



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

Case Study of the Republic of Palau



The Human Dignity Trust is an organisation of international lawyers supporting local partners to uphold international and constitutional human rights law in countries where private, consensual sexual conduct between adults of the same-sex is criminalised. Over 70 jurisdictions globally criminalise consensual same-sex 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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The principal authors of this report are Victoria Barnes (Senior Legal Consultant for the Human Dignity Trust), and Michael Okkonen (Senior Associate, Dechert LLP), and the report was edited by Treva (Téa) Braun, Director of the Human Dignity Trust. The Human Dignity Trust is very grateful to Global Affairs Canada for generously providing the funding for this report. The Human Dignity Trust is also grateful to The Royal Commonwealth Society for their ongoing partnership supporting our work on legislative reform in the Commonwealth.

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¹ Delphine Strohl, Raphaele Legru, Ruxandra Esanu, Nicolo D'Anzi, Chloe-Jane Belton and Craig Watson.

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INTRODUCTION


INTRODUCTION

Discriminatory sexual offences laws continue to impact the lives of many Commonwealth citizens, particularly affecting 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 threaten the health and prosperity of entire societies.

Discriminatory laws are apparent in the sexual offences provisions of 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 all 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 inside and outside of the Commonwealth have however made real progress in reforming their laws through either the wholesale updating of criminal codes, allowing multiple issues to be tackled together, or targeted reforms. Some of the most recent examples are as follows:

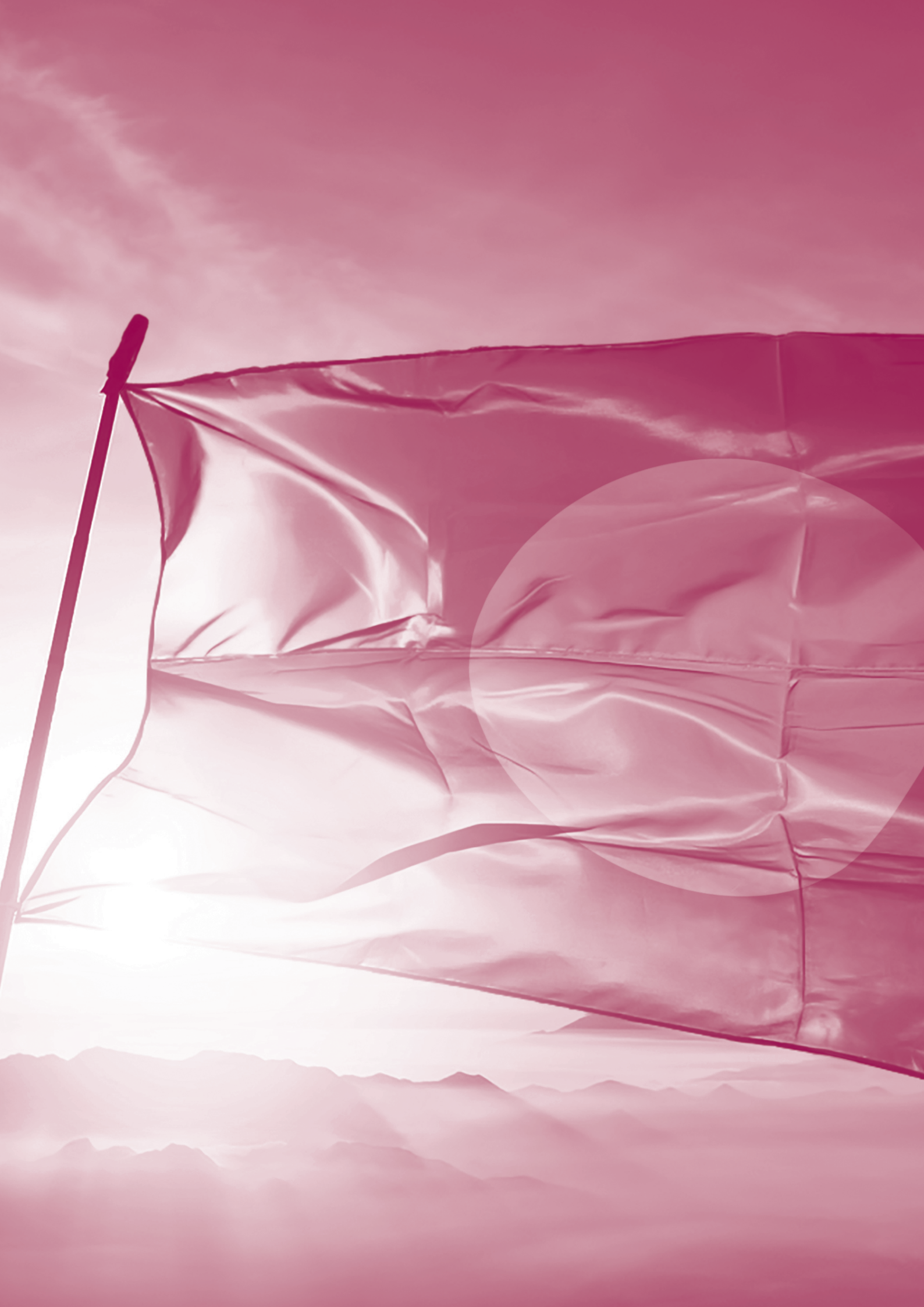
- **Palau** in 2012 and 2014, with the assistance of model laws, respectively modernised its sexual offences laws and completed the wholesale updating of its penal code;
- **Belize** in 2014 enacted major reforms to its colonial-era sexual offences laws, including making rape laws gender neutral, and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

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- **Seychelles** in 2016 repealed a law criminalising consensual same-sex sexual intimacy between adults; and
 - **Nauru** in 2016, with international assistance, completed the 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.



EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Over the last twenty years, the Pacific Region has seen a movement by several of its island nations to review and update domestic legal frameworks, modernise criminal laws and provide better protection for women, children, LGBT people and other vulnerable people. Many of these territories were former colonies, administered by European, United States ('US') or other international powers. Palau is no exception.

The Republic of Palau, located in the western Pacific Ocean, became independent in 1994. Prior to independence it was subject to multiple colonial administrations including Spain, Germany, Japan and latterly the USA. This history meant that, as for many colonial territories, local laws borrowed heavily from their prior colonial administrators and remained unchanged for some significant time post-independence. This created outdated and archaic legal provisions and inadequate protections for individual human rights.

Although Palau is not a Commonwealth member state, its colonial history, its geography and its status as a small island state, means that its experience of reform holds many lessons for Commonwealth countries, both in the Pacific region and beyond.

Between 2011 and 2014, Palau took a significant leap forward in protecting the rights of its citizens, through the Presidential signing of eight international human rights treaties and the updating of its sexual offences laws and criminal code.

Significant changes to the country's sexual offences laws and domestic violence framework were achieved by the enactment of the Family Protection Act ('FPA') in 2012. The sexual offence provisions in the FPA were later consolidated into a single piece of legislation in 2014, alongside other changes to Palau's criminal laws, through the enactment of a new Title 17 of the Palau National Code, Public Law No. 9-21 ('New Penal Code').

Sexual Offences Prior to Reform

Prior to the reforms in 2012, the sexual offences provisions in Palau were based on a mixture of colonial laws from Spanish, German, Japanese and American regimes that had been amended on an ad hoc basis over the years.

The laws were archaic in nature, and suffered from a number of shortcomings. For instance, there was a marital exemption for rape and the sexual abuse of children and offences of sodomy and adultery remained on the statute book. Some provisions referred to archaic notions such as "abominable and detestable crime[s] against nature" or sexual conduct undertaken in an "unnatural manner". The legislation was not clearly drafted and lacked precise definitions. The concept of sexual intercourse was open to judicial interpretation which ultimately limited the act of rape to a penile-vaginal

penetrative offence, and there was also no statutory definition of consent. The offence of incest was partially based on custom – which created complexity as a result of differing marital customs within Palau’s clan structure.

The provisions did not include a comprehensive and graded set of offences (nor aggravating circumstances) and in some instances discriminated on the basis of gender, age and marital status (for example, only unmarried females were protected under the law against rape, and only children were protected against non-penetrative sexual assaults).

Drivers of Reform

Notwithstanding the limitations of the prior laws, Palau is a strong matriarchal and matrilineal society and one which looks to the international stage. The influence of civil society and efforts to comply with international standards contributed to the reform of sexual offences legislation in Palau. In order to achieve change, a combination of influences at both the domestic and international level were required.

The sexual offences reform in Palau is a tale of two halves. The sexual offences chapter in the prior criminal code (chapter 28) was entirely repealed, reformed and replaced in November 2012 by the FPA. The main aim of the FPA was to enact a statute specifically addressing domestic violence in Palau, which had been seen as a gap in the law for nearly two decades. What drove the enactment of the FPA was principally civil society, and more specifically Mechesil Belau and its influential members. Additional contributory factors included the political resolve to adopt the FPA - thereby putting in place a legal framework that provided much needed protection for women - and international support and influence.

In 2014, Palau’s criminal laws were overhauled, whereby Palau’s criminal provisions were reformed and updated wholesale whilst at the same time consolidating various other provisions (such as chapter 28 of the old Title 17, “Sex Crimes”, as amended by the FPA) into a single piece of legislation. There does not appear to have been one single overriding factor behind this wholesale reform but it was rather a result of a combination of the political will to modernise the criminal law and international influence.

The Reform Process

The FPA and the New Penal Code were reformed through two essentially parallel yet complementary legislative processes that coincided and were mutually reinforcing. The initiative and impetus for the reforms, while stemming from different and similar sources, ran side by side to a large extent, such that the two pieces of legislation were enacted within two years of one another (the New Penal Code taking a little longer to come to fruition).

EXECUTIVE SUMMARY

The legislative process for the two Acts were mutually supportive. On the one hand, the later drafts of the FPA evolved to incorporate the sexual offences provisions that had been drafted as part of the original penal code bill in 2012. On the other hand, with the overhaul of the criminal law two years later in 2014, the New Penal Code codified some of the changes made by the FPA. The New Penal Code was based on the American Model Penal Code that was originally drafted by the American Law Institute in 1962.

The passing of the FPA and the New Penal Code through the parliament provided opportunity for debate, meetings and public hearings, however, we have found no public information or evidence that broad public consultation processes took place. Local sources have confirmed that the judiciary and Chief Justice were consulted regarding the draft FPA and New Penal Code and that there were apparently public hearings on the drafts. To the extent that there were public meetings to discuss the FPA and the New Penal Code, it is questionable whether these meetings covered the full extent of the changes being made as part of the FPA and later the New Penal Code, given the lack of clarity and understanding regarding the reforms to the sexual offences laws, which surfaced during the enactment of the New Penal Code in 2014.

Key Changes to the Sexual Offences Laws

The modernisation of Palau's sexual offences laws has gone some way towards conforming the country's sexual offences framework to international good practice. Unlike the prior criminal law, the new sexual offences laws use mostly gender-neutral language, some discriminatory provisions have been repealed (such as the provision criminalising consensual same-sex sexual relations and the marital rape exemption in part), and the scope of offences, such as the offence of rape, have been expanded. There is now a more comprehensive framework of graded offences with clearer statutory definitions for the various constitutive elements. However, some important limitations and deficiencies remain. Most notably, the spousal exemption for certain child sexual offences (a hangover from the previous law that has resulted in conflicting provisions) and the continued link between incest and clan custom endure.

Post-Reform Environment

The post-reform environment has presented different challenges for both the FPA and the New Penal Code.

Implementation is a tale of two stories. The initial programme of implementation for the FPA got off to a very slow start but has so far seemingly proved relatively effective and successful, at least in terms of providing greater protection and improving access to justice for domestic violence victims. As for the New Penal Code, although some initial training was undertaken within the criminal justice system, any implementation programmes appear to have been focused on new crimes such as the cyber law, trafficking and money laundering offences.

While ultimately the FPA made great strides in creating better legal protections for certain sections of Palauan society, the implementation of that legislation in certain respects failed to promote the broader legislative reforms that were part and parcel

of the FPA. The implementation of the New Penal Code merely served to underline this shortcoming, when there was also a failure to adequately and publicly address the sexual offence reforms brought about by the FPA and push for further changes. As such, the post-reform implementation of both legislative Acts can be viewed as a missed opportunity in this regard. Whether progress made in addressing domestic abuse could still serve as a catalyst for further latent reform remains to be seen.

Areas for Ongoing Work

Although the legislative reforms achieved in Palau are remarkable, and there has been a concerted effort to fully implement the FPA, this work needs to be maintained. Further work is also needed to raise awareness and educate the public on wider sexual offences, as this appears to have been an aspect that has not been tackled directly.

Going forward, enhanced data collection, production mechanisms and processes, especially the maintenance of disaggregated data on specific crimes and gender, will also be important in order to monitor the effectiveness of the legal changes that have been made.

Additional protections and equality for LGBT people in Palau should also be a priority, including the introduction of comprehensive hate crime legislation. The recent citizen-led initiative to legalise same-sex marriage may go some way to encourage further progress.

Lessons Learned

A number of important lessons can be learned from the Palau experience. These are outlined below:

- **Progressive legislative reform**, even in small countries, is possible in a reasonably short timeframe with a combination of political will and technical support.
- **Early engagement** with the public and key stakeholders is important especially where controversial aspects of the legislation will inevitably lead to some societal resistance and/or opposition. It is important to ensure that affected groups, as well as the general public, are involved in the legislative reform process. Engaging people in an open dialogue allows for early education of the need for change and creates less opportunity for opposition later.
- **International cooperation** can also be highly beneficial. Law reform is a complex and technical process, particularly for small countries. Engaging with other countries allows those seeking reform to leverage the experience of those who have designed and implemented similar changes and provides a greater prospect of success.
- A **comprehensive implementation plan** is as important as the legislation itself. Without an implementation plan, the risk of losing momentum behind the reform is greatly increased and could ultimately lead to policy failure.
- **Procedural rules** should be reviewed and, as the case may be, amended to ensure that they do not create obstacles to the implementation of the new substantive provisions and enable victims to obtain redress.
- **Post-reform impact**, particularly in criminal legislative reform, should be **measured and monitored** over time to ensure it is achieving its intended objectives.



AIRPORT

KOROR



COUNTRY OVERVIEW

COUNTRY OVERVIEW

Location and Population

Palau is an island country in the western Pacific Ocean. It consists of more than 340 islands with a total land mass area of 459 square kilometres² and has a population of approximately 17,900 inhabitants (as of 2018),³ making it one of the world's smallest independent nations. While the current capital, Ngerulmud, is located on Babeldaob Island, the nearby island of Koror, where the capital city was located until 2006, is the most populous island in Palau.⁴

Palau's cultural demographic is a mixture of Micronesian, Melanesian, Asian and Western influences. Ethnically, the majority of the population are Palauans with minorities of Asians, Carolinians and Caucasians.⁵ The Constitution of the Republic of Palau ('Constitution') recognises traditional Palauan languages as national languages and states that both Palauan and English are the official languages of the country.⁶ Whilst English is used as the major written language in media, education and official documents,⁷ Palauan is still the most used language overall, being spoken by 65.2 per cent of the population relative to 19.1 per cent for English.⁸ A constitutional amendment that was adopted in 2008 changed the prevailing language in case of conflicts between different language versions of the Constitution from English to Palauan.⁹ Also, Palauan is mainly used during congressional debates and public hearings of the Palau National Congress (the Olbiil Era Kelulau, 'OEK' or 'Congress'). During official proceedings, members of the OEK rarely speak in English unless the occasion calls for it.¹⁰

² Palau Ministry of Health, 'Belau Family Health and Safety Study: National Research Project on Violence Against Women in Palau', October 2014 (available at: https://asiapacific.unfpa.org/sites/default/files/pub-pdf/Palau_family_health_safety_survey_report_2014.pdf).

³ The World Bank database (available at: <https://www.worldbank.org/>).

⁴ Constitution of the Republic of Palau, Article XIII, Section 11. A copy can be found at section 1.a of the Annex; Belau Family Study, *Ibid.*, n. 2.

⁵ Central Intelligence Agency ('CIA'), *the World Factbook*, Palau, (available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/ps.html>).

⁶ Constitution, Article XIII, Section 1. A copy can be found at section 1.a of the Annex.

⁷ K. Matsumoto and D. J. Britain, *Palau: Language situation*, *Encyclopaedia of Language and Linguistics*, 2nd edn., vol 9, 2006, p.129-130 (available at: https://www.academia.edu/3365397/_with_Kazuko_Matsumoto_Palau_Language_Situation).

⁸ CIA, *the World Factbook*, Palau, *Statistics for 2015* (available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/ps.html>); UN Human Rights Committee ('HRC'), National report submitted in accordance with para. 15(a) of the annex to Human Rights Council resolution 5/1, Palau, A/HRC/WG.6/11/PLW/1, 2 February 2011 (available at: <https://undocs.org/A/HRC/WG.6/11/PLW/1>).

⁹ Republic of Palau, Second Constitutional Convention, *Certification of adoption of proposed amendments to the constitution of the Republic of Palau*, 15 July 2005, amendment 21 (CP No. 2-278), adopted on 4 November 2008 (available at: <http://www.track.unodc.org/LegalLibrary/LegalResources/Palau/Laws/Palau%20Second%20Constitution%20Convention%20Proposed%20Amendments%202005.pdf>).

¹⁰ HDT interview with Delanie Prescott-Tate, former House of Delegates legal counsel, conducted on 18 March 2019; HDT interview with Bernadette Carreon, freelance journalist in Palau, conducted on 6 March 2019.

Economy

Palau had a gross domestic product ('GDP') per capita of \$17,318 in 2018¹¹ and it is currently ranked 69th out of 258 countries.¹² The economy relies on subsistence agriculture and fishing,¹³ but the main component of Palau's economy is tourism.¹⁴ Tourism drove the country's strong economic growth recorded in 2014 and 2015¹⁵ and the contraction of the economy in 2016-2017.¹⁶ In 2016, the service industry represented 78 per cent of Palau's GDP, the industrial and agricultural sectors representing only 19 per cent and 3 per cent, respectively.¹⁷ The Palauan government is one of the country's major employers.

Palau receives substantial external financial assistance.¹⁸ In 2015, Palau received \$22 million in development and co-operation aid which amounted to approximately 7.5 per cent of its Gross National Product. The US was the largest contributor (63 per cent), followed by Japan (32 per cent) and Australia (5 per cent).¹⁹ US financing derives originally from the Compact of Free Association, renewed as the Compact Review Agreement ('CRA') in 2018.²⁰ The CRA provides for \$123 million in funding through 2024.²¹ The International Monetary Fund ('IMF') noted that the main economic policy priorities for Palau were to develop a medium-term fiscal framework and strategy to *inter alia* help to face the expiration of CRA grants.²²

¹¹ The World Bank, *Ibid.*, n. 3.

¹² The World Bank, *Ibid.*, n. 3.

¹³ CIA, *the World Factbook*, Palau, *Ibid.*, n. 8.

¹⁴ IMF, Staff Country Reports, *Republic of Palau: 2005 Article IV Consultation*, March 2006, No. 06/108, Background (available at: https://www.imf.org/-/media/Websites/IMF/imported-full-text-pdf/external/pubs/ft/scr/2006/_cr06108.ashx).

¹⁵ President Remengesau, *State of the Republic Address*, 13 April 2017 (available at: https://www.palau.gov.pw/wp-content/uploads/2017/04/2017-President-Remengesau-State-of-the-Republic-Address_FINAL.pdf).

¹⁶ IMF, *Staff Report for the 2018 Article IV Consultation*, 15 January 2019, p.4 (available at: <https://www.imf.org/-/media/Files/Publications/CR/2019/cr1943.ashx>).

¹⁷ CIA, *the World Factbook*, Palau, *Ibid.*, n. 8.

¹⁸ IMF, *Staff Report for the 2018 Article IV Consultation*, page 6, *Ibid.*, n. 16.

¹⁹ Global Partnership for Effective Development Co-operation, *Monitoring Profile*, Palau, October 2016 (available at: https://effectivecooperation.org/wp-content/uploads/2016/11/Palau_2_11.pdf).

²⁰ Compact of Free Association signed between Palau and the US for 1994 to 2009. The new Compact Review Agreement, which extended financial assistance, was signed in 2010 but only ratified by the US Congress in 2017 and signed by the US President in 2018.

²¹ US Department of the Interior, *Interior Secretary Zinke Applauds Completion of Palau Compact Funding Agreement*, 20 September 2018 (available at: <https://www.doi.gov/oia/interior-secretary-zinke-applauds-completion-palau-compact-funding-agreement>).

²² IMF, *Staff Report for the 2018 Article IV Consultation*, page 6, *Ibid.*, n. 16.

COUNTRY OVERVIEW

Political system

Palau has been the subject of several colonial administrations, including those of Spain, Germany, Japan and the US, claimed as part of the Spanish East Indies from as early as 1574. In 1898, the country was sold to Germany and remained under German administration until it was occupied by Japan in 1914. During World War II, Palau was occupied by the US, which went on to administer the territory from 1947 as part of the United Nations ('UN') Trust Territory of the Pacific Islands ('TTPI'). The Republic of Palau was created in 1981 and, following the signing of the Compact of Free Association with the US, became independent in 1994.

Palau is a constitutional republic with a directly-elected executive and bicameral legislative branches. It is a *de facto* non-partisan democracy.²³ Palauan laws do not prevent the formation of political parties, however in practice, all candidates run and compete as independents.²⁴ Although political ideas and ideology are of importance in the elections, clan membership and personality of the candidates also play a role.²⁵

The system of governance comprises of the President of the Republic of Palau ('President'), the Vice President, and members of the bicameral OEK, which includes the House of Delegates and the House of Senate ('Senate'). They are elected for four-year terms.²⁶

The President is both the head of state and the head of government.²⁷ Thomas Remengesau Jr., the current President, was previously President from 2000 to 2008. He was succeeded by Johnson Toribiong but later re-elected for two terms in 2012 and 2016.²⁸

Palau consists of 16 states.²⁹ Each state has its own constitution, legislature and governor.³⁰ The individual states can also impose taxes.³¹

²³ W-R. Clark Golder and S-N. Golder, *Principles of Comparative Politics*, 2nd edition, 1962, page 611; Dr. Liam Weeks, 'Parliaments without Parties', 2014, Paper delivered at the annual conference of the Australian Study of Parliament Group (available at: <https://pdfs.semanticscholar.org/01bf/b468b7db580c7018df89de2b88f4391c20b7.pdf>).

²⁴ Freedom House, *Freedom in the World 2012 report*, Palau; Wouter.P. Veenendaal, *How democracy functions without parties: The Republic of Palau, 2013, Party Politics* (available at: https://www.academia.edu/8488938/How_Democracy_Functions_Without_Parties_The_Republic_of_Palau).

²⁵ Wouter.P. Veenendaal, *Ibid.*, n. 24.

²⁶ Constitution, Article VIII, Section 4 and Article IX, Section 2. A copy can be found at section 1.a of the Annex.

²⁷ CIA, *the World Factbook*, Palau, *Ibid.*, n. 8.

²⁸ Official website of the Republic of Palau National Government, Past Presidents (available at: <https://www.palau.gov.pw/executive-branch/president/past-presidents/>).

²⁹ Aimeliik, Airai, Angaur, Hatohobei, Kayangel, Koror, Melekeok, Ngaraard, Ngarchelong, Ngardmau, Ngatpang, Ngiwal, Ngchesar, Ngeremlenui, Peeliu and Sonsorol.

³⁰ Government of Palau with the assistance of UNICEF, *Palau: A Situation Analysis of Children, Youth and Women 2008*, p.7 (available at: https://www.unicef.org/pacificislands/Palau_Sitan_compressed.pdf).

³¹ Constitution, Article XI, Section 3. A copy can be found at section 1.a of the Annex.

Palau's traditional leaders from each state are members of the Council of Chiefs ('Council').³² The Council has an official advisory role to the President and its objective is to ensure that traditional ways of life are preserved in Palau, specifically advising on issues relating to the traditional laws and customs and how they relate to Palau's legal framework.³³ Its main task is to ensure that Palau does not stray from "its core cultural and traditional values".³⁴ The Council is highly respected and works closely with the elected officials on a variety of local and regional issues.

