that it cannot in the opinion of the court be adequately punished [as common assault].”

A conviction of aggravated assault included a penalty of two years imprisonment, except:

“... in respect of an indecent assault upon a female or an aggravated assault upon any male child or any female, a person convicted under this section shall be liable to imprisonment for three years instead of two years.”⁶⁹

⁶⁷ Criminal Code, Belize, Chapter 101, Revised Edition 2000, *ibid.* n. 66, section 46.

⁶⁸ Criminal Code, Belize, Chapter 101, Revised Edition 2000, *ibid.* n. 66, section 46.

⁶⁹ Criminal Code, Belize, Chapter 101, Revised Edition 2000, *ibid.* n. 66, section 45.

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Adult males were specifically excluded from protection under paragraph (g). Aggravated assault offences against male children and females under this section carried a stricter penalty (of three years imprisonment rather than two years) than offences against adult males under this section.

Incest

Section 62 of the Criminal Code, which penalises incest, previously only recognized incest offences committed by male perpetrators against a limited range of female family members, stating:

“(1) Any male who carnally knows a female, who is to his knowledge his granddaughter, daughter, sister or mother, shall on conviction thereof be liable to imprisonment for seven years:

Provided that if, on an information for that offence, it is alleged in the information and proved that the female is under the age of twelve years, the same punishment may be imposed as may be imposed under section 47 for carnally knowing a female under twelve years of age.

(2) It is immaterial that the carnal knowledge was had with the consent of the female.

(3) If any male attempts to commit the offence as aforesaid, he shall be guilty of a misdemeanour and on conviction thereof be liable to imprisonment for two years.

(4) On the conviction before any court of any male of an offence under this section against any female under eighteen years of age, the court may divest the offender of all authority over that female, and if the offender is her guardian, remove him from the guardianship and appoint any person or persons to be her guardian or guardians during her minority or any less period: Provided that the court may at any time vary or rescind the order by the appointment of any other person as the guardian or in any other respect.”

Notably, these provisions offered no protections for male victims of incest and did not recognise offences by female perpetrators. The language did not clarify the types of sexual activities that would constitute “carnal knowledge” with respect to incest - whether penetrative or non-penetrative in nature - and did not contemplate other types of incest offences, including persons causing a child family member to engage in sexual activities.

Marital Rape

In 1999 the Criminal Code was amended to create a separate offence of marital rape.⁷⁰ Section 72 of the Criminal Code currently makes it an offence for a male spouse to commit marital rape (defined as sexual intercourse without consent) against a female spouse in circumstances where:

⁷⁰ United Nations Committee on the Elimination of All Forms of Discrimination against Women, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women – Combined third and fourth reports of States parties: Belize*, 26 September 2005, CEDAW/C/BLZ/3-4, para.240 (available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FBLZ%2F3-4&Lang=ru).

“(a) the spouses have separated and thereafter have lived separately and apart within the meaning of the Married Persons (Protection) Act;

(b) there is in existence a separation agreement in writing between the spouses;

(c) proceedings for the dissolution of the marriage or for a decree of nullity of marriage have been instituted;

(d) there has been made or granted against one of the spouses an order or injunction, as the case may be, for non-cohabitation, non-molestation, ouster from the matrimonial home or the personal protection of the other spouse;

(e) one of the spouses has given an undertaking with regard to the matters specified in paragraph (d); and

(f) the act of sexual intercourse is preceded or accompanied by or associated with, assault and battery, harm or injury to the female spouse.”

The reasons for the decision not to repeal section 72 as part of the Amendment Act are unclear, since the rape offence in section 46 makes no exception for marital rape in any circumstances, and the penalties for both offences are the same.

Carnal intercourse against the order of nature

Section 53 of the Criminal Code stated that:

“every person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years.”

The Criminal Code does not explicitly define “carnal intercourse against the order of nature” but it has generally been interpreted to encompass anal sex between two men or between a man and a woman, regardless of consent.⁷¹ Those close to the matter have indicated that in practice, the provision was rarely used to prosecute individuals engaging in private consensual same-sex sexual intimacy, instead it was relied upon as a mechanism for prosecuting men who raped boys (as noted above, the rape provision did not include male victims).⁷² However, section 53 effectively criminalised consensual same-sex sexual intimacy between consenting male adults, even in private, and it was felt by many that the law legitimised the persecution of individuals who were engaging in private consensual same-sex sexual intimacy, or were perceived to be doing so.⁷³ The Criminal Code was criticised by human rights groups and local media for being

⁷¹ Ambergris Today, *Belize Is The First Country In The Caribbean To Overturn Its Sodomy Law*, 11 August 2016, (available at: <https://www.ambergristoday.com/content/stories/2016/08/11/belize-first-country-caribbean-overturn-its-sodomy-law>).

⁷² Ms. Vidal, Director of Public Prosecutions - Interview with HDT, October 2018.

⁷³ United Nations Human Rights Council, *Report of the Human Rights Council on its twelfth session*, 25 February 2010, A/HRC/12/50, paragraph 247 (available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/118/28/PDF/G1011828.pdf?OpenElement>).

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discriminatory.⁷⁴ International observers were also calling for Belize to decriminalise private consensual same-sex intimacy between adults through legislative reform.⁷⁵ However, by the time the Amendment Bill was introduced to Parliament, the Orozco Case had been heard in the Supreme Court, and the government's position was that it would not be appropriate to amend section 53 whilst the court case was ongoing.

Gap Analyses of the Criminal Code Prior to Reform

To assess its compliance with its obligations under relevant international treaties, Belize commissioned a number of studies to review its legislation on child protection and make recommendations for policy, procedure and legislative improvements. These revealed a number of shortcomings in the existing legislation with respect to the rights of children and women.

The Vulnerability Analysis

In 2001, the MHDSTPA commissioned a report analysing the child protection system in Belize⁷⁶ ('Vulnerability Analysis'). The Vulnerability Analysis examined the extent to which Belize law complied with Belize's obligations under the CRC.⁷⁷

The report identified nine deficiencies with the Criminal Code:⁷⁸

1. the age of criminal responsibility was too low;⁷⁹
2. there was a discrepancy between the legal age for valid sexual consent (16) and the legal age for obtaining sexual health advice and medical treatment without parental consent (18);
3. the offences of carnal knowledge, indecent assault and rape were only capable of being committed against females;
4. there was a big discrepancy between the sentence for incest committed with a child aged 12 to 18 (seven years) and incest committed with a child under 12 (12 years to life),⁸⁰
5. there was no provision for an offence of abandonment of a child over the age of five;



"A legal challenge to the provision of our Criminal Code that criminalized private same-sex intimacy between adults was going through our courts at about the same time ... As that outdated provision had been before the courts since 2010, we left it to the judiciary, and happily the Chief Justice ruled in 2016 that the provision was inconsistent with our Constitution."

**First Lady,
Mrs. Simplis Barrow,**
Special Envoy,
Modernising Sexual
Offences Law

⁷⁴ Frontline Defenders, *LGBT rights defender Caleb Orozco succeeds in efforts to decriminalise homosexuality in Belize*, August 2016 (available at: <https://www.frontlinedefenders.org/en/statement-report/lgbt-rights-defender-caleb-orozco-succeeds-efforts-decriminalise-homosexuality>).

⁷⁵ United Nations Human Rights Council, *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Belize*, 30 July 2013, A/HRC/WG.6/17/BLZ/3, para.20 (available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/159/54/PDF/G1315954.pdf?OpenElement>).

⁷⁶ *The Child Protection System – Belize, C.A.: A Vulnerability Analysis*, *Ibid.* n.44, p.2.

⁷⁷ *The Child Protection System – Belize, C.A.: A Vulnerability Analysis*, *Ibid.* n.44, p.3.

⁷⁸ *The Child Protection System – Belize, C.A.: A Vulnerability Analysis*, *Ibid.* n.44, p.27.

⁷⁹ The age of criminal responsibility at the time was nine.

⁸⁰ Diana Shaw felt there was no justification for the lower sentence for victims over 12.

6. there was an offence of stealing a child under the age of 12, but no provisions to prevent stealing a child over 12;⁸¹
7. the offences relating to procurement of children applied only to females, which meant there was no offence of procuring a boy under the age of 18 for sexual purposes;
8. there were no offences to criminalise sexual misconduct that did not constitute rape, carnal knowledge of a female or carnal intercourse against the order of nature; and
9. the Criminal Code did not criminalise child prostitution.

The Vulnerability Analysis noted that the lack of provisions criminalising sexual misconduct not involving penetration meant that police had to rely on the assault provisions based on the type of injuries caused. As a result, in sexual assault cases where no physical injury was evident, often no offence was charged.⁸²

The report recommended the following amendments to the Criminal Code relating to sexual offences:

- lowering the age of for obtaining sexual health advice without parental consent to 16;
- making the existing sexual offence provisions gender neutral;
- repealing the Marriage Defence;
- making the incest provisions gender neutral and increasing the sentence for incest with children from 12 to 18 to match the sentence for children under 12;
- criminalising the publication of names and addresses of child victims or children involved in sexual offence cases; and
- creating an offence preventing children's guardians from accepting money in exchange for withdrawing criminal complaints of sexual misconduct or abuse.

The report also recommended:

- increasing the legal age of marriage with parental consent from 14 to 16; and
- introducing measures to make it easier for children to give evidence in sexual offence cases.⁸³

⁸¹ The offence of stealing a child applied only to children under 12. There were separate provisions prohibiting abduction of an "unmarried female" under 18, but no provision prohibiting the abduction of a male under 18.

⁸² *The Child Protection System – Belize, C.A.: A Vulnerability Analysis*, Ibid. n.44, p.27.

⁸³ *The Child Protection System – Belize, C.A.: A Vulnerability Analysis*, Ibid. n.44, pp.71-72.

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The CRC Report

In December 2003, the NCFC published *Towards Complete Compliance with the Convention on the Rights of the Child: An Analysis of the Laws of Belize*, which was authored by Sara Owen ('CRC Report'),⁸⁴ and included a systematic review and analysis of the national laws relevant to the various articles of the CRC. The CRC Report noted that, although there were laws in place to address some types of child sex abuse, they did not go far enough.⁸⁵

The CRC Report recommended that amendments to the Criminal Code be modelled on the UK Sexual Offences Act 2003 and specifically suggested the following amendments:

- make all offences gender neutral regarding victims and perpetrators;⁸⁶
- abolish the Marriage Defence;⁸⁷
- increase the age limit for marriage with parental consent from 14 to 16;
- create separate offences for sexual abuse which does not fall into the categories of "rape," "carnal knowledge of a female under 16" or "carnal intercourse against the order of nature";⁸⁸ and
- increase penalties for sexual offences.⁸⁹

The Vulnerability Analysis and the CRC Report were the two main catalysts that intensified the Belizean campaign for legislative reform.⁹⁰ They were further supplemented by contributions from a number of other legal experts and academic commentators.⁹¹



"There is also a need for stronger, clearer legislation governing child abuse. A model to follow would be that of the Sexual Offences Act in the UK, which defines and prohibits sexual activity with a child, causing a child to engage in sexual activity, causing a child to watch a sexual act and covers abuse by those in a position of trust. All of these issues should be addressed in one consistent piece of legislation."

**The CRC Report,
page 16**

⁸⁴ Sara Ellis Owen for the NCFC, *Towards Complete Compliance with the Convention on the Rights of the Child: An Analysis of the Laws of Belize*, December 2003. A copy can be found at section 2.a of the Annex.

⁸⁵ *Towards Complete Compliance with the Convention on the Rights of the Child: An Analysis of the Laws of Belize*, *Ibid.* n.84, p.15.

⁸⁶ *Towards Complete Compliance with the Convention on the Rights of the Child: An Analysis of the Laws of Belize*, *Ibid.* n.84, p.9 and 46.

⁸⁷ *Towards Complete Compliance with the Convention on the Rights of the Child: An Analysis of the Laws of Belize*, *Ibid.* n.84.

⁸⁸ *Towards Complete Compliance with the Convention on the Rights of the Child: An Analysis of the Laws of Belize*, *Ibid.* n.84, p.16.

⁸⁹ *Towards Complete Compliance with the Convention on the Rights of the Child: An Analysis of the Laws of Belize*, *Ibid.* n.84, p.43.

⁹⁰ Ms. Alpuche – interview with HDT, November 2018.

⁹¹ For examples of such studies see the International Labour Office, *The Commercial Sexual Exploitation of Children and Adolescents in Belize*, 2006, (available at: https://www.ilo.org/ipecc/informationresources/WCMS_IPEC_PUB_7186/lang-en/index.htm); the NWC National Gender Policy (Updated January, 2010) – Part 1 *The Situation Analysis of Gender Issues in Belize* (available at: <https://www.nationalwomenscommissionbz.org/situation-analysis-of-gender-issues-in-belize/>) and Part 2 *The Revised National Gender Policy (Updated Version 2013)* (available at: <https://www.nationalwomenscommissionbz.org/wp-content/uploads/2015/10/National-Gender-Policy-2013.pdf>).



"This Sexual Offence law would amend all existing legislation to harmonize the definition of a child to under 18 years, eliminate prejudicial language and gender biases as well as increase penalties and fill gaps in the legal protection of child victims."

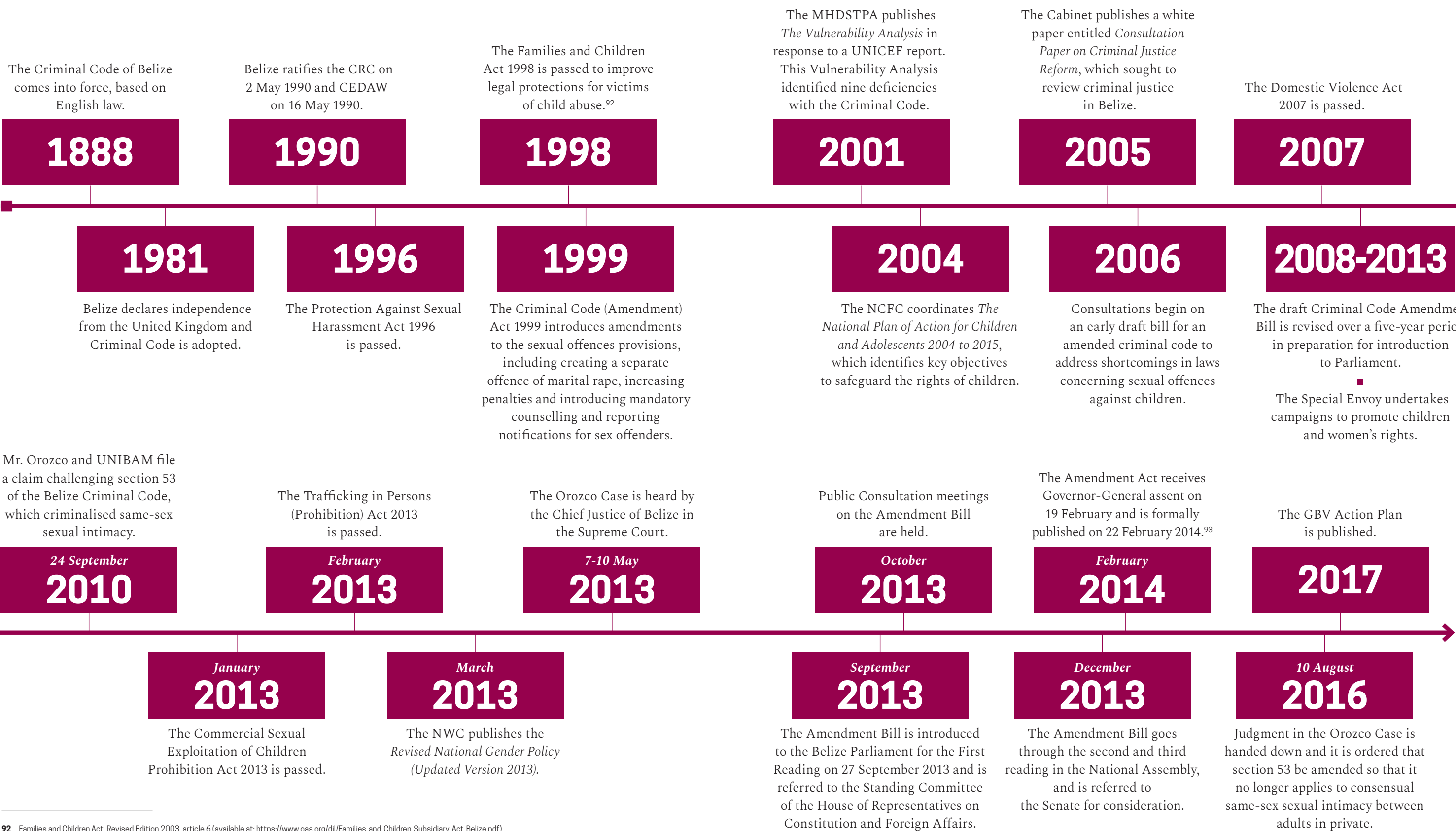
ILO Report – The Commercial Sexual Exploitation of Children and Adolescents in Belize, 2006

By the time the Amendment Bill was introduced to Parliament, the general consensus both nationally and internationally was that the Criminal Code needed to be amended to:

- update the language (e.g. carnal knowledge) and replace it with technical definitions that were clear, easy to understand, and easy to apply to specific cases;
- make the provisions gender-neutral to protect male and female victims and allow for male and female perpetrators;
- homogenise the legal age for marriage, the legal age for sexual consent, and the legal age for seeking legal or medical counselling without parental consent;
- create additional offences to cover the full range of sexual conduct falling short of full intercourse, and provide a wider range of sentencing options to reflect the seriousness of those offences; and
- increase the sentences for certain offences.