Legal system

Palau's legal system is a mixture of civil, common and customary law. The judiciary was created in 1981 and consists of the Supreme Court (Trial Division and Appellate Division), the Court of Common Pleas, the Land Court, and the associated administrative sections that provide various services to the courts. The Judiciary is independent of the executive and the legislative branches of government.³⁵

American and Anglo-American laws have had significant influence on Palau's legal system, largely as a result of the US occupation during World War II and the later administration of Palau (then part of Micronesia) as part of the TTPI on the basis of the Trust Territory Code ('TT Code'). The TT Code, enacted in 1952, provided the constitutional and legal framework for the TTPI.³⁶ In 1985, Palau adopted the Palau National Code ('PNC'), which consisted of a combination of legislative acts passed by the OEK, colonial law implemented during the Spanish, German, Japanese and US administrations, and laws promulgated during the strategic trusteeship by the US (including the TT Code).³⁷ Title 17 of the PNC comprised the criminal law provisions, imported from the TT Code.³⁸

³² Constitution, Article VIII, Section 6. A copy can be found at section 1.a of the Annex.

³³ UN Committee on the Rights of the Child ('CRC Committee'), *Consideration of reports submitted by States parties under article 44 of the Convention*, Second periodic reports of States parties, Palau, CRC/C/PLW/2, 15 March 2017 (available at: <https://www.refworld.org/publisher/CRC/PLW/5922e3184,0.html>); and Constitution, Article VIII, Section 6. A copy can be found at section 1.a of the Annex.

³⁴ Obaklechhol Kuniwo Nakamura, *Remarks at 5th Micronesian Traditional Leaders Conference*, Ngarachamayong Culture Centre, Palau, 23 November 2010 (available at: <https://alekokau.wordpress.com/2011/07/13/obaklechhol-kuniwo-nakamuras-remarks-at-5th-micronesian-traditional-leaders-conference/amp/>).

³⁵ Palau Judiciary, *Court Annual Report 2017*, page 4 (available at: <http://www.paclii.org/pw/other/court-annual-reports/CourtAnnualReport2017.pdf>).

³⁶ "Trust Territory of the Pacific Islands", Encyclopaedia Britannica (available at: <https://www.britannica.com/place/Trust-Territory-of-the-Pacific-Islands>).

³⁷ Secretariat of the Pacific Regional Environment Programme and EDO NSW, *Palau: Review of Natural Resource and Environment Related Legislation*, January 2018 p.7 (available at: <https://www.sprep.org/attachments/Publications/EMG/sprep-legislative-review-palau.pdf>).

³⁸ Title 17 of the PNC, "Crimes", before amendments introduced by the FPA. It mentioned as sources from each provision "Code 1966". A copy can be found at section 1.i of the Annex.

COUNTRY OVERVIEW

Legal Framework for Human Rights

Constitution

The Constitution is the supreme law of the nation and any other laws are invalid to the extent that they are inconsistent with it. Article IV of the Constitution protects various fundamental rights and freedoms, including freedom of conscience and religion (Section 1); freedom of expression and press (Section 2); the right to peaceful assembly and association (Section 3); the right to liberty (Section 4); due process (Section 6); prohibition of torture and inhumane treatment (Section 10); and freedom from slavery and involuntary servitude (Section 11).

Section 5 in Article IV of the Constitution specifically provides that every person shall be equal under the law and entitled to equal protection, prohibiting discrimination on the grounds of “sex, race, place of origin, language, religion or belief, social status or clan affiliation.”

In July 2005, the Second Constitutional Convention of Palau proposed 22 amendments to the Constitution.³⁹ Amongst them, Constitutional proposal No. 2-274 proposed to prohibit same-sex marriage. The amendment was adopted by referendum on 4 November 2008;⁴⁰ Article IV, Section 13 of the Constitution now states that “All marriages contracted within the Republic of Palau shall be between a man and a woman.”⁴¹ In 2014, Senate Bill 9-100, which sought to amend Title 21 of the PNC to reflect the constitutional change, was introduced in the Senate and passed the first reading.⁴² However, the bill does not appear to have been passed into law. In 2019, a citizens initiative was launched to legalise same-sex marriage in Palau⁴³ and received the support of the President (see the Post-Reform Environment section below).⁴⁴

Institutional frameworks

An executive order by the President established an Ombudsman office within the office of the President.⁴⁵ As the Ombudsman was not established by an act or by the Constitution, the office originally lacked sufficient independence to exercise its mandate. However, following complaints by the Ombudsman himself and with the support of the Office of the Commonwealth Ombudsman, its status and mandate

³⁹ Republic of Palau, Second Constitutional Convention, *ibid.* n. 9.

⁴⁰ Kaleidoscope Australia, *Submission to the UN Universal Periodic Review regarding the protection of the rights of LGBTI persons in the Republic of Palau*, 24th session of the Universal Periodic Review, January–February 2016, para. 4.2 (available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2274&file=EnglishTranslation>)

⁴¹ Constitution, as amended by the Constitutional proposal No. 2-274, adopted on 15 July 2005.

⁴² Kaleidoscope Australia, UPR Submission, para 5.3. *Ibid.*, n. 40.

⁴³ HDT interview with Ongerung Kesolei, editor for Tia Belau, conducted on 22 March 2019.

⁴⁴ Ongerung Kambes Kesolei, Palau’s leader backs same-sex marriage, *Pacific Note*, 24 July 2019, (available at: https://www.pacificnote.com/single-post/2019/07/24/Palaus-leader-backs-same-sex-marriage?fbclid=IwAR22A-FaAI50ThFZUr77bV62u-l6GQgSuzF_Kisn1N2Ek6izAUCsxpsttlw)

⁴⁵ UN HRC, National report submitted in accordance with para. 5 of the annex to HRC resolution 16/21, Palau, 10 November 2015, para. 6, A/HRC/WG.6/24/PLW/1 (available at: <http://undocs.org/A/HRC/WG.6/24/PLW/1>); Executive order No. 381.

were clarified in 2017.⁴⁶ According to Executive order No. 400, the Ombudsman is directly appointed by the President.⁴⁷ Its mandate focuses on the investigation of complaints involving the governmental agencies, and it has relatively extensive investigative powers to carry out its mandate.⁴⁸ The Ombudsman can also issue reports, submit recommendations and seek Presidential authorisation for legal recourse as well as adopt, promulgate, amend and rescind rules and regulations required for its duties.⁴⁹ The current Ombudsman is Francis Llecholch.⁵⁰

Palau has also established a reporting committee on the UN human rights conventions, whose objective is to ensure that Palau complies with all reporting obligations in a timely and satisfactory manner.⁵¹ As of 2018, the establishment of a National Human Rights Institution was in progress but has not been finalised.⁵²

Legislation

Several provisions in the PNC prohibit discrimination. For example:

Title 23 – Voting; Section 105: “All citizens of the Republic who are otherwise qualified by law to vote at national elections shall be entitled and allowed to vote at all state, municipal or other political or territorial subdivision elections without distinction of race, sex, color, financial circumstance, clan, custom, literacy, residency except as otherwise provided by this chapter, religion, or previous condition of servitude within the state, municipality or other political or territorial subdivision in which they reside;”

Title 33 - Public Employment; Section 202: “The National Public Service System shall be administered in accordance with the merit principles set forth below: (a) equal opportunity for all regardless of sex, race, religion, political affiliation or place of origin. [...]”

⁴⁶ J. Rodriguez T. Senase, Palau Ombudsman Seeks More Independence, Clearer Mandate, December 2015, Pacific Islands Report (available at: <http://www.pireport.org/articles/2015/08/25/palau-ombudsman-seeks-more-independence-clearer-mandate>); Pacific Ombudsman Alliance Network News, Issue 37, December 2015 (available at: https://www.theioi.org/downloads/4sjle/POA_Newsletter_Dec.%202015.%202015).

⁴⁷ Republic of Palau, Office of the President, Executive Order No. 400, Organizing the Office of the Ombudsman, 29 June 2017, (available at: <https://www.palau.gov.pw/wp-content/uploads/2017/06/Executive-Order-No.-400-re.-Organizing-the-Office-of-the-Ombudsman.pdf>), Part I.

⁴⁸ *Ibid.*, Part III.

⁴⁹ *Ibid.*, Part II.

⁵⁰ Pacific Ombudsman Alliance website, About the Pacific Ombudsman Alliance (available at: <http://www.pacificombudsman.org/about>).

⁵¹ UNCT, Joint Submission of the UN Country Team for Palau for the UN Compilation Universal Periodic Review of Palau 24th Session, Jan-Feb 2016 (available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2375&file=EnglishTranslation>); CRC Committee, Consideration of reports 2017, *Ibid.*, n. 33; Pacific Community ('SPC') and United Nations Office of the High Commissioner for Human Rights ('UNOHCHR'), Human rights in the Pacific – A situational analysis, 2016, page 11 (available at: <https://www.spc.int/sites/default/files/resources/2018-05/Human-right-Pacific.pdf>).

⁵² EU annual report on Human Rights and Democracy in Palau, 2018 (available at: https://eeas.europa.eu/headquarters/headquarters-homepage/62466/eu-annual-report-human-rights-and-democracy-palau-2018_en).

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Discrimination on the basis of gender or sexual orientation is expressly prohibited in the context of judicial proceedings by the Code of Judicial Conduct promulgated in 2011 by the Palau Supreme Court:

*“A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon **gender**, race, language, religion, political or other opinion, national or social origin, place of birth, family status or descent, ethnicity, disability, age, **sexual orientation**, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge’s direction and control to do so.”*⁵³ (emphasis added)

Legislation punishing hate crimes on the basis of *inter alia* sexual orientation and gender identity was introduced in the OEK in 2014,⁵⁴ but not enacted due to change in legislative priorities.

International Commitments

Palau has been a member of the UN since 15 December 1994. The Universal Declaration of Human Rights and the Constitution are used to develop laws in Palau.⁵⁵ Palau signed multiple international treaties in the context of the first cycle of its UN Universal Periodic Review (‘UPR’), a State-driven process under the auspices of the Human Rights Council (‘HRC’) that reviews the human rights performance of all UN member states, including Palau, every five years.⁵⁶ However, for most of these treaties, no ratification followed, which means that Palau is only bound by very few of them. The table below provides an overview of the relevant human rights treaties signed and ratified by Palau.

INTERNATIONAL HUMAN RIGHTS TREATY	SIGNATURE	RATIFICATION
▪ Convention on the Rights of the Child (‘CRC’)		4 August 1995
▪ Optional Protocol to the CRC	20 September 2011	11 June 2013

⁵³ The Republic of Palau, *Code of Judicial Conduct 2011*, promulgated by the Palau Supreme Court on 1st March 2011, and amended on 9 March 2011, para. 4.5 (available at: <http://www.palausupremecourt.net/upload/P1408/13812030955924.pdf>).

⁵⁴ Senate Bill No. 9-125, *A bill for an Act to punish hate crimes, to allow civil actions against the perpetrators of hate crimes, and for other related purposes*, passed in first reading by the Senate on 29 July 2014. A copy can be found at section 1.h of the Annex.

⁵⁵ UN HRC, UPR, *National report 2011*, para. 29, *Ibid*, n. 8.

⁵⁶ SPC and UNOHCHR, *Human rights in the Pacific – A situational analysis*, 2016, page 11, *Ibid*, n. 51.

▪ Convention on the Rights of Persons with Disabilities ('CRPD')	20 September 2011	11 June 2013
▪ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('CAT')	20 September 2011	
▪ International Covenant on Civil and Political Rights ('ICCPR')	20 September 2011	
▪ Convention for the protection of All Persons from Enforced Disappearance ('CED')	20 September 2011	
▪ Convention on the Elimination of all forms of Discrimination Against Women ('CEDAW')	20 September 2011	
▪ International Convention on the Elimination of All forms of Racial Discrimination ('ICERD')	20 September 2011	
▪ International Covenant on Economic, Social and Cultural Rights ('ICESCR')	20 September 2011	
▪ International Convention on the Protection of all Migrant Workers and Members of Their Families ('ICRWM')	20 September 2011	
▪ Beijing Declaration on Commitments for Children in the East Asia and Pacific Region for 2001-2010	16 May 2001 ⁵⁷	

In March 2011, Palau also signed the Joint Statement on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity.⁵⁸

⁵⁷ The declaration was not signed but endorsed.

⁵⁸ Joint Statement on the Rights of LGBT Persons at the Human Rights Council, Fact Sheet, Office of the Spokesman, US Government, 22 March 2011 (available at: <https://2009-2017.state.gov/r/pa/prs/ps/2011/03/158847.htm>).

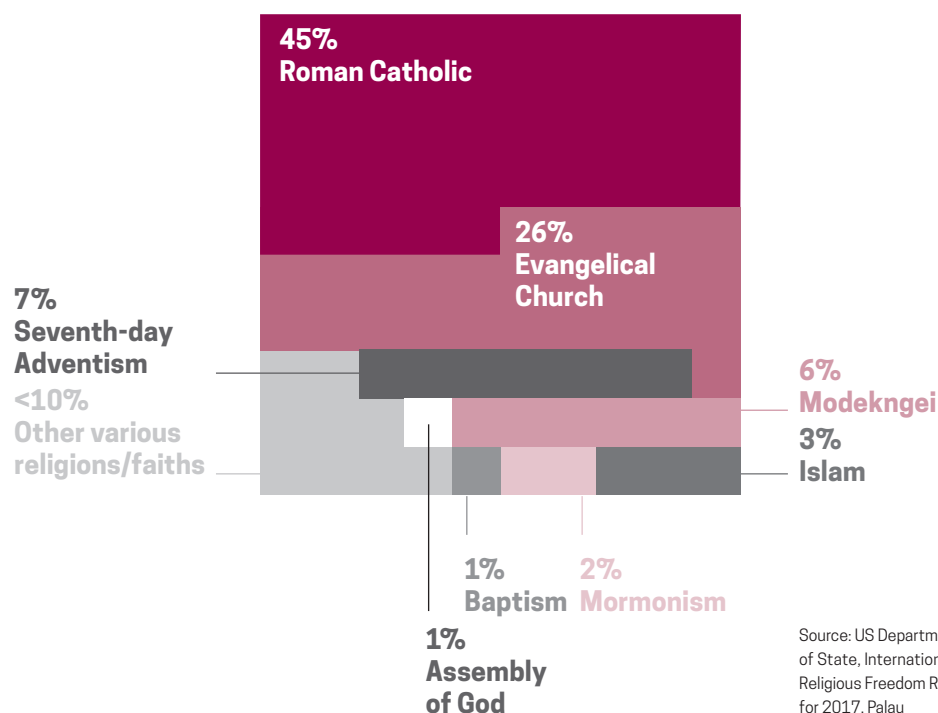
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Religion

Religion is a key feature of Palauan society. In 2011, 99 per cent of residents were affiliated with an organised religion.⁵⁹ Also, the Constitution itself refers to the “*guidance of Almighty God*”,⁶⁰ and a national day of prayer is held each year in January.⁶¹

The faith community in Palau is made up of a wide spectrum of religious identities. The dominant faith is Catholicism, followed by Protestantism. Six per cent of the population still practise the local religion, Modekngai, a faith which embraces both Animist and Christian beliefs. The table below shows the breakdown of religious denominations in Palau.

Main Religious Denominations in Palau



⁵⁹ UN HRC, UPR, National report 2011, *Ibid.*, n. 8.

⁶⁰ Constitution, Preamble. A copy can be found at section 1.a of the Annex.

⁶¹ Republic of Palau Public Law ('RPPL') No. 10-6, *To establish a National Day of Prayer in the Republic of Palau that shall be announced yearly by Presidential Proclamation, and for other related purposes*, passed by the OEK on 23 March 2017 and signed into law on 13 April 2017 by President Remengesau (available at: <https://www.palau.gov.pw/wp-content/uploads/2017/04/RPPL-No.-10-6-re.-National-Day-of-Prayer.pdf>).

Media

The media industry in Palau is small but diverse. It includes three television ('TV') stations, two main newspapers and several radio stations. TV stations include a commercial TV station, Roll'em Productions, which is owned by local and foreign individuals. It broadcasts Oceania TV Network, with news, educational and cultural content relating to the Pacific, and OTV Er Kid, which is the only TV station in Palau producing local news, programmes, sports and entertainment in the local language.⁶² Legislative sessions are broadcast on TV either in English or Palauan, depending on the language used by the speaking member of the OEK.⁶³

The print media in Palau is made up of two main independent newspapers which are published regularly. Tia Belau is the oldest newspaper and the most independent news source in Palau. Island Times is owned by former Senator, Phillip Reklai, and former Governor, Leilani Reklai and has an online presence, in addition to a printed media. There are also intermittently published governmental publications. Print media remains the most influential form of media in Palau for news reporting.⁶⁴

There are five main radio stations in Palau. The main radio station is Palau Wave – PWFM. Other radio stations include two government-operated stations, T8AA AM and Eco Paradise FM, and two commercial ones, WPRK Island Rhythm, and WWFM (Diaz Station).⁶⁵

⁶² Pacific Media Assistance Scheme, *Republic of Palau, State of Media and Communication Report*, 2013 (available at: <https://www.abc.net.au/cm/lb/9269426/data/palau%3A-state-of-the-media-report-data.pdf>).

⁶³ HDT interview with Delanie Prescott-Tate, former House of Delegates legal counsel, conducted on 6 August 2019.

⁶⁴ HDT interview with Ongerung Kesolei, *Ibid.* n. 43; and with Bernadette Carreon, *Ibid.* n. 10.

⁶⁵ Pacific Media Assistance Scheme, *Ibid.*, n. 62.



SEXUAL OFFENCES LAWS PRIOR TO THE REFORMS

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History of Sexual Offences Laws

Palau's legal framework is the result of a number of colonial influences as the country has been subject to Spanish, German, Japanese and US control. During World War II, the US defeated Japan and took over the administration of Micronesia, including Palau. As a result, Palau was included within the TTPI in 1947. In 1952, the US promulgated the TT Code used to administer the TTPI. The TT Code was revised four times in 1959, 1966, 1970 and 1980.⁶⁶ The sexual offences provisions, modelled on the 1952 Kansas Criminal Code,⁶⁷ were inserted into the TT Code in 1966 and retained in subsequent revisions.⁶⁸ When the Republic of Palau was created in 1981, it retained *"all existing law in force and effect in Palau immediately preceding the effective date of this Constitution."*⁶⁹

In 1982, Palau established the National Code Commission ('PNC Commission'),⁷⁰ composed of the Chief Justice of the Supreme Court, the Attorney General, the Public Defender, Senate Legal Counsel, House of Delegates Legal Counsel, and a representative of the Palau Bar Association. The aim of the PNC Commission was to codify the laws in force in Palau.⁷¹

In 1985, Palau adopted the PNC, consolidating all laws remaining in force into one code.⁷² The result was a mixture of colonial law implemented during the Spanish, German, Japanese and US administrations and laws promulgated during the strategic trusteeship of the US. It is noteworthy that many provisions still mentioned as their source the TT Code.⁷³ Title 17 of the PNC comprised the criminal law provisions ('Old Penal Code'), and its chapter 28 dealt specifically with sexual offences (referred to as "Sex Crimes").

⁶⁶ The TT Code of 1980 was never applied in practice in the TTPI but contained all provisions of the TT Code 1970 and could as such be used as a basis for the state of the law in Palau when the PNC was adopted. See *Introduction: A Brief History of the Trust Territory of the Pacific Islands*, 1988, Revised Code of the Marshall Islands (available at: http://www.pacilii.org/mh/indices/legis/2004_intro.pdf).

⁶⁷ HDT interview with Ron Ledgerwood, Directing Attorney at Micronesian Legal Services Corporation Palau, conducted on 18 March 2019.

⁶⁸ See TT Code 1980, Section 1302, Chapter 27 which mentions that it was introduced as Section 387 in the TT Code 1966 and Section 1302, title 11 in the TT Code 1970. A copy can be found at section 1.i of the Annex.

⁶⁹ Constitution, Article XV. A copy can be found at section 1.a of the Annex.

⁷⁰ RPPL No. 1-34, *To establish a Palau National Code Commission, and for other purposes*, passed by the OEK on 5 May 1982 and signed into law by President Remeliik on 27 May 1982 (available at: <https://palaulegal.org/rppls-2/rppls-1st-oek/1-30-to-1-39/rppl-no-1-34/>).

⁷¹ RPPL No. 1-34, *Ibid.*, n.70.

⁷² RPPL No. 2-3, *An Act relating to the revision, consolidation, compilation and codification of the general and permanent laws relating to and in force in the Republic of Palau, and to enact the Republic of Palau National Code, and for other purposes*, passed by the OEK on 22 July 1985 and signed into law by President Oiterong on 14 August 1985, (available at: <https://palaulegal.org/rppls-2/rppls-2nd-oek/2-1-to-2-9/rppl-no-2-3/>).

⁷³ See e.g. Section 201 on marriage, mentioning as source: (Code 1966, § 690.) 39 TTC § 51, modified (available at: <https://palaulegal.org/palau-national-code/titles-20-29/title-21-domestic-relations/>).

Until 2012, the sexual offences laws had been amended on an ad hoc basis and in a targeted way, with a strong focus on creating greater protection for children against abuse.⁷⁴ We have highlighted below the relevant key reforms from 2008 and 2011.⁷⁵

In 2006, the OEK acknowledged that there were issues and loopholes associated with the protection of children in light of the increase in cases of child abuse, including sexual abuse and neglect, and recognised the power imbalance between child victims and adult perpetrators, who were often family members.⁷⁶ At the time, the sexual abuse of children was covered by three provisions: section 2804 (carnal knowledge of a girl below the age of 15), and section 2806 (indecent and improper liberties with a child below 14 years old) of the Old Penal Code, as well as section 606 of Title 21 (sexual abuse of children below the age of 16). In 2008, RPPL No. 7-55⁷⁷ amended the framework for the offences of child sexual abuse by repealing sections 2804 and 2806 of the Old Penal Code. Following the enactment of RPPL No. 7-55, the sexual abuse of children under the age of 16 was criminalised under section 606 of Title 21⁷⁸ only (see Key Sexual Offences Provisions section below for further details). The reform also provided for stronger penalties: imprisonment up to 25 years and not less than six months (versus up to five years before) and a fine up to \$50,000 (versus \$5,000 before).⁷⁹ This reform also improved the protection of children against sexual abuse by repealing the marital exemption in case of child sexual abuse, i.e. it amended the definition of the concept of sexual abuse which previously encompassed only sexual abuse of a child “*who [was] not the spouse of the*

74 RPPL No. 7-55, *To amend RPPL No. 3-66, as codified in 21 PNC §602, 603, 606 and create a new §607 and §608, to eliminate spouse exemptions relating to child sexual abuse, to amend reporting requirements and penalties, to create a child hearsay exception, to allow for testimony to be received by closed circuit television, to extend the statute of limitations, and for other related purposes*, passed by the OEK on 6 October 2008 and signed into law by President Remengesau on 3 November 2009, Section 1. A copy can be found at section 1.d of the Annex; RPPL No. 8-32, *To create a penalty for failing to report an incident of child abuse, and for other related purposes*, passed by the OEK on 25 September 2011 and signed into law on 17 October 2011 by President Toribiong, Section 1. A copy can be found at section 1.c of the Annex.

75 In 2006, there was also an attempt to pass Senate Bill (‘SB’) No. 7-148, SD1. SB No. 7-148 aimed at amending Sections 2802 and 2803 of the Old Penal Code so as to introduce harsher penalties for the rape of girls under 18 years of age, i.e. imprisonment of at least 15 years and up to 30 years and impose a mandatory prison term between 15 and 30 years for individuals of at least 18 years of age convicted of sodomy with a person under the age of 18. It also sought to repeal the marital exemption in respect of rape, effectively removing spousal exemption in respect of all sexual offences. The bill does not appear to have been passed by the OEK, as the amendments were not introduced into law. Agnes Abrau, *Palau Senate Approves Stiffer Penalty for Rape*, 2006, *Pacific Islands Report*, (available at: <http://www.pireport.org/articles/2006/09/07/palau-senate-approves-stiffer-penalty-rape>).

76 RPPL No. 7-55, Section 1, *Ibid.*, n. 74.

77 RPPL No. 7-55, *Ibid.*, n. 74.

78 Section 601(e) and 606 of Title 21 as amended by RPPL No. 3-66, *To amend 21 PNC 601, 602, 603, 605 and 606 relating to child abuse or neglect, and for other purposes*, passed on 7 February 1992 and approved on 25 February 1992; Following RPPL No. 7-55, Section 606 of Title 21 of the PNC was renumbered as 608. A copy can be found at section 1.d of the Annex.

79 See Section 608(b) as issued from No. 7-55. A copy can be found at section 1.d of the Annex; and Section 606(5) of Title 21 as issued from RPPL No. 3-66. A copy can be found at section 1.c of the Annex.

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perpetrator”.⁸⁰ It also provided for stronger reporting obligations where there was evidence or suspicion of abuse,⁸¹ and better procedural guarantees.⁸²

Similarly, in 2011, the OEK identified again deficiencies in the laws on child sexual abuse that led to further changes. Specifically, RPPL No. 8-32 extended the definition of child sexual abuse to cover sexual abuse of minors under the age of 18 years old and reinforced reporting obligations.⁸³



RPPL No. 8-32, Section 1, 25 September 2011

The Olbiil Era Kelulau finds that currently the laws regarding Child abuse and sexual abuse are far too lenient and do not serve as an adequate deterrent to prevent these crimes. This has been highlighted by the recent and unfortunate spate of rapes and incidences of child abuse that have surfaced in our Republic and been reported in the newspapers. Moreover, the Olbiil Era Kelulau finds that despite the law requiring the

reporting of abuse by “responsible officials”, too often the ultimate culprit who maintains their silence is, sadly, relatives who reside in the home with the child where the abuse is taking place. The Olbiil Era Kelulau is outraged and dismayed at the repeated abuse of children and women that takes place in the Republic.

Sexual Offences Framework

Before 2012, the Old Penal Code, specifically chapter 28 (*Sex Crimes*), and Title 21 (*Domestic Relations*) of the PNC, specifically chapter 6 (*Child Abuse*), formed the legal framework for sexual offences.⁸⁴ This framework very much reflected its colonial origins.⁸⁵ Although, as outlined above, there were earlier targeted reforms of the Old Penal Code to address some of the failings around child sexual abuse, the other sexual offences laws remained largely untouched until 2012.

⁸⁰ See Section 601(e) of Title 21 before RPPL No. 7-55. A marital exemption was also previously included in Section 2804 of the Old Penal Code: “a female under 15 years of age who is not his wife”. A copy can be found at section 1.i of the Annex.

⁸¹ RPPL No. 7-55, *Ibid.*, n. 74 amended Section 603 of Title 21 of the PNC to impose an obligation on any responsible official examining, attending, teaching or treating a child who had a reason to believe that such child suffered abuse or neglect, to report the matter to the Attorney General’s Office within 48 hours. RPPL No. 7-55 also increased the penalties for failing or knowingly or wilfully refusing to meet the reporting obligation to imprisonment of up to one year or a fine not exceeding \$1,000 or both.

⁸² RPPL No. 7-55, *Ibid.*, n. 74, introduced in Section 603 (f) of Title 21 of the PNC a child hearsay exception whereby an out-of-court statement made by a child under the age of 12 years about sexual or physical abuse would be admissible in evidence at trial through the testimony of the person or persons to whom the statement was made, provided certain criteria was met. Moreover, it introduced the possibility of using closed circuit television during criminal proceedings. It also extended the statute of limitation to three years after the victim turned 21 years, or three years from the date the offence was reported to the Office of the Attorney General. Finally, it introduced Section 609 of Title 21 of the PNC to allow the protection of the identity of child victims and witnesses.

⁸³ RPPL No. 8-32, *Ibid.*, n. 74 extended the reporting obligation under Sections 602 and 603 to any person who had parental, custodial, or other legal custody or visitation rights to a child suspected of being abused, along with the relevant penalties. It also introduced a presumption that a person who had an obligation to report suspected child abuse and who resided in the same domicile or home as the abused child was presumed to have known or to should have known about the abuse. RPPL No. 8-32, however, reintroduced the spousal exemption for child sexual abuse that was repealed by RPPL No. 7-55.

⁸⁴ Christine Forster, *Sexual Offences Law Reform in Pacific Island Countries: Replacing Colonial Norms with International Good Practice Standards*, 2009, 33(3), Melbourne University Law Review, p.833 (available at: <https://pdfs.semanticscholar.org/e5bb/db23dba3b53b9ba9892afd5a2096dc10d3dd.pdf>).

⁸⁵ Christine Forster, *Sexual Offences Law Reform in Pacific Island Countries*, *Ibid.*, n. 84.

The sexual offences provisions were in many respects discriminatory on the basis of gender and age. Furthermore, the Old Penal Code did not include a comprehensive and graded set of offences (including different degrees of sexual assaults and aggravating circumstances carrying serious penalties), a statutory definition of the element of consent (including a free agreement provision), nor a non-exhaustive list of situations in which consent cannot be established. Palau's framework for sexual offences also suffered from a recurrent lack of definition of key concepts and contained archaic language. We briefly elaborate on these thematic shortcomings in the following paragraphs.

No graded set of offences

The Palauan framework for sexual offences did not encompass the whole range of possible sexual assaults; whilst rape and the sexual assault of children were indeed criminalised, other general sexual assaults against adult victims, not amounting to rape, were not specifically provided for. This gap was a major lacuna in the old sexual offences framework.

Lack of definition

The sexual offences provisions contained undefined and outdated concepts used as constitutive elements of the crimes. For instance, and as further outlined below, the concepts of “sexual intercourse”⁸⁶ or “unnatural manner”⁸⁷ were not adequately defined in the PNC and remained open to interpretation.

The key concept of consent was not defined and was only referred to through the vague notion of “against [the] will” of the victim.⁸⁸ This lack of a clear definition, together with the absence of a non-exhaustive list of situations in which consent cannot be established, left the concept susceptible to judicial interpretation. As a result, the wording “against her will”, which suggested a requirement of express opposition or resistance, as opposed to unequivocal and free consent, was effectively interpreted in that narrow manner. For example, in a case dealing with the rape of a 15-year-old girl, the Palau Supreme Court referred to previous TTPI case law requiring some form of resistance.⁸⁹

Consent was therefore very narrowly construed, which would have likely left some rape victims without any proper justice and was out of step with contemporary consent provisions.



“The conduct of the female person need only be such as to make the absence of consent and the actual resistance reasonably apparent.”

**Supreme Court
of Palau,
Liep v. ROP (1994)**

⁸⁶ Old Penal Code, Section 2802.

⁸⁷ Old Penal Code, Section 2803.

⁸⁸ Old Penal Code, Section 2802.

⁸⁹ Liep v. ROP, 1994, Supreme Court of Palau, 5 ROP Intrm. 5, (available at: http://www.palausupremecourt.net/doc/ROP_Reporters/5ROP/5%20ROP%20Intrm%205.pdf).

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Language

The Old Penal Code contained outdated language and was drafted using archaic concepts not in line with modern human rights considerations and standards. Many provisions mirrored provisions of old US criminal laws which had long since been repealed.⁹⁰

Gender

The framework for sexual offences contained gender-based discrimination. A marital exemption applied to the rape of a wife by her husband and had been reintroduced with respect to certain types of sexual abuse involving girls.⁹¹ Moreover, sexual abuse of boys and men was only criminalised to the extent they constituted child sexual abuse or a “*sexual relation of an unnatural manner*”.⁹² As a result, the maximum sentence for the sexual assault of a male was 10 years, in contrast to 25 years in cases of the rape of a female.⁹³

Aggravating factors

Comprehensive contextual factors are a critical component of any framework for sexual offences. Neither the Old Penal Code nor Title 21 of the PNC provided for specific aggravating or contextual circumstances.

Key Sexual Offences Provisions

Rape

Section 2802 of the Old Penal Code criminalised rape, defined as

“unlawfully hav[ing] sexual intercourse with a female, not his wife, by force and against her will”.

Rape was punishable with imprisonment of up to 25 years.

This definition was problematic on a number of levels. “*Sexual intercourse*”, a key constituent element of the offence, was not defined in the Old Penal Code. Sexual intercourse was mentioned as one form of “*sexual penetration*”⁹⁴ in the context of another offence, prostitution, but no further statutory guidance was provided. As with similar rape provisions across the Pacific, rape was likely limited to penile-vaginal penetration. This interpretation is in line with the case law from the TTPI-era where judges tended to require proof of sexual penile penetration, “*however slight*”, as a constitutive element of “*sexual intercourse*”.⁹⁵

⁹⁰ For instance, the references to “abominable and detestable crime against nature” were repealed from the Florida Penal Code in 1974.

⁹¹ PNC, Title 21, Section 602(f): “with any minor under the age of eighteen (18) who is not the spouse of the perpetrator”.

⁹² Old Penal Code, Section 2803.

⁹³ Old Penal Code, Sections 2802 and 2803.

⁹⁴ Old Penal Code, Chapter 36 – Anti-Prostitution Act, Section 3602 (g). Sexual penetration was defined as “*sexual intercourse, cunnilingus, fellatio, anal intercourse or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body*”.

⁹⁵ See e.g. TTPI v. Kerahd Loney, 1975, Criminal Case No. 6-74, Trial Division of the High Court, Ponape District, p.176 (available at: <http://www.cnilaw.org/pdf/ttr/vol7/7-TTR-172.pdf>); Liep v. ROP, *Ibid.* n. 89.

Moreover, the rape provision only applied to unmarried female victims, leaving both males and married females outside the protection of this provision. The fact that rape of a female spouse was not criminalised reflected the historical conception of rape as a property offense; married women were the property of their husbands and thus could not be raped by them. This entirely failed to recognise and protect the physical and sexual integrity of the victim.⁹⁶

Incest

Section 2801 of the Old Penal Code defined incest as

*“unlawfully engag[ing] in sexual intercourse with another of such a close blood relationship or affinity that marriage between the two who so engage is prohibited by law or custom”.*⁹⁷

Incest was punishable with imprisonment of up to five years.

In addition to the lack of definition of the notion of “sexual intercourse” previously described in the context of the rape provision, the reference to “custom” as a constitutive element of the crime added another layer of legal uncertainty. It has been reported that the definition was “purposely vague” in order to take account of the complexity of Palauan culture and clan structure.⁹⁸ This, however, led to a situation where the provision was applied in an inconsistent manner, resulting in a definition of incest which differed from one clan to another as clan customs prohibited marriage up to different degrees of kinship.⁹⁹

Sodomy¹⁰⁰

Section 2803 of the Old Penal Code provided that:

“Every person who shall unlawfully and voluntarily have any sexual relations of an unnatural manner with a member of the same or the other sex, or who shall have any carnal connection in any manner with a beast, shall be guilty of sodomy, and upon conviction thereof shall be imprisoned for a period of not more than 10 years; provided, that the term “sodomy” shall embrace any and all parts of the sometimes written ‘abominable and detestable crime against nature’.”

Section 2803 the Old Penal Code was discriminatory as it effectively criminalised private, consensual same-sex sexual acts between adults. Although the wording of the provision appeared to prohibit all same-sex relations as well as some types of heterosexual sexual relations, there were reports that the provision applied only to sexual activity between men and that consensual sexual activity between women

⁹⁶ Christine Forster, *Sexual Offences Law Reform in Pacific Island Countries*, *Ibid.*, n. 84.

⁹⁷ Old Penal Code, Section 2801.

⁹⁸ Stevenson Kuartei, *Incest in Palau: Delemumuu Undressed*, 2005, 12(1), *Health in Palau and Micronesia* (available at: <https://merirei.com/wp-content/uploads/2018/07/Incest-in-Palau-Delemumuu-Undressed.pdf>).

⁹⁹ Stevenson Kuartei, *Incest in Palau: Delemumuu Undressed*, p.87, *Ibid.*, n. 98.

¹⁰⁰ Official title of Section 2803 of the Old Penal Code.

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remained legal.¹⁰¹ The Palauan government's official position was however that Palauan law did not criminalise sexual intimacy between consenting same-sex adults.¹⁰²

Section 2803 the Old Penal Code was also a particularly key example of the recurrent lack of definition in the Old Penal Code provisions: several key terms such as “unnatural manner” and “sexual relation” remained undefined in the Old Penal Code. From the title of the provision (“Sodomy”) however it was understood to be designed to prohibit penile-anal penetration.

The provision also suffered from archaic and colonial-era language. The notion of “abominable and detestable crime against nature” referred to old legal wording that was found in 19th century US law¹⁰³ and which had previously been interpreted as unclear and imprecise by US Courts as far back as the 1970s.¹⁰⁴



Supreme Court of Indiana, *Dixon vs. State*, 1971

The words “abominable” and “detestable” are mere epithets and are not descriptive of any behavior at all. [...] The issue then is whether a person of ordinary comprehension can know what conduct is prohibited by the phrase “crime against nature” [...] the words do not tell anyone what behavior

utes the crime. [...] They could be used to punish whatever behavior the majority considered morally offensive or perverse without any advance notice of the kind of behavior prohibited.

The mere fact that a provision criminalising consensual private sexual acts remained in force until 2012 is in itself out of step with international human rights law.¹⁰⁵

Adultery

Section 2805 of the Old Penal Code prohibited adultery, which was defined as

any two persons of the opposite sex, not husband and wife, of whom one is a married person [...] voluntarily engag[ing] in sexual intercourse.

¹⁰¹ The International Lesbian, Gay, Bisexual, Trans and Intersex Association, *State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults*, 2010, 40, (available at: https://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf).

¹⁰² UN HRC, Report of the Working Group on the Universal Periodic Review, Palau, A/HRC/18/5, 11 July 2011, para. 57 (available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/144/15/PDF/G1114415.pdf?OpenElement>).

¹⁰³ See e.g. North Carolina Code (1837) stating that “Any person who shall commit the abominable and detestable crime against nature, not to be named among Christians, with either mankind or beast, shall be adjudged guilty of a felony, and shall suffer death without the benefit of clergy”.

¹⁰⁴ *Dixon v. State*, Supreme Court of Indiana, 268 N.E.2d 84, 1971 (available at: <https://law.justia.com/cases/indiana/supreme-court/1971/869s177-2.html>).

¹⁰⁵ UN Universal Declaration of Human Rights, Article 3: “Everyone has the right to life, liberty and security of person” and Article 12: “No one shall be subjected to arbitrary interference with his privacy, family”.

The sanction for adultery was imprisonment of up to six months or a fine of up to \$100, or both. The charges had to be brought on the initiative and with the full and voluntary consent of the spouse of the person who had committed adultery.

The simple existence of section 2805 the Old Penal Code was in itself a major shortcoming in the Old Penal Code. The UN Working Group on the Issue of Discrimination Against Women in Law and Practice has called upon governments to decriminalise adultery, as such provisions are often used to discriminate against women.¹⁰⁶ Whilst there is no evidence that section 2805 the Old Penal Code was used to discriminate against women in Palau (the only reference to adultery is within the case law concerning divorce proceedings)¹⁰⁷ nor even enforced in practice, adultery provisions are viewed as “*dead letter*” law, as mentioned by the UN Working Group.¹⁰⁸

Section 2805 of the Old Penal Code also suffered from a lack of definition, although the courts had gone some way in interpreting the provision. For example, the interpretation given by the court in the context of divorce proceedings was that the provision applied “*irrespective of the specific sexual acts performed, or the gender of the third party.*”¹⁰⁹

Child Sexual Offences

Offences specifically addressing the sexual abuse of children were found in chapter 6 of Title 21 of the PNC following the targeted reforms in 2008 and 2011.

Section 608 of Title 21 of the PNC (old section 606) criminalised (and continues to criminalise) sexual abuse of children, defined by section 602 of Title 21 as

“any willful or negligent sexually related activity for the purpose of sexual gratification, pleasure, or profit by any person, with any minor under the age of eighteen (18) who is not the spouse of the perpetrator including, but not limited to: sexual intercourse, sodomy, masturbation, cunnilingus, fellatio, and fondling.”

Sexual abuse of children is punishable with imprisonment of up to 25 years, with a minimum sentence of six months. Child sexual abuse can also result in fines between \$5,000 and \$50,000.¹¹⁰

Following the earlier reforms, chapter 6 of Title 21 provided for a framework for criminalising child sexual abuse that was more in line with good practice, yet some important shortcomings remained.



Violence, abuse and exploitation of children are difficult issues to both openly discuss and to research.

**Amanda Bissex, UNICEF
Pacific Chief of Child
Protection,
28 March 2013**

¹⁰⁶ UN Working Group on Discrimination against women in law and in practice, *Adultery as a criminal offence violates women’s human rights*, October 2012 (available at: <https://www.ohchr.org/Documents/Issues/Women/WG/AdulteryasaCriminalOffenceViolatesWomenHR.pdf>).

¹⁰⁷ See e.g. *Yano vs. Yano*, Palau Supreme Court, No. 11-011, 20 ROP 190, 2013 (available at: http://www.palausupremecourt.net/doc/ROP_Reporters/20ROP/20%20ROP%20190.pdf) or *Ngoriakl v. Gulibert*, No. 07-051, 16 ROP 105, 2008 (available at: http://www.palausupremecourt.net/doc/ROP_Reporters/16ROP/16%20ROP%20105.pdf).

¹⁰⁸ UN Working Group on Discrimination against women in law and in practice, *Ibid.*, n. 106.

¹⁰⁹ *Yano vs. Yano*, 2013, *Ibid.*, n. 107.

¹¹⁰ PNC, Title 21, Section 608(b), *Ibid.*, n. 79.

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Section 602 of Title 21 defines sexual abuse in an inclusive way, including both penetrative and non-penetrative offences. It uses gender neutral wording and extended the protection to all children up to the age of 18.¹¹¹ Penalties for sexual abuse reflected the gravity of the crime, and section 608 of Title 21 provided for the publication of the names and addresses of convicted “*sexual abuse/offence violators*”.¹¹² Moreover, the updated provisions also provided for a comprehensive framework relating to reporting obligations and procedural guarantees.¹¹³

However, the continued existence of a spousal exemption was a major deficiency in the law - where a child was married to the perpetrator, no offence was deemed to have been committed. As outlined above, it was briefly repealed by RPPL No. 7-55¹¹⁴ before being reintroduced in 2011 by RPPL No. 8-32. The persistence of the spousal exemption within provisions criminalising sexual abuse of children and adults is highly problematic as it leaves some victims without protection; this is even more problematic in the case of children as they are typically already in a vulnerable position having been married at a young age. Given that customary marriages between Palauan citizens are recognised¹¹⁵ and the PNC does not specify a legal minimum age for marriage between two Palauan citizens,¹¹⁶ the existence of a spousal exemption is all the more significant.

Enforcement and Impact

Sexual violence and sex crimes, particularly against women and children, have been a prevalent problem in Palau, as outlined in successive national and international studies, such as:

- A 2008 study carried out by the Government of Palau with the support of the UN Children’s Fund (‘UNICEF’) on the situation of children, youth and women (‘UNICEF Report’),¹¹⁷
- A report published in 2010 by the UN Development Fund for Women (‘UNIFEM’) gathering evidence, data and knowledge and summarising all current literature

¹¹¹ RPPL No. 8-32, *Ibid.*, n. 74.

¹¹² PNC, Title 21, Section 608(b), *Ibid.*, n. 79.

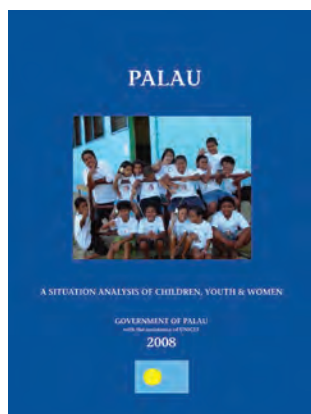
¹¹³ RPPL No. 8-32, *Ibid.*, n. 74 extended the reporting obligation under Sections 602 and 603 of Title 21 of the PNC to any person who had parental, custodial, or other legal custody or visitation rights to a child suspected of being abused, along with the relevant penalties. It also introduced a presumption that a person who had an obligation to report suspected child abuse and who resided in the same domicile or home as the abused child was presumed to have known or to should have known about the abuse.

¹¹⁴ One of the goals of RPPL No. 7-55, as stated in the name of the law itself, was specifically to “*eliminate spouse exemptions relating to child sexual abuse*”.

¹¹⁵ Imrana Jalal, UN Division for the Advancement of Women, Expert Group Meeting on good practices in legislation to address harmful practices against women, *Harmful practices against women in Pacific Island countries: customary and conventional laws*, 3 June 2009 (available at: https://www.un.org/womenwatch/daw/egm/vaw/legislation_2009/Expert%20Paper%20EGMGPLHP%20Imrana%20Jalal.pdf).

¹¹⁶ Section 201 of Title 21 of the PNC provides for a minimum age for marriage between either non-citizens of Palau or a Palauan citizen and a non-citizen only. See also Girls Not Brides, Palau (available at: <https://www.girlsnotbrides.org/child-marriage/palau/>).

¹¹⁷ UNICEF, *Palau: A Situation Analysis of Children, Youth and Women*, *Ibid.*, n. 30.



on violence against women and girls in the Pacific Island countries ('UNIFEM Report');¹¹⁸ and

- A study conducted between 2012 and 2014¹¹⁹ by the Ministry of Health with the support of Australian Aid and the UN Population Fund on violence against women in Palau ('Belau Family Study').¹²⁰

Both the UNICEF and UNIFEM reports noted a 2007 study which revealed that 21 per cent of high school students in Palau had been forced to have non-consensual sex and 13 per cent had been assaulted by their boyfriend / girlfriend.¹²¹ Moreover, according to the Belau Family Study, 23 per cent of women in Palau experienced physical violence from their partner and 10 per cent had experienced sexual violence from a partner.¹²² In addition, 15 per cent of women in Palau had experienced sexual violence by a non-partner.¹²³



Minister Gregorio Ngirmang, Ministry of Health, October 2014

The rise of violence against women is a complex, multi-sectorial issue that will need the support of our policy makers, service providers, law enforcement, traditional leadership, educators, health workers, and the community to solve. For us to effectively find solutions, we must first acknowledge the problem: violence against women in our community is real, it

is happening, and it affects everyone. This extensive report gives us an accurate picture and provides us with the data and information we need to initiate comprehensive policies and services to protect the victims who suffer from violence and to prevent it.

Despite the prevalence of domestic violence and sexual offences, sex crimes were significantly under-reported.¹²⁴ According to the Belau Family Study, 37 per cent of abused women in Palau had never told anyone about the violence they suffered and 35.8 per cent indicated that they had not gone to any formal service or authority.¹²⁵

¹¹⁸ UNIFEM, Ending Violence Against Women & Girls, Evidence, Data and Knowledge in the Pacific Island Countries Literature Review and Annotated Bibliography, 2010, para. 32 (available at: <https://www.unicef.org/pacificislands/evaw.pdf>).

¹¹⁹ Although the study took place after the adoption of the FPA, its findings are still relevant for our assessment as the FPA was in practice not implemented before 2014.

¹²⁰ Belau Family Study, *Ibid.*, n. 2.

¹²¹ UNICEF, Palau: A Situation Analysis of Children, Youth and Women, *Ibid.*, n. 30; UNIFEM, Ending Violence Against Women & Girls, *Ibid.*, n. 118, para 32.

¹²² Belau Family Study, *Ibid.*, n. 2.

¹²³ Belau Family Study, *Ibid.*, n. 2.

¹²⁴ UNICEF, Palau: A Situation Analysis of Children, Youth and Women, *Ibid.*, n. 30; Belau Family Study, *Ibid.*, n. 2. According to data from the VOCA, 89 incidents of domestic violence were reported in fiscal year 2005, 36 in 2007, 39 in 2008 and 39 in 2009.

¹²⁵ Belau Family Study, page 53, *Ibid.*, n. 2.

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European Commission, Understanding Gender Inequality Actions in the Pacific: Ethnographic Case-studies and Policy Options, Final Report, 2016

It appears that in the Palauan culture, women are viewed as the stronger gender with regards to self-control, and therefore seen as responsible for male drives and capable

of absorbing violence. We need to discuss these notions. No women can be held responsible for the violence perpetrated against her.

Regarding children, on average less than 20 cases of child sexual abuse were reported to the Victims of Crime Assistance unit ('VOCA'),¹²⁶ which is low relative to the estimated number of child sexual abuse cases in Palau.¹²⁷ Even individuals in professions such as health workers and educators were reluctant to report child abuse given the close-knit nature of the society in which they lived.¹²⁸

The enforcement of sexual offences laws was also highlighted as a critical systemic weakness in Palau. The UNICEF and UNIFEM reports and the Belau Family Study identified the legal framework as a key factor in both hindering enforcement and deterring victims from reporting, with the UNICEF report also noting strong cultural attitudes and the taboo nature of sexual abuse as significant contributory factors.¹²⁹



Photo by Dr Henrica A.F.M. (Henriette) Jansen / Technical Advisor, Violence against Women, Research and Data, UNFPA Asia and the Pacific Regional Office, Thailand.



"Due to the culture in Palau, family abuse, sexual abuse or incest in the family are not openly discussed in public, but rather kept within the family."