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Legislative reform chronology



92 Families and Children Act, Revised Edition 2003, article 6 (available at: https://www.oas.org/dil/Families_and_Children_Subsiadiary_Act_Belize.pdf).

93 Plus TV, Senate Makes Criminal Code Bill Still Go Through More Tweaking, December 2013 (available at: <http://www.plustvbelize.com/criminal-code-bill-passessthrough-more-tweaking-during-the-senate-sitting/>).

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Drivers of the Criminal Code Reform

This section of the case study examines what the most important drivers of the 2014 reform were and what ultimately led to the successful passage of the Amendment Act. Principally, the following four key factors played the most significant role in the reform to Belize's sexual offences in 2014:

- i. The reform context and history;
- ii. Engagement and lobbying of national agencies;
- iii. Cross party consensus; and
- iv. International supervision and the fulfilment of international obligations.

Whilst each of these factors were crucial in the creation of a social and political environment in which the reforms could progress, the engagement and lobbying of national agencies and certain key individuals were arguably the most important elements. In the years preceding the Amendment Act, a number of national agencies including the MHDSTPA, the Special Envoy, the NCFC, the NWC and NAC placed equality and women's and children's rights at the centre of their programmes. Through the commissioning of studies, campaigning for legislative reform through various initiatives and proposing draft legislation, these agencies pushed the legislative agenda. It was ultimately the dedication of these national agencies and the individuals working within them that drove the Criminal Code reforms forward and secured the enactment of the Amendment Act.

Reform Context and History

The Amendment Act has to be seen in its historical context. Since the late 1990s, Belize had been undertaking legislative reform and enacting new protective legislation, policies and action plans to improve the lives of women and children. The Amendment Bill was therefore part and parcel of a trajectory of legislative and policy evolution over time. The below provides a brief overview of some of the main legal and policy changes implemented over the years.

As early as 1992, the Domestic Violence Act implemented protection and rehabilitation orders, to protect children and spouses from domestic violence. In 1998, the Families and Children Act was passed in order to provide greater legal protection to children subjected to child abuse and to create offences for failing to report cases of mistreatment.⁹⁴

Shortly after, the Criminal Code (Amendment) Act 1999 amended the Criminal Code to:

- create a separate offence of marital rape;⁹⁵
- increase the penalties for carnal knowledge of a female child under 16;⁹⁶

⁹⁴ Families and Children Act, *ibid.* n.92, article 6.

⁹⁵ *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Second periodic report of States parties due in 1997: Belize*, CRC/C/65/Add.29, *ibid.* n.48 para.129.

⁹⁶ *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Second periodic report of States parties due in 1997: Belize*, CRC/C/65/Add.29, *ibid.* n.48, para.130.

- implement mandatory life sentences for habitual sex offenders;⁹⁷ and
- introduce mandatory counselling and reporting notifications for sex offenders.⁹⁸

In 2005, the Cabinet published a white paper entitled *Consultation Paper on Criminal Justice Reform*⁹⁹ which proposed incorporating new provisions to strengthen the rules around investigation and evidence in sexual offences cases. It also proposed raising the age of sexual consent from 16 to 18, but those proposals were not progressed further.¹⁰⁰

In 2007 the Domestic Violence Act was repealed and replaced with a more comprehensive Act which expanded the categories of people who could apply for protective orders, introduced a wider definition of what constituted domestic violence and increased the penalties for relevant offences.¹⁰¹ By 2009, Belize had increased the legal age for marriage with parental consent from 14 to 16.¹⁰² In 2010, *The National Gender Policy, January, 2010* ('National Gender Policy') was implemented, which included a commitment to review the Criminal Code alongside other legislation.¹⁰³ Other important policies that guided the government in the process of reform included the GBV Action Plan, the National Plan of Action for Children and Adolescents 2004 to 2015 ('National Plan of Action for Children') and the Sexual and Reproductive Health Policy.¹⁰⁴ The impact of these policies on the 2014 reforms is explored in further detail below.

In early 2013 Belize passed the Commercial Sexual Exploitation of Children Act (implementing the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography),¹⁰⁵ criminalising the facilitation of prostitution of children under the age of 18.¹⁰⁶ Belize had also passed the Trafficking in Persons (Prohibition) Act 2013, which criminalised child sex and labour trafficking,¹⁰⁷

⁹⁷ Criminal Code, Revised Edition 2000, *ibid.* n.66, section 48.

⁹⁸ Criminal Code, Revised Edition 2000, *ibid.* n.66, section 65.

⁹⁹ Attorney General's Ministry, *Belize: Consultation Paper on Criminal Justice Reform*, August 2005 (available at: http://www.belizeaweb.org/web/e_library/WPOCJ_REFORM.pdf).

¹⁰⁰ Pursuant to section 12(b) of the Criminal Code Revised Edition, 2000 the legal age of consent in Belize is currently 16.

¹⁰¹ 7 News, *New Domestic Violence Act Toughens Up on Abusers*, March 2007 (available at: <http://www.7newsbelize.com/sstory.php?nid=7833&frmsrch=1>).

¹⁰² *Report of the Working Group on the UPR: Belize*, A/HRC/12/4, *ibid.* n.39 paragraph 19.

¹⁰³ *Combined third and fourth reports of States parties: Belize*, 26 September 2005, CEDAW/C/BLZ/3-4, *ibid.* n.70 para.18.

¹⁰⁴ These policies are available at: <https://www.nationalwomenscommissionbz.org/wp-content/uploads/2018/06/National-Gender-Based-Violence-Plan-of-Action-Book.pdf>; <https://www.mindbank.info/item/4416>; and https://hivhealthclearinghouse.unesco.org/sites/default/files/resources/iiep_belizehrh.pdf.

¹⁰⁵ Special Envoy, *Protection & Rights of Children – Legislation*, (available at: <https://www.specialenvoy.bz/protection-rights-of-children>).

¹⁰⁶ US Department of State, *Trafficking in Persons Report 2018*, June 2018, p.97 (available at: <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>).

¹⁰⁷ *Trafficking in Persons Report 2018*, *ibid.* n.106.

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expanded the range of offences punishable and defined them more clearly, and set stringent minimum penalties.¹⁰⁸

More broadly, challenges to other gender-discriminatory practices were becoming increasingly vocal, adding support to the wider call for greater equality before the law and equal protection of the law. One example is the case of Maria Roches, a teacher at a Catholic School, who was dismissed when she fell pregnant out of wedlock. Ms Roches brought a claim against the school for discrimination based on gender, pursuant to article 16 of the Belize Constitution (which provides that no person shall be treated in a discriminatory manner by any person or authority).¹⁰⁹ The NWC and Mrs. Balderamos Garcia, as Special Envoy at the time, raised funds to instruct counsel¹¹⁰ and the Supreme Court found in her favour and awarded damages. The case was widely publicised and attracted comment from CEDAW.¹¹¹

This brief timeline demonstrates that the reforms to the Criminal Code in 2014 formed part of an ongoing process of reform. Without the legal and policy changes that had been enacted prior, the 2014 reforms may well have faced significant obstacles, or been delayed even further. This trajectory of reform also helped proponents to contextualise the Amendment Bill, making it easier to rebut suggestions that the Amendment Bill was a surreptitious effort to decriminalise consensual same-sex sexual intimacy.

The Role of National Agencies, Lobbying and Engagement

Situating the Amendment Bill in its historical context clearly provides insight into how the 2014 reforms fitted into a chronology of legislative reform in Belize. However, that path of change was only made possible by the determination and influence of a number of national agencies and key individuals.

The push for reform was driven by key ministries along with agencies mandated to protect and enforce the rights of women and / or children respectively:

- a.** the MHDSTPA;
- b.** the NCFC;
- c.** the Special Envoy;
- d.** the NWC; and
- e.** the NAC.

The MHDSTPA, the NCFC and the Special Envoy were particularly instrumental. This section reflects on the role that the above agencies played in the Criminal Code amendments, among other legal and policy changes in Belize, and reviews how those agencies: gathered the evidence which supported the call for reform, developed

108 Special Envoy, *Protection & Rights of Children – Legislation*, *Ibid.* n.105.

109 The definition of “Discriminatory” in the Constitution includes affording different treatment to persons based wholly or mainly on their sex.

110 Mrs. Balderamos Garcia – interview with HDT, December 2018.

111 *Combined third and fourth reports of States parties: Belize*, CEDAW/C/BLZ/3-4, *Ibid.* n.70, para.101.

policies and action plans, which explicitly recognised the need for reform to the Criminal Code, and advocated and campaigned for change.

Ministry of Human Development, Social Transformation and Poverty Alleviation

The MHDSTPA was at the coal-face of efforts to ensure compliance with Belize's international child protection obligations and worked closely with the office of the Solicitor-General.¹¹² As such, it was the MHDSTPA that was best positioned to drive legal reform forward. The MHDSTPA worked tirelessly over a significant number of years to realise changes to the Criminal Code.

The campaign for reform, led by the MHDSTPA, included:

- commissioning studies such as the Vulnerability Analysis, which highlighted areas in which the Criminal Code did not adequately protect children and women from sexual misconduct;
- commissioning and reviewing draft legislation, including supervising the commissioning of the Early Draft; and
- campaigning and coordinating calls for legislative reform.

The MHDSTPA, led by Ms. Alpuche, lobbied the cabinet for approval to introduce the amendments to the Criminal Code, and then exerted pressure on the Solicitor-General's office to produce a draft bill. The MHDSTPA also worked with the Special Envoy to conduct consultations, and hosted a media event to explain and contextualise the Amendment Bill.¹¹³ Once the Amendment Bill had been introduced to Parliament, the MHDSTPA played an active role in attending the public consultations to answer questions and provide valuable testimony about what the reforms intended to achieve, and why they were needed. In this way, the MHDSTPA proactively drove the Amendment Act through Parliament, from inception to enactment.

The Women's Department within the MHDSTPA was also responsible for publishing the GBV Action Plan, which is updated on a three-year cycle and was first published in 2010. It sets out goals and objectives, and monitors Belize's progress against earlier action plans. The GBV Action Plan, having been sanctioned and approved by the Cabinet, was a powerful tool in lobbying for reform of the Criminal Code. Goal one of the GBV Action Plan 2010-2013 was "*zero-tolerance for gender-based violence in Belize*" and a key objective of goal one was to strengthen mechanisms to prosecute acts of gender-based violence and reduce the number of abandoned trials.¹¹⁴ To achieve that, the review and revision of all laws relating to sexual offences was highlighted as a key action point. As a result of the government endorsement of the GBV Action Plan, the government had recognised the need for legislative reform. This added further credibility to the reforms,

112 Ms. Alpuche – Interview with HDT, November 2018.

113 Ms. Alpuche – Interview with HDT, November 2018.

114 Debra J. Lewis for the MHDSTPA, *National Gender-Based Violence Plan of Action 2010 – 2013*, August 2010, page 36 (available at: <http://scm.oas.org/pdfs/2012/CIM03206-A.pdf>).

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and made it less likely that individual government ministers and other members of Parliament would resist the reforms to the Criminal Code when they were introduced.

The work of the MHDSTPA, its CEO and dedicated staff, were therefore crucial – they used direct pressure at Cabinet level, sanctioned policies and awareness campaigning, to lead the drive to introduce and pass the Amendment Act.

The Special Envoy

As already noted, the Special Envoy was appointed to work alongside the MHDSTPA¹¹⁵ and the NCFC in safeguarding the rights of women and children.¹¹⁶ The Special Envoy played a pivotal role in the campaign for reform of the sexual offences provisions of Criminal Code, for the protection of women and children more widely,¹¹⁷ and provided an independent (i.e., non-governmental) platform from which to advocate for change.

In interviews conducted for this case study, it was observed that both Special Envoys, Mrs. Balderamos Garcia¹¹⁸ and Mrs. Simplis Barrow,¹¹⁹ were fervent critics of the inadequacies of the Criminal Code and vocal about the need for reform. Both were high-profile individuals in Belize. Mrs. Balderamos Garcia had served as the Minister for Human Development at the MHDSTPA prior to accepting the role as Special Envoy in 2003, and was also chairperson of the NAC at around the same time. She had championed a non-discriminatory agenda from the outset of her tenure, and as the opposition member of the Standing Committee in 2013 when the Amendment Bill was being passed, she gave her full support to Hon. Faber (Chair of the Standing Committee), and endorsed the Amendment Bill throughout the process.¹²⁰

Mrs. Simplis Barrow, being the First Lady of Belize, was already known for her work with children in the charitable sector when she was appointed to the role of Special Envoy in 2008. By provoking public discourse and action on the subject of the sexual exploitation and abuse of children, Mrs. Simplis Barrow helped to reignite the campaign to table the draft Criminal Code amendments in 2013. Combining forces with the MHDSTPA, she liaised with the Belize judicial ministry and lobbied key ministries to encourage a review of the Criminal Code. Her office shared information and technical resources and, with Ms. Alpuche and the MHDSTPA, continued to campaign publicly for changes to the Criminal Code.¹²¹



“With the help and constant support of the Ministry of Human Development, I pulled in resources from wherever I could to run a public education campaign...”

**First Lady,
Mrs. Simplis Barrow,**
Special Envoy,
Modernising Sexual
Offences Law

¹¹⁵ Special Envoy, About us, *Ibid*, n.38.

¹¹⁶ *Report of the Working Group on the UPR: Belize*, A/HRC/12/4, *Ibid*. n.39, paragraph 20 (available at: <https://www.right-docs.org/doc/a-hrc-12-4/>).

¹¹⁷ Such as in the context of domestic violence.

¹¹⁸ Special Envoy from 2003 to 2008.

¹¹⁹ Special Envoy, 2008 to current day.

¹²⁰ Mrs. Balderamos Garcia, Interview with HDT, December 2018.

¹²¹ *Modernising Sexual Offences Laws: Our Journey*, *Ibid*. n.7.



"My office having been working for over five years to get the criminal code for child sexual abuse updated and it finally is going to the house today. It was a long process."

**First Lady,
Mrs. Simplis Barrow,**
"A bill to update
Criminal code for sexual
offences against
children," News 5,
27 September 2013

The public campaign included, for example, delivering public presentations at joint media events, hosted by the MHDSTPA and the Special Envoy's office, which were vital to contextualising the reforms and challenging some of its most vocal critics. Similarly, national conferences hosted by the Special Envoy helped support the push for legislative reform. In November 2013, the Special Envoy hosted the National Stakeholder Conference to End Violence Against Children in partnership with UNICEF Belize and the MHDSTPA. This sought to raise awareness on the rights of children, having successfully advocated for the passage of legislation on the commercial sexual exploitation of children (to end impunity for crimes against children and human trafficking), as well as the passage of amendments to the Criminal Code.¹²² In addition to all of this, Mrs. Simplis Barrow would write personally to the court, judges and the Chief Justice whenever she observed a criminal case in which she felt justice had not been served.¹²³

The Special Envoy's office also reinforced the efforts outlined above by dovetailing them with initiatives designed to achieve a broader societal understanding of the rights of women and children in Belize. These have included the publication of a book in 2013 called *My Body is Precious*, as part of a campaign to introduce the concept of 'good touch' and 'bad touch', providing information on sexual abuse and exploitation in an accessible way to children, parents and teachers.

The purpose of the initiative was to remind girls of their importance and teach strategies on how to build positive self-esteem and habits as well as to discourage early sexual activity. The campaign provided crucial information on sexual abuse in an accessible way, and signposted Belizeans to locally available information and support services. Through this campaign, Mrs. Simplis Barrow secured funding from the International Development Bank to produce animations of the book in prominent indigenous languages in Belize as well as printing the book in Spanish.

Another public engagement activity spearheaded by Mrs. Simplis Barrow's which reinforced calls for more equal protection within the Criminal Code provisions is the biennial 20,000 STRONG Women's Empowerment Rally, a hitherto unprecedented event that highlights the strength and importance of women and their role within society.

In all these ways, the Office of the Special Envoy exerted real and very public pressure on the government to reform the law to improve the protection of women and children. Undoubtedly, Mrs. Simplis Barrow's profile and platform gave the campaign additional and important gravitas. The campaigns also provided helpful context to the reforms, particularly in areas of Belize where literacy and language comprehension meant many people were not aware of the reforms, or the law on sexual offences more generally.