Ongerung Kesolei,
editor for Tia Belau,
22 March 2019

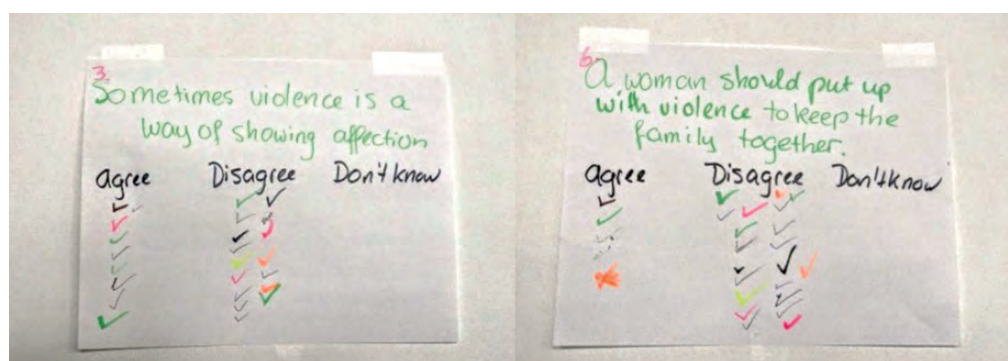
¹²⁶ UNIFEM, *Ending Violence Against Women & Girls*, *Ibid.*, n. 118. VOCA is a department within the Ministry of Health offering social work and counselling services to victims. Statistics are not available for every year. However, between 2002 and 2005, 56 cases of child sexual abuse were reported to the VOCA and approximately 13 cases in 2010.

¹²⁷ A study conducted in 2010 found that 4% of children have experienced inappropriate touching other the last month (cf. UNIFEM, *Ending Violence Against Women & Girls*, page 44, *Ibid.*, n. 118). A study carried out on women only between 2012 and 2014 showed that 15% of respondents have experienced sexual violence before the age of 15 years old (cf. Belau Family Study, para. 5.2, *Ibid.*, n. 2).

¹²⁸ UNIFEM, *Ending Violence Against Women & Girls*, page 32, *Ibid.*, n. 118.

¹²⁹ UNICEF, *Palau: A Situation Analysis of Children, Youth and Women*, *Ibid.*, n. 30; UNIFEM, *Ending Violence Against Women & Girls*, *Ibid.*, n. 118; Belau Family Study, *Ibid.*, n. 2.

Moreover, there were weak protective measures for victims in circumstances where they sought the assistance of the criminal justice system, which no doubt had a further detrimental impact on reporting. For example, there was no temporary safe shelter for victims of child abuse or domestic violence.¹³⁰



Photos by Dr Henrica A.F.M. (Henriette) Jansen / Technical Advisor, Violence against Women, Research and Data, UNFPA Asia and the Pacific Regional Office, Thailand.

In terms of cultural attitudes, there was a lack of community consensus as regards the acts that constitute abuse, making it difficult for individuals to determine whether cases should be dealt with under Palauan tradition or law.¹³¹ Based on the Palauan tradition, the perpetrator would generally apologise and make a payment to the “significant man” in the victim’s family (such as the victim’s father, maternal uncle or the head of the clan) who would accept it on the victim’s behalf. Such a resolution is inadequate to protect the victims or punish the perpetrators.¹³² Another remedy was to send the perpetrator away to live with relatives, which again is inadequate to protect victims or deter future offending as the perpetrator could continue to commit sexual offences elsewhere.¹³³

Lastly, there were issues with charging and prosecution. The police force did not have specific training regarding child abuse and domestic violence cases¹³⁴ and there was also no specific reporting mechanism. Even when reported, the enforcement was insufficient as the VOCA unit was under-staffed (it had only one member),¹³⁵ and charges were often not filed or were dropped because key witnesses refused to



“In Palau there is a longing to look at traditional methods to protect children and to safeguard against abuse and neglect of children, but these are not always in place, particularly in urban centers.”

**UNICEF,
Press release,
28 March 2013**

¹³⁰ UN HRC, UPR, National report 2011, *Ibid.*, n. 8, para. 39; The Republic of Palau National Review, Implementation of the Beijing Declaration and Platform for Action (1995), The Outcomes of the 23rd Special Session of the General Assembly (2000) in the context of the 20th Anniversary of the 4th World Conference on Women; and the Adoption of the Beijing Declaration and Platform for Action 2015, 18 June 2014, p.22 (available at: http://www.unwomen.org/-/media/headquarters/attachments/sections/csw/59/national_reviews/palau_review_beijing20.pdf)

¹³¹ UNICEF, Palau: A Situation Analysis of Children, Youth and Women, *Ibid.*, n. 30, page 32.

¹³² *Ibid.*

¹³³ European Commission, Message suggested for Palau, *Understanding Gender Inequality Actions in the Pacific: Ethnographic Case-studies and Policy Options*, Final Report, 2016, p.99 (available at: <https://publications.europa.eu/en/publication-detail/-/publication/53d563f8-9c4c-11e6-868c-01aa75ed71a1>).

¹³⁴ UN HRC, *Report of the Working Group on the UPR*, Palau, 2011, *Ibid.*, n. 102.

¹³⁵ UN HRC, UPR, National report 2011, *Ibid.*, n. 8, para. 39.

THE OFFENCES UNDER REFORM

file them or to cooperate with the authorities.¹³⁶ In six of 16 child sexual abuse cases reported to the VOCA as of 2000, either no charges were filed against the perpetrators or the charges were dropped.¹³⁷

In relation to the criminalisation of private consensual same-sex sexual acts, there is no evidence that section 2803 the Old Penal Code was enforced against LGBT people. However, its continued existence may have acted as an obstacle to the enjoyment of equal rights by LGBT people and could have promoted stigma and discrimination.¹³⁸

In addition, as highlighted in the country overview section, in 2008 over 80 per cent of the electorate supported the amendment to the Constitution which saw the right to marry being restricted to opposite-sex couples, demonstrating the level of resistance to creating greater equality for LGBT people back in 2008.¹³⁹

Section 2803 the Old Penal Code was also identified as constituting an obstacle to effective HIV prevention, treatment and care and support to certain vulnerable populations, including LGBT people.¹⁴⁰

Early Attempt at Reform

Work on the wholesale reform of the PNC, including the Old Penal Code, started in 2010-11 when legal counsel in the House of Delegates was tasked with drafting a new penal code. In May 2012, House Delegate Madrangchar introduced a draft penal code bill to the House of Delegates.¹⁴¹ This proposal received the support of the Committee on Judiciary and Governmental Affairs of the House of Delegates, who considered that “the current laws are described to be inadequate in addressing today’s sophisticated criminal element” and that “revision of criminal laws here is long overdue”.¹⁴² However, a lack of agreement over the bill in the OEK, essentially due to the Senate’s reluctance to pass the bill, led to the reform efforts being forestalled and it was not until 2013 that the process to reform the PNC and the Old Penal Code was resurrected.¹⁴³

¹³⁶ Belau Family Study, p.18, *Ibid.*, n. 2.

¹³⁷ Stevenson Kuartei, *Incest in Palau: Delemumuu Undressed*, p.87, *Ibid.*, n. 98. In one case, a father and older brother were suspected of sexual abuse of a 15 year old girl. No legal action was brought as the girl’s mother refused to file charges. In another case, a stepfather had allegedly sexually abused a 16 year old girl. The charges were dropped as the girl’s mother refused to cooperate.

¹³⁸ Kaleidoscope, *Alternative Report to the UN Committee on the Rights of the Child Regarding Palau’s Protection of the Rights of LGBTI Persons*, March 2017 (available at: https://webcache.googleusercontent.com/search?q=cache:o3nReWc2-usJ:https://tbinternet.ohchr.org/Treaties/CRC/Shared%2520Documents/PLW/INT_CRC_NGO_PLW_27112_E.doc+&cd=1&hl=fr&ct=clnk&gl=uk) point 5.3; HDT interviews with Ongerung Kesolei, *Ibid.*, n. 43 and with Victoria Roe, former Attorney General of Palau, conducted on 4 August 2019.

¹³⁹ Kaleidoscope Australia, UPR Submission, para 4.2. *Ibid.*, n. 40.

¹⁴⁰ UNAIDS, Palau Report NCPI, 2012, Section A – III, 2), (available at: <https://www.unaids.org/sites/default/files/country/documents/Palau%20NCPI%202012.pdf>). Please note that although Palau recognised in part A of the report that the illegality of same-sex relationships created an obstacle to effective HIV prevention, treatment and care and support of certain vulnerable populations, the Palau Red Cross Society did not identify this as an obstacle.

¹⁴¹ Aurea Gerundio-Dizon, *Palau Lawmakers Call For Revision Of Criminal Laws*, Pacific Islands Report, 25 September 2012 (available at: <http://www.pireport.org/articles/2012/09/25/palau-lawmakers-call-revision-criminal-laws>).

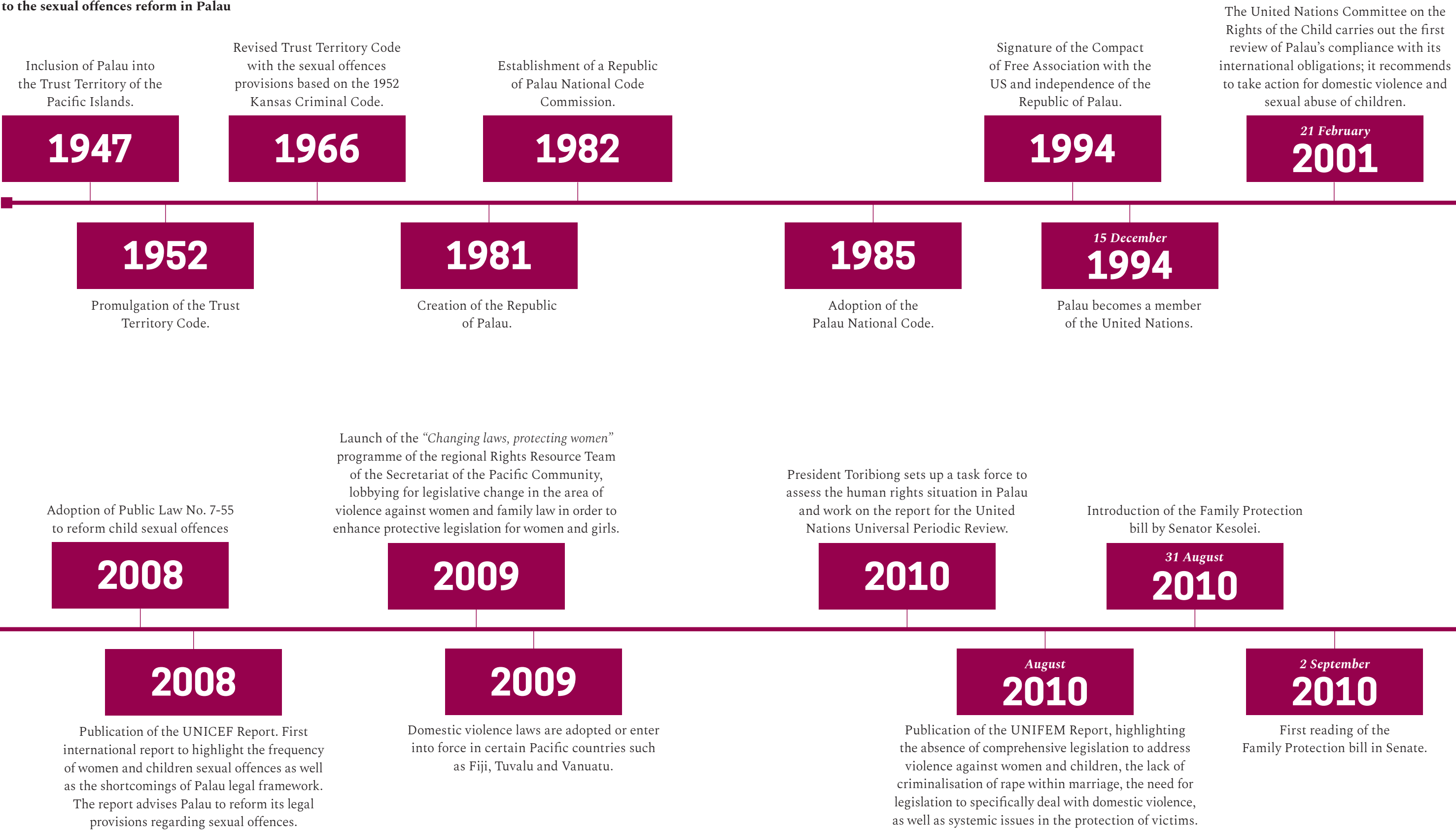
¹⁴² *Ibid.*

¹⁴³ HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

CHRONOLOGY OF LEGISLATIVE REFORM

CHRONOLOGY OF LEGISLATIVE REFORM

The following provides a timeline of key events and activities relating to the sexual offences reform in Palau



CHRONOLOGY OF LEGISLATIVE REFORM

The United Nations carries out the first Universal Periodic Review cycle for Palau. Various member states recommend to Palau to decriminalise same-sex intimacy, introduce legislation against domestic abuses, repeal the spousal rape exemption and generally to better protect women and children against sexual abuse.

May
2011

Palau signs eight core international human right treaties.

20 September
2011

July
2011

Delanie Prescott-Tate, House of Delegates legal counsel, starts drafting the New Penal Code.

May
2012

First draft of the bill to amend the Old Penal Code is introduced to the House of Delegates.

The Family Protection Act stakeholders (government, Judiciary, civil society) execute a “Memorandum of Understanding” spelling out in detail the roles, duties and responsibilities of each of the partner agencies.

14 July
2014

Publication of the Belau Family Study, highlighting the frequency of sexual abuse suffered by women and children in Palau.

October
2014

September
2014

The “Family Violence and Youth Justice” workshop is hosted by the Pacific Judicial Development Programme.

May
2015

First Pacific Human Rights Conference on Sexual Orientation and Gender Identity hosted by the Kingdom of Tonga. The conference triggers a wave of controversy in Palau.

The Pacific Islands Forum, including Palau, adopts the Pacific Leaders Gender Equality Declaration, committing to the enactment of legislation against sexual and gender-based violence.

30 August
2012

First reading of the second bill to revise the Old Penal Code in the OEK House of Delegates.

April
2013

Adoption of the New Penal Code.

April
2014

13 November
2012

Adoption of the Family Protection Act.

February
2014

Senate bill introducing punishments for Hate Crimes (including hate crimes on the basis of sexual orientation and gender identity) passes House of Delegates.

Introduction of the Emergency Family Shelter Bill by Senator Uduch Sengebau-Senior and of the Child Protection Bill to a Senate Committee.

2016

Participation of Palau in the UNiTE campaign “16 Days of Activism to Eliminate Gendered-based Violence”

November-December
2016

President Remengesau speaks in support of same-sex marriage

24 July
2019

April
2016

Report of the working group on Palau in the context of Palau’s second UPR acknowledging the progress made by Palau towards the first UPR’s recommendations.

August
2017

Senator Senior talks at the Micronesian women’s Conference, “Navigating Change for Gender Equality and the Empowerment of Micronesian Women”, in the Republic of the Marshall Islands.



DRIVERS OF REFORM

DRIVERS OF REFORM

Sexual offences reform in Palau is a tale of two halves. The sexual offences chapter in the Old Penal Code (chapter 28) was entirely repealed, reformed and replaced in November 2012 by the FPA. The main aim of the FPA was to enact a statute specifically addressing domestic violence in Palau, which had been seen to be a gap in the law for nearly two decades. What drove the enactment of the FPA was principally civil society, and more specifically Mechesil Belau and its influential members. Additional contributory factors included the political resolve to adopt the FPA - thereby putting in place a legal framework that provided much needed protection for women - and international support and influence.

In 2014, Palau's criminal laws were overhauled, reforming and updating wholesale much of Palau's criminal provisions, and consolidating various other provisions (such as chapter 28 "*Sex Crimes*", as amended by the FPA) into a single piece of legislation, the New Penal Code. The New Penal Code was based on the American Model Penal Code that was originally drafted by the American Law Institute in 1962. There does not appear to have been one single overriding factor behind this wholesale reform but it was rather a result of a combination of the political will to modernise the criminal law and international influence.

We address the drivers of each piece of legislation in turn.

The Family Protection Act

Civil Society

Mechesil Belau (meaning "Women of Palau") was the key civil society group that advocated, campaigned for and drove the enactment of the FPA. Mechesil Belau is a women's group that brings together women and women's organisations from across 16 states of Palau. It is led by traditional women leaders¹⁴⁴ and it has a wide membership from the numerous clans across the country. Bilung Gloria Salii, the highest-ranking traditional female leader of Koror state, heads the group.

Mechesil Belau is a politically influential group and has been instrumental in amplifying women's voices and women's rights for more than 20 years. Palau is a matrilineal and matriarchal society,¹⁴⁵ in which women have significant traditional role.¹⁴⁶ Mechesil Belau's views, particularly their annual resolutions and recommendations to government, are given high considerations in legislative

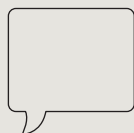
¹⁴⁴ Belau Family Study, p.19, *Ibid.*, n. 2. Mechesil Belau is led by Bilung Gloria G. Salii (Queen of Palau) and Ebilreklai Gracia Yalap, the two highest ranking traditional female leaders in Palau.

¹⁴⁵ Palau, The Millennium Development Goals: Initial Status Report, 2008, p.19 (available at: https://www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Palau/Palau_MDG_Report_2008.pdf).

¹⁴⁶ UN HRC, UPR, *National report 2011*, para. 74, *Ibid.*, n. 8.

matters¹⁴⁷ and, over the years, Mechesil Belau has developed into a consultative body for government in the development of state policies.¹⁴⁸ Importantly, the national government has an obligation under the Constitution to take affirmative actions to assist Mechesil Belau.¹⁴⁹

The group's scope is very broad and diverse, considering issues as extensive as preservation, protection, and promotion of Palau's heritage, culture, language, customs and tradition; education; conservation and environment; health; transparent government; economic development; parenting; and socioeconomics.¹⁵⁰



**Ms. Klouldil Singeo, Director of the Bureau of Ageing, Disability and Gender (Palau),
25 November 2015**

They are a very important partner to have on board and we need to work closely with them. One of our key approaches has been to be more inclusive in getting groups and organisations with strong ties in the community on board.

Mechesil Belau's annual Women's Conference is a key event that brings together the full membership to discuss and consider a specific theme over a two to three-day period. The first day is usually dedicated to speeches and presentations, followed by an exhibition day on the second day where traditional foods, artefacts, heirlooms and handicrafts are displayed.¹⁵¹ The Women's Conference has been held every year since 1994. The Women's Conference regularly invites government ministers and other leaders who "often find themselves making promises of support"¹⁵² during the conference. At the end of the Women's Conference, a resolution is adopted consolidating all the matters raised. The resolution is presented to the Palau leadership, the President, all Cabinet Members, Governors of all States, OEK members and key prominent individuals in Palau.¹⁵³ The Women's Conference resolutions are considered in the OEK and in discussions between the President and his Cabinet in national

¹⁴⁷ UN Women, Asia and the Pacific, Palau (available at: http://asiapacific.unwomen.org/en/countries/fiji/co/palau#down_anc1)

¹⁴⁸ 9th OEK, 5th Special Session, Senate Joint Resolution, No. 9-21, 12 August 2013. A copy can be found at section 1.k of the Annex.

¹⁴⁹ Constitution, Article V, as amended by Constitutional Proposal No. 2-272. A copy can be found at section 1.a of the Annex.

¹⁵⁰ Senate Joint Resolution, *Ibid.* n. 148.

¹⁵¹ Maripet L. Poso, *Palau women convene for the 17th Women's Conference*, 2010, Marianas Variety, (available at: <http://www.mvariety.com/regional-news/palau-pacific-news/25552-palau-women-convene-for-the-17th-womens-conference>).

¹⁵² Noe Tanigawa, *Women in Palau: The Velvet Glove*, 2016, Hawaii Public Radio (available at: <https://www.hawaiipublicradio.org/post/women-palau-velvet-glove#stream/0>).

¹⁵³ Unknown, *Deepening relations on gender issues in Palau*, 2015, Marianas Variety (available at: <http://www.mvariety.com/regional-news/81859-deepening-relations-on-gender-issues-in-palau>).

DRIVERS OF REFORM

development issues.¹⁵⁴ Such resolutions have been instrumental over the years in shaping policies and legal developments.¹⁵⁵



Source: Island Times, 23rd Mechesil Belau Conference held (2016), available at: <http://islandtimes.us/23rd-mechesil-belau-conference-held/>.

For instance, the Women's Conference and their adopted resolutions have been instrumental in the passage of at least 19 laws and three constitutional amendments.¹⁵⁶ For example, Mechesil Belau's annual resolutions led to the adoption of RPPL No. 7-55 (elimination of spouse exemption with respect to child sexual abuse) and RPPL No. 8-32 (penalty for failing to report child abuse).¹⁵⁷

Since at least 2004, Mechesil Belau has had a particular focus on domestic violence and abuse within Palauan society,¹⁵⁸ and equal rights and equal opportunity for women have been important themes.¹⁵⁹ In this regard, Mechesil Belau strongly campaigned for and supported the adoption of the FPA.¹⁶⁰ The group's annual resolution was the starting point of the formal call for legislation to address the issue of domestic violence and abuse.¹⁶¹



"The women are in the forefront as matriarchs of the society – they have been instrumental in shaping the policies of the government."

President Remengesau,
9th Mechesil Belau
Conference,
2002

¹⁵⁴ Pacific Islands Forum Secretariat, *16 Days, 16 Stories: Niue*, 2015 (available at: <https://pacificwomen.org/news/16-days-16-stories-niue/>); Pacific Islands Forum Secretariat, Facebook post, 2015 (available at: <https://www.facebook.com/Pacific.Islands.Forum.Secretariat/photos/mechesil-belau-women-of-palau-is-a-traditional-womens-group-it-is-composed-of-tr/928225813881753/>); Unknown, *Deepening relations on gender issues in Palau*, *Ibid.*, n. 153.

¹⁵⁵ Noe Tanigawa, *Women in Palau: The Velvet Glove*, *Ibid.*, n. 152.

¹⁵⁶ Palau National Review Implementation of the Beijing Declaration and Platform for Action, p.9, *Ibid.*, n. 130; RPPLs Nos. 4-35, 5-3, 5-8, 5-20, 6-25, 6-28, 6-32, 6-41, 6-49, 7-49, 7-55, 8-14, 8-23, 8-32, 8-51, 8-55, 8-57, 8-7 and 8-58 as well as constitutional amendments 21 and 22 (prohibition of same-sex marriage) and 25.

¹⁵⁷ Palau National Review Implementation of the Beijing Declaration and Platform for Action, p.10, *Ibid.*, n. 130.

¹⁵⁸ Donald R Shuster, *Micronesia in Review: Issues and Events, 1 July 2004 to 30 June 2005, 2006*, *The Contemporary Pacific*, Vol. 18, No. 1, p.125 (available at: <https://www.jstor.org/stable/23721903>)

¹⁵⁹ Equal rights and equal opportunity for women was the theme of the 17th Mechesil Belau conference in 2010. Maripet L. Poso, *Palau women convene for the 17th Women's Conference*, *Ibid.*, n. 151.

¹⁶⁰ Palau National Review Implementation of the Beijing Declaration and Platform for Action, p.21, *Ibid.*, n. 130.

¹⁶¹ According to a local observer.

In a joint resolution in honour of the 20th anniversary of the Mechesil Belau, the Senate expressly recognised that Mechesil Belau and its resolution had been influential and instrumental in the adoption of the FPA.¹⁶²

Mechesil Belau reviewed early drafts of the FPA and lobbied effectively for the legislation to be passed by the OEK.¹⁶³ Crucially, a key member of Mechesil Belau, Katherine Kesolei, was a Senator at the time and was central to the introduction of the FPA in the Senate and sponsoring the FPA through the OEK (Ms. Kesolei's specific role is discussed further below). Since the adoption of the FPA, Mechesil Belau has continued to play an active role in creating awareness of issues relating to domestic violence and the FPA within the community.



**Honorable Baklai Temengil, Palau's Minister for Community and Cultural Affairs,
28 July 2015**

Through the annual Women of Palau Conference (Mechesil Belau), equality issues and their implications for society at large are receiving due attention and the country has made some significant progress over the years including with the Family Protection Act of 2012.

Mechesil Belau's original objective in campaigning for the FPA was addressing the absence of legal protection for women and children where they were victims of domestic violence and abuse. The first draft of the FPA focused solely on creating effective remedies and establishing protective measures and mechanisms for instances of domestic violence.¹⁶⁴ However, as the FPA made its way through the OEK, the scope of the legislation was significantly broadened so as to repeal and replace chapter 28 of the Old Penal Code, reforming wholesale Palau's sexual offences laws. It has not been possible to fully establish why the FPA was extended so substantially. Some observers suggested that it may have been unintentional. Others have more convincingly revealed that these changes were motivated by the need to have more appropriate and comprehensive offences to cover the multitude of different cases of abuse and violence and, at the same time, consciously remove a number of discriminatory provisions from the Old Penal Code. Nevertheless, some of the more controversial changes, such as the repeal of the laws on adultery and the decriminalisation of private consensual same-sex sexual acts, were not aspects that were wholly supported by Mechesil Belau, nor was the group fully cognisant of these changes in 2012. In light of this, whilst Mechesil Belau was the main driving force behind the original and core purpose of the FPA, other forces were in play as regards the full reach of the legislation. In any case,

¹⁶² Senate Joint Resolution, *Ibid.*, n. 148.

¹⁶³ Pacific Islands Forum Secretariat, *16 Days, 16 Stories: Niue*, *Ibid.*, n. 154; Pacific Islands Forum Secretariat, Facebook post, *Ibid.*, n. 154; Unknown, *Deepening relations on gender issues in Palau*, *Ibid.*, n. 153.

¹⁶⁴ Senate Bill No. 8-1477, SD2, HD1, To offer protection and create effective remedies to deter acts of family violence, expand and strengthen the ability of police officers to assist family violence victims, enforce the law effectively against family abusers, and establish family violence as a serious crime which will not be excused or tolerated, by bringing to bear strong law enforcement and appropriate legal penalties for acts of family violence and abuse, and for other related purposes, introduced on 31 August 2010.

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the broad remit of the FPA proved effective at addressing a variety of shortcomings in the sexual offences laws and it meant that rather than specific issues being highlighted and targeted they just became one aspect amongst many being tackled as part of the reform.

Political Will

In addition to Mechesil Belau's influence, there was political resolve at the highest level (within the OEK and the government) to address the inadequate legal protection for women and children. There were key individuals within the OEK that were personally committed to seeing the FPA enacted, who were able to drive the process through the OEK and advocate for the reforms. There is little doubt that key individuals in the OEK, especially Ms. Kesolei, who was one of the most respected female leaders in Palau¹⁶⁵ and was viewed as the author of the FPA,¹⁶⁶ had a significant influence over the other OEK members when gathering support for the FPA and ensuring the smooth passing of the FPA in the OEK.

In terms of general political will within the OEK, the need for greater legal protection for women and children had long been recognised. As early as 2010, the OEK publicly stated that it was “*outraged and dismayed at the repeated abuse of children and women*”¹⁶⁷ and acknowledged that the shortcomings in the legal framework and the criminal justice system were failing certain segments of society.



Senate Committee on Judiciary and Governmental Affairs, Deliberations on Senate Bill No. 7-148, September 2006

There is no valid reason not to prosecute marital rape, and the fact that such prosecutions may be more challenging for the Office of Attorney General, does not mitigate against the need to protect women and prosecute violent crime.

As a consequence, it was no surprise that when the draft FPA was introduced, the representatives were “*very receptive to the FPA*”.¹⁶⁸ There was strong support in the Senate and, following amendments to broaden the scope of the FPA to include changes to the sexual offences laws, the House of Delegates was equally supportive.¹⁶⁹

¹⁶⁵ Micronesia Forum, *Rest in Peace Senator Kathy Kesolei of Palau* (available at: <http://www.micronesiaforum.org/index.php?p=/discussion/14488/rest-in-peace-sen-kathy-kesolei-of-palau>).

¹⁶⁶ 33rd Guam Legislature, Resolution No. 233-33, adopted on 11 May 2015 (available at: [http://www.guamlegislature.com/COR_Res_33rd/R0233-33%20\(COR\).pdf](http://www.guamlegislature.com/COR_Res_33rd/R0233-33%20(COR).pdf)).

¹⁶⁷ RPPL No. 8-32, *ibid.*, n. 74.

¹⁶⁸ According to a local observer.

¹⁶⁹ HDT interview with Delanie Prescott-Tate, *ibid.*, n. 10.



8th OEK, Ninth Special Session, RPPL No. 8-51, August 2010

The OEK finds and declares that: family violence is a serious crime against society; the number of people in Palau who are regularly abused by family members is unacceptably high; a significant number of women who are assaulted

are pregnant; victims of violence come from all social and economic backgrounds and ethnic groups (...). It is therefore the intent of the OEK to ensure the victims of family violence receive the maximum protection under the law.

Political champions, such as Senate Vice President Katherine Kesolei, were instrumental in the introduction and passage of the FPA through the OEK.¹⁷⁰ Senator Kesolei commissioned the original draft of the FPA, instructing Senate legal counsel to produce a bill as well as personally contributing to the drafting.¹⁷¹ She then introduced and sponsored the bill through the Senate as well as advocated and campaigned for its enactment. Her aim was to enact legislation that would address family violence, enhance the protection of victims and enforce legal consequences against perpetrators.¹⁷²



Palau, National Review of Implementation of the Beijing Declaration and Platform for Action, 18 June 2014

[Hon. Kesolei's] presence at the national legislature ensures that women and cultural perspective is well represented in the legislative process in Palau.

Such political champions are vital in order to drive a legislative agenda forward and also in having legislation effectively implemented so that it delivers its intended purposes. Since the enactment of the FPA, other political or “gender” champions have come to the fore within the OEK: Senator Sengebau-Senior and Senator Inabo. Both have continued to strongly advocate for gender equality and women’s human rights (See Post-Reform Environment section).¹⁷³

¹⁷⁰ Senate Vice President Katherine Kesolei passed away on 13 October 2015 in Manila, Philippines. See: Jose Rodriguez Senase, *Palau Senator, Educator Kathy Kesolei passes away*, 20 October 2015, Pacific Islands Report (available at: <http://www.pireport.org/articles/2015/10/20/palau-senator-educator-kathy-kesolei-passes-away>).

¹⁷¹ According to a local observer.

¹⁷² Pacific Women in Politics, *Historic election of three women into Palau Congress*, 2013 (available at: <https://www.pacwip.org/resources/news/historic-election-of-three-women-into-palau-congress/>).

¹⁷³ UN Women, *Stocktake of the Gender Mainstreaming Capacity of Pacific Island Governments Republic of Palau*, 2016 (available at: <https://spccfpstore1.blob.core.windows.net/digitalibrary-docs/files/03/0309d16c174eaf627e0fb406841007e7.pdf?sv=2015-12-11&sr=b&sig=eSrJitkq9ltgZmjWmRhI6NGxcOxcSBHM%2BfmHE9gASSk%3D&se=2020-01-16T08%3A48%3A01Z&sp=r&rscc=public%2C%20max-age%3D864000%2C%20max-stale%3D86400&rsct=application%2Fpdf&rscd=inline%3B%20filename%3D%22Stocktake%20Report%20Gender%20Mainstreaming%20Palau.pdf%22>).

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33rd Guam Legislature, Resolution No. 233-33, adopted on 11 May 2015

Senator Kathy Kesolei was an outstanding member of her community who, through her selfless commitment and dedication, served to better the quality of life of her community, and had a measurable positive impact on the lives of the people of Belau.

On the executive side, violence and abuse against women and girls was also a serious concern for the President and ministers.¹⁷⁴ Every year, on the International Day for the Elimination of Violence against Women,¹⁷⁵ the President issues a proclamation urging citizens: “to make a choice, to take a stand to end all violence against women and girls.”¹⁷⁶ Moreover, in 2011, the government set the enactment of the FPA as one of its key national priorities.¹⁷⁷ The same year, government representatives urged “better treatment of women and children and to end the vicious cycle of violence that all too often begins at home.”¹⁷⁸ Also, prior to the enactment of the FPA, the VOCA was established and the Ministry of Health, the Ministry of Education and the Ministry of Justice were coordinating efforts with community stakeholders to address domestic violence.¹⁷⁹

International Influence, Support and Fulfilling Human Rights Obligations

The international community supported and influenced changes to Palau’s domestic violence and sexual offences laws in a number of ways. First, they highlighted the prevalence of abuse and violence (including physical and sexual), particularly of women and children, as well as the gaps in the legal framework. Second, and crucially, the changes that Palau made to its legal framework were prompted by its desire to fulfil its human rights obligations (including its international commitments) and conform to international human rights standards.

International Influence and Support

UN bodies, in collaboration with the government of Palau, funded early studies on violence against women and the protection of children.¹⁸⁰ These studies highlighted the frequency of abuse against women and children in Palau (See Enforcement and Impact section above), the shortcomings of the Palauan system and the need for legislative reform.

¹⁷⁴ Bernadette H. Carreon, *November 25 is White Ribbon Day*, 30 November 2009 (available at: <http://www.mvariety.com/component/content/article/17/22175>)

¹⁷⁵ Designated by the UN Women Campaign Say No, UNiTE, in 2009. For more information: <https://www.un.org/en/events/endviolenceday/>.

¹⁷⁶ UN HRC, UPR, National report 2016, *Ibid.*, n. 45.

¹⁷⁷ UN HRC, UPR, National report 2011, p.18, *Ibid.*, n. 8.

¹⁷⁸ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices*, Palau, 2011, (available at: <https://2009-2017.state.gov/documents/organization/186509.pdf>).

¹⁷⁹ UN HRC, *Report of the Working Group on the UPR*, Palau, 2011, p.4, *Ibid.*, n. 102.

¹⁸⁰ UNICEF, *Palau: A Situation Analysis of Children, Youth and Women*, *Ibid.*, n. 30; UNIFEM, *Ending Violence Against Women & Girls*, *Ibid.*, n. 118.

For example, in 2008, the UNICEF Report outlined the continued existence of legal provisions that discriminated against women, such as the exemption for spousal rape,¹⁸¹ and emphasized the need for legal reform to address domestic violence.¹⁸² The same year, the initial status report on Palau's progress on achieving the millennium development goals highlighted the discriminatory nature of the provision criminalising rape in Palau.¹⁸³

In 2010, the UNIFEM Report highlighted again concerns around the absence of comprehensive legislation to address violence against women and girls, the lack of criminalisation of rape within marriage, and the need for legislation to specifically deal with domestic violence.¹⁸⁴ The report also noted systemic issues in the protection of children and women, e.g., the lack of safe temporary shelter for women and children during ongoing police investigations.¹⁸⁵

Bilateral Influence

The Republic of Palau still holds strong ties to the US and this relationship may have influenced the reforms in Palau, although this was not confirmed as part of this case study.

In the years leading to the reform, the US had been quite vocal regarding gender-based discrimination and women rights. The US have repeatedly highlighted the lack of legal protection against domestic violence both during Palau's first UPR cycle in 2011¹⁸⁶ and in their annual human rights reports.¹⁸⁷ Moreover, they were involved in various initiatives aimed at combating gender-based violence and promoting women's empowerment in the Pacific region.¹⁸⁸



"The Government reiterates that the cornerstone of Palau's democratic society is underpinned by the promotion, protection and safeguarding of human rights."

HRC,
Report of the Working
Group on the UPR

¹⁸¹ Section 2802 of the Old Penal Code; UNICEF, *Palau: A Situation Analysis of Children, Youth and Women*, p.48, *Ibid.*, n. 30.

¹⁸² UNICEF, *Palau: A Situation Analysis of Children, Youth and Women*, p.48, *Ibid.*, n. 30.

¹⁸³ Palau, *Millennium Development Goals Initial Status Report*, p.21, *Ibid.*, n. 145.

¹⁸⁴ UNIFEM, *Ending Violence Against Women & Girls*, para. 180, *Ibid.*, n. 118.

¹⁸⁵ UNIFEM, *Ending Violence Against Women & Girls*, para. 221, *Ibid.*, n. 118.

¹⁸⁶ UN HRC, *Report of the Working Group on the UPR*, Palau, 2011, para. 34, *Ibid.*, n. 102.

¹⁸⁷ US Department of State, Human Rights Reports (available at: <https://2009-2017.state.gov/j/drl/rls/hrrpt/index.htm>); UN HRC, *Report of the Working Group on the UPR*, Palau, 2011, p.7, *Ibid.*, n. 102.

¹⁸⁸ *Women's Empowerment Initiative in the Pacific Region* implemented in 2010 by the US with the support of Australia, New Zealand and Papua New Guinea, US Department of State. See *Ambassador-at-large for global women's issues: Melanne Verveer announces new initiative to strengthen women's empowerment in the Pacific in partnership with the World Bank Group and the Governments of Australia, New Zealand and Papua New Guinea*, 8 November 2010, (available at: <https://2009-2017.state.gov/r/pa/prs/ps/2010/11/150558.htm>).

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Fulfilling Human Rights Obligations and Conforming to International Standards

As MPs, we commit ourselves to explore and promote the integration of principles of human rights [...] into parliamentary systems; and to apply a human rights lens to the formulation of new legislation, review of existing legislation and allocation of adequate financial resources for sustainable implementation. We affirm the importance of making human rights a reality on the ground, and the obligations of Parliament and MPs to increase awareness, knowledge and understanding of human rights with a view to changing norms and attitudes.

Declaration on Human Rights and Good Governance, Denarau (2015)

Palau has a long history of publicly declaring its commitment and obligation to upholding human rights. Upon its admission to the UN in 1994, Palau publicly affirmed this.¹⁸⁹

My country, with approximately 20,000 citizens, will be one of the smallest Members of this Organization, but we are large in the things that count: a strong cultural heritage; a commitment to human rights and a democratic government.

H.E. Kuniwo Nakamura, President of the Republic of Palau, UN General Assembly, 49th Session, 15 December 1994

The signing of eight significant international human rights treaties in 2011 was also seen as a key moment that signalled to the international community Palau's dedication to human rights.¹⁹⁰

I signed on behalf of the Republic of Palau all of the international conventions on human rights. As an ardent advocate of human rights and freedoms I signed these conventions because I believe that all human rights and freedoms are indispensable elements to true happiness

H.E. Johnson Toribiong, President of the Republic of Palau, 2012

Although the signature to those treaties did not translate into comprehensive ratification by the OEK, the government of Palau has maintained its commitment to advancing and fulfilling its duty to uphold universal human rights and those treaties that it has ratified.

¹⁸⁹ UN General Assembly, 49th Session, Official records, 15 December 1994, A/49/PV.89 (available at: <https://undocs.org/en/A/49/PV.89>)

¹⁹⁰ Editor, *Palau has matured internationally*, Tia Belau Editorial, 26 September 2011 (available at: <https://alekokau.wordpress.com/2011/09/29/palau-has-matured-internationally/>).

The Government of Palau [...] welcomes this opportunity to respond to the recommendations made at the first reporting cycle of the Universal Periodic Review and affirms its commitment towards the advancement and protection of fundamental principles and values of universal human rights enshrined in the Universal Declaration of Human Rights and core human rights treaties.
HRC, Report of the Working Group on the UPR, 2016

Importantly, the Constitution and the Universal Declaration of Human Rights are described as the guiding tools for the development of human rights laws in Palau.¹⁹¹

Moreover, Palau has placed special importance on its role and status within the international community and positively engaged at the international level. President Toribiong's address to the UN in 2010 demonstrated this vividly.¹⁹²

Palau is also proud of our role in the international community, joining international conventions and meeting our international obligations.
**H.E. Johnson Toribiong, President of the Republic of Palau,
UN General Assembly 65th Session, 24 September 2010**

Given this context, it is no surprise that Palau has sought to implement the international human rights conventions that have been ratified (significantly, the CRC) and the recommendations it has received from treaty bodies and as part of the UPR process. All of these have played an important role in Palau's legislative reform efforts, and notably in respect of the FPA and later the New Penal Code.

■ Committee on the Rights of the Child

In 2001, the Committee on the Rights of the Child ('CRC Committee') published its concluding observations regarding Palau's compliance with the CRC as part of its first cycle review in 1998. The report outlined the increase in sexual abuse of children, as well as the absence of a comprehensive framework to prevent and combat such abuse.¹⁹³ The CRC Committee recommended that Palau "take all appropriate measures to ensure that cases of domestic violence, ill-treatment and sexual abuse of children are properly investigated in the context of a child-friendly judicial procedure and that sanctions are applied to perpetrators" and "review its legislation to guarantee greater protection for children in harmful situations".¹⁹⁴

¹⁹¹ CRC Committee, *Consideration of reports 2017*, *Ibid.*, n. 33.

¹⁹² See e.g. UN General Assembly, 49th Session, *Ibid.*, n. 189; UN General Assembly, 65th Session, Official records, 24 September 2010, A/65/PV.14 (available at: <https://undocs.org/en/A/65/PV.14>)

¹⁹³ CRC, *Consideration of reports submitted by States parties under article 44 of the Convention*, Concluding observations of the CRC, Palau, 21 February 2001, CRC/C/15/Add.149, para. 42 (available at: <https://www.refworld.org/docid/3cb4358a4.html>)

¹⁹⁴ CRC Committee, *Consideration of reports submitted by States parties under article 44 of the Convention*, para. 43, *Ibid.*, n. 193.

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As part of its second cycle review in 2018, Palau's government highlighted a number of its achievements, including legislative changes providing greater protection for children, and acknowledged that this had been part of implementing the concluding observations from the initial review in 1998.¹⁹⁵ Moreover, the government stated that *"Palau continues to strive to align itself to the principles of the Convention on the Rights of the Child."*¹⁹⁶

■ Universal Periodic Review

In September 2011, when addressing the UN General Assembly, President Toribiong underlined the importance of the UPR process and Palau's commitment to it.¹⁹⁷



H.E. Johnson Toribiong, President of the Republic of Palau, UN General Assembly, 66th Session, 22 September 2011

"Palau is also reaching out to the world on human rights. In February, we began our Human Rights Council Universal Periodic Review. As a former practicing attorney and human rights advocate, I have been an ardent supporter of this

process from the outset, and so I have committed Palau's limited resources to ensuring a complete and meaningful outcome."

During Palau's first cycle UPR, various states expressed concerns regarding domestic violence,¹⁹⁸ the lack of protection against marital rape,¹⁹⁹ sexual abuse of children,²⁰⁰ and the criminalisation of private consensual same-sex sexual acts.²⁰¹ These concerns led to strong recommendations to Palau regarding its existing legal framework in relation to sexual offences. Below are a number of specific country recommendations:²⁰²

- Eliminate the marital rape exemption (Norway, the United Kingdom ('UK'), New Zealand);

¹⁹⁵ CRC Committee, Consideration of reports submitted by States parties under article 44 of the Convention, Second periodic reports of States parties due in 2002, Palau, 15 March 2017, CRC/C/PLW/2, p.6-7 (available at: <https://www.refworld.org/publisher/CRC,,PLW,5922e3184,0.html>)

¹⁹⁶ CRC Committee, Consideration of reports submitted by States parties under article 44 of the Convention, Second periodic reports of States parties due in 2002, Palau, para. 153, *Ibid.*, n. 195.

¹⁹⁷ UN General Assembly, 66th session, 22 September 2011, Official records, A/66/PV.16 (available at: <https://undocs.org/A/66/PV.16>)

¹⁹⁸ Canada, Poland, US, Australia and South Africa. UN HRC, *Report of the Working Group on the UPR*, Palau, 2011, paras. 22-53, *Ibid.*, n. 102.

¹⁹⁹ Hungary and Norway. UN HRC, *Report of the Working Group on the UPR*, Palau, 2011, *Ibid.*, n. 102, paras. 22-53.

²⁰⁰ Poland, Slovakia and the US. UN HRC, *Report of the Working Group on the UPR*, Palau, 2011, *Ibid.*, n. 102, paras. 22-53.

²⁰¹ France and Norway. UN HRC, *Report of the Working Group on the UPR*, Palau, 2011, paras. 22-53, *Ibid.*, n. 102.

²⁰² UN HRC, *Report of the Working Group on the UPR*, Palau, 2011, paras. 61-63, *Ibid.*, n. 102.

- Improve protection of women and children against domestic violence. Recommendations ranged from a general recommendation to grant victims of domestic violence better protection (Canada, Norway, South Africa) to urging the adoption of the FPA, which was pending at the time (Mexico, Spain, Costa Rica, the US, Brazil, Morocco, Chile);
- Improve protection of children against sexual abuse by implementing better enforcement procedures (Slovakia, Malaysia);
- Ratify the Convention on the Elimination of All Forms of Discrimination against Women (Norway, the UK, Poland, Maldives, Turkey, Canada, France, Moldova, Hungary, Chile Australia, Philippines, Argentina, Spain); and
- Repeal section 2803 of the Old Penal Code that criminalised consensual same-sex relationships between adults (France, Norway, Spain).

These recommendations were positively received by Palau and the government accepted all of the above.²⁰³ In particular, with regards to section 2803 of the Old Penal Code, Palau committed to amend the legislation in line with international standards.²⁰⁴ When commenting on the UPR process, President Toribiong stated that “Palau’s response was a great success”.²⁰⁵

During its second UPR cycle in 2016, Palau emphasized that it had satisfied the recommendations made during the first cycle (2011) to address: domestic violence,²⁰⁶ criminalise marital rape,²⁰⁷ and stated that “the Family Protection Act Committee has been active in promoting awareness of the new law, affording people comfort and safety in reporting sexual assault and domestic violence”.²⁰⁸ Palau also stated that it had adopted, in accordance with these recommendations, a New Penal Code to better address sexual assault of children²⁰⁹ and that it decriminalised same-sex sexual relations between consenting adults.²¹⁰

²⁰³ UN HRC, *Report of the Working Group on the UPR*, Palau, 2011, paras. 61-63, *Ibid.*, n. 102.

²⁰⁴ UN HRC, *Report of the Working Group on the UPR*, Palau, Addendum, 28 July 2011, A/HRC/18/5/Add.1, p.7 (available at: <http://undocs.org/A/HRC/18/5/Add.1>).

²⁰⁵ UN General Assembly, 66th session *Ibid.*, n. 197.

²⁰⁶ UN HRC, UPR, National report 2016, para. 136, *Ibid.*, n. 45.

²⁰⁷ UN HRC, UPR, National report 2016, para. 99 et seq, *Ibid.*, n. 45.

²⁰⁸ UN HRC, UPR, National report 2016, para. 59, *Ibid.*, n. 45.

²⁰⁹ UN HRC, UPR, National report 2016, para. 57, *Ibid.*, n. 45.

²¹⁰ UN HRC, UPR, National report 2016, para. 102, *Ibid.*, n. 45.

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Other factors

Regional Movement to Enhance Protection for Families

The enactment of the FPA took place at a time when there were various regional movements in the Pacific region to address gender-based violence and improve the situation of women, especially through legislative reform. These movements may have impacted developments in Palau or at least been an indirect influence.

In 2009, for example, the Pacific Islands Forum ('PIF'),²¹¹ the region's premier political and economic policy organisation, which comprises of 18 members (including Palau), acknowledged in its communiqué the need to address sexual and gender-based violence. This was followed by the adoption of the Gender Equality Declaration in 2012, in which leaders of the PIF pledged to implement several international conventions focused on gender equality into their national legislation.

Similarly, between 2009 and 2012, there was also a regional movement across the Pacific to create greater legal protection for women and children: "*Changing Laws, Protecting Women*".²¹² The regional movement was led by the Pacific Community's Regional Rights Resource Team ('RRRT'). Established in Fiji in 1995, RRRT assists Pacific states to commit to and observe international human rights and good governance by providing technical assistance, legal services and training.²¹³ The RRRT has been instrumental in helping various countries in the Pacific region in passing legislation to better protect women.²¹⁴ For instance in the Republic of the Fiji Islands,²¹⁵ the Republic of the Marshall Islands²¹⁶ and the Republic of Vanuatu.²¹⁷

The programme "*Changing Laws, Protecting Women*" was implemented by RRRT with funding from UNIFEM. The programme's principal aim was to contribute to the ending of violence against women in the Pacific with a particular focus on six Pacific Islands (Kiribati, Nauru, Samoa, Solomon Islands, Tonga and Tuvalu). More specifically, the "*Changing Laws, Protecting Women*" programme sought to lobby for legislative change in the area of violence against women and family law in order to



"Enact and implement legislation regarding sexual and gender-based violence to protect women from violence and impose appropriate penalties for perpetrators of violence"

Pacific leaders Gender Equality Declaration,
30 August 2012

"The project recognises that laws are not the be all and end all, but can be an effective catalyst of social change as well."