¹²² Special Envoy, Mrs. Simplis Barrow, (available at: <https://www.specialenvoy.bz/mrs-kim-simplis-barrow>).

¹²³ *Modernising Sexual Offences Laws: Our Journey*, Ibid. n.7.

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1,2. My Body is Precious Book Launch, March 2013. 3. My Body is Precious Girl Empowerment Rally. 4,5. STRONG Women's Empowerment Rally

National Committee for Families and Children

The principle manner in which the NCFC contributed to the reform was through the drafting and implementation of national policies and action plans which supported the calls for reform.

The NCFC coordinated the National Plan of Action for Children, with technical and financial support from UNICEF. It was approved by the then Prime Minister, Hon. Said Musa, and the then Leader of the opposition, Hon. Barrow. It comprised work plans for key areas, and identified objectives, targets and strategies to ensure implementation. One of those objectives was “to safeguard the rights of children and adolescents, especially those who are at risk.”¹²⁴ Although there was no specific reference to the Criminal Code or the law on sexual offences, the strategy and action points included recommendations to:

- amend relevant legislation to make it more effective in addressing family violence and child abuse issues; and
- conduct a comprehensive review of all legislation to standardise the age definition of a child and eliminate all gender disparity.¹²⁵

This was a further national instrument that recognised and endorsed the need for legislative change and offers an example of how the NCFC supported the reforms through policies and action plans.

The NCFC also supported the MHDSTPA and Special Envoy in their campaigns for reform. In accordance with its mandate to coordinate and promote the implementation of the CRC and enhance protection for women and children, the NCFC commissioned the CRC Report, discussed in detail in the section on ‘Sexual Offences Law Prior to Reform’, which outlined the need for clearer legislation governing child abuse and sexual exploitation.

National Women’s Commission

A particularly important initiative the NWC coordinated was the National Gender Policy, which was published in 2010 and updated in 2013.¹²⁶ The National Gender Policy identified the shortcomings of the Criminal Code,¹²⁷ and noted that both the NCFC and NWC had recognised the need for legislative reform to make the framework “*more cohesive, more gender neutral and more human rights oriented.*”



“According to NCFC, the passage of this amendment bill would “see the increased compliance by Belize with the Convention of the rights of the Child...” and it “signals a pivotal move in the right direction.”

NCFC, News 5,
27 September 2013

“The legislative framework for addressing the above stated sex crimes remains gender biases (sic.) outdated and fragmented.”

National Gender Policy
(Updated 2010),
Part 1, page 62

¹²⁴ Government of Belize, *The National Plan of Action for Children and Adolescents in Belize 2004-2015*, September 2004, para.2.5.3 (available at: <https://www.mindbank.info/item/4416>).

¹²⁵ Ms. Alpuche – Interview with HDT and *The National Plan of Action for Children and Adolescents in Belize 2004-2015*, *Ibid.* n.124, p.16.

¹²⁶ *National Gender Policy (Updated January, 2010) – Part 1 The Situation Analysis of Gender Issues in Belize and Part 2 The Revised National Gender Policy (Updated Version 2013)*, *Ibid.* n.91.

¹²⁷ *National Gender Policy (Updated January, 2010) – Part 1 The Situation Analysis of Gender Issues in Belize*, *Ibid.* n.91, p.58.

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The National Gender Policy observed that provisions to ensure legislative reform had also been included in the National Plan of Action for Children.¹²⁸

National AIDS Commission

The NAC commissioned studies and situational analyses to identify potential areas for legislative development, through the prism of HIV and AIDS prevention, as well as playing a key role in spearheading campaigns to amend laws and regulations which criminalised consensual same-sex sexual intimacy between adults.¹²⁹ It played a significant role in the creation and implementation of plans and policies, which included legislative reform as part of their agenda. In 2006, it identified the need to increase awareness of the link between gender-based violence and HIV & AIDS,¹³⁰ and set objectives to advocate for and amend legislation.¹³¹ The 2012 – 2014 Belize HIV Operational Plan identified the need for training and education on existing legislation against statutory rape,¹³² as well as the need for public consultations to sensitise the public to legislation and the importance of enforcing it.¹³³ More recently, the 2012 – 2016 Strategic Plan has called for new offences to criminalise the wilful and reckless transmission of HIV.¹³⁴

The role of the above agencies and individuals in campaigning for legal and policy change in Belize over the last two decades cannot be understated. Without their tireless efforts, determination and multi-faceted approach, it is difficult to see how the legal and policy reforms that have been achieved would have come to fruition.

Cross-party consensus

In light of the historical context and the considerable amount of national and international documentation that had identified the deficiencies in the Criminal Code, the National Assembly understood the need for legislative reform, and welcomed it when it came. The Constitution and Foreign Affairs Committee (‘Standing Committee’) which was responsible for scrutinising the Amendment Bill, was comprised of members of both the ruling United Democratic Party and the Opposition People’s United Party. Despite this, the Amendment Bill enjoyed the unanimous support of the Standing Committee, irrespective of political affiliation.



“There was no drama to it ... everyone supported it.”

Anonymous,
PUP member,
October 2018

¹²⁸ National Gender Policy (Updated January, 2010) – Part 1 The Situation Analysis of Gender Issues in Belize, *Ibid.* n.91, p.62.

¹²⁹ NAC, *Getting to Zero – Belize HIV Strategic Plan 2012 – 2016*, accessed April 2019, (available at: <http://nacbelize.org/wp-content/uploads/2015/11/Belize-HIV-Strategic-Plan-2012-2016.pdf>), p.59.

¹³⁰ NAC, *A National Communication Strategy for HIV / AIDS in Belize*, April 2006 (available at: <http://nacbelize.org/wp-content/uploads/2015/11/A-National-Communication-Strategy-for-HIVAIDS-in-Belize.pdf>), p.15.

¹³¹ *A National Communication Strategy for HIV / AIDS in Belize*, *Ibid.* n.130, p.16.

¹³² NAC, *Getting to Zero – Belize HIV Operational Plan 2012 – 2014* (available at: <http://nacbelize.org/wp-content/uploads/2015/11/Belize-HIV-Operational-Plan-2012-2014.pdf>), p.10.

¹³³ *Getting to Zero – Belize HIV Operational Plan 2012 – 2014*, *Ibid.* n.132, p.27.

¹³⁴ *Getting to Zero – Belize HIV Operational Plan 2012 – 2014*, *Ibid.* n.132, p.59.



"It was important that we managed to stay above the political party noise."

First Lady, Mrs. Simplis Barrow,
Special Envoy,
Modernising Sexual
Offences Law

"Belize remains committed to fulfilling its international human rights treaty obligations and to ensuring that human rights and fundamental freedoms enshrined in Our Constitution are guaranteed to every citizen."

Ms. Ayesha Borland,
Director of International
Affairs, Embassy
of Belize, Brussels,
Belgium, 2014 UPR,
(adoption)

The focus of the Amendment Bill was on updating and strengthening the laws protecting children. This made it difficult, if not impossible, for objections to be raised to the Amendment Bill's principal purpose. Whilst concerns were raised about the drafting (these are covered in further detail below), no one could challenge the overall purpose of the Amendment Bill and there was a broad consensus that the laws needed to be strengthened.

The consensus that formed across both Houses of Parliament on the need for reform and the coalescing around the objectives of the Amendment Bill was significant as it created the political environment in which the Amendment Bill could be passed expeditiously. Given the strength of some of the opposition from religious groups, it was very important that there was political force behind the reforms and that that political force had significant support.

International supervision and fulfilment of international human rights obligations

Belize has made long-standing commitments to the promotion and protection of human rights in Belize and endorsed a human-rights approach to the country's development.¹³⁵ Equally, Belize has signed and ratified numerous international human rights conventions and treaties. In doing so, Belize has made international commitments and publicly spoken of the value it places on international participation, emphasising the importance of international mechanisms for the promotion of human rights around the world.¹³⁶ It is no surprise therefore that Belize has sought to implement the international human rights conventions that it has signed up to and the recommendations it has received (markedly in respect of the CRC and CEDAW), and actively engaged at the international level. All of which have played an important influencing role in Belize's legislative reform efforts over the last two decades, and importantly in respect of the 2014 Criminal Code amendments.

The commissioning of the early analyses (detailed in the previous section of this report), for example, was done as a means to assess Belize's compliance with the CRC and those reviews were instrumental in the legislative and policy steps that Belize later took. In addition, since the late 1990s, the treaty bodies monitoring compliance with the CRC and CEDAW, expressed concerns about deficiencies in Belize's legislative framework and through recommendations called upon the state to update and reform its laws, particularly the Criminal Code, to strengthen the protection

¹³⁵ Government of Belize, *Statement 40th Session of the Human Rights Council Consideration of the Outcome of the Universal Periodic Review of Belize*, 14-15 March 2019 (available at: https://www.upr-info.org/sites/default/files/document/belize/session_32_-_octobre_2018/belize_plenary_statement_2019.pdf).

¹³⁶ *Statement 40th Session of the Human Rights Council Consideration of the Outcome of the Universal Periodic Review of Belize*, *Ibid.* n.135.

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afforded to women and children.¹³⁷ Over the years, in response to these international recommendations, Belize made various piecemeal amendments to the Criminal Code, as well as introduced new legislation to implement its obligations. For instance, in June 1999, the Standing Committee overseeing CEDAW urged “the Government to seek, as a priority, the repeal in the Criminal Code of the marital immunity relating to rape.”¹³⁸ By September, the Criminal Code (Amendment) Act 1999 had been passed and the marital rape exception removed. The CRC Committee, in 2005, recommended that Belize strengthen its legislation protecting against trafficking, sexual exploitation and child pornography.¹³⁹ Belize implemented this recommendation in part in 2013, when it passed the Commercial Sexual Exploitation Prohibition Act and the Trafficking in Persons (Prohibition) Act. Pressure was also exerted through the UPR,¹⁴⁰ with the UN Human Rights Council, during the first cycle in 2009, citing the CRC’s concern that Belize’s sex offences legislation was discriminatory.¹⁴¹ In a later UPR, the Amendment Bill had been tabled and this was acknowledged with approval, but there remained continued calls for the decriminalisation of consensual same-sex sexual intimacy between adults to be removed.¹⁴²

The spate of legislative amendments implemented between 1999 and 2013 reflect the fact that Belize was facing mounting pressure from multiple international sources to update and strengthen the provisions of the Criminal Code on sexual offences, in order to bring it into compliance with international standards and obligations. Whilst piecemeal amendments to the Criminal Code went some way to addressing some of the concerns raised, it was not until the introduction of the Amendment Bill in September 2013 that the efforts at a national and international level to implement a wholesale reform of Belize’s sexual offences provisions was realised. The international mechanisms were undoubtedly a contributory influence and

137 *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Initial Report of States parties due in 1992 to the CRC: Addendum, Belize, CRC/C/3/Add.46, Ibid. n.50, paras 30-31, 162; Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Belize, CRC/C/15/Add.99, 10 May 1999 (available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=_CRC%2FC%2F15%2FAdd.99&Lang=en); Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Belize, CRC/C/15/Add.252, 31 March 2004 (available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=_CRC/C/15/Add.252&Lang=En); Committee on the Elimination of Discrimination Against Women, Report of CEDAW, Twentieth Session (19 January-5 February 1999), Twenty-first session 7-25 June 1999, A/54/38/Rev.1, p.52 para.62 (available at: <https://www.un.org/womenwatch/daw/cedaw/reports/21report.pdf>); Committee on the Elimination of Discrimination Against Women, Concluding Comments of CEDAW: Belize 10 August 2007, CEDAW/C/BLZ/CO/4, para.27 (available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/BLZ/CO/4&Lang=En).*

138 Report of CEDAW, Twentieth Session (19 January-5 February 1999), Twenty-first session 7-25 June 1999, A/54/38/Rev.1, Ibid. n.137 para.62.

139 *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Belize, CRC/C/15/Add.252, Ibid. n.137, para.69.*

140 The UPR is a State-driven peer review process overseen by the Human Rights Council. It involves ongoing monitoring and reporting on individual States’ compliance with their international human rights treaty obligations, with the ultimate goal of “improving the human rights situations in all countries and addressing human rights violations wherever they occur” – UN Human Rights Council website, (available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>).

141 United Nations Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(B) of the Annex to Human Rights Council Resolution 5.1: Belize, A/HRC/WG.6/5/BLZ/2*, 9 March 2009, para.17 (available at: https://lib.ohchr.org/HRBodies/UPR/Documents/Session5/BZ/A_HRC.WG6.5.BLZ.2_E.pdf).

142 *Report of the Working Group on the UPR, A/HRC/25/13, Ibid. n.46 paras. 99.30 – 99.39.*

complementary pressure to what was being applied at the domestic level and helped support the campaign for changes to the Criminal Code.

Conclusion

It is evident that Belize acknowledged as early as 1999 the need to make amendments to the legislation on sexual offences, and the pressure was mounting from multiple national and international sources as the years progressed. Belize made small, piecemeal amendments to the law on marital rape, increase the age limits for marriage with parental consent and increase sentences for some of the Principal Offences, but it was not until national lobbyists actively engaged with reform, resulting in the publication of the Vulnerability Analysis and the CRC Report that Belize started to recognise that broader reform was necessary. The MHDSTPA, the NCFC and the Special Envoy were all integral to the process of producing an initial draft bill, introducing the Amendment Bill to Parliament and campaigning for the necessary changes to the Criminal Code. The existence of separate agencies, specifically mandated to progress the needs and rights of women and children was a key factor and it was, in part, due to the pressure from international treaty bodies that those agencies, in particular the NCFC and the Special Envoy, were created. This is a good example of a country working together with international partners to achieve reform.

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Consultation, Drafting and Passage of Reform

There were three principal phases to the process of consultation and legislative reform. These were:

Phase 1 – Genesis

From 2003 to 2005 a number of comprehensive reviews¹⁴³ of the country's child protection legislation highlighted deficiencies in the Criminal Code and made recommendations to update and strengthen the provisions to better protect women and children. This resulted in the production of the Early Draft in 2006.

Phase 2 – Consultations on the Draft



Time constraints and a lack of resources within the department for legislative drafting of the Solicitor-General's office meant that the Amendment Bill was only introduced to the House of Representatives in 2013, almost seven years later. The Amendment Bill was then scrutinised by key stakeholders and formal private and public consultations were held in response to concerns raised about various elements of the Amendment Bill. The Amendment Bill underwent a number of revisions as a result.

Phase 3 – Enactment and Implementation



The Amendment Act received Governor-General Assent in February 2014 and initial training was rolled out to the police and the judiciary shortly thereafter.

Phase 1 – Genesis

As already noted, calls to reform the sexual offences legislation in Belize started as early as 2003¹⁴⁴ and were largely informed by the CRC Report and the Vulnerability Analysis. The findings of these reports were supported and reiterated by a number of key stakeholders including the former director of the Family Court, Margaret Nicholas,¹⁴⁵ the former Chair of the NAC, Special Envoy at the time, Mrs. Balderamos Garcia, and the current Chair of the NAC and Speaker of the House of Representatives, Hon. Tucker-Longworth.¹⁴⁶

The Early Draft

Following publication of the early analyses, and in light of continued calls from international observers to strengthen the Criminal Code provisions, the MHDSTPA and NCFC commissioned the Early Draft in 2006. Adopting the recommendation of

¹⁴³ Most notably the Vulnerability Analysis and the CRC Report.

¹⁴⁴ Ms. Alpuche, CEO of the Ministry for Human Development – interview with HDT, November 2018.

¹⁴⁵ Ms. Alpuche, CEO of the Ministry for Human Development – interview with HDT, November 2018.

¹⁴⁶ Hon. Tucker-Longworth, Speaker of the House of Representatives – Interview with HDT, November 2018.

the CRC Report, the Early Draft was modelled on the English Sexual Offences Act 2003.¹⁴⁷ Led by Ms. Alpuche for the NCFC and the Special Envoy Mrs. Balderamos Garcia, consultations were held with a number of stakeholders¹⁴⁸ who proposed some key changes to the Early Draft.

In 2006, the Early Draft was presented to the Attorney General together with a document summarising the proposed amendments ('Explanatory Notes')¹⁴⁹ and a ministerial briefing note ('Briefing Note'), which explained the background to and reasons for the proposed amendments.

The Briefing Note referred to the findings of the CRC Report and the Vulnerability Analysis and explained that the Early Draft was the result of numerous consultations with stakeholders *"to deal with the various manifestations of sexual abuse and exploitation of children in a gender-neutral way."*

The Briefing Note acknowledged that the Early Draft was modelled on the English Sexual Offences Act 2003 and explained that the drafting process *"was led by a volunteer attorney from the United Kingdom."*

Although the Early Draft was presented to the Attorney General as early as 2006, the reform process stalled shortly thereafter. This was caused by a combination of factors including volunteer and staff turnover and lack of resources.