Ms. Imrana Jalal,
Human Rights
Commissioner

²¹¹ More information: <https://www.forumsec.org/who-we-are/pacific-islands-forum/>.

²¹² In full, "*Changing Laws, Protecting Women; lobbying for legislative change in violence against women/family law in order to enhance protective legislation for women and girls in 6 PICTs*".

²¹³ Official website of the Regional Rights Resource Team (available at: <https://rrrt.spc.int/about>)

²¹⁴ SPC, *Gender equality and violence against women and children* (available at: <https://rrrt.spc.int/ending-violence-against-women/gender-equality-and-violence-against-women-and-children>).

²¹⁵ Family Law Act 2003 (No. 18 of 2003), 06 November 2003; Domestic Violence Decree 2009.

²¹⁶ Domestic Violence Prevention and Protection Act of 2011, criminalising domestic violence and creating a specific fund which can be used to assist services such as safe houses for victims of domestic violence

²¹⁷ Family Protection Act 2008 (No. 28 of 2008), 22 December 2008, creating a specific domestic violence offence and provides for civil protection orders.

enhance protective legislation for women and girls.²¹⁸ As a result, many countries participating in the programme started a legislative process to address gender-based violence: Tuvalu,²¹⁹ Samoa,²²⁰ the Solomon Islands,²²¹ and Kiribati.²²²

Legislative reforms rarely operate in a vacuum and given the close knit community that exists across the Pacific region, there is a great likelihood that these regional movements played a contributory role in influencing Palau's own domestic legal changes.

Support from the legal community

The FPA also seems to have benefitted from general support from the legal community. In July 2012, while the FPA was under consideration in the OEK, the Pacific Judicial Development Programme ('PJDP')²²³ hosted a two-day workshop in Palau dedicated to Family Violence and Youth Justice.²²⁴ The workshop was attended by members of various Palauan organisations, the Supreme Court, the Attorney General office and the Palau Bar Association.²²⁵ The Palauan members were invited to sign a memorandum of understanding at the end of the workshop confirming their commitment to "*set out a clear pathway for the response to this violence*".²²⁶ It is likely that the workshop created further support for the enactment of the FPA.



Family/Domestic Violence in Palau, Draft memorandum of understanding, 25 July 2012

It is accepted that family / domestic violence must be seen more broadly than existing Palau law recognizes, and that family / domestic violence should be seen as a specific form of crime which covers a broad range of violence and

controlling behaviours, commonly of a physical, sexual, and/or psychological nature which typically involve fear, intimidation and emotional deprivation.

²¹⁸ Pacific Islands Law Officers' Network, Document (available at: http://www.pilonsec.org/images/stories/Documents/SGBV_Atch_A.pdf).

²¹⁹ The Family Protection and Domestic Violence Bill was drafted in 2011 with the support of the RRRT and was adopted on 18 December 2014.

²²⁰ The Family Safety Act, No. 8 of 2013, was drafted in 2009 and adopted 5 April 2013.

²²¹ The Family Protection Act 2014, No. 15 of 2014, was adopted on 27 August 2014.

²²² Following the adoption of policy and strategic action plan on eliminating sexual and gender based violence in 2010, Kiribati passed the Te Rau N Te Mwenga Act 2014, Family Peace Act, No. 1 of 2014 on 10 December 2014.

²²³ RJDP is funded by the Government of New Zealand and managed by the Federal Court of Australia.

²²⁴ RJDP, *Family Violence and Youth Justice Project Workshop Toolkit - Additional Documentation* (available at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>).

²²⁵ Supreme Court and Court of Common Pleas of the Judiciary, The Office of the Attorney General, Bureau of Public Safety (Police), Pacific Prevention of Domestic Violence Programme (PPDVP), Palau Bar Association, Behavioural Health, Community Guidance Centre, Palau Council of Chiefs, EKEI Women Organization, Milad 'I Dil Women's Organization, House of Delegates Legal Counsel, Public Defender, Palau National Olympic Committee, Probation Office, Palau Community College Adult high School / Talent Search, Victims of Crime Assistance (VOCA), Coordinator - United Nations Joint Presence, Palau Evangelical Church.

²²⁶ Family/Domestic Violence in Palau, *Memorandum of understanding*, 25 July 2012, RJDP Workshop, pages A-27 - A-30 (available at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/RJDP-Family-Violence-Youth-Justice-Toolkit-AD.pdf>).

DRIVERS OF REFORM

The New Penal Code

The main driver behind the wholesale reform of Palau's criminal law and enactment of the New Penal Code in 2014 appears to have been Palau's common desire for modernisation. This was reflected in the support the New Penal Code received from every branch of the state. As with the FPA, the influence of the international community and the desire to meet international standards were key contributory factors.

Political will to modernise the Old Penal Code

The reform of the Old Penal Code was primarily driven by the broad political desire to modernise Palau's criminal law to ensure that it met the needs of society and addressed contemporary criminal risks. As outlined in the previous chapter, many criminal provisions in the PNC reflected the laws contained in the outdated TT Code and only piecemeal changes had been introduced to the criminal laws since the 1960s.²²⁷

There appears to have been a general agreement at all levels – executive, legislative and judicial – that a revision was needed due to the Old Penal Code's antiquated and inadequate provisions and language.

As you know, the Republic's penal code has been outdated for many years and this bill will modernize the penal code by implementing a variation of the Model Penal Code promulgated by the American Law Institute.

H.E. Thomas Remengesau Jr., President of the Republic of Palau,
Signing statement of House Bill No. 9-20-2, 24 April 2014

At the executive level, it was reported that one of the ambitions of the new government²²⁸ was to adopt a modern penal code.²²⁹

On the legislative side, as early as 2012, the House Committee on Judiciary and Government Affairs ('JGA') described the Old Penal Code as "*inadequate in addressing today's sophisticated criminal element.*"²³⁰ It has also been described as impractical "*for the modern times.*"²³¹ For instance, it did not address computer-based crimes, nor comprehensively criminalise the trafficking of people.²³² In addition, the Old Penal Code was incompatible with various other new statutes such as the Money Laundering Act



Revision of criminal laws here is long overdue.

Ms. Aurea Gerundio-Dizon,
Pacific Islands Reports,
25 September 2009

²²⁷ HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

²²⁸ President Remengesau was re-elected in November 2012.

²²⁹ HDT interview with Aaron Esty, former Legal Counsel in House of Senate, conducted on 18 February 2019.

²³⁰ Aurea Gerundio-Dizon, *Palau Lawmakers Call For Revision Of Criminal Laws*, *Ibid.*, n. 141.

²³¹ HDT interview with Aaron Esty, *Ibid.*, n. 229.

²³² Aurea Gerundio-Dizon, *Palau Lawmakers Call For Revision Of Criminal Laws*, *Ibid.*, n. 141.

2001,²³³ and penalties for some crimes like drug trafficking were viewed as not having the desired deterrent effect.²³⁴ It is therefore not surprising that there was wide support for the New Penal Code in the OEK. The bill was introduced in the House of Delegates by seven Delegates: Lucio Ngiraiwet, Noah Kemesong, Lee Otobed, Marhence Madrangchar, Marino Oiterong Ngemaes, Yutaka Gibbons Jr. and Masasinge Arurang²³⁵ and passed within 12 months.

Influence of the International Community

As outlined above, the international community and international standards have been and continue to play an important role and influence in Palau. In addition, there appears to be a strong desire politically for Palau to be viewed as a modern and progressive state in the eyes of the international community.²³⁶

Having been identified as a Tier 2 nation by the United States for the past two years, we must do what is necessary to improve our response in the eyes of the international community.

**H.E. Thomas Remengesau Jr., President of the Republic of Palau,
State of the Republic Address, 16 April 2015**

This aspiration, combined with the fact that foreign aid and tourism are important aspects of Palau's economy, was a further driving force behind Palau's legislative changes and particularly its reform of its criminal law. Accepting recommendations and adhering to international standards were further ways for Palau to present itself as a modern, compliant, and secure state, governed by the rule of law.²³⁷ The desire to be at the forefront of international best practice and compliance, particularly with Palau's criminal laws, was highlighted by the President in his signing statement for the Penal Code.²³⁸

By embracing the best international practices in combating money laundering we are doing our part to ensure that Palau is a responsible member of the international community.

**H.E. Thomas Remengesau Jr., President of the Republic of Palau,
Signing statement House Bill No. 9-20-2, 24 April 2014**

²³³ HDT interview with Ron Ledgerwood, *Ibid.*, n. 67; RPPL No. 6-4, To amend Title 17 of the Palau National Code by the addition of Chapter 36 to be called the Money Laundering and Proceeds of Crime Act of 2001 which will establish the economic crime of money laundering as a criminal offense under the national law; to enable the Republic to identify, trace, freeze, seize, and confiscate the proceeds of serious crime and property used in the commission of a serious crime; to require financial institutions and cash dealers to establish procedures and to take prudential measures to prevent money laundering; and for other purposes, adopted on 8 June 2001 and signed into law on 19 June 2001 (available at: <https://palaulegal.org/rppls-2/rppls-6th-oek/6-1-to-6-9/rppl-no-6-4/>).

²³⁴ *Ibid.*

²³⁵ Peter Erick L. Magbanua, *Bill to amend to the Penal Code passes 3rd reading in HOD*, *Island Times*. A copy can be found at section 3.a of the Annex.

²³⁶ According to a local observer.

²³⁷ According to a local observer.

²³⁸ President, Signing Statement – House Bill No. 9-20-2, HD1, SD6, CD1, PD1, *To update criminal offenses contained in title 17 of the PNC*, 24 April 2014, No. 14-601. A copy can be found at 1.c of the Annex.

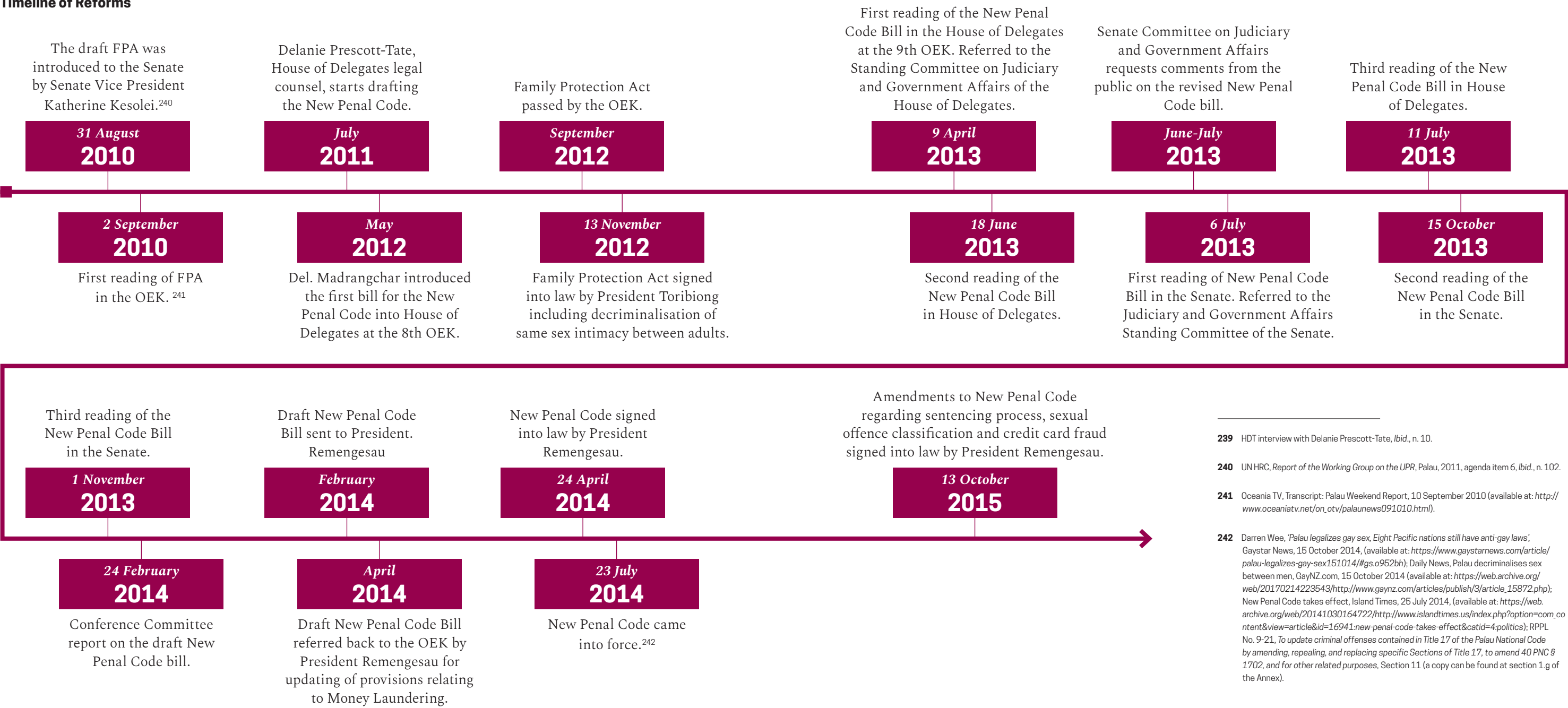


CONSULTATION, DRAFTING AND PASSAGE OF REFORM

CONSULTATION, DRAFTING
AND PASSAGE OF REFORM

The FPA and the New Penal Code were reformed through two essentially parallel yet complementary legislative processes that coincided and were mutually reinforcing. The initiative and impetus for the reforms, while stemming from different and similar sources, ran side by side to a large extent, such that the two pieces of legislation were enacted within two years of one another (the New Penal Code taking a little longer to come to fruition).

Timeline of Reforms



The legislative process for the two Acts were mutually supportive. On the one hand, the later drafts of the FPA evolved to incorporate the sexual offences provisions that had been drafted as part of the original penal code bill in 2012. On the other hand, with the overhaul of the criminal law two years later in 2014, the New Penal Code codified the changes made by the FPA.

²³⁹ HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

²⁴⁰ UN HRC, *Report of the Working Group on the UPR*, Palau, 2011, agenda item 6, *Ibid.*, n. 102.

²⁴¹ Oceania TV, Transcript: Palau Weekend Report, 10 September 2010 (available at: http://www.oceaniatv.net/on_otv/palaunews091010.html).

²⁴² Darren Wee, 'Palau legalizes gay sex, Eight Pacific nations still have anti-gay laws', Gaystar News, 15 October 2014, (available at: <https://www.gaystarnews.com/article/palau-legalizes-gay-sex-151014/#gs.o952bh>); Daily News, Palau decriminalises sex between men, GayNZ.com, 15 October 2014 (available at: https://web.archive.org/web/20170214223543/http://www.gaynz.com/articles/publish/3/article_15872.php); New Penal Code takes effect, Island Times, 25 July 2014, (available at: https://web.archive.org/web/20141030164722/http://www.islandtimes.us/index.php?option=com_content&view=article&id=16941:new-penal-code-takes-effect&catid=4:politics); RPPL No. 9-21, To update criminal offenses contained in Title 17 of the Palau National Code by amending, repealing, and replacing specific Sections of Title 17, to amend 40 PNC § 1702, and for other related purposes, Section 11 (a copy can be found at section 1.g of the Annex).

CONSULTATION, DRAFTING AND PASSAGE OF REFORM

Overview of the Parliamentary Process

The Constitution sets out that the OEK must enact law by way of a bill. Each House has its own procedure, which involves three readings and the ability to pass a bill (at the stage of second reading) to a Standing²⁴³ or specially formulated Parliamentary Committee. Conference Committees may also be established, comprising members of both the Senate and the House of Delegates. All bills must be adopted by a majority of the members of each House present on three separate readings, each reading to be held on a separate day.²⁴⁴

Each committee can examine evidence and summon witnesses, and all House of Delegates committees must hold a public hearing within 60 days of the date upon which the bill is assigned to the committee. Committee meetings are open to the public.

Once a bill is passed by the Senate and House of Delegates on a third and final reading, it is transmitted to the President who may sign the bill into law, recommend amendments or veto it.²⁴⁵

If the bill is refused by the President, it must be referred back to the committee which originally considered it to make a recommendation as to whether it should be repassed. In order for the bill to be repassed, it must be reconsidered by each House and approved by two thirds of the members of the House of Delegates. The bill is then returned to the President, who cannot make a further referral or veto.

According to counsel to the President, new legislative bills are usually submitted to the OEK by the Palau Bar Association with support from the judiciary. The Ministry of Justice, the judiciary and the Palau Bar Association are also often involved at the committee stage, during the second reading of the bill.²⁴⁶

Drafting

Family Protection Act

According to observers, Senator Kesolei commissioned the original draft of the FPA, instructing Senate legal counsel to produce a bill as well as personally contributing to the drafting.²⁴⁷ According to social media reports, Mechesil Belau also reviewed early drafts of the FPA,²⁴⁸ before it was introduced to the Senate by Senator Kesolei in 2010. The FPA was substantially amended during the course of its progress through the House

²⁴³ The following Standing Committees were established by the Rules of Procedure for the House of Delegates: Judiciary & Governmental Affairs; Health and Education; Resources and Development; Ways & Means; Foreign Affairs; Tourism, Youth and Social Affairs; Maritime and Fisheries; Capital Improvement Projects; Commerce, Banking, Insurance and Investment.

²⁴⁴ Constitution, Article IX, Section 14. A copy can be found at section 1.a of the Annex.

²⁴⁵ Constitution, Article IX, Section 15. A copy can be found at section 1.a of the Annex.

²⁴⁶ HDT interview with Larry Goddard, Counsel to the President, conducted on 15 March 2019.

²⁴⁷ 33rd Guam Legislature, Resolution No. 233-33, *ibid.*, n. 166; HDT interview with Delanie Prescott-Tate, *ibid.*, n. 10.

²⁴⁸ Pacific Islands Forum Secretariat, Facebook post, *ibid.*, n. 154.

of Delegates, with all revisions being accepted by the Senate.²⁴⁹ As the draft bill for the New Penal Code was also in progress at the same time, the draft provisions on sexual offences and domestic violence contained in the draft penal code bill were incorporated wholesale into the FPA during the passage of the FPA through the House of Delegates. The revised FPA provided greater protection for victims of domestic abuse and sexual offences and also repealed various discriminatory provisions, such as the criminalisation of adultery and private consensual same-sex sexual acts between adults.²⁵⁰

New Penal Code

Work on the wholesale reform of the PNC and Old Penal Code dated back to 2010-11 when legal counsel in the House of Delegates was tasked with drafting a new penal code ('New Penal Code Bill').

At the time of these reforms, Palau's legal community was largely formed of lawyers educated in the USA, who were familiar with US laws and processes.²⁵¹ The New Penal Code was drafted by a US attorney, Ms Delanie Prescott Tate, who had been a member of the Prosecutor's Office in the State of Hawaii for 22 years and took up the role of legal counsel to the House of Delegates in July 2011.

In part due to legal counsel's background but also in recognition of the cultural similarities and familiarities in the legal systems, the New Penal Code was based on the Hawaiian Penal Code (itself based on the US Model Penal Code), while adapting it in accordance with the needs of Palauan society.²⁵² The drafting of the New Penal Code took approximately one year.

Consultation

Family Protection Act

The passing of the FPA through the OEK provided opportunity for debate, meetings and public hearings, however we have found no public information or evidence that a broad public consultation process took place. Local sources have confirmed that the judiciary and Chief Justice were consulted regarding the draft FPA²⁵³ and that there were apparently public hearings on the draft.²⁵⁴ To the extent that there were public meetings to discuss the FPA, it is questionable whether these meetings covered the full extent of the changes being made as part of the FPA, given the lack of clarity and understanding regarding the reforms to the sexual offences laws, which surfaced during the enactment of the New Penal Code in 2014.

²⁴⁹ HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

²⁵⁰ HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

²⁵¹ Aurea Gerundio-Dizon, *Palau Lawmakers Call For Revision Of Criminal Laws*, *Ibid.* n. 141.

²⁵² HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

²⁵³ According to a local observer.

²⁵⁴ HDT interview with Ongerung Kesolei, *Ibid.* n. 43.

CONSULTATION, DRAFTING AND PASSAGE OF REFORM

New Penal Code

Like the passing of the FPA, we have similarly found no evidence or public information about a broad public consultation process taking place with respect to the New Penal Code. A request for public comment was made by the Senate Standing Committee on Judiciary and Governmental affairs ('Standing Committee') in June 2013, with the deadline for comment being set as 3 July 2013.²⁵⁵ The Standing Committee also asked for comments and inputs from stakeholders; as such, the Chief Justice and the Judiciary were given the opportunity to provide comments on the New Penal Code.²⁵⁶ At least one public hearing was held²⁵⁷ but we have not been able to identify any further information on these public meetings and consultation efforts.

Parliamentary Process

Family Protection Act

The draft FPA was introduced to the OEK on 31 August 2010 by Senator Kesolei.²⁵⁸ It received its first reading in September of that year. As described in the Drivers of Reform section above, when the FPA was introduced, representatives of the OEK were very receptive to the changes.²⁵⁹ There was strong support in the Senate and, following amendments to broaden the scope of the FPA in order to include changes to the sexual offences laws that were part of the New Penal Code Bill²⁶⁰ and eliminate some unenforceable provisions,²⁶¹ the House of Delegates was equally supportive.²⁶²

In terms of parliamentary debate, we understand that debates were broadcast on local television in Palauan²⁶³ and that records exist,²⁶⁴ but they do not appear to be readily accessible to the public. According to sources, there was little focus on the broader changes to the sexual offences laws. The focus, at the time, appears to have been solely on the domestic violence provisions within the FPA.

²⁵⁵ Kamo Uchais, *JGA ask public comments on bill*, Palau 2012 (available at: <https://palau2012.wordpress.com/2013/06/15/jga-asks-public-comments-on-bills-tia-belau-6-13-13-posted-by-kamo-uchais/>).

²⁵⁶ HDT interview with Aaron Esty, *Ibid.*, n. 229; Senate Joint Resolution, *Ibid.* n. 148.

²⁵⁷ HDT interview with Aaron Esty, *Ibid.*, n. 229

²⁵⁸ Jose Rodriguez Senase, *Palau Senator, Educator Kathy Kesolei passes away*, *Ibid.*, n. 170; Senate Bill No. 8-1477, SD2, HD1, *To offer protection and create effective remedies to deter acts of family violence, expand and strengthen the ability of police officers to assist family violence victims, enforce the law effectively against family abusers, and establish family violence as a serious crime which will not be excused or tolerated, by bringing to bear strong law enforcement and appropriate legal penalties for acts of family violence and abuse, and for other related purposes*, introduced on 31 August 2010.

²⁵⁹ According to a local observer.

²⁶⁰ For instance, the original version of the FPA still included an exemption for marital rape, and did not repeal sections 2803 and 2805 of the Old Penal Code.

²⁶¹ For instance, the offences of stalking and kidnapping did not include any definitions of the key concepts.

²⁶² HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

²⁶³ HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

²⁶⁴ HDT interview with Aaron Esty, *Ibid.*, n. 229.



RPPL No. 8-51, Section 2, 1 November 2012

The OEK finds and declares that: Family violence, is a serious crime against society; the number of people in Palau who are regularly abused by family members is unacceptably high; a significant number of women who are assaulted

are pregnant; victims of violence comes from all social and economic backgrounds and ethnic groups.....therefore, it is the intent of OEK to ensure the victims of family violence receive the maximum protection under the law.

The revised FPA was subsequently passed in both Houses and swiftly enacted. Subsequent to the readings of the draft FPA in the Senate and House of Delegates, it went before a Conference Committee.²⁶⁵ No further detail has been identified as to the committee that was formed to discuss the FPA or its outcome other than that the FPA was passed by both Houses and submitted to the President, who signed it into law on 13 November 2012 (a copy can be found at section 1.f of the Annex).



"No longer will criminals be able to victimize the people of Palau due to inadequate criminal laws."