By 2008, an increase in resources and technical expertise rejuvenated the reform process. Ms. Alpuche joined the MHDSTPA as Chief Executive Officer and Mrs. Simplis Barrow was appointed as Special Envoy. Mrs. Simplis Barrow's husband, the Rt. Hon. Dean Barrow was sworn in as Prime Minister of Belize in February 2008. Capacity within the Solicitor-General's office rose and, with direct access to the executive, including the Minister of Human Development and the Prime Minister, there was more opportunity to secure ministerial engagement in order to advocate for change.¹⁵⁰

Phase 2 – Consultations on the draft

In 2008, the MHDSTPA (in consultation with the Special Envoy) commissioned the Solicitor General's office to update the Early Draft and finalise an amendment bill to be introduced to Parliament. The Solicitor General's office was given the Early Draft



"The current provisions under the Criminal Code to deal with the sexual abuse and exploitation of children are very limited and what provisions do exist are not very clearly defined. Also, they do not afford equal protection to boys and girls. The current provisions on carnal knowledge also do not recognize female perpetrators."

**Excerpt from
Ministerial Briefing
Notes for 2006
Meeting with the
Attorney General, 2006**

¹⁴⁷ Hon. Tucker-Longworth, Speaker of the House of Representatives – Interview with HDT, November 2018.

¹⁴⁸ The Judiciary, the Police, the Director of Public Prosecutions, UNICEF, the MHDSTPA, the Ministry of Health, and the Ministry of Education - Excerpt from Ministerial Briefing Notes for 2006 Meeting with the Attorney General, 2006. A copy can be found at section 2.c of the Annex.

¹⁴⁹ Explanatory Notes to the Criminal Code (Amendment) Act, 2006. A copy can be found at section 1.e of the Annex.

¹⁵⁰ Explanatory Notes to the Criminal Code (Amendment) Act, *Ibid.* n.149 and Mrs. Simplis Barrow, interview with HDT, November 2018.

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and Explanatory Notes to assist with drafting the Amendment Bill¹⁵¹ (there were no specific drafting instructions). The Amendment Bill introduced to Parliament largely reflected the original Early Draft.

The Amendment Bill was presented to Parliament by the Minister for Human Development, Hon. Anthony Martinez, on 27 September 2013 before being referred to the Standing Committee for examination.

By the time the Amendment Bill was introduced to Parliament, the Orozco Case had been heard in the Supreme Court of Belize, and the Revised National Gender Policy had been published (in July 2013), which included commitments to protect against discrimination based on sexual orientation. The public response to the Amendment Bill was therefore one of suspicion. This suspicion was attributed, in part, to people conflating the purpose of the reforms with the issue of the decriminalisation of consensual same-sex sexual intimacy.

The consensus from those interviewed is that the timing of the Criminal Code amendments, coinciding with the Orozco Case and the Revised National Gender Policy, made the passage of the Amendment Bill more difficult, fostering more distrust and resistance to the proposed changes than would otherwise have been the case.¹⁵² Many believed there was a hidden agenda to legalise consensual same-sex sexual intimacy and the phrase “the Homosexual Agenda” was adopted in media reports, public comment and even by members of the Parliament.¹⁵³

News coverage at the time suggests a second Standing Committee meeting then took place in October 2013, with representatives from the Evangelical Association, the Council of Churches, pastors and church leaders attending to express their concerns about proposed amendments. The resistance expressed by members of the public and faith groups at the Standing Committee meeting in October 2013 was such that a decision was taken to hold a public consultation.¹⁵⁴ The public resistance to the reforms was unexpected, and the decision to schedule a public meeting was also partly due to time constraints during the initial Standing Committee meeting where it was felt that the issues had not had a full airing. Consequently the second reading of the Amendment Bill did not take place until December, two months later.

There were four core elements to the consultation exercise that the Standing Committee undertook:



“This Bill seeks to strengthen the current criminal code with the aim of more efficiently prosecuting perpetrators of sexual abuse against children. Essentially the Bill provides equal protection for male and female children from carnal knowledge, rape, incest, abduction, kidnapping and procurement by male and female offenders and institutes stiffer penalties for these offenses.”

Hon. Martinez,
on presenting the
Amendment Bill, Extract
from *Hansard*, dated 27
September 2013

“And finally, they feel that the government should not even be touching section fifty-three while the Chief Justice has yet to rule on its Constitutionality.”

‘The churches question amendments to the criminal code’,
Channel5Belize,
9 October 2013

¹⁵¹ Ms. Alpuche, CEO of the Ministry for Human Development – Interview with HDT, November 2018.

¹⁵² Hon. Faber, Chair of the Committee – Opening remarks during the second reading of the Bill, *Hansard*, 12 December 2013. A copy can be found at section 2.e of the Annex.

¹⁵³ Channel5Belize, *The churches question amendments to the criminal code*, October 2013 (available at: <https://edition.channel5belize.com/archives/91269>).

¹⁵⁴ Ms. Alpuche, Ms. Vidal, Mrs. Simplis Barrow, Anonymous – Judicial Law Clerk – interviews with HDT, October, November and December 2018.

“... when we held the first meeting in the Committee Room ...it was not [big] enough to hold the entire gathering that had come to express that they had a concern.

...

We decided that we would give full ventilation [to the concerns raised].”

Hon. Faber, Chair of the Committee – Opening remarks during the second reading of the Amendment Bill, 12 December 2013

“On Tuesday representatives from the Evangelical Association, the Council of Churches, pastors, church leaders and supporters headed up the steps of the National Assembly. Their destination was the meeting room of the Standing Committee of the House, where some of them were scheduled to make presentations.”

‘The Churches question amendments to the criminal code’, Channel5Belize, 9 October 2013

“I think if I were to capture the concern, it is to again make sure that the proposed Bill in a way meets the aspirations of us as a people and as Christians, I suppose.”

‘Bishop Phillip Wright, quoted in ‘The Churches question amendments to the criminal code’, Channel5Belize, 9 October 2013

- A.** engagement with faith groups;
- B.** public consultation;
- C.** engagement with legal experts; and
- D.** consideration of the views of the National Assembly.

A – Engagement with faith groups

In early October 2013, a further Standing Committee meeting took place and was attended by members of various faith groups to make representations regarding the Amendment Bill.

The concerns raised by faith leaders during that Standing Committee meeting principally centred around morality or were theological in nature.

The concerns of the churches were summarised by Hon. Faber, Chair of the Standing Committee, in his remarks to Parliament during the second reading of the Amendment Bill. The principal objections are set out below:

1. The language used to define ‘rape’ and other relevant terms was too harsh.

Hon. Faber acknowledged that faith groups had expressed concerns over the some of the anatomical wording of the new provision defining rape, which sought to replace the term “carnal knowledge” with the following wording:

“Rape is the penetration of a person’s mouth, vagina or anus, with a penis, without that person’s consent.”

He explained to Parliament that, although efforts had been made to soften the language, some of the anatomical wording had to be retained to ensure clarity and certainty.

2. Some of the provisions of the Amendment Bill usurped parental authority in regards to children accessing sexual health services.

Under Belize law it is illegal to provide medical or legal counselling (including sexual health treatment or counselling) without parental consent until a child reaches the age of 18. Section 47G of the Amendment Bill (which created the offence of arranging or facilitating the commission of a child sex offence) included a statutory defence for situations in which the “arranging or facilitating” was done with the intention of protecting the child. The defence would have made it legal, for example, for someone to administer contraception and sexual health advice and treatment to children under 16 which, otherwise, would have constituted an offence. Section 47G was not included in the Amendment Act, which suggests that the Standing Committee decided the concern around usurping parental authority could not be overcome. Consequently, it is still an offence to administer sexual health treatment or counselling to someone under the age of 18 without parental consent.

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3. The definition of rape to include the concept of consent as a defence to anal penetration implied that anal penetration with consent would no longer be an offence.

A number of faith groups and members of the public believed that the Amendment Bill sought to decriminalise consensual same-sex sexual intimacy through the back-door. The reform to the sexual offences laws had never sought to amend the law around consensual same-sex sexual conduct,¹⁵⁵ but the timing of the reforms meant that many conflated the objectives of the legislative reforms (which had always been to improve the protection of children) with the issue of decriminalisation.

Another factor which exacerbated misunderstanding was the drafting. Section 11 of the Amendment Bill (which later became section 10 of the Amendment Act) inserted a new section 53A. The purpose of the section was to insert provisions in relation to presumptions regarding consent in certain cases (such as cases involving the use of force, coercion or unlawful detention). The decision to insert those provisions as a new section 53A confused the public, many of whom did not have access to the draft Amendment Bill,¹⁵⁶ and therefore assumed that inserting section 53A meant making changes to section 53. The Bar Association also expressed concern that inserting section 53A would cause confusion.¹⁵⁷

Hon. Faber's comments during the second reading of the Amendment Bill reflects the level of distrust the government faced, seeking to pass these reforms. In his remarks to Parliament during the Second Reading, Hon. Faber went so far as to assure the House:

“...it is the desire of this administration ... if the courts decide that [section 53] is unconstitutional, to challenge as far as we can go”

Hon. Faber, Remarks to the House during the Second Reading of the Amendment Bill, Hansard, December 2013

Public resistance was so emphatic that someone raised the prospect of delaying the Amendment Bill until the conclusion of the Orozco Case, but campaigners rejected that suggestion on the basis that the amendments were urgently required.¹⁵⁸

B – Public consultation meeting

The public consultation stage of the process comprised direct engagement through an open meeting and interaction through social media platforms, both by members of the



“... there are those who accused the Government of having the desire to advance to homosexual agenda in this country through this Bill” (sic.).

Hon. Faber, Remarks during the Second Reading of the Amendment Bill, Hansard, December 2013

¹⁵⁵ Hon. Faber, Chair of the Committee – Opening remarks during the second reading of the Bill, Hansard, *ibid.* n.152; Mrs. Simplis Barrow – Interview with HDT, November 2018.

¹⁵⁶ Mrs. Simplis Barrow – Interview with HDT, November 2018.

¹⁵⁷ Ms. Alpuche, Mrs. Simplis Barrow, Mrs. Balderamos Garcia, in interview with HDT, November 2018.

¹⁵⁸ Copies of Draft Bills are published on the Belize Government website, or can be requested from the Office of the National Assembly.



Faith leaders going up steps of National Assembly (photograph taken by Channel5Belize).

Standing Committee¹⁵⁹ and campaigners, including the Special Envoy. Facebook appears to have played a significant role in the interactions between campaigners and the public.¹⁶⁰

As a result of the fears expressed by faith groups during the October Standing Committee meeting, the Standing Committee decided to hold an open public consultation meeting to address concerns and correct any misapprehensions. The public meeting was held one week after the faith groups had attended the National Assembly.

The public consultation meeting was integral to the process of securing the backing of the public and quelling the concerns of the faith groups in order to pass the Amendment Bill.

Those interviewed as part of this case study identified three factors which contributed to the success of the public consultation meeting:

1. A presentation explaining the purpose of the reforms

A presentation was delivered by a representative of the Solicitor-General's office, supported by PowerPoint slides, which set out clearly and succinctly the policy directives underpinning the amendments, and explained that the purpose of the reform was to improve measures to protect children and vulnerable adults. The presentation gave the context and background to the reform and highlighted that the Amendment Bill was a logical progression from the passage of the 2013 Commercial Sexual Exploitation of Children (Prohibition) Act and Trafficking in Persons (Prohibition) Act, both of which had been passed with the same objectives in mind.

¹⁵⁹ Comments by the Bar Association of Belize on the Criminal Code (Amendment) (No.2) Bill, 2013, paragraph D.2, copy provided by Courtenay Coye LLP. A copy can be found at section 2.f of the Annex.

¹⁶⁰ The Special Envoy Facebook page has 7300 likes and the Belize Government Facebook page has 24,000 likes as of August 2019, and both pages have almost daily interactions.



"We needed to have a public consultation, although it was such a straightforward piece, for transparency's sake."

**First Lady,
Mrs. Simplis Barrow,**
Special Envoy,
November 2018

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2. Testimony of victims and anecdotal evidence

Victims of sexual offences attended the meeting and gave personal testimony of their experiences. Separately, the CEO of the MHDSTPA, Ms. Alpuche, was able to provide anecdotal evidence from her time as a child protection officer and the instances in which children had been seriously sexually assaulted but the police had been unable to charge because the conduct in question did not exist as an offence. Ms. Alpuche described a case in which a child who had been digitally penetrated was left with no redress because there was not a sufficiently serious charge under the legislation to prosecute. This testimony made it more difficult for those who were opposed to challenge the objectives the Amendment Bill.

3. Open and challenging dialogue

Both Hon. Faber and Ms. Alpuche commented that the opportunity to take questions and answer them in a public forum made it easier to challenge some of the unfounded concerns and to correct the misapprehensions of the public. In interview, Ms. Alpuche acknowledged that the level of resistance to the Amendment Bill had come as a surprise, but through engagement it was difficult for opponents to make the case that the reforms were unnecessary to improve the protection of children and vulnerable adults.



"The only agenda that the Government has is to put in protection our children that are being abused on a daily basis."

Hon. Faber,
'Public Consultation on the Criminal Code (Amendment) Act 2013', *Belize Guardian*, 17 October 2013

C – Consultation with legal experts

The Standing Committee also consulted with the DPP and the Bar Association, who recommended a number of revisions to the Amendment Bill. Although both parties fully endorsed the sentiment of the amendments, there were concerns raised regarding the drafting. The Bar Association submitted comments on the Amendment Bill¹⁶¹ ('Bar Comments'). A copy of the Bar Comments is included at section 2.f of the Annex. The DPP, Ms. Vidal, met with the draftspersons and the Standing Committee in person to discuss the Amendment Bill, and contributed substantive changes to the final Amendment Act.

The concerns raised are set out fully in the Bar Comments at the Annex. The key concerns are summarised below.

1. The inter-changing use of the terms 'carnal knowledge', 'unlawful sexual intercourse' and 'rape' were inconsistent and confusing.

There was concern that replacing the offence of unlawful carnal knowledge with a new offence of unlawful sexual intercourse would confuse people. This issue was not addressed for a number of reasons and the final Amendment Act includes references to all three terms.

¹⁶¹ Comments by the Bar Association of Belize on the Criminal Code (Amendment) (No.2) Bill, 2013, *Ibid*, n.159.

2. The Draft did not properly reflect the Belizean sentencing regime, which requires that certain offences are subject to mandatory minimum tariffs.

The intention had been to remove judges' discretion in sentencing certain offences such as child rape¹⁶² by setting a mandatory life sentence. Minimum tariffs were therefore imposed for the child sexual offences, to bring it into compliance with the Belize sentencing regime.

3. The inclusion of penetration of the anus in the definition of rape opened up the defence of consent for cases in which the victim is over 16.

The Bar Comments were neutral on the implications of this argument. During the second reading of the Amendment Bill, it was made clear that there was no intention to use the Amendment Act to legalise private consensual same-sex sexual intimacy between adults. In light of the decision in the Orozco Case, the question of whether the provision operates to legalise consensual same-sex sexual activity is now academic.

4. The offences of inciting or causing a child to engage in sexual activity (or incest) were already covered by section 20 of the Criminal Code.

It was thought that the existing incitement offences were adequately covered by the existing section 20 and so the new incitement offences were dropped from the final Amendment Act.

5. The proposed section 47G (creating an offence of arranging or facilitating the commission of a child sex offence) included a statutory defence (where the offence is committed for the protection of the child), which may not be considered appropriate.

The Bar Association recommended treating this as a mitigating feature, rather than a defence. In response to this, and to concerns raised by the public that the defence usurped parental authority, section 47G in its entirety was not included in the final Amendment Act.

6. The new incest offences overlapped, and the penalties were inconsistent, in some cases much lower than under the prior law.

The Amendment Bill expanded the offence of incest to include consensual incestuous activity (including sexual touching) and activity with half-siblings, step-sibling, aunts, uncles, foster parents, anyone who is living or has lived in the same household, and anyone regularly involved in caring for, training, supervising or being in sole charge of the person in question.

¹⁶² Explanatory Notes to the Criminal Code (Amendment) Act, *Ibid.* n.149, section 8.

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The original Amendment Bill created separate offences for sexual activity between adult relatives (which had to include penetration), and sexual activity between a child and a family member, or inciting a child to commit a sexual act with a family member (neither of which had to include penetration). The offences of incest and incest with an adult relative could only be committed by someone over the age of 18. Under the Amendment Bill all forms of sexual touching (not just penetration) would have been prohibited, if the family member in question was under 18.

The final text of the Amendment Act as enacted was narrower, and more closely aligned with the prior law. Section 62(1) of the Amendment Act makes it an offence to “carnally know” another person where that person is a grandchild, child, sibling, niece, nephew or parent. All the new offences which had been proposed were dropped, and the Amendment Act created one single offence of incest, requiring penetration.