RPPL No. 9-21, Section 1,
24 February 2014

New Penal Code

The original draft New Penal Code was introduced to the House of Delegates by Delegate Mdrangchar in May 2012.²⁶⁶ It was co-sponsored by all other Members of the House of Delegates²⁶⁷ and was considered by the House Committee on Judiciary and Governmental Affairs ('House Committee').²⁶⁸

According to an observer, the initial bill "sailed through" the House of Delegates as it was considered to be far more modern and in tune with Palauan society than the provisions of the PNC and Old Penal Code in force at the time.²⁶⁹ The House Committee reported that Palau's revised criminal laws were to be based on the Hawaii Penal Code, which was itself based on the US Model Penal Code. The new offenses to be incorporated included:

"Computer-based crimes, extortion, child exploitation, stalking, specific domestic violence laws, credit card offenses, labor trafficking, and much more".²⁷⁰

The House Committee commented that "revision of criminal laws here is long overdue" and that "[t]his penal code should be familiar to Palau's legal community as the majority of lawyers practicing in Palau have been educated in the US."²⁷¹

²⁶⁵ HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

²⁶⁶ House Bill No. 8-174-21S, HD1, *To update criminal offenses contained in Title 17 of the Palau National Code by amending, repealing, and replacing specific Sections of Title 17, and for other related purposes.*

²⁶⁷ Aurea Gerundio-Dizon, *Palau Lawmakers Call For Revision Of Criminal Laws*, *Ibid.*, n. 141.

²⁶⁸ Committee Members: Del. Marhence Mdrangchar (Chairman) Del. Gibson Kanai (Vice Chairman) Del. Celestine Yangilmau, Del. Secilil Eldebechel, Del. Noah Kemesong, Del. Swenny Ongidobel and Del. Tmewang Rengulbai (members); Aurea Gerundio-Dizon, *Palau Lawmakers Call For Revision Of Criminal Laws*, *Ibid.*, n. 141.

²⁶⁹ HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

²⁷⁰ Aurea Gerundio-Dizon, *Palau Lawmakers Call For Revision Of Criminal Laws*, *Ibid.*, n. 141.

²⁷¹ Aurea Gerundio-Dizon, *Palau Lawmakers Call For Revision Of Criminal Laws*, *Ibid.*, n. 141.

CONSULTATION, DRAFTING AND PASSAGE OF REFORM

The bill then came before the Senate where it stalled and it was not passed during the 8th session of the OEK,²⁷² which ended in early 2013. According to contemporaneous accounts, the reason for the lack of progress was unrelated to the general reforms of the sexual offences laws, which had in any event been incorporated into the FPA.²⁷³ We have not been able to identify specific information regarding the debates or any public meetings that were held during the passage of the bill through the 8th OEK.

9th OEK

In April 2013, the draft New Penal Code Bill was reintroduced to the House of Delegates during the 9th OEK by seven delegates: Lucio Ngiraiwet, Noah Kemesong, Lee Otobed, Marhence Madrangchar, Marino Oiterong Ngemaes, Yutaka Gibbons Jr. and Masasinge Arurang.²⁷⁴

Again, the New Penal Code Bill moved quickly through the House of Delegates and the House Committee and was passed to the Senate.²⁷⁵ The Senate also referred the New Penal Code to its Standing Committee and it was subsequently passed at the third reading on 1 November 2013. As the FPA had incorporated the provisions on sexual offences one year prior, there was already general acceptance of these provisions within the bill during the OEK process.²⁷⁶ Following the appointment of a Conference Committee,²⁷⁷ both Houses adopted the New Penal Code. It was sent to the Attorney General to check the constitutionality of the bill.²⁷⁸

It was then sent to President Remengesau for signing into law on or around 25 February 2014.²⁷⁹ The President referred it back to the OEK in early April 2014 with suggested amendments on provisions relating to money laundering.²⁸⁰

The OEK then resubmitted the New Penal Code to the President, who passed it into law on 24 April 2014.

RPPL NO. ... 9-21

NINTH OLBIL ERA KELULAU

TENTH SPECIAL SESSION

MARCH 2014

HOUSE BILL NO. 9-20-2, HD1, SD6, CD1, PD1

A BILL FOR AN ACT

To update criminal offenses contained in Title 17 of the Palau National Code by amending, repealing, and replacing specific Sections of Title 17, to repeal 2 PNC § 121(e), to amend 40 PNC § 1702, and for other related purposes.

OFFERED BY DELEGATE(S): Marhence Madrangchar, Noah Kemesong

ET AL.

DATE INTRODUCED: April 09, 2013

HOUSE ACTION

FIRST READING: April 9, 2013

REFERRED TO: Judiciary & Governmental Affairs

STANDING COMMITTEE REPORT NO.: 9-13

DATE ADOPTED: June 18, 2013

SECOND READING: June 18, 2013

LEGAL FORMAT: Proper

REVIEW: June 18, 2013

THIRD READING: July 11, 2013 / Feb. 24, 2014

FINAL ACTION: March 18, 2014

SENATE ACTION

FIRST READING: July 16, 2013

REFERRED TO: Judiciary & Governmental Affairs

STANDING COMMITTEE REPORT NO.: 9-20/9-6

DATE ADOPTED: Oct. 15, 2013 / March 27, 2014

SECOND READING: Oct. 15, 2013

LEGAL FORMAT: Proper

REVIEW: October 16, 2013

THIRD READING: November 1, 2013 / March 27, 2014

FINAL ACTION: March 27, 2014

CONFERENCE COMMITTEE ACTION

DATE: February 24, 2014

COMMITTEE REPORT: 9-6

DATE PASSED: February 24, 2014

ACTING HOUSE CLERK: [Signature]

SENATE CLERK: [Signature]

²⁷² HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

²⁷³ HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

²⁷⁴ Island Times, *Bill to amend to the Penal Code passes 3rd reading in HOD*, *Ibid.* n. 235.

²⁷⁵ HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

²⁷⁶ HDT interview with Aaron Esty, *Ibid.*, n. 229.

²⁷⁷ House Bill No. 9-20-2, HD 1, SD6, CD1, PD1, *Bill for an Act to update criminal offenses contained in Title 17 of the Palau National Code by amending, repealing, and replacing specific Sections of Title 17, to repeal 2 PNC § 121(e), to amend 40 PNC § 1702, and for other related purposes*, Cover sheet.

²⁷⁸ HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

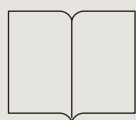
²⁷⁹ HDT interview with Aaron Esty, *Ibid.*, n. 229.

²⁸⁰ HDT interview with Aaron Esty, *Ibid.*, n. 229.

**KEY CHANGES
TO SEXUAL
OFFENCES LAWS
UNDER THE FAMILY
PROTECTION ACT**

KEY CHANGES TO SEXUAL OFFENCES LAWS UNDER THE FAMILY PROTECTION ACT

In 2012, the FPA overhauled Palau's laws on domestic violence and sexual offences. The changes to sexual offences provisions were then codified in the New Penal Code in 2014. A later amendment to the New Penal Code in 2015 did not change the substantive text of the sexual offences provisions; however it did amend the sentencing provisions, placing each crime into a new sentencing category as part of an overhauled structure. Given that the FPA and New Penal Code have the same operative provisions regarding sexual offences, we refer to both texts as the 'Revised Sexual Offences Laws'.



Joint Submission of the UN Country Team for Palau for the UN Compilation Universal Periodic Review of Palau 24th Session, Jan-Feb 2016

The FPA provides for a broad definition of domestic violence, makes protection orders accessible and highlights the need for the establishment and coordination between services for survivors of violence. More specifically, the Act expands

on and strengthens the ability of police officers to assist family violence victims and outlines legal penalties for acts of family violence and abuse.

The modernisation of the Revised Sexual Offences Laws has gone some way towards conforming Palau's legal framework for sexual offences to international good practice. Unlike the Old Penal Code, the Revised Sexual Offences Laws:

- use mostly gender-neutral language,
- some discriminatory provisions have been repealed, such as the provision criminalising consensual same-sex sexual relations and the marital rape exemption, and
- the scope of offences, such as the offence of rape, have been expanded.²⁸¹

There is now a more comprehensive framework of graded offences with clearer statutory definitions for the various constitutive elements. However, some important limitations and deficiencies remain. Most notably, the spousal exemption for certain child sexual offences (a hangover from the previous law that has resulted in conflicting provisions) and the continued link between incest and clan custom endure.

Rape and Sexual Assaults

Sections 1602 to 1605 of the New Penal Code (covering sexual assault in the first, second, third and fourth degree, respectively) set out the law on rape and a range of other sexual assaults.²⁸²

²⁸¹ The term "rape" is not used in either the FPA or the New Penal Code – instead there are graded offences of sexual assault in the first, second, third and fourth degree.

²⁸² Sections 2802 to 2805 of the FPA.

Penetrative Sexual Offences - Rape

The more commonly termed offence of *rape* (meaning offences involving sexual penetration) is encompassed within the Revised Sexual Offences Laws under one of the multiple sexual assault offences, in particular sexual assault in the first degree, second degree or third degree. There is no stand-alone crime of rape under the New Penal Code. The Revised Sexual Offences Laws also criminalises statutory rape, i.e. consensual sexual intercourse with a minor.

Being based on the US Model Penal Code, aggravating factors are accounted for in the varying “degrees” of sexual assault that can be charged and the corresponding punishments available, unlike in other common law jurisdictions where these factors are considered at sentencing. Punishment and the applicable degree of sexual assault charged depend on the severity of the crime, the issue of consent and intent of the perpetrator.

Section 1603 of the New Penal Code (and 2802 of the FPA) provides for the offence of sexual assault in the first degree which is a Category A felony punishable by up to 25 years’ imprisonment or a \$50,000 fine or both. Sexual assault in the first degree is defined as follows:

- (1) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;*
- (2) The person knowingly engages in sexual penetration with another person who is less than 15 years old;*
- (3) The person knowingly engages in sexual penetration with a person who is at least 15 years old but less than seventeen years old; provided that:*
 - (a) The person is not less than five years older than the minor; and*
 - (b) The person is not legally married to the minor.*
- (4) The person knowingly subjects to sexual penetration another person who is mentally defective.*
- (5) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without that person’s consent.*

Section 1604 of the New Penal Code provides for the offence of sexual assault in the second degree which is a Category B felony punishable by up to 10 years’ imprisonment or a \$25,000 fine or both. Sexual assault in the second degree is defined as follows:

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(1) The person knowingly subjects another person to an act of sexual penetration by compulsion;

(2) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless; or

Section 1605 of the New Penal code sets out the offence of sexual assault in the third degree which is a Category C felony punishable by up to five years' imprisonment or a \$10,000 fine or both. Sexual assault in the third degree is constituted, in particular when "[t]he person recklessly subjects another person to an act of sexual penetration by compulsion".²⁸³

Sexual Penetration

"Sexual penetration" is defined in the New Penal Code as meaning:²⁸⁴

(1) Vaginal intercourse, anal intercourse, fellatio, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required. As used in this definition, "genital opening" includes the anterior surface of the vulva or labia majora; or

(2) Cunnilingus or anilingus, whether or not actual penetration has occurred. [...]

Accordingly, the definition is gender neutral and can be applied to offences involving individuals of the same sex or opposite sex.

Intent

The New Penal Code defines the following types of intent:

"Knowingly" as follows:

(1) A person acts knowingly with respect to his or her conduct when he or she is aware that his or her conduct is of that nature.

(2) A person acts knowingly with respect to attendant circumstances when he or she is aware that such circumstances exist.

(3) A person acts knowingly with respect to a result of his or her conduct when he or she is aware that it is practically certain that his or her conduct will cause such a result.

"Recklessly" as follows:

(1) A person acts recklessly with respect to his or her conduct when he or she consciously disregards a substantial and unjustifiable risk that the person's conduct is of the specified nature.

²⁸³ Section 1605 of the New Penal Code.

²⁸⁴ Section 1201(r) of the New Penal Code.

(2) A person acts recklessly with respect to attendant circumstances when he or she consciously disregards a substantial and unjustifiable risk that such circumstances exist.

(3) A person acts recklessly with respect to a result of his or her conduct when he or she consciously disregards a substantial and unjustifiable risk that his or her conduct will cause such a result.

(4) A risk is substantial and unjustifiable within the meaning of this section if, considering the nature and purpose of the person's conduct and the circumstances known to him or her, the disregard of the risk involves a gross deviation from the standard of conduct that a law-abiding person would observe in the same situation.

This difference is relevant to a decision to charge an offender with sexual assault in the second or third degree - and accordingly whether the maximum penalty is five or 10 years.

Compulsion

The sexual assault offences are based on the need to prove “**Strong Compulsion**” or “**Compulsion**”, which are defined as follows:

“**Strong Compulsion**” means the use or attempt to overcome a person with:

- A threat, express or implied, that places a person in fear of bodily injury to the individual or another person or in fear that the person or another person will be kidnapped; or
- A dangerous instrument; or
- Physical force.²⁸⁵

“**Compulsion**” means the absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss.²⁸⁶

The impact of this distinction is that where there is no force or threat of force, a lesser penalty of five or 10 years’ imprisonment will be applied to any offender upon conviction instead of the greater 25 years’ imprisonment for Category A felonies such as sexual assault in the first degree.

Consent

There is no clear definition of “consent” being freely and positively given. However, the New Penal Code does set out circumstances in which consent is deemed ineffective:

²⁸⁵ Section 1201(s) of the New Penal Code.

²⁸⁶ Section 1201(b) of the New Penal Code.

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(a) It is given by a person who is legally incompetent to authorise the conduct alleged; or

(b) It is given by a person who by reason of youth, mental disease, disorder, or defect, or intoxication is manifestly unable or known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct alleged; or

(c) It is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or

(d) It is induced by force, duress or deception.²⁸⁷

Furthermore, sexual penetration or contact with a minor is an offence in itself, irrespective of whether the minor consented,²⁸⁸ as the minor is viewed as a vulnerable individual incapable of consenting to sexual activities.

The Revised Sexual Offences Laws also repealed the spousal exemption that previously existed for marital rape. However, under the new framework, a “Romeo & Juliet” type exemption was inserted for sexual penetration and sexual contact with a minor aged between 15 and 17 years old. The exemption prevents a finding of sexual assault in the first and the third degrees where there is five years or less between the couple, the couple is married (or is co-habiting)²⁸⁹ and one of the parties in the couple is aged between 15 and 17 years (a ‘Romeo & Juliet Couple’).²⁹⁰ However, the exemption would not apply where strong compulsion or compulsion was used to compel sexual penetration or contact between the Romeo & Juliet Couple, as this would still be captured under one of the sexual assault provisions. As per the above, the definition of marriage only applies to heterosexual couples and accordingly no such exemption exists for the LGBT community.

There appears to be a further lacuna in the law for Romeo and Juliet Couples depending on the interpretation of “a person who is manifestly unable to consent by reason of youth”. If there is deemed to be an absence of consent in such circumstances, an offence under sexual assault in the second degree may be committed.

Non-Penetrative Sexual Offences

Certain types of non-penetrative sexual assaults are criminalised under sections 1604 and 1605 of the New Penal Code.

Sexual contact is a sexual assault in the third degree and punishable by up to five years’ imprisonment in the following circumstances:

²⁸⁷ Section 234 of the New Penal Code.

²⁸⁸ Sexual assault in the first and third degree, respectively.

²⁸⁹ Section 1601(g) of the New Penal Code.

²⁹⁰ Sections 1603 and 1605 of the New Penal Code

(2) The person knowingly subjects to sexual contact another person who is less than fifteen years old or causes such a person to have sexual contact with the person;

(3) The person knowingly engages in sexual contact with a person who is at least fifteen years old but less than seventeen years old or causes the minor to have sexual contact with the person; provided that:

(A) The person is not less than five years older than the minor; and

(B) The person is not legally married to the minor;

(4) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;

Outside of these circumstances, sexual contact would constitute a sexual assault in the fourth degree (punishable by up to one year imprisonment or a fine of up to \$1,000 or both) in case of compulsion. Section 1605 of the New Penal Code, fourth degree sexual assaults, also covers the following situations:

(2) The person knowingly exposes the person's genitals to another person under circumstances in which the actor's conduct is likely to alarm the other person or put the other person in fear of bodily injury; or

(3) The person knowingly trespasses on property for the purpose of subjecting another person to surreptitious surveillance for the sexual gratification of the actor.

The definition of “sexual contact” includes sexual conduct comprising conduct falling short of sexual penetration, to include:

*“any touching [...] of the sexual or other intimate parts of a **person not married to the actor**, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.”²⁹¹*

“Married” includes people legally married or solemnised in accordance with recognised custom, and a male and female living together as husband and wife regardless of their legal status, but does not include spouses living apart.

“Compulsion” is defined in the same way as for penetrative offence (see previous section).

²⁹¹ Section 1201(q) of the New Penal Code.

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Accordingly, it appears that, at least in relation to sexual assault falling short of penetration (i.e. sexual contact), there remains an exemption for sexual assault between actual or de facto married heterosexual couples. The language is otherwise clear and gender neutral.

As outlined above on penetrative offences, consent is not a constituent part of the offence against certain individuals – being children under the age of 15 and those who are mentally defective, incapacitated or physically helpless. Non-penetrative offences involving this category of victims are deemed more serious and therefore carry a higher penalty of five years imprisonment rather than the one year imprisonment for a sexual assault of the fourth degree. The language used to describe those with mental disabilities or impairments has been improved to some extent, but the use of terms such as “mentally defective” remains derogatory and discriminatory.

Child Sexual Offences

Child sexual offences are generally covered in the various sexual assault provisions (including an offence of *causing* sexual assault to a minor) – where offences involve the perpetrator *knowingly* engaging in sexual penetration with or subjecting to sexual conduct a victim under the age of 17.

Section 1607 of the New Penal Code²⁹² provides for a specific offence of Continuous Sexual Assault of a minor under the age of 15, punishable by up to 25 years’ imprisonment or a fine of up to \$50,000 or both:

*(a) A person commits the offense of **continuous sexual assault of a minor under the age of fifteen years if the person:***

(1) Either resides in the same home with a minor under the age of fifteen years or has recurring access to the minor; and

*(2) Engages in three or more acts of **sexual penetration or sexual contact** with the minor over a period of time, while the minor is under the age of fifteen years.*

As outlined in the Key Sexual Offences Provisions section above, similar limitations were also contained in the Old Penal Code. This section however includes a general spousal exemption, not limited to Romeo & Juliet Couples. The effect of the spousal exemption under section 608 of Title 21 is however rendered largely redundant in light of the wider amendments made by the Revised Sexual Offences Laws, specifically Sections 1603, 1604, 1605 and 1607, which would capture non-consensual sexual penetration or contact with a minor. Nevertheless, there remains an unresolved conflict between these provisions.

²⁹² Section 2806 of the FPA.

Incest

The offence of incest is contained within section 1602²⁹³ of the New Penal Code and punishable by up to 25 years' imprisonment or a fine of up to \$50,000 or both:

- (a) A person commits the offense of incest if the person commits an act of sexual penetration with another who is within the degrees of consanguinity or affinity within which marriage is prohibited by law or custom.*
- (b) Incest is a strict liability offense.*

Although the terminology related to sexual penetration is gender neutral, the offence is limited by the provision which prohibits committing an offence with another “who is within the degrees of consanguinity or affinity within which marriage is prohibited by law or custom”. The definition of incest thus continues to depend on custom which differs from clan to clan. The provision also fails to explicitly account for modern family situations, such as fostering, adoption and remarriages. As outlined in the Key Sexual Offences Provisions section above, a similar limitation was also contained in the Old Penal Code. In addition, sexual conduct falling short of penetration cannot be the subject of a charge of incest.

Rules of Evidence and Procedure

The Revised Sexual Offences Laws brought about certain changes to the procedural rules relating to Palau's criminal laws. Most importantly, domestic abuse cases can be pursued by the authorities even if the victim drops the charges.²⁹⁴ This provided additional protection to victims and specifically to vulnerable family members.

Moreover, the New Penal Code amended statutory limitations for sexual abuse cases. Section 107 of the New Penal Code states that a prosecution can be brought for any of the sexual assault provisions between two to six years from the date of the offence (depending on the degree of the assault) and that the limitation period does not start running until the victim reaches 18 years of age or dies.²⁹⁵

It must be noted that under section 607 of Title 21 of the PNC, which was not amended by the Revised Sexual Offences Laws, the statutory limitation is three years and is suspended until the victim reaches 16 years.²⁹⁶

Although the statutory limitations under the new framework provide better protection for victims that are minors, they still do not meet the level recommended by best practices, i.e. no time limit for prosecution of child sexual abuse cases. The recommendation

²⁹³ Section 2801 of the FPA.

²⁹⁴ Section 808 of the FPA.

²⁹⁵ Sections 107(b.2-5) and 107(f.3) of the New Penal Code.

²⁹⁶ Section 607 of Title 21.

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is based on the view that victims, especially when abused as a child, need time to come to term with what has happened to them and report such a crime.²⁹⁷

The Revised Sexual Offences Laws do not introduce any other rules of procedure or evidence specific to child sexual abuse and, as a consequence, are dealt with under the general framework of Palau criminal procedure, including the rules of evidence for the courts of the Republic of Palau ('Rules of Evidence')²⁹⁸ and the rules of criminal procedure for the courts of the Republic of Palau ('Rules of Criminal Procedure') promulgated by the Supreme Court,²⁹⁹ as well as other sections of the PNC. In a number of respects, these procedural rules do not conform to contemporary rules of best practice.

For example, best practices require that consideration is given to facilitate the giving of evidence by the victim in order to ensure that the individual feels safe. This could include permitting giving of evidence via video link or the provision of a curtain or shield or out of the defendant's presence. The identity of the victim should be protected from reporting. Palau's procedural framework provides for such rules in the context of sexual abuse of children: for instance, out of court testimony or video testimony of a child below 12 years old is admissible,³⁰⁰ and the identity of child victims and witnesses are confidential in all documents filed with the court or published.³⁰¹ However, there are reports that these rules are not applied in a meaningful way. Notably, the 2017 UN report on Palau's adherence to the CRC states:

*"A main finding was that there were limited legislative provisions for child-friendly investigative processes and court procedures for child victims/survivors or for young offenders. In general, the necessary discretions exist in law, but are undefined, and unsupported by current policy/protocols/court directions."*³⁰²

Furthermore, there does not seem to be equivalent protection for sexual abuse victims outside of these specific provisions.

²⁹⁷ UK Home Secretary Office, *Setting the boundaries, reforming the law on sex offences*, July 2000, paras. 3.2.6 and 3.6.6 (available at: <https://webarchive.nationalarchives.gov.uk/%2B/-/www.homeoffice.gov.uk/documents/vol1main.pdf%3Fview%3DBinary>).

²⁹⁸ Palau Supreme Court, *Rules of evidence for the Courts of the Republic of Palau*, promulgated on 1 February 2014, (available at: <http://www.palausupremecourt.net/upload/P1408/15814100048282.pdf>). The Rules of Evidence were amended in 2014 mainly to include provisions relating to jury trials.

²⁹⁹ Palau Supreme Court, *Rules of criminal procedure for the Court of the Republic of Palau*, promulgated on 1 February 2014 (available at: <http://www.palausupremecourt.net/upload/P1408/15814100653838.pdf>). The Rules of have been amended in 2014 mainly to include provisions relating to jury trials.

³⁰⁰ Section 606 of Title 21.

³⁰¹ Section 609 of Title 21.

³⁰² CRC Committee, *Consideration of reports 2017*, *Ibid.*, n. 33.

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Palau Supreme Court in Koror, Palau Island.

The post-reform environment has presented different challenges for both the FPA and the New Penal Code. While ultimately the FPA made great strides in creating better legal protections for certain sections of Palauan society, the implementation of that legislation failed to promote the broader legislative reforms that were part and parcel of the FPA. The implementation of the New Penal Code merely served to underline this shortcoming, when there was also a failure to adequately and publicly address the sexual offence reforms brought about by the FPA and push for further changes. As such, the post-reform implementation of both legislative Acts can be viewed as a missed opportunity in some respects. Whether progress made in addressing domestic abuse could still serve as a catalyst for further latent reform remains to be seen.

Implementation

Implementation is a tale of two stories. The initial programme of implementation for the FPA got off to a very slow start but has so far seemingly proved relatively effective and successful, at least in terms of providing greater protection and improving access to justice for domestic violence victims.

As for the New Penal Code, some initial training was undertaken within the criminal justice system, but these appear to have been focused on new crimes such as the cyber law, trafficking and money laundering offences.³⁰³ There was no evidence identified, or publicly available information, to suggest that a comprehensive programme of implementation in relation to the Revised Sexual Offences Laws

303 According to a local observer.

was rolled out following the enactment of the FPA or the New Penal Code. This is unfortunate for two key reasons. First, the implementation work undertaken as part of operationalising the FPA does not appear to have focused on the reformed sexual offences laws. Second, there was therefore a real opportunity and need to address this aspect as a part of implementing the New Penal Code. However, it appears that due to a general lack of understanding and awareness of all the changes brought in by the FPA and the New Penal Code, this second chance for a comprehensive implementation programme relating to sexual offences was not taken.