The offence does not differentiate based on age and makes clear that it is immaterial for the purpose of the offence whether the conduct is consensual. The offences relating to sexual activity with a child were already covered by the child sex offences, and presumably it was felt that the additional offences in relation to incest with a child family member were not needed. However, the effect of the current legislation is that if an adult has sex with a child family member, the child as well as the adult could be charged with the offence of incest. The minimum penalty is 12 years and the maximum penalty is life, and a court would have no discretion to reduce the penalty for a child charged with the offence. The DPP office has confirmed that it would be extremely difficult to prosecute a minor in such circumstances, as the police would have to demonstrate that it was in the public interest to prosecute the minor. The DPP confirmed that in the past two decades, a minor has never been charged with incest.

The Amendment Act also leaves a lacuna in the law so that consensual sexual activity between an adult and a family member between the ages of 16 and 18 which does not include penetration is not an offence. This could leave young people between the ages of 16 and 18 vulnerable to pressure from older family members to engage in sexual activity (which does not amount to penetration).

Under the prior law, the penalty for incest was seven years, unless the offence was one of carnal knowledge of a female family member under the age of 12, in which case it was 12 years to life. The Amendment Bill introduced a range of offences and sentences, from two years for consensual sex between two adult relatives, to 14 years for the offence of inciting a child to engage in sexual activity with an adult family member.

Although most of the new offences proposed in the Amendment Bill were dropped, following consultation with the DPP, the Standing Committee agreed to increase the penalty for incest to a minimum of 12 years to life imprisonment. This was to address a concern around the prevalence of incest in certain districts

of Belize. The defence of lawful marriage which had been proposed in the Amendment Bill was not included in the Amendment Act.

7. The Bar felt that Sex Offenders Database should be open to the public at large.

Section 19 of the Amendment Act created a national sex offender database ('Database') on which details of sexual offenders would be stored. Despite the Bar Association's opinion that the Database should be open to the public, access to the Database is restricted and controlled by the Commissioner of Police and the Minister of National Security. Section 19(7) of the Amendment Act allows certain parties, including school principals and managers, child care facility providers and other bodies involved with the care and education of children to apply to the Commissioner for disclosure of information stored on the database.

D – The concerns of the National Assembly

As representatives of the populace, the concerns aired by both Houses during the readings of the Amendment Bill were largely consistent with those discussed above. However, some concerns were raised regarding the implications of some of the new offences for ordinary Belizeans, particularly those in poorer areas, where families often live in close quarters (see further below).

The key concerns raised by members of the House are summarised below:

1. The definition of rape to include anal penetration without consent sought to amend section 53 to legalise sodomy.

Hon. Mark Lizarraga, Senator for Business Community at the time, reiterated the concern that the Amendment Bill was an attempt to legalise same-sex sexual intimacy through legislative reform, and recommended that the definition be amended to exclude penetration of the anus, on the grounds that under the present law such conduct would constitute the offence of sodomy, not rape.¹⁶³ This recommendation was not adopted.

2. Socio-economic conditions in Belize would place many ordinary Belizeans at risk under the new legislation, which created a new offence of sexual activity in front of an infant.

Section 47E of the Amendment Bill, which became section 47C of the Amendment Act, made it an offence to deliberately engage in sexual activity in the presence of a child for the purpose of obtaining sexual gratification. Hon. Karen Bodden, Senator for the Opposition, made the point that the level of poverty in Belize meant that many families lived together in one room, which would make it more difficult for parents to avoid engaging in sexual activity when there were children present. This concern was echoed by Hon. Elrington. Ultimately,

¹⁶³ Plus TV, *Senate Makes Criminal Code Bill Still Go Through More Tweaking*, *Ibid.* n.93.

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Hon. Bodden supported the Amendment Bill as drafted, observing that it was important to achieve the underlying objective of the Amendment Bill, which was to improve the protection of children and vulnerable adults.

Hon. Elrington also supported the Amendment Bill, but stressed the importance of rolling out an educational campaign to educate the public about the new offences, observing that behaviour which had previously been common practice and perfectly legal, under the reforms would now be an offence. Although Hon. Elrington's concern that families living in confined quarters due to poverty might be adversely affected by the new offence was valid, it should be noted that the Amendment Act only makes sexual activity in front of a child an offence if the perpetrators are engaging in such sexual activity for the purpose of obtaining sexual gratification from the fact that the child is observing. The Amendment Act does not criminalise, for example, parents engaging in sexual activity at home whilst a young child is present, where the home consists of a single room and there is no other practical or possible alternative available.

As a result of the consultation processes outlined above, a number of revisions were made to the Amendment Bill before it was passed as an Act of Parliament.

Phase 3 – Enactment and implementation

The timeline for passage of a bill in Belize varies. In most cases, Belize parliamentary convention requires that a bill should be referred back to the House of Representatives for its second reading within 60 days of being referred to the Standing Committee.



"...[I]t was our intention to bring back the Bill at the last sitting for a second and third reading. However, the amendments were so many that we found it impossible to do it in time...."

Hon. Faber, Remarks to the House during the Second Reading of the Amendment Bill, *Hansard*, December 2013

Timeline of Passage of the Amendment Bill

The Amendment Bill was introduced to the House of Representatives for the First Reading. The House referred the Amendment Bill to the Committee.

Faith groups attended a consultation meeting with the Standing Committee.

The Amendment Bill went through the Second and Third Reading, and was referred to the Senate for consideration.

The Amendment Act received Governor-General assent.

**27 September
2013**

**8 October
2013**

**12 December
2013**

**19 February
2014**

**September
2013**

**15 October
2013**

**On/around 20 December
2013**

**22 February
2014**

The Standing Committee considered the Amendment Bill and requested explanatory notes.

Public consultation meeting was held at Jaguar Auditorium.

The Amendment Bill was considered by the Senate.

the Amendment Act was gazetted.

This timeline was not adhered to during the passage of the Amendment Bill because of the need to consult and engage with the public and other groups.

The Amendment Act received Governor-General assent on 19 February 2014 and was formally published on 22 February 2014. From introduction and first reading through to enactment, the process lasted approximately six months. Such a timeline for passage of a comprehensive bill of reform was not remarkable, but it was not usual, and the delay was not something that those close to the Amendment Bill had anticipated.

Implementation

Although the passage of the Amendment Act was hailed as a success, those closest to the reform have indicated that they would have liked to see and would still like to see three overarching but interrelated processes undertaken as part of the implementation of the Amendment Act. Those are:

1. comprehensive training and education programmes;
2. facilitation of more prosecutions; and
3. on-going monitoring of the implementation of the Amendment Act.

Training and education

Despite calls from various quarters for a comprehensive training and education programme following the passing of the Amendment Act, this has not materialised. Initial training was undertaken within the criminal justice system and there have been efforts by a few key agencies to undertake some limited implementation activities as well as more general awareness-raising campaigns (although not solely focused on the Criminal Code changes).

Following the enactment of the Criminal Code amendments, the head of the national criminal investigation branch of Belize's police force asked the DPP to deliver training to officers who would be investigating sexual offences. This training did not form part of a comprehensive programme that had been developed before the passing of the Amendment Act. The training was delivered at the Belize National Training Academy. It took the form of interactive class-room sessions, with reference to illustrative examples. Prior to the amendments, sexual offences were charged as one of the Principal Offences outlined above. The complexity of the new offences caused confusion. There was also uncertainty because, until the reforms, it had been unusual to see reports involving male victims.¹⁶⁵ Some felt that the new offences were duplicative, and there was apprehension around what offence should be charged in each case. As a result, it was agreed that all offences charged under the new provisions should be referred to the DPP's office before charging, so that the DPP could assist with drafting the charges. The purpose of this measure was to enable the police to build up a precedent bank



"The National Committee for Families and Children (NCFC) recognizes today as a historic victory in championing the rights, welfare and development of our Belizean children as the Criminal Code Amendments have finally passed."

NCFC,
'A Historic Day For Our Belizean Children,'
29 May 2014

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¹⁶⁴ 'A Historical Day for Our Belizean Children', 29 May 2014 (available at: <http://ncfc.org.bz/a-historic-day-for-our-belizean-children>).

¹⁶⁵ Ms. Vidal – Interview with HDT, October 2018.

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of draft charges. The authority to charge offences lies solely with the police department. However, the Criminal Code stipulates that, in relation to certain offences, the police must obtain written authority from the DPP before they can lay a charge.

Training was also delivered to the magistrates, the High Court and the criminal division of the Supreme Court.¹⁶⁶

In an announcement following the enactment of the Amendment Act, the NCFC stated that it would seek to amplify its public education and training efforts targeting stakeholders who have pivotal roles in securing compliance with the amendments brought in under the Amendment Act. The NCFC also stated that it would provide platforms for families to learn of the new protections provided.¹⁶⁷

Separately, the Office of the Special Envoy embarked on a multi-media campaign to increase awareness and understanding of the child protection systems in place, particularly amongst remote communities of Belize where families had less access to online and print resources, or where English was not widely spoken.¹⁶⁸

More generally, the ‘My Body is Precious’ campaign¹⁶⁹ was launched in 2013, to empower children and young people by providing information on sexual abuse and exploitation. In 2014, the “20,000 STRONG” Women’s Empowerment Rally took place to help engage women with women’s empowerment.¹⁷⁰ In 2015, the Office of the Special Envoy launched animated cartoon versions of the ‘My Body is Precious’ books, to make the information more accessible to the wider Belizean population.

Facilitating prosecutions

Prior to the reform, it was widely accepted (both by domestic agencies and international treaty bodies) that sexual offences were under-reported in Belize. It has not been possible to conduct a quantitative assessment of the number of offences charged under the new provisions, because statistics are only published for certain offences, such as rape and carnal knowledge. However, annual comparative crime statistics are published on the Belize police website and the comparatively low number of sexual offences being reported at a national level indicates that issues around reporting and prosecuting sexual offences may remain.

¹⁶⁶ Anonymous, Officer of the Supreme Court of Belize – interview with HDT, November 2018.

¹⁶⁷ ‘A Historical Day for Our Belizean Children’, *Ibid.* n.164.

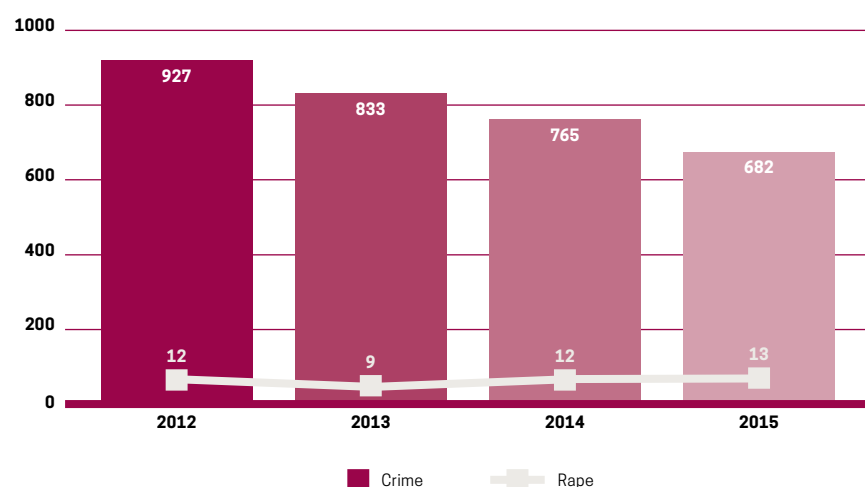
¹⁶⁸ Special Envoy, *My body is precious*, (available at: <https://www.specialenvoy.bz/protection-rights-of-children>).

¹⁶⁹ *My body is precious*, *Ibid.* n.168.

¹⁷⁰ Special Envoy, *20,000 Strong Women’s Empowerment Rally*, 11 March 2016 (available at: <https://www.specialenvoy.bz/single-post/2016/03/11/20000-Strong-Women%E2%80%99s-Empowerment-Rally>).

The statistics¹⁷¹ show that in 2012, prior to the implementation of the Amendment Act, there were 56 reported cases of carnal knowledge,¹⁷² increasing to 73 in 2013. In 2014, following the implementation of the Amendment Act, the number of cases of carnal knowledge remained relatively static at 79, but reporting from 2015 changed to reflect the amendments brought in under the Amendment Act. In 2015, 74 cases of unlawful sexual intercourse were recorded and no cases of carnal knowledge were reported. This suggests that, although the offence charged changed, the rate of reporting remained consistent. In 2016, 87 cases of unlawful sexual intercourse were reported, suggesting a slight increase, but in 2017 only 55 cases were reported. The records for 2018 only reflect cases reported from January to July, but these suggest a similar trajectory for the year, with 29 cases reported so far. The number of recorded rape cases has historically always been lower than the number of reported cases of carnal knowledge and unlawful sexual intercourse figures, for example in 2012, only 12 cases of rape were reported. This suggests that there is a greater reluctance within Belize to report rape than there is to report cases of sex with minors.

Major Crime and Rape Statistics Jan to Apr 2012 to 2015^{173; 174}



This issue is not limited to data collection and records. Social and geographical barriers to reporting sexual offences were (and continue to be) a contributing factor to the low number of sexual offences reported in Belize. Prior to the reforms, practices such as declining to charge a sexual assault where there were no apparent injuries meant that, even when cases were reported, charges were not brought. Ultimately, it is still too early to assess the long-term impact of the reforms, but the relatively low

¹⁷¹ Belize Crime Observatory, Crimes Comparative Statistics (available at: <http://www.bco.gov.bz/index.php/crime-violence-repository?view=files&cat=44>).

¹⁷² The records do not specify whether these were cases of carnal knowledge against the order of nature under section 53 or carnal knowledge of an underage girl under section 47 of the Criminal Code (prior to the reforms) or both.

¹⁷³ Belize Police Department, *Major Crime Statistics Jan to Apr 2012 to 2015*, (available at: http://www.police.gov.bz/index.php?option=com_phocadownload&view=category&id=6&Itemid=317

¹⁷⁴ *Major Crime Statistics Jan to Apr 2012 to 2015*, *ibid.* n.171.

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rates of reporting suggest that there is still more to be done in terms of educating the public and encouraging victims to come forward and report cases.

Anecdotal evidence confirms that the courts have seen a slight increase in the number of sexual offences being brought to court, but lack of resources, exacerbated by geographical factors (particularly in remote areas)¹⁷⁵ and a lack of understanding of the law may all be barriers to higher numbers of prosecutions being brought. Another significant barrier to bringing successful prosecutions is the substantial backlog affecting the criminal courts. This issue was reported by the Chief Justice in his annual reports for 2012 – 2013, and 2014 – 2015. A number of measures have been implemented in an effort to combat these issues. In 2013 the Courts retained IT software developers to commence a move towards digitalised case management systems¹⁷⁶ and new criminal procedure rules were brought into force in 2016 to implement a more robust system of case management.¹⁷⁷ There is also a particular focus on implementing more structured protection in the form of special measures to assist witnesses giving evidence, such as by providing video-link facilities and anonymity for victims.¹⁷⁸

On-going monitoring

As far as we are aware, following the enactment of the Criminal Code reforms in 2014, no monitoring mechanisms have been established to examine and evaluate implementation, particularly to assess the effectiveness of the reforms.

As for other monitoring, the Amendment Act includes provision for the creation and maintenance of the Database, for the purpose of maintaining a record of individuals convicted of sexual offences. Responsibility for administration, update and maintenance of the Database sits with the Belize Crime Observatory ('BCO'),¹⁷⁹ which is part of the Ministry of National Security.¹⁸⁰ The Database is maintained by the Belize Commissioner of Police in conjunction with the Superintendent of Prisons, who is required to notify the Commissioner whenever a sex offender is released from

175 The ILO in its *Report on the Commercial Sexual Exploitation of Children and Adolescents in Belize* noted the negative impact of the absence of transportation or fuel to travel on the ability to properly investigate cases, particularly in rural communities, where the commercial sexual exploitation of children was perceived to occur at higher rates.

176 Judiciary of Belize, *Annual Report on the Judiciary of Belize for the year 2013 – 2014*, January 2014 (available at: <http://belizejudiciary.org/wp-content/uploads/2015/01/Annual-Report-2013-2014n.pdf>).

177 *Annual Report on the Judiciary of Belize for the year 2013 – 2014*, *Ibid.* n.176.

178 Ms. Vidal, Ms. Alpuche – interviews with HDT, October and November 2018. The Evidence (Amendment) Act 2017 allows for the giving of oral evidence by way of video-link in civil and criminal proceedings. In proceedings involving a child victim or a victim of human trafficking, their oral evidence must be given by video-link. In all other cases, the judge may, in his or her discretion, and upon an application by the prosecution, allow a witness to give oral evidence using a video-link.

179 The BCO is the national depository of data relating to crime in Belize. Its primary aim is to foster the development of public policies that address public safety and national security issues through the collection, analysis and dissemination of quality, timely and multidimensional data on crime and violence trends in Belize (BCO website, *Ibid.* n.172).

180 Belize Crime Observatory, *Sex Offenders Registry*, (available at: <http://bco.gov.bz/index.php/sex-offenders-registry>).

prison. The Database was launched in 2018,¹⁸¹ some four years after the Amendment Act was passed, and was critiqued at the Amendment Bill's consultation stage by stakeholders such as the Bar Association, who felt that restricting access to the Database to certain parties was counterproductive to its stated objectives.

As noted above, the lack of quantitative data on sexual offences (in relation to both children and adults) poses a longer-term problem for monitoring and evaluation. These data shortcomings were noted by UNICEF in its 2001 report, *The Right to a Future 2000*. It was also noted by the UPR Working Group during Belize's Second Cycle review in 2013¹⁸² and the CRC Committee recommended in 2005 that Belize strengthen its data collection systems with a view to facilitating easier monitoring of compliance with treaty obligations.¹⁸³ The National Plan of Action for Children recognises that, in order to effectively monitor and evaluate progress, Belize must strengthen its data collection and information systems.

Beyond the national crime statistics published by the police, there is currently no quantitative data which accurately captures and compares the number of arrests, charges, prosecutions, acquittals and conviction rates for sexual offences within Belize nor is disaggregated data available.¹⁸⁴ This lack of data makes monitoring implementation difficult. It is hoped that the implementation of a digitalised case management system will go some way to addressing this issue, as it should make it easier to capture statistics on the number and type of offences prosecuted, and the associated conviction rates.

181 The San Pedro Sun, *Belize Sex Offender Registry Launched*, 22 November 2018 (available at: <https://www.sanpedrosun.com/community-and-society/2018/11/22/belize-sex-offender-registry-launched/>).

182 *Report of the Working Group on the UPR*, A/HRC/25/13, *Ibid.* n.46.

183 *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Belize*, CRC/C/15/Add.252, *Ibid.* n.137 para.18.

184 Ms. Alpuche, CEO of the Ministry for Human Development – Interview with HDT November 2018



PUBLIC INTEREST LITIGATION

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On 10 August 2016, the Supreme Court of Belize handed down a landmark judgment in the case of *Caleb Orozco v Attorney General of Belize*,¹⁸⁵ overturning an old British colonial law that made consensual same-sex sexual intimacy a crime. In handing down the judgment, Chief Justice Kenneth Benjamin agreed that section 53 of the Criminal Code, which prohibited “carnal intercourse against the order of nature”, amounted to a violation of the constitutional rights to dignity, privacy, equality and non-discrimination on grounds of sex and freedom of expression. He found that there was no justification in the form of ‘public morality’ and therefore the law had to be modified.

This was an historic victory, with far-reaching significance, and a culmination of years of work and determination by the individual claimant, Mr. Orozco, a Belizean gay man and prominent LGBT human rights advocate, and a Caribbean-led coalition of LGBT activists, academics and legal experts.

This section of the case study will discuss the origins, development and current status of this litigation.

Background

Prior to the Chief Justice’s decision in 2016, Belize was one of 11 Commonwealth Caribbean countries that criminalised consensual same-sex sexual intimacy. Prompted by the growing calls from human rights defenders and HIV/AIDs experts from across the Caribbean region to repeal laws that make sexual relations between adults of the same sex a crime, and in the absence of political and legislative action to address the situation, regional legal experts begun evaluating whether constitutional or public interest litigation could be one strategy embarked upon to bring about legal change.¹⁸⁶

Building on the thesis of Conway Blake,¹⁸⁷ in 2007 the University of the West Indies, Faculty of Law (‘UWI’) supported by the International Commission of Jurists, undertook an extensive evaluation assessing the viability of constitutional litigation in Belize, Guyana, Trinidad & Tobago, Antigua & Barbuda, and the Bahamas.¹⁸⁸ The report concluded that litigation in Belize and Guyana stood the greatest chance

¹⁸⁵ *Caleb Orozco v the Attorney General of Belize (and others)*, *Ibid.* n.2.

¹⁸⁶ Conway Blake, *Challenges at the frontiers of the gay rights movement in the Commonwealth Caribbean: the future of advocacy in the region*, Thesis (LLB) – Faculty of Law, University of West Indies, 2004.

¹⁸⁷ *Challenges at the frontiers of the gay rights movement in the Commonwealth Caribbean: the future of advocacy in the region*, *Ibid.* n.186.

¹⁸⁸ The Regional Legal Team For Orozco, *Friends Of The Orozco/Unibam Litigation*, (available at: <https://unibam.org/wp517/wp-content/uploads/2015/05/Friends-of-the-Orozco-UNBAM-Case-Questions-Answered.pdf>).

of success.¹⁸⁹ From 2008 to 2009, under the auspices of UWI Faculty of Law Rights Advocacy Project (‘U-RAP’), a Caribbean-led coalition of legal experts, human rights activists and non-governmental organisations (‘NGOs’) (including the Caribbean Vulnerable Communities Coalition (‘CVC’)) came together in various fora to discuss constitutional litigation as a strategy, focusing on litigation in Belize and the possibility of identifying potential litigants. Mr. Orozco and UNIBAM participated in many of the early discussions and roundtables, and later agreed to serve as claimants.¹⁹⁰

Mr. Orozco is a long-time activist for the rights of sexual minorities and those communities impacted by HIV and AIDS. He has worked for many years to eradicate stigma and discrimination advocating at the local, regional, and international level. He is also the Executive Director of UNIBAM, an NGO that provides education and services to men who have sex with men and LGBT people, and seeks to safeguard their basic human rights.

Before the Caribbean-wide consultations, UNIBAM and Mr. Orozco were focused on advocating for law reform in Belize. Their efforts, much like the experience of others across the Caribbean, had not born fruit. In addition, despite early recommendations by the NAC that decriminalisation was a means to strengthen the country’s HIV response, and some supportive voices (albeit quiet ones) amongst the political establishment, repealing section 53 through legislative reform appeared very unlikely. Litigation as a strategy was therefore seen as an important avenue and opportunity to move the debate forward and advance the rights of LGBT people in Belize.

During 2008 to 2009, comprehensive consultations were undertaken by CVC and U-RAP in Belize. This involved participants from members of the LGBT community, the NAC, representatives from women’s organisations, indigenous groups and other civil society groups, representatives from agencies involved in HIV-related work, academics at the University of Belize and the Belizean legal profession, amongst others. It was only after these consultations and in recognition that those on the ground understood the litigation to be a valuable and beneficial process for Belize, that the case was filed in July 2010.

The Case

In September 2010, Mr. Orozco and UNIBAM filed a claim against the Attorney General of Belize challenging the constitutionality of section 53. Section 53 states that *“every person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years.”*

¹⁸⁹ Friends Of The Orozco/Unibam Litigation, *Ibid.* n.188.

¹⁹⁰ Friends Of The Orozco/Unibam Litigation, *Ibid.* n.188



“Change was not going to happen without rocking the political boat.”

Mr. Caleb Orozco,
Executive Director
of UNIBAM, 2019

PUBLIC INTEREST LITIGATION

The Criminal Code did not specify the ‘penetrating’ object nor define the terms “carnal intercourse” or “against the order of nature.” However, it was generally accepted that this provision captured “anal intercourse between consenting male adults in private.... anal intercourse between male and female and oral intercourse between consenting adults.”¹⁹¹ There was no requirement for lack of consent or use of force. The law on its face was gender neutral but it disproportionately impacted the lives of gay men and, although rarely enforced, its existence reinforced pervasive violence, stigmatisation and discrimination against LGBT people.¹⁹²

The key principles in the case centred on whether section 53 contravened the following fundamental rights of the Belize Constitution:

- The right to human dignity - s. 3(c).
- The right to protection for personal privacy and privacy of the home - s. 3(c).
- The right to freedom from arbitrary or unlawful interference with privacy and private life - s. 14(1).
- The right to equal protection of the law and non-discrimination - ss. 6(1) and 16.

Interveners

A year after the Orozco Case was filed, the Human Dignity Trust together with the Commonwealth Lawyers Association¹⁹³ and the International Commission of Jurists¹⁹⁴ applied, and were granted permission, to join the litigation as “*Interested Parties*” (‘Claimant Interested Parties’). The Claimant Interested Parties joined the proceedings with the aim of assisting the Supreme Court in its just disposal of the claim by drawing upon their expertise in comparative and international constitutional and human rights law.

The Roman Catholic Church of Belize, the Belize Church of England and the Belize Evangelical Association of Churches also applied and were joined as Interested Parties (‘Defendant Interested Parties’). The Defendant Interested Parties joined the Orozco Case in order to oppose the claim.

¹⁹¹ *Caleb Orozco v the Attorney General of Belize (and others)*, *Ibid.* n.2.

¹⁹² United Nations Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*, A/HRC/WG.6/17/BLZ/2, 7 August 2013, (available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/161/97/PDF/G1316197.pdf?OpenElement>); *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Belize*, A/HRC/WG.6/17/BLZ/3, *Ibid.* n.75.

¹⁹³ The CLA is a membership organisation for professional lawyers, academics and students practising within the Commonwealth. CLA seeks to uphold the rule of law by encouraging exchanges between members of the profession through projects, conferences and workshops and by driving improvements in legal education (information available at: <https://www.commonwealthlawyers.com>).

¹⁹⁴ The ICJ is an international non-governmental organization that defends human rights and the rule of law worldwide (information available at: <https://www.icj.org>).

Litigation Process

- Mr. Orozco and UNIBAM file a claim challenging section 53 of the Belize Criminal Code, which criminalised same-sex sexual intimacy.

24 September **2010**

- The Human Dignity Trust, The Commonwealth Lawyers Association and the International Commission of Jurists applied and were joined as Interested Parties to the Orozco Case.

11 April **2011**

- The Roman Catholic Church of Belize, the Belize Church of England and the Belize Evangelical Association of Churches applied and were joined as Interested Parties.

18 May **2011**

- UNIBAM is struck out as a Claimant in the Orozco Case following an application by the Church Interested Parties.

27 April **2012**

- UNIBAM applies and is granted permission to be joined as an Interested Party.

8 December **2012**

- The Orozco Case is heard by the Chief Justice of Belize in the Supreme Court.

7-10 May **2013**

- Judgment in the Orozco Case is handed down and it is ordered that Section 53 be amended so that it no longer applies to consensual same-sex sexual intimacy between adults in private.

10 August **2016**

- The Government of Belize and the Catholic Church of Belize file their appeals to the Supreme Court Judgement, appealing respectively the Judgment in part and in its entirety.

16 September **2016**

- The Belize Evangelical Association of Churches' (*not an original party to the first instance proceedings*) application to appeal the decision of the Supreme Court is denied.

4 October **2016**

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- The appeal by the Catholic Church against the ruling of the Supreme Court is withdrawn.

2 March **2018**

- The Government's limited appeal in the Orozco Case is heard. Judgment reserved.

29 October **2018**

Decision

After a three-year wait for judgment, the Chief Justice handed down a ground-breaking decision. The Chief Justice ruled that Mr. Orozco had legal standing to bring his claim and he did not need to show that he was being actually prosecuted under section 53. The very existence of the law made him an “*un-apprehended felon*.” The Court also stated that it could not shirk from its responsibility in interpreting whether any law was consistent or in contravention with the Constitution and therefore could not simply abdicate its power to the legislature.

Mr. Orozco prevailed on all points of his claim. The Chief Justice determined that section 53 was inconsistent with the Constitution because it violated the right to human dignity, privacy, freedom of expression and non-discrimination and equality before the law and equal protection of the law. The Court ‘read down’ section 53 to exclude consensual sexual acts between adults in private.

The Chief Justice also ruled that the definition of “sex” in Section 16(3) of the Constitution includes ‘sexual orientation’, in line with Belize’s international obligations.



“The Supreme Court is the designated guardian of the rights conferred under the Constitution. It cannot shirk from such responsibility by asserting that any change to legislation is matter best left to the legislature. To do so would be to act in defiance of the mandate of the Constitution itself.”

Caleb Orozco,
v Attorney General
of Belize, para.53
10 August 2016

“It’s a great day for Belize, it’s a great day for human rights; one step closer to dignity and the respect we all deserve.”

**First Lady,
Mrs. Simplis Barrow,**
Special Envoy,
10 August 2016





"This case is an important part of the march forward in Belize and the Caribbean towards dignity and respect for the human rights of all. Decisions throughout Caribbean history that have advanced human rights have not been decisions arrived at easily or quickly."

Simone Hill,
President of UNIBAM,
10 August 2016

"Section 53 is a national issue because it has implications for HIV prevention and care. Education is key for creating meaningful change in our society."

Hon. Tucker-Longworth,
Chairperson of NAC,
10 August 2016



The Attorney General appealed the Supreme Court's judgment, albeit limited to two particular grounds, namely freedom of expression and non-discrimination on the grounds of "sex" under sections 12 and 16 of the Constitution respectively. Notably, the remaining grounds upon which section 53 had been held to be unconstitutional – dignity, privacy and equality before the law under sections 3, 6 and 14 – and the decriminalisation of consensual same-sex sexual intimacy itself were not challenged by the Government. The Catholic Church of Belize, having filed an appeal against the Supreme Court ruling in its entirety, withdrew its appeal in March 2018. The appeal was heard on 29 October 2018 and judgment was reserved. Importantly, whatever the Court of Appeal decides in relation to the partial appeal, this will not affect the result of the Supreme Court decision in 2016 to decriminalise private consensual same-sex sexual intimacy between adults.

Challenges

The section 53 litigation did not proceed without difficulty and there were principally four main challenges:

- opposition and public outcry by faith groups;
- delay;
- timing of the Amendment Bill; and
- personal cost.

Religious opposition

As noted above, three churches joined the section 53 litigation as Defendant Interested Parties in order to counter the claim filed by Mr. Orozco and UNIBAM. As far as the proceedings were concerned, the Defendant Interested Parties were a significant opposing force in the case. At the preliminary stage, they succeeded in their application to remove UNIBAM as a claimant in the case, arguing that the organisation did not meet the constitutional requirements of standing to join as an applicant. In striking out UNIBAM, Honourable Madam Justice Arana took a very narrow approach to the interpretation of standing that has been criticised by legal

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experts. The claimants' evidence affidavits were also struck out for non-compliance with certain procedural rules, although the Supreme Court did grant permission for expert evidence to be refiled. For strategic reasons, Mr. Orozco did not appeal these preliminary matters, opting to press ahead with the substantive hearing, and UNIBAM later joined the litigation as an additional 'interested party'.

During the hearing, the Defendant Interested Parties also fervently opposed the legal claim relying on arguments of sovereignty, separation of powers (submitting that the issue of section 53 should be left to the Parliament), and morality, amongst others.

All such arguments failed, as the Honourable Chief Justice sensitively put it: *"Lest the role of the Court be misunderstood against the background of strong views emanating from the religious and other sectors of the community, it bears emphasis that the issue before the Court must be determined by reference to the fundamental rights provisions of the Constitution and not b[y] recourse to public views...The respect and influence of the Churches in Belize cannot be ignored...However...Belize is a secular state with a written constitution which provides for the protection of fundamental human rights and freedoms."*¹⁹⁵

The key battlefield however was in the court of public opinion, as some faith leaders and church groups founded a nationwide activist campaign, namely Belize Action (a network group connected with the Belize Evangelical Association of Churches).¹⁹⁶ Marches were organised,¹⁹⁷ press statements issued, candlelight vigils held, prayer rallies arranged, social media campaigns launched and campaign videos created, to name but a few.

As a result of these activities, Belize Action came under strong criticism for propagating homophobia and potentially inciting hate and violence, although this was denied by the group. This was particularly so in relation to the July 2013 constitutional march, where a hanging effigy of UNIBAM was paraded.

Some media outlets also came under fire for what some labelled bias, and sensationalist and irresponsible reporting.¹⁹⁸ A 2015 report published by Outright International documented that many media outlets across the Caribbean and



"[UNIBAM's suit is] heavily influenced by foreign interests who seek to impose a worldview that directly contradicts the supremacy of God as reflected in our laws, challenges our national sovereignty, and threatens our very way of life, not least by targeting our children."

Roman Catholic Diocese Bishop Dorick Wright; Anglican Bishop Philip Wright; and Reverend Eugene Crawford, President of the Evangelicals,
Joint Statement,
May 2011

¹⁹⁵ *Caleb Orozco v the Attorney General of Belize (and others)*, *Ibid.* n.2.

¹⁹⁶ Facebook, Belize Action, About Us, undated (available at: https://www.facebook.com/pg/belizeaction/about/?ref=page_internal). Individuals involved in the case have suggested that this group may have had links to US-based Christian organisations. See for example the Washington Blade, *Report criticizes U.S. religious groups' support of Belize sodomy law*, Undated (available at: <https://www.washingtonblade.com/2013/07/25/report-criticizes-u-s-religious-groups-support-of-belize-sodomy-law/>); The Economist, *The War on Gays, Strange Bedfellows*, 4 May 2013 (available at: <http://www.economist.com/news/international/21577043-american-christian-zealots-are-fighting-back-against-gay-rights-abroad-strange-bedfellows>)

¹⁹⁷ 7 News Belize, *Christian Activists March Against Gays & Gender Policy*, 2 July 2013 (available at: <http://7newsbelize.com/sstory.php?nid=25927>).

¹⁹⁸ The San Pedro Sun, *If you REALLY care about the kids, support UNIBAM and revise our laws!* November 2011 (available at: <https://www.sanpedrosun.com/community-and-society/2011/11/26/letter-to-the-editor-241111/>).



"We live in a democracy and people have a right to protest and to hold marches. But I think everyone has a responsibility to ensure that these marches or protests don't lead into violence. I posted something on my personal page on Facebook because I saw an effigy that was being carried in the Punta Gorda march and that was very concerning to me because it brings to question whether in fact this will result in hate crimes against the Lesbian Gay Bi-sexual Transgender community."

Minister Lisel Alamilla,
July 2013

"Justice delayed is justice denied."

Ms. Lisa Shoman SC,
Attorney for Mr. Orozco,
June 2016

including Belize, were reinforcing negative stereotypes that could lead to violence and discrimination against LGBT people.¹⁹⁹

Ultimately, many felt that some of these campaigns and certain media outlets went too far, and found their efforts proved counterproductive. The passage of time has also shown that this opposition was relatively short lived. As noted above, the Defendant Interested Parties eventually withdrew from the section 53 litigation at the appeal stage and Belize Action appears to have since disbanded.²⁰⁰ Much of the furore that existed between 2011 and 2014 has also seemingly diffused. This was most notable at the October 2018 Court of Appeal hearing.

Inordinate delay

Following the Supreme Court hearing in May 2013, it took three years and three months for a decision to be handed down. As noted elsewhere in this report, the court system in Belize has been plagued by backlog, but the time lag for such a significant public interest case was unexpected and distressing for the claimant in the case.

Despite the significant wait for a decision and the anxiety that that caused for those directly involved and impacted, a number of positives can be gleaned.

First, it is not unreasonable to suggest that the intervening period allowed some of the opposition to ebb away, effectively lowering the temperature surrounding the issue of section 53, and perhaps enabled a more salutary environment to develop.

Second, from 2013 there was a public softening of approach by the government. The Revised National Gender Policy explicitly recognised the importance of diversity - one of the guiding principles speaks of the need to respect diversity and there is explicit reference to sexual orientation as a personal characteristic to be protected: *"all policies and programmes must therefore reflect this reality of diversity among the Belizean populace."*²⁰¹ The Prime Minister's Independence Day statement from September 2013 was also particularly telling.

¹⁹⁹ International Gay and Lesbian Human Rights Commission, *Homophobia & Transphobia in Caribbean Media*, 2015 (available at: <https://outrightinternational.org/content/homophobia-and-transphobia-caribbean-media-baseline-study>).

²⁰⁰ Their Facebook page has seen no activity since September 2014 and their webpage can no longer be accessed.

²⁰¹ Part 2 The Revised National Gender Policy (Updated Version 2013), *Ibid.* n.91, p.10.

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In addition, whilst publicly maintaining, prior to the judgment, that the government would strongly appeal any affirmative judgment by the Supreme Court,²⁰² by September 2016 the government position had softened. It accepted the result of decriminalisation and was even perhaps reluctant to file a partial appeal, having earlier publicly announced that it would not seek to appeal the decision.²⁰³ A quick judgment may not have provided the space for government to gradually adapt its position.

Lastly, whilst not a direct result of the delay in the judgment being handed down but a positive by-product, between 2012 and 2017 the LGBT civil society strengthened, particularly in terms of visibility and the growth of formalised organisations, representing the diversity of the LGBT community in Belize.²⁰⁴

Criminal Code Amendment

The Criminal Code amendment coupled with the Revised National Gender Policy a few months prior, may have intensified an already emotive environment that had resulted from the Orozco Case.²⁰⁵ This is unlikely to have had any impact on the judicial proceedings, as such, but is likely to have contributed to the difficult atmosphere that existed with respect to Mr. Orozco and the LGBT community in 2013. Yet, more positively, the Criminal Code reform, and the fact that the Amendment Bill did not touch section 53, in effect made the case for the repeal of section 53 all the stronger. This is because section 53 was effectively left as the vestige of colonial-era sexual offences in the newly reformed Criminal Code, which further highlighted the discriminatory nature of the law. In addition, the Amendment Act, particularly the reforms to the law of rape (making the provision consent-based and gender neutral), neutralised some of the arguments that section 53 needed to be retained in order to protect male victims of rape.

Personal cost

The bravery and resilience of Mr. Orozco cannot be understated. Becoming a lone claimant in a public interest case, particularly one that touched such a controversial issue, should not be underestimated. But doing so often comes at some cost and, in this case, there was personal cost. Mr. Orozco became a target and victim of abuse and



"For we are still, and ever must be, nation builders all. We must fix whatever has gone wrong and continue the forward march. We must bring healing on the basis of compassion and understanding and the infinitely sheltering capacity of Divine love ... We must build and expand this country of progress and reform and social justice where, as was said on that first Independence Day, every man, woman and child has a stake, a real stake, in the life and work of the new Belize."

Mr. Barrow,
Prime Minister
of Belize, Independence
Day Address,
21 September 2016

²⁰² Hon. Faber, Chair of the Committee – Opening remarks during the second reading of the Bill, *Hansard*, *Ibid.* n.152.

²⁰³ Washington Blade, *Belize government won't appeal sodomy law ruling*, August 2016 (available at: <https://www.washingtonblade.com/2016/08/18/belize-government-wont-appeal-sodomy-law-ruling/>).

²⁰⁴ Promoting Empowerment Through Awareness for Lesbian and Bisexual Women (PETAL) began informally from 2011/2 but was officially established as an NGO in December 2015 (see https://www.facebook.com/pg/PETALBELIZE/about/?ref=page_internal); Our Circle, an LGBT NGO that works with and for LGBT families, was incorporated in 2014 and registered as an NGO in 2017 (see <https://ourcirclebze.weebly.com>); Empower Yourself Belize Movement, a youth-based movement that seeks to empower and defend the rights of young persons of all sexual orientations and gender identities or expression (see <http://www.empoweryourselfbelize.org>); Trans In Action (TIA), a network representing transgender persons in Belize, was legally registered in 2014 (see <https://www.facebook.com/TIABelize/>).

²⁰⁵ A comment in response to Channel 5 Belize's 17 May 2013 article 'Gender Policy Updated and is against discrimination by sexual orientation' remarked that "this 'policy' reflects exactly what many of us warned here, the incessant, creeping influence of the UN homosexual agenda...", and the Senator for Business Community Mr Mark Lizarraga later protested (during the Senate meeting at which the Amendment Bill was considered) that the Amendment Bill sought to legalise same-sex sexual intimacy. Available at: <https://edition.channel5belize.com/archives/85581> (See Plus TV Belize, 'Senate Makes Criminal Code Bill Still Go Through More Tweaking', *Ibid.* n.93).



"This is the first day of my life in which it is legal for me to be me. This is a history-making judgment for Belize, the country which I am proud to call home."

Mr. Orozco,
10 August 2016

"This is a great victory for human rights and the rule of law. Intimacy in private between two adults of their own free will should not be a matter for the law. The only outcome of such laws is to blight the lives of members of the LGBT community by fostering a climate of oppression and state-sponsored discrimination. The bravery and resilience of colleagues across the Caribbean who have worked tirelessly on this case is an inspiration. Caleb Orozco is a hero and a trailblazer. The Human Dignity Trust is immensely proud to have worked alongside him and his legal team."

Ms. Téa Braun,
Current Director of the Human Dignity Trust,
10 August 2016

violence.²⁰⁶ In 2012, one such incident left Mr. Orozco with an injured face and broken tooth.²⁰⁷ The matter was raised with the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and Special Rapporteur on the situation of human rights defenders, which lead to direct communication with the Government of Belize.²⁰⁸

Despite this, Mr. Orozco remained, and continues to remain, committed to the litigation and the advocacy work that he and the LGBT civil society in Belize carry out.

Thankfully, his and the community's resilience resulted in the 2016 victory and Mr. Orozco's own contribution and courage has since been recognised and acknowledged across the world.²⁰⁹

Impact

The immediate impact of the section 53 litigation was of course the decriminalisation of private consensual same-sex sexual intimacy between adults and what that meant for the lives of LGBT people in Belize.

The judgment also reminded everyone that discriminatory laws undermine the ability of vulnerable groups to access vital health services and support, and reinforced the importance of being able to freely access those services, particularly in the context of HIV and AIDS prevention.

More broadly, the litigation process and the victory in 2016 appears to have had a threefold impact.

First, as described above, not only did the process of litigation likely strengthen and create more visibility for LGBT civil society in Belize, the success in August 2016 further empowered the community. For the first time, Pride events were held and have since coincided with the anniversary of the Supreme Court decision.²¹⁰ LGBT activists

²⁰⁶ News 5, *Caleb Orozco's Neighbor Found Guilty of Gay Bashing and Throwing Missiles*, July 2015 (available at: <http://edition.channel5belize.com/archives/115972>); The Guardian, *Belize gay rights campaigner is facing more death threats, says lawyer*, May 2013 (available at: <https://www.theguardian.com/world/2013/may/10/belize-gay-rights-campaigner-threats>).

²⁰⁷ United Belize Advocacy Movement, *Belizean LGBT Rights Violations*, February 2012 (available at: <http://unitedbelizeadvocacymovement.blogspot.com/2012/02/few-examples-of-media-coverage-of.html>).

²⁰⁸ Office of the United Nations High Commissioner for Human Rights, Letter dated 24 July 2013 (available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=14007>).

²⁰⁹ Pink News, *Belizean LGBT activist Caleb Orozco to be honoured with David Kato Award for battle to overturn anti-gay law*, 5 December 2016 (available at: <https://www.pinknews.co.uk/2016/12/05/belizean-lgbt-activist-to-be-honoured-with-david-kato-award-for-battle-to-overturn-anti-gay-law/>).

²¹⁰ Channel5Belize, *For Belize LGBT's, Pride is Showing*, 4 August 2017 (available at: <https://www.youtube.com/watch?v=hY315PT5mok>); Breaking Belize News, *PRIDE week to be celebrated in Belize*, 4 August 2017 (available at: <https://www.breakingbelizenews.com/2017/08/04/pride-week-celebrated-belize/>); Empower Yourself Belize, *Pride Camp 2019*, 26 February 2019, (available at: <http://www.empoweryourselfbelize.org/news>).

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and civil society organisations have intensified their advocacy work,²¹¹ viewing the revision of section 53 as merely the beginning, and doing that in a collaborative way. Their work has visibly borne fruit in terms of greater engagement with government ministries and inclusion in policy and legislative developments.²¹²

Second, the success of the litigation has made a significant contribution to the legal, political and social changes that have occurred in Belize with respect to the rights of LGBT people. As a result of decriminalisation, the discourse has been able to move forward and so too has the position of government. As noted above, the government's legal position towards the litigation adapted over time. From initially being firmly opposed to the case, by late 2016, the government had publicly accepted the result. Since 2016, there has also been a public sea-change in the approach of the government. Domestically, the government appears to be committed to putting in place greater protective legislation, such as anti-discrimination legislation and potentially comprehensive hate crime laws, which would be fully inclusive. Internationally, Belize has also joined many other nations in supporting various UN resolutions directed at creating greater equality for LGBT people and accepted a swathe of recent UN UPR recommendations, which address issues relating to sexual orientation and gender identity.²¹³

The Special Envoy, through her Office, has contributed to the ongoing advocacy campaigns through partnerships with key LGBT organisations and speaking engagements at national conferences. She continues to campaign on social media platforms to raise awareness about the constant challenges faced by the LGBT community. Since her early years as the Special Envoy, Mrs. Simplis Barrow has made dedicated videos to commemorate the International Day Against Homophobia, Transphobia and Biphobia. In 2016, Mrs. Simplis Barrow engaged in dialogues with LGBT mothers reminding them of their worth and contribution to society. She also continues to speak against violence of any kind on every platform available. Mrs. Simplis Barrow is Chair of the Spouses of CARICOM Action Leaders Network, which is an NGO comprised of First Ladies and Spouses of the Prime Ministers in CARICOM countries who aim to make strides in ensuring the general health and well-being of all persons by reducing the number of HIV/AIDS cases through preventative measures. Recognising the importance of highlighting the efforts of the LGBT community, Mrs. Simplis Barrow has brought visibility not only to the challenges, but also to the progress made in ensuring that every person's basic human rights are respected and enforced.

Socially, attitudes towards and acceptance of LGBT people are slowly changing. In 2015, Channel5Belize reported that the Caribbean Men's Internet Survey on public



"Last week's ruling is of critical importance for the continuing response to HIV and AIDS."

Mrs. Dolores Balderamos Garcia,
"My Perspective:
A Critical Ruling,"
Belize Times,
21 August 2016, p.17

*"We are silent no more,
change must come."*

Ms. Simone Hill,
Coordinator of PETAL,
March 2017

*"Caleb Orozco's
landmark court victory
in decriminalizing
sodomy has encouraged
conversation about
ensuring human rights
and is humanizing LGBT
persons. However, our
advocacy continues"*

Mr. Kevin Mendez,
President and founder
of Belize Youth
Empowerment for
Change, 8 March 2017

²¹¹ UNIBAM, PETAL, Belize Youth Empowerment For Change, Empower Yourself Belize, TIA Belize, *Universal Periodic Review of Belize Briefing Note*, Undated (available at: https://ilga.org/downloads/SOGIESC_Advocacy_paper_Belize_UPR31.pdf).

²¹² Amandala, *UWI Signs Agreement with UNIBAM for New Course*, 6 October 2018 (available at: <http://amandala.com.bz/news/uwi-signs-agreement-unibam/>).

²¹³ Channel5Belize, *Belize Action Frowns on U.N. Turnaround Over LGBT Expert*, 22 December 2016, (available at: <http://edition.channel5belize.com/archives/139945>); *Report of the Working Group on the Universal Periodic Review: Belize*, A/HRC/40/14, *ibid.* n.12.



"Compared to the other countries, with the exception of Surinam, Belize is more accepting than a lot of the other countries. There is something interesting and important happening in Belize, where we see that thirty four percent say they would accept someone if they were gay or homosexual... That is quite significant and a very good progress in a Belizean society."

Dr. Ernest Massiah,
quoted in 'And
the Survey Says,
Homophobia is Down in
Belize', *Channel5 Belize*,
17 April 2015

attitudes to sexual and reproductive health, abuse, violence and discrimination related to HIV and homophobia had found that Belize had one of the highest rates of acceptance of "homosexuality" in the Caribbean region.²¹⁴ The report acknowledged the higher rate of acceptance as a positive indicator of progressive thinking in Belize.

Lastly, outside Belize, the section 53 litigation had the potential to serve as an example to other Caribbean states considering repealing laws that criminalise private consensual same-sex sexual intimacy, inspiring other LGBT movements across the region and creating a domino effect.²¹⁵ This has to some extent been realised with the recent litigation leading to decriminalisation in Trinidad & Tobago.²¹⁶ Other legal challenges within the region may yet follow suit. The Belize judgment also serves as an international precedent and has been cited in similar challenges and related actions across the world.

²¹⁴ Channel5Belize, *And the Survey Says ... Homophobia is Down in Belize*, 17 April 2015 (available at: <http://edition.channel5belize.com/archives/112340>).

²¹⁵ Lauren Tisdale, *A Triumphant Victory for Gay Rights in Belize Lays the Foundation for a Domino Effect Throughout the Caribbean*, 41 Loy. L.A. Int'l & Comp. L. Rev. 99 (2018) (available at: <http://digitalcommons.lmu.edu/ilr/vol41/iss1/4>).

²¹⁶ *Jason Jones v The Attorney General of Trinidad and Tobago*, Claim No. CV2017-00720, 12 April 2018, (available at: <http://www.u-rap.org/web2/index.php/component/k2/item/71-jasonjonesandagttandeoc>).



POST-REFORM ENVIRONMENT

POST-REFORM ENVIRONMENT

The passage of the Amendment Act was undoubtedly an important achievement and yet another step forward in the effort to improve the protection of children against sexual offences. Nevertheless, the general consensus is that further amendments are necessary. Some of those close to the process say they felt the Amendment Bill was rushed through, and that there was limited opportunity to consult or comment on the revisions that were made to the Amendment Bill following the initial consultation phases and before it received Governor-General assent. There are still issues that the MHDSTPA, the DPP and the NCFC, in particular, would like to see addressed, including:

- The creation of a specific offence of child sexual assault by touching;²¹⁷
- The repeal of the separate offence for marital rape;
- Provisions to criminalise grooming behaviour;²¹⁸
- Better particularisation of the various incest offences;
- A more flexible sentencing regime allowing judges to sentence according to the seriousness of the offence having regard to all the circumstances, rather than just the age of the victim; and
- Legalising access to sexual health counselling and medical treatment without consent for children under the age of 18.

Despite the recognition that further work is needed, the Amendment Act has been a success in so far as members of the public are now calling for it to be properly implemented, for example, through greater use of the Database.

The lack of statistical data recording the number of reports, charges and convictions for sexual offences makes it difficult to gauge how effective the Amendment Act has been in increasing the protection of children from sexual offences. Anecdotal evidence from stakeholders interviewed is that there is a greater awareness and understanding around sexual offences, which is an important step.

On-going Training and Education

In addition to the specific training on the new offences, which was rolled out to the police and the courts after the Amendment Act came into force, there were some limited efforts to deliver broader educational programmes to the wider public. The Special Envoy reached out to schools to deliver training for teachers, encouraging



"People are more protected and there is an ongoing conversation about respect for diversity and people's sexuality."

Ms. Alpuche,
CEO of the Ministry
of Human Development,
2018

²¹⁷ The Act created offences of unlawful sexual intercourse with a child under 16, rape of a child under 16, and sexual assault by penetration of a child under 16. It also created an offence of sexual assault by touching, but in order to prove sexual assault by touching the prosecution is required to show also that the victim did not consent, or that the perpetrator did not reasonably believe that the victim consented. There is no separate offence for sexual assault by touching of a child (which would not include as an element of the offence, lack of consent or a reasonable belief that the victim did not consent). This leaves it open, in sexual assault cases involving children, for perpetrators to argue that they believed the victim consented to the sexual touching, despite the Act making any consent to sexual conduct from a child under 16 void.

²¹⁸ Child grooming is defined in the UK by the National Society for the Prevention of Cruelty to Children ('NSPCC') as "when someone builds an emotional connection with a child to gain their trust for the purposes of sexual abuse, sexual exploitation or trafficking." NSPCC website, Grooming (available at: <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/grooming/>).

them to report instances of sexual abuse where they saw evidence of it.²¹⁹ Later, in 2017, the Special Envoy was also invited to deliver training to the police which, although targeted more broadly at women's rights and leadership, touched on issues of child abuse. Despite recommendations from Hon. Elrington during the second reading of the Amendment Bill that a public awareness campaign should be launched to explain the changes to ordinary Belizeans, we have seen no evidence that any such campaign has been implemented.

Equally, following the Supreme Court decision in August 2016, we are not aware of any attempt by the government or state agencies to undertake broader sensitisation training or awareness raising programmes aimed at creating better understanding and acceptance across Belizean society with respect to LGBT people. LGBT civil society groups have worked to fill this gap and have hosted a number of educational and awareness raising events, some public and some involving state agencies,²²⁰ but no systematic programme has been rolled out. This was perhaps also an area that was a missed opportunity for the government to further educate the public.

The need for education and greater awareness raising has also been highlighted in the context of the domestic violence laws. Ms. Cynthia Pitts, a legal commentator within Belize, observed in 2007 that although the Women's Department of the MHDSTPA had published literature which sought to simplify the law and raise awareness, many people were not aware of those publications. Ms. Pitts also reiterated the concern highlighted above, that the lack of mechanisms for accurately recording data on domestic abuse meant it was difficult to understand the full extent of the problem within Belize.²²¹

Further Developments in the Criminal Justice Sector and the Future Legislative Agenda

In August 2017, under the auspices of the Judicial Reform and Institutional Strengthening (JURIST) Project, the Model Guidelines for Sexual Offence Cases in the Caribbean Region ('Model Guidelines')²²² were unveiled. The Chief Justice of Belize launched the guidelines nationally in October 2017. The Model Guidelines

219 Mrs. Simplis Barrow – Interview with HDT, November 2018.

220 For examples see Facebook Event, Stigma and Discrimination and Human Rights Conversation, 11 March 2017, (available at: <https://www.facebook.com/events/374754189571300/>); Breaking News Belize, Our Circle Launches new projects to strengthen LGBT community, 13 June 2018 (available at: <https://www.breakingbelizenews.com/2018/06/13/our-circle-launches-new-projects-to-strengthen-lgbt-community/>); Belize Youth Empowerment For Change, *Our Work*, Undated (available at: <https://www.byecngo.org/our-work/>); Empower Yourself Belize, *Our Programs*, Undated, (available at: <http://www.empoweryourselfbelize.org/programs>) and *Pride Camp 2019*, Undated (available at: <https://www.breakingbelizenews.com/2018/06/13/our-circle-launches-new-projects-to-strengthen-lgbt-community/>).

221 Channel5Belize, *The Fight Against Domestic Violence and the Law*, May 2018 (available at: <http://edition.channel5belize.com/archives/165606>).

222 JURIST Project, *Model Guidelines for Sexual Offence Cases in the Caribbean Region*, 2017 (available at: <https://www.juristproject.org/publication/model-guidelines/200-model-guidelines-for-sexual-offence-cases-in-the-caribbean-region>).

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are intended to provide guidance to justice sector stakeholders on managing cases involving sexual offences and dealing with witnesses and survivors of those offences.²²³ In interview, the DPP indicated that the Model Guidelines were not being used in every case because some of the measures proposed were slightly ambitious. However, she noted that the Model Guidelines did not deviate significantly from the procedures already in place. It is hoped that the Model Guidelines will serve as an aspirational guide to complement other initiatives that are being implemented to streamline and improve the court process.²²⁴

Belize is currently consulting on new anti-discrimination legislation. The Special Envoy and the NAC, in partnership with the Attorney General's office, is in the process of conducting a review of domestic legislation in order to identify what reforms are needed to achieve compliance with section 16 of the Constitution (*the right to protection against discrimination*).²²⁵ Support and information is being provided by the Human Rights Observatory and the Human Rights Commission. The Chair of the NAC, Hon. Tucker-Longworth, has stressed that the priority in this case is to ensure the messaging around the purpose of any proposed bill is clear before it is introduced to Parliament,²²⁶ having learned lessons from the difficulties encountered during the Criminal Code reforms. In this way, the passage of the Amendment Act has had a positive impact, paving the way for smoother legislative reforms where they are needed in the future.

One area identified by stakeholders as a potential next step for legislative reform, is the introduction of legislation to address hate crime, which would dovetail well with a broader anti-discrimination bill.²²⁷ In March 2019, the Office of the Special Envoy and the NAC hosted an unprecedented forum on hate crimes and anti-discrimination in Belize. It was well attended and represented, including by heads of departments from the Attorney General's office and other key agencies. The forum was an overwhelming success and demonstrates the appetite in Belize for this kind of legislation, and the desire to ensure that all people are protected.

In relation to future activities that seek to enhance the protection of women and children's rights specifically, the Government of Belize commissioned the GBV Action Plan. The purpose of the plan is to establish a harmonised response to gender-based violence resulting in decreased incidence and increased support for victims and



"A lot of lessons have been learned and it is good that the whole section 53 case, the gender policy and the sexual offences amendments put a much needed discourse in Belize about the issues squarely on the table."

Ms. Alpuche,
CEO of the Ministry
of Human Development,
2018

²²³ *Model Guidelines for Sexual Offence Cases in the Caribbean Region*, *Ibid.* n.222, para.8.

²²⁴ In his 2013 Annual Address the chief justice confirmed that IT systems developers had been engaged to implement case management software for the civil and criminal courts, and that the applications were in various stages of completion (available at: <http://www.belizejudiciary.org/publications/annual-reports/>).

²²⁵ 2013 Annual Address, *Ibid.* n.224, para.18.

²²⁶ Hon. Tucker-Longworth, Interview with HDT, November 2018.

²²⁷ Anonymous, Officer of the Supreme Court – Interview with HDT, December 2018.



“Effective coordination of a multisectoral GBV response in Belize based on an approach of human rights, gender justice and zero tolerance where women, men, girls and boys live free of all forms of gender violence.”

National Gender-Based Violence Action Plan: a multi-sectoral plan to prevent and respond to gender-based violence in Belize 2017-2020

“What better gift to give the children of Belize than a safer Belize to live in where the laws are more robust and provide complete protection for them and hold violators accountable.”

NCFC,
‘A Historic Day For Our Belizean Children,’
29 May 2014

access to justice.²²⁸ Belize has also accepted recommendations during its most recent UPR to “include specific programmes on combating violence against women in the gender equality framework under the national growth and substantial development strategy.”

The Future is Bright

The success of the passage of the Amendment Act together with the Supreme Court decision in the Orozco Case offer a positive outlook for Belize, both in terms of the continued protection of women and children as well as LGBT people.

The challenge Belize faces in terms of addressing sexual crimes and violence is the high rate of acquittals and cases withdrawn by the prosecution due to insufficient evidence, particularly for sexual offences.²²⁹ The next step for Belize in the context of protecting rights is to encourage victims to report crimes and support them through the prosecution process and strengthen the court rules to provide special measures for victims and witnesses in sexual offences cases.²³⁰ The back-log of cases and lack of court time and resources remains a chronic issue, as does the lack of resources within the police department to adequately investigate crimes that are reported. However, the hope for Belize’s determination to eliminate sexual crimes and violence is aptly captured by the policy vision set out in the GBV Action Plan.

More importantly, objectives to enhance education and raise awareness of what amounts to a case of sexual abuse within the GBV Action Plan and the Gender Policy will provide the foundation for a stronger framework for the investigation, charging and prosecution of sexual offences in Belize.

With the continued commitment and expertise of its dedicated agencies and civil society partners, and adequate support and guidance from international partners, the outlook for Belize is good.

²²⁸ NWC, *The National Gender-Based Violence Action Plan: a multi-sectoral plan to prevent and respond to gender-based violence in Belize 2017-2020*, 2017, p.16 (available at: <https://www.nationalwomenscommissionbz.org/wp-content/uploads/2018/06/National-Gender-Based-Violence-Plan-of-Action-Book.pdf>).

²²⁹ U.S. Department of State, *2017 Country Reports on Human Rights Practices: Belize*, 20 April 2018 (available at: <https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/belize/>).

²³⁰ Ms. Vidal – Interview with HDT, October 2018.



LESSONS LEARNED

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Belize offers a unique example of concurrent legal reforms progressing through Parliament and the courts. Although the two processes were separate, they fed and informed a broader dialogue on sexual rights, bodily integrity and sexual orientation and gender identity, and together have helped shaped Belize's current human rights policy. There are both positive and negative learning points from the achievement of these reforms.

The passage of the Amendment Act in Belize offers a strong example of government, state agencies, civil society and the international community working together to achieve legislative reform.

Despite the fact it took almost seven years to get the Amendment Bill introduced to Parliament, those close to the process say they felt that revisions to the Amendment Bill were then rushed through the National Assembly.²³¹ Although this meant that the Amendment Act was not embroiled in lengthy political or bureaucratic deliberations, the outcome was that some of the original objectives of the Amendment Bill were not fully realised. Overall, the final Amendment Act perhaps reflects the reality as it was in 2013 and what could be achieved at that moment. The Amendment Act could not be all things to all people but was a step in the right direction.

The principal cause of delay in the effort to reform Belize's Criminal Code was the lack of time and resources within the legislative drafting team of the Attorney General's office. Although ultimately funding was secured to engage legal consultants, it was noted that the engagement of foreign consultants meant that the Amendment Bill as initially drafted²³² suffered from a lack of contextual understanding. Taking precedents and models from other countries is an important and useful resource in the legislative drafting process, but it is paramount that any such precedent is carefully adapted to fit the legislative regime of the country undergoing reform. To achieve this aim, it is vital that local legal experts are involved early in the process. Legislative reform to ensure compliance with international legal standards should ideally be a collaborative process, involving international experts who can push boundaries and set aspirations for what could be achieved, whilst local experts ensure that the legal drafting sits within the boundaries of what is achievable within that country's legal framework. It is equally important that legislative reform projects are adequately funded and, where possible, that funding is ring-fenced.

Top level Government engagement and high-profile champions can be key to achieving legislative reform, and the Belize case study offers a clear and successful illustration of this. It is likely that Ms. Alpuche, as CEO of the MHDSTPA, was able



"Fight like you're fighting for yourself, like you're a victim and it means the world to you."

**First Lady and
Special Envoy,
Mrs. Simplis Barrow,**
November 2018

²³¹ Ms. Alpuche and Ms. Vidal – In interview with HDT, October and November 2018.

²³² Modelled, as it was, on the UK Sexual Offences Act 2003.

to achieve much more because as a ministry employee she had direct access to the Minister for Human Development and the office of the Attorney General. The fact that government commitment to reform had also been formalised in the National Plan of Action for Children and the GBV Action Plan made the task of tabling the reforms easier. In addition, Mrs. Simplis Barrow in her role as Special Envoy undoubtedly brought much needed attention and gravitas to the importance of reforms.



"Today's achievement demonstrates the benefits of working together to bring about substantive changes to the lives of our children."

NCFC,
'A Historic Day For Our Belizean Children,'
29 May 2014

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More broadly, the Belize example makes clear that engaging the public is vital to achieving broad reform. In particular, the public consultation sessions were integral to correcting some of the misapprehensions which underpinned public resistance to the Amendment Bill. Engaging the public through consultation at an early stage of the legal reform process allows the government to build trust and secure public backing from the outset. The use of public testimony from victims and enabling a two-way dialogue through the use of social media platforms, such as Facebook, were shown to be particularly effective tools in securing public backing for the amendments.

Equally, offering training and education on the nature and impact of the reforms so that the public fully know how they may be affected, will make it more likely that the public will enjoy the full benefit of the law as amended. Ongoing awareness raising and education programmes are also key to longer-term societal change and progress. A comprehensive and overarching education programme on the rights of women, children and LGBT people has so far not materialised in Belize and this has perhaps been a missed opportunity.

The lack of empirical data on sexual offences in Belize made it difficult to explain to ordinary members of the public why reform was so important. Accurately monitoring and recording the number of reports, charges and convictions for sexual offences moving forward will make it easier to monitor the effectiveness of the changes and identify where additional work may be needed to further strengthen the law. It is hoped that the implementation of new case management software within the Belize court system will go some way towards achieving this.

In terms of the intersection between legislative reform and litigation, in many cases, there can be a natural complementarity between legislative reform and public interest litigation. There are often synergies between the two approaches that can improve the likelihood of comprehensive and effective reform. Litigation, impending or actual, can give government actors the impetus and the political cover to undertake legislative reforms with which they may privately agree but which may be publicly unpopular or difficult to defend, but at the same time shine a spotlight on flaws in the law that

233 'A Historical Day for Our Belizean Children', *ibid.* n.164.

LESSONS LEARNED

legislative reform can then address. Litigation can also complement legislative reform, where each focus on separate, but related issues. The blunt tool of successful litigation can be augmented with legislative reform that allows for more systematic and holistic reform.

In the case of Belize, the two parallel processes were somewhat accidental and unexpected partners, coming together as a result of timing rather than design. This presented challenges for both processes. For the Criminal Code reforms, the timing of the litigation and particularly the hearing in May 2013, resulted in misapprehension as to the scope of the legislative reforms and a conflation of the two processes, with many allegations being made that the Criminal Code amendment was somehow an attempt to achieve decriminalisation of consensual same-sex sexual intimacy by the back-door and without public scrutiny. The Criminal Code reform did not however directly tackle section 53, although there are suggestions that the changes to the rape provisions may have altered the legal position with respect consensual same-sex sexual intimacy. Had the Amendment Bill sought to decriminalise same-sex sexual intimacy, it is difficult to imagine, in light of the opposition, that the Amendment Act would ever have passed. In that respect, although challenging, the section 53 litigation enabled a controversial issue to be taken out of the court of public opinion and placed in the objective realm of an independent judiciary, and the two processes proceeded in tandem. Despite the challenges, overall, the coextensive courses enabled Belize to address separate but related issues and emerge with a legal framework that provided greater protection and equality for women, children on the one hand and LGBT people on the other.

Although there is more to be done, Belize is on the path to a strong legislative and practical framework which protects its citizens against all forms of discrimination.

ANNEX

ANNEX

1. Law and Legislation

- a. The Criminal Code (Amendment) Act 1999
- b. Criminal Code 2000, Chapter 101, revised edition, Part II Title VII
- c. Criminal Code (Amendment) Zero Draft
- d. Criminal Code (Amendment) (No. 2) Bill 2013
- e. Explanatory Notes to the Criminal Code (Amendment) Act
- f. Criminal Code (Amendment) (No. 2) Act 2014

2. Analyses, Policy Documents and Reports

- a. Sara Ellis Owen for the National Committee for the Family and Child, Towards Complete Compliance with the Convention on the Rights of the Child: An Analysis of the Laws of Belize, December 2003
- b. Diana Shaw for the Ministry of Human Development, The Child Protection System – Belize, C.A.: A Vulnerability Analysis, 2004
- c. Excerpt from Ministerial Briefing Notes for 2006 Meeting with the Attorney General, 2006
- d. Belize House of Representatives, Hansard, 27 September 2013, copy provided by Courtenay Coye LLP
- e. Remarks during the Second Reading of the Bill, Hansard, 12 December 2013
- f. Comments by the Bar Association on the Criminal Code (Amendment) (No.2) Bill, 2013