FPA Implementation Programme

In 2012, public consultations and media engagement addressing the FPA were minimal. As a consequence, there appears to have been a general lack of awareness of the legal changes achieved by the FPA within the general populace of Palau. Because of this, initial engagement with the FPA was limited, despite the significant and substantial legal changes that the new framework had established.³⁰⁴

It was not until 2014 that a comprehensive implementation programme was developed and rolled out. A number of key stakeholders, namely Senator Uduch Sengebau-Senior, Minister Baklai Temengil-Chilton (Ministry of Community & Cultural Affairs) and Senior Judge Rudimch, among others, recognised the potential of the new framework and the need to have it operationalised. These individuals remained at the forefront of instigating this process of implementation.³⁰⁵

A particular milestone in the implementation of the FPA was the Memorandum of Understanding Concerning the FPA ('MoU')³⁰⁶ which was signed in July 2014 by the Ministry of Community and Cultural Affairs, the Office of the Attorney General, the Bureau of Public Safety ('BPS'), the Ministry of Health and the Palau Judiciary. The MoU was put in place in order to coordinate efforts to successfully implement the FPA and create greater inter-agency cooperation. The MoU outlined the responsibilities of each of the above agencies. The Office of the Attorney General, for example, was responsible for providing training on the FPA to law enforcement and any other agencies/ministries upon request. The BPS was tasked with helping to educate the public about domestic abuse in order to address the culture of under-reporting.

Adding to the momentum created throughout 2014, the government of Palau committed to help educate the public about domestic abuse, allocating a budget

304 HDT interviews with Aaron Esty, *Ibid.*, n. 229; Bernadette Carreon, *Ibid.* n. 10 and Larry Goddard, *Ibid.*, n. 246.

305 According to a local observer.

306 Memorandum of Understanding Concerning the Family Protection Act dated 14 July 2014. A copy can be found at section 2.a of the Annex.

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of \$20,000, with the goal of involving multiple governmental bodies in raising awareness and assisting in the implementation of the FPA.³⁰⁷

In conjunction with this implementation programme and the wider collective approach, there was a concerted effort to raise awareness and educate the public about the FPA and broader issues of gender-based violence. Efforts to educate the public, especially women and young people, were conducted within community groups and at schools, whilst handbooks and brochures on the FPA were presented and made available to each partner agency (of the MoU) for general distribution.³⁰⁸

Senator J. Uduch Sengebau-Senior was a vocal and active advocate of the FPA.³⁰⁹ After being elected to the Senate in January 2013, she focused much of her time on disseminating information about the FPA. For example, she engaged with members of the Palau Bar Association and the general public on the issues that women and girls faced with respect to domestic and sexual abuse, and the new remedies available. Senator Senior has continued to speak out about violence against women. In 2017, Senator Senior gave a talk about “*Navigating Change for Gender Equality and the Empowerment of Micronesian Women*” at a conference in the Republic of the Marshall Islands, where she voiced concerns about violence against women in Palau.³¹⁰

Senior Judge Rudimch was another powerful advocate of the FPA and continued to be heavily involved in not only raising awareness about the new legal framework but in implementing the legal changes through her judicial role. In terms of awareness-raising, Senior Judge Rudimch organised two conferences to educate the Palauan police academy and the police force on how to respond to cases involving domestic violence.³¹¹ In her judicial capacity, Senior Judge Rudimch has been actively involved in assisting with initial investigations under the FPA, being notably present at crime scenes, and is known to be available at any time (day or night) for advice or in relation to urgent protection orders. She also provided practical assistance in sourcing temporary housing for victims and used her influence to involve and source resources from other governmental services.³¹²

Broader campaigns and awareness-raising events have also been launched, which have enhanced the specific FPA implementation work that has been undertaken.



Photo by Dr Henrica A.F.M. (Henriette) Jansen / Technical Advisor, Violence against Women, Research and Data, UNFPA Asia and the Pacific Regional Office, Thailand.



Source: Rheelyn Pojas, Senator Senior announces Vice Presidential bid for 2020 elections, *Island Times*, (2019), available at: <http://islandtimes.us/senator-senior-announces-vice-presidential-bid/>.

³⁰⁷ CRC Committee, *Consideration of reports 2017*, *Ibid.*, n. 33.

³⁰⁸ Internet page of Family & Youth Services Bureau, *Republic of Palau Family Violence Prevention and Services Grantees* (available at: <https://www.acf.hhs.gov/fysb/grants/palau-fvpsa>).

³⁰⁹ News report *Palauan Senator encourages women's economic independence - Pacific Women Shaping Pacific Development*, 17 September 2015 (available at: <https://pacificwomen.org/news/palauan-senator-encourages-womens-economic-independence/>).

³¹⁰ *Island Times* press article, *Senator Senior Represents Palau at Micronesian Women's Conference in RMI*, 4 August 2017 (available at: <http://islandtimes.us/senator-senior-to-represent-palau-at-micronesian-womens-conference-in-rmi/>).

³¹¹ According to a local observer.

³¹² *Island Times* press article, *Raising Awareness on Domestic Violence One Group at a Time*, 9 December 2016 (available at: <http://islandtimes.us/raising-awareness-on-domestic-violence-one-group-at-a-time/>).

For example, a significant campaign was launched in November-December 2016, when Palau actively participated in the UNiTE campaign “16 Days of Activism to Eliminate Gender-based Violence”. Presentations or “brown bag sessions” were given to the public about the dynamics of domestic violence in Palau and, in particular, gender-based violence.³¹³ The “brown bag” sessions were held with a range of audiences, including an audience of students attending Palau Community College. The trainers explained that violence is an acquired behaviour rather than an innate trait, and encouraged all participants, and particularly parents, to teach their children and to be proactive in building violence-free communities. Senior Judge Rudimch herself delivered a presentation about domestic violence.³¹⁴

Also, local radio and television networks and, in particular, television network Oceania TV showed public service broadcasts to help raise awareness on ending violence in the community.³¹⁵ The American Embassy of Palau organised and sponsored an event, the “Koror Kolor Run”, with the aim of raising awareness of the Palau campaign to end domestic violence against women and girls and to recognise International Human Rights Day. The run adopted an official colour – orange – with the aim of group identification and unification.³¹⁶



Source: Palau Judiciary: Court Annual Report 2016, 10 Dec – Koror Kolor Run (Conclude the 16 Days of Activism Against All forms of Violence campaign and Human Rights Day), available at: <http://www.palausupremecourt.net/upload/P1408/18320121948686.pdf>

Despite the slow start, the coordinated FPA implementation programme that was developed and rolled out from 2014 appears to have largely operationalised the new legal framework for domestic violence and generated substantially more awareness and understanding about the issues of domestic abuse and gender-based violence.

³¹³ Island Times press article, *Raising Awareness on Domestic Violence One Group at a Time*, *Ibid.*, n. 312.

³¹⁴ Island Times press article, *Raising Awareness on Domestic Violence One Group at a Time*, *Ibid.*, n. 312.

³¹⁵ Island Times press article, *Raising Awareness on Domestic Violence One Group at a Time*, *Ibid.*, n. 312.

³¹⁶ Island Times press article, *Raising Awareness on Domestic Violence One Group at a Time*, *Ibid.*, n. 312.

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However, other than discussions undertaken at the 2015 Women's Conference³¹⁷ (See Public response to the reform section below), we have found no other evidence or publicly available information to suggest that the FPA implementation programme covered or included explicit training and education with respect to the changes made to the sexual offences laws, which were part and parcel of the FPA. The apparent absence of this aspect of the FPA is particularly unfortunate given the prevalence of sexual abuse in Palau.³¹⁸ It was a lost opportunity to realise effective change and integrate a comprehensive institutional response to crime, particularly sexual assaults. Legal reform is only one aspect of a broader reform package that is necessary to effectively respond to sexual assaults and violations.

New Penal Code Implementation

Other than a general announcement made to the public regarding the New Penal Code, we have found no other evidence to suggest that further public awareness campaigns were undertaken.³¹⁹ There also appeared to have been limited reporting by the media on the changes made by the New Penal Code. Any reporting that did arise wrongly focussed on the changes already brought about by the FPA, which the New Penal Code subsequently transposed and codified.³²⁰ This resulted in a general lack of understanding, awareness and some confusion about what legal reforms had been made and when. In particular, the generally accepted view was that the New Penal Code had brought about the wholesale reform of Palau's sexual offences laws, resulting in the decriminalisation of private consensual same-sex sexual acts and adultery, amongst others,³²¹ yet these changes had occurred some two years prior as part of the FPA.

The implementation work on the New Penal Code that did take place, took the form of workplace training sessions. These were largely focused on members of the Attorney General's Office, with individuals giving the training travelling to Palau from countries that were already using a penal code similar to the New Penal Code. Consultants from the UN were also hired to assist with these training efforts.³²² A three-day seminar was organised by the Palau Bar Association.³²³ District court judges, as well as a Federal Public Defender, travelled to Palau from the US to give lectures on the New Penal Code and its implications. Lectures notably highlighted the differences between the Old Penal Code and the New Penal Code. The workshop was attended by judges, lawyers

³¹⁷ According to a local observer.

³¹⁸ Belau Family Study, *Ibid.*, n. 2.

³¹⁹ See, for instance, Peter Erick L. Magbanua, Bill to amend to the Penal Code passes 3rd reading in HOD, *Ibid.* n. 235.

³²⁰ HDT interview with Aaron Esty, *Ibid.*, n. 229.

³²¹ See, for instance, *LGBT Rights in Palau* (available at: <https://www.equaldex.com/region/palau>).

³²² According to a local observer.

³²³ Palau Judiciary, *Court Annual Report 2017*, *Ibid.*, n.35.

and law enforcement officials.³²⁴ The Attorney General's Office also made efforts to educate the police force on the changes to the Old Penal Code.³²⁵

The impact of these training sessions on the attendees is difficult to evaluate. According to some, the police generally continued to operate in line with the Old Penal Code instead of using the new tools at their disposal.³²⁶ As such, the implementation programmes accompanying the New Penal Code are regarded by some as being of limited value, particularly with regard to informing the wider Palauan public of the law concerning sexual offences and domestic abuse.

A comprehensive implementation programme could have addressed these misapprehensions and sensitised and educated the public about the important reforms that had taken place. Such a programme is generally vital if longer-term social change is to be achieved.

Impact of Legislative Reform - Family Protection Act and New Penal Code

Overall, the impact of the FPA has been demonstrably positive, especially in respect of providing greater protection and justice for victims of domestic violence. The upsurge in reports, civil and criminal charges, and cases is testament to that. Anecdotal evidence also points to the FPA as having fostered an environment that has empowered victims to speak out and seek help.³²⁷ Historically, Palau suffered from an endemic problem of under-reporting of violence and abuse (see Enforcement and Impact section in earlier chapters), and this has certainly started to change in the last few years, with an increase in reporting of domestic violence.³²⁸ It is difficult to isolate the factors that have led to this, but undoubtedly the FPA and the implementation of that legislation have been positive contributory forces.



UN HRC, Report of the Working Group on the Universal Periodic Review, Addendum, 21 June 2016, A/HRC/32/11/Add.1, para. 21

[T]he Family Protection Act Committee has been active in the education awareness and the implementation of the new law, [with] more people feeling comfortable in reporting sexual assault and domestic violence.

³²⁴ Palau Judiciary, *Court Annual Report 2017*, *Ibid.*, n.35.

³²⁵ According to a local observer.

³²⁶ HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

³²⁷ According to a local observer.

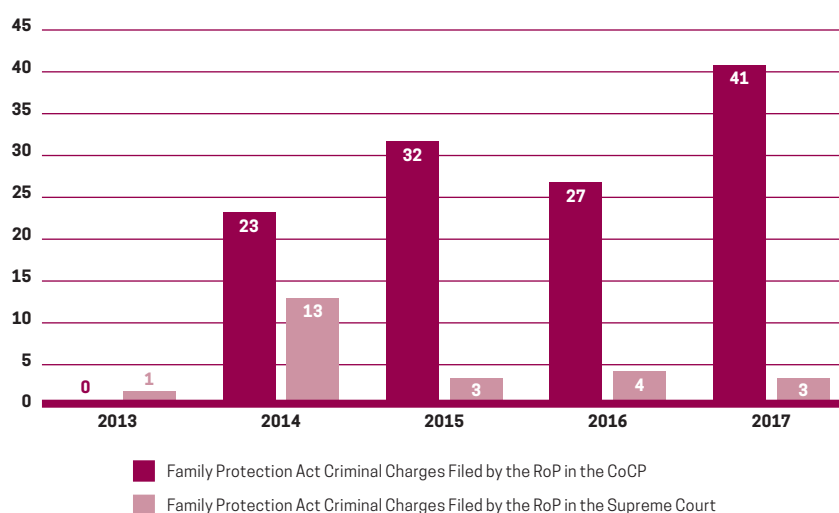
³²⁸ Palau Judiciary, *Court Annual Report 2017*, p.20, *Ibid.*, n.35.

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Importantly, however, the number of reported cases still remains relatively low. The Belau Family Study 2014 found that 8 per cent of Palauan women experience violence each year,³²⁹ yet, the Judiciary received, as of 2017, 44 criminal cases under FPA.³³⁰ As such, underreporting does remain a significant issue. Despite the increase in civil and criminal cases heard by the Palauan judiciary, the positive trends shown below still fall far short of the caseload that the judiciary should be handling, if the underlying violence rates were effectively actioned.

For example, in 2013, only one criminal case based on the FPA was filed, whilst in 2014, 36 charges were initiated.³³¹ From 2014 there has been a steady increase in number of cases filed in both the Trial Division of the Supreme Court and the Court of Common Pleas, with 44 charges being filed in 2017.

Number of Family Protection Act Criminal Charges Filed (By Court)



A similar trend is also apparent in the Ministry of Justice data where there is a clear increase in the number of sexual abuse and assault convictions over time, with a dramatic increase in convictions in 2014. Unfortunately, much of the available data is not disaggregated,³³² so it has been impossible to ascertain whether the domestic violence cases under the FPA included cases of sexual assaults and other sex crimes. Nevertheless, from the criminal statistics available through the Ministry of Justice, there is a clear increase in the number of sexual abuse and assault convictions, with a dramatic increase in convictions in 2014.

³²⁹ Belau Family Study, *Ibid.*, n. 2.

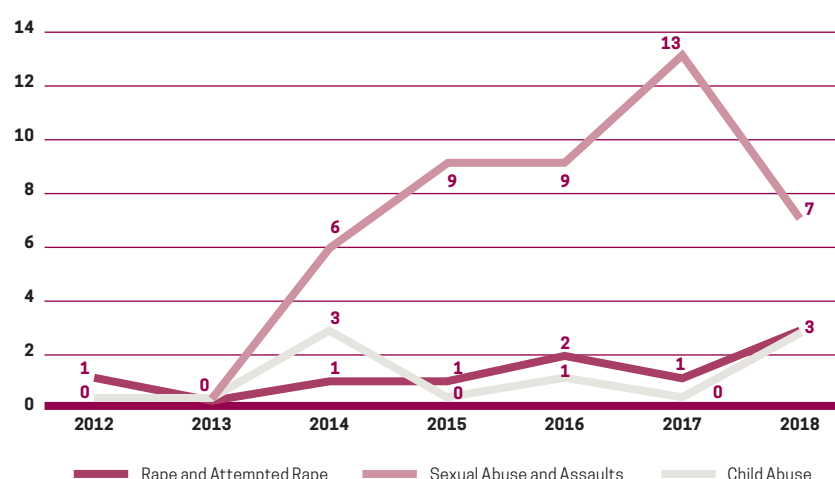
³³⁰ Palau Judiciary, *Court Annual Report 2017*, p.21, *Ibid.*, n.35.

³³¹ Palau Judiciary, *Court Annual Report 2017*, p.21, *Ibid.*, n.35.

³³² See, *Crime and Offenses* (available at: <https://www.palau.gov.pw/executive-branch/ministries/finance/budgetandplanning/crime-and-offenses>).

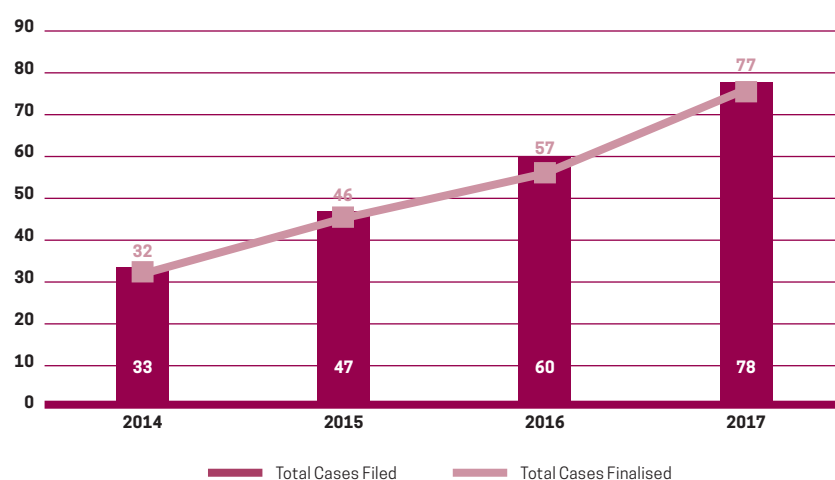
Again, it is difficult to directly attribute these changes to the legal reforms made to the sexual offences laws through the FPA and the New Penal Code, but there has plainly been a positive trend in the reporting and conviction of sexual offences cases within this timeframe.

Ministry of Justice Criminal Convictions



Alongside the increased number of criminal cases filed, the number of successful civil actions, which include temporary (95 per cent average from 2014-2017)³³³ and final (79 per cent average from 2014-2017)³³⁴ restraining/protective orders has continued on an upward trend. This positive change in the number of successful civil and criminal actions may be explained by the improved procedures in place to protect victims.

Civil Cases Filed under the FPA and Finalised



³³³ Palau Judiciary, *Court Annual Report 2017*, p.23, *Ibid.*, n. 35.

³³⁴ Palau Judiciary, *Court Annual Report 2017*, p.24, *Ibid.*, n.35.

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The FPA's main objective was to establish clear procedures for reporting, assessing and intervening in cases of violence and/or abuse and this appears to have been achieved. These structures have allowed the judiciary to take the initiative and ensure serious action against family violence is instituted in Palau.³³⁵

Some observers have also suggested that the FPA, particularly the publicity and awareness-raising activities undertaken as part of the implementation effort, has had a deterrent effect on domestic violence and abuse. A once taboo subject is now very much a "hot topic".³³⁶ Perpetrators are today not only very much more aware of the criminal and civil consequences of their actions but are also cognisant of the community scorn that they may face as a result of their actions.

Public Response to the Reforms

The FPA reforms, by and large, were positively received by the general public, notably with regard to the new protections afforded to women and children. However, as mentioned above, there was significant confusion regarding the reforms to the sexual offences law, which many were only cognisant of when the New Penal Code was enacted. This misinformation extended to international and local media who also reported that the decriminalisation of private consensual same-sex sexual acts, for example, occurred as part of the 2014 reforms of the Old Penal Code, rather than via the enactment of the FPA.³³⁷

This confusion highlights the failure to adequately consult and inform the public of the full scope of the reforms contained within the FPA in 2012, and later as part of the wholesale reform of the Old Penal Code and PNC. This initially led to some members of the public and civil society suggesting that certain changes, such as the decriminalisation of same-sex sexual intimacy and adultery, were covertly made.³³⁸

Such was the discomfort, that a bill was filed in 2014 in an effort to re-enact the repealed provision on same-sex sexual acts.³³⁹ A number of high-ranking women expressed discontent during the subsequent annual Women's Conference in 2015, especially about the repeal of adultery and sodomy provisions.³⁴⁰ However, the President himself intervened and made it clear that there was no support for section 2803 of the Old Penal Code to be re-imposed.³⁴¹ Despite the controversy, and more

³³⁵ L.N. Reklai, Bills aimed at family protection studied. A copy can be found at section 3.b of the Annex.

³³⁶ According to a local observer.

³³⁷ See, for instance, *LGBT Rights in Palau*, *Ibid.*, n. 321; and Patricia Karvelas, *Palau comes latest country to decriminalize homosexuality*, *The Australian*, 15 October 2014 (available at: <https://www.theaustralian.com.au/nation/world/palau-comes-latest-country-to-decriminalise-homosexuality/news-story/bf1d8033ef8669637897392904e42c61>).

³³⁸ HDT interviews with Aaron Esty, *Ibid.*, n. 229.

³³⁹ According to a local observer

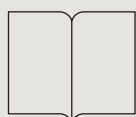
³⁴⁰ According to a local observer

³⁴¹ According to a local observer

positively, Palauan media reported the decriminalisation on same-sex sexual acts as a “step in the right direction in terms of understanding [H]uman [R]ights issues related to LGBTQI.”³⁴²

Public sentiment briefly re-ignited at the first Conference of Pacific Human Rights on Sexual Orientation and Gender Identity hosted by the Kingdom of Tonga in 2015. The conference reportedly sparked a “public uproar”, with, as Palauan media reported, protesters in Palau calling on participants to “go home to your country with your immorality”.³⁴³ Palau was represented at the conference by Amanda Sasao, an LGBT rights advocate and the founder of the LGBTQ-Palau group.³⁴⁴ Some of this furor appears now to have since dissipated,³⁴⁵ but progress on eradicating discrimination and creating greater equality for LGBT people remains slow.

For example, on 23 July 2014, the Senate passed in its first reading Senate Bill No. 9-125 – ‘To punish hate crimes, to allow civil action against the perpetrators of hate crimes’ (the ‘Hate Crimes Bill’), which aimed to punish hate crimes and, more notably, hate crimes on the basis of sexual orientation and gender identity (a copy can be found at section 1.h of the Annex). The overarching message was that individuals should feel safe and not fear being punished for their sexual orientation and gender identity. The bill focused on the fact that the population of Palau is diverse and will continue to grow in diversity in terms of origin, disability and ethnicity, but also in terms of gender and sexual orientation. The Hate Crimes Bill provided for increased sentences for crimes motivated by the actual or perceived sexual orientation or gender identity of the victim. The Hate Crimes Bill was passed in the second reading by the Senate in January 2015 but was not adopted.³⁴⁶ There is some discussion that a similar bill will be reintroduced but this remains to be seen.



Preamble of Senate Bill No. 9-125 (the Hate Crimes Bill)

The Olbiil Era Kelusau finds it important that all individuals in the Republic [of Palau] feel secure in their person and know that they will be accorded the full protection of the law... By enacting this law the Olbiil Era Keluau sends a strong

message to all people living in Palau that they should feel safe to go about their lives without the fear that they will be punished any person for their group identity.

³⁴² Oceania TV News, *Conference on Gays and Lesbian Rights in Tonga Sparks Public Uproar*, May 13th, 2015 (available at: <http://www.oceaniatv.net/2015/05/13/conference-on-gays-and-lesbian-rights-in-tonga-sparks-public-uproar/>)

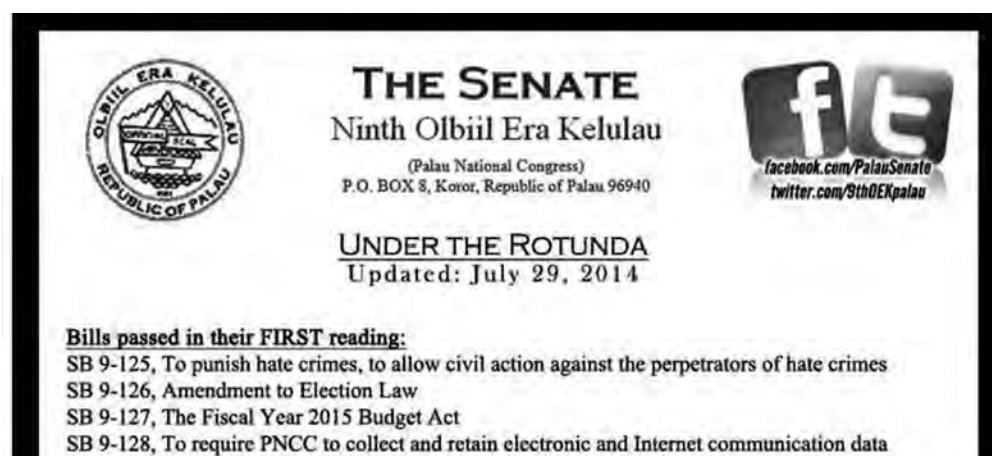
³⁴³ Oceania TV News, *Conference on Gays and Lesbian Rights in Tonga Sparks Public Uproar*, *Ibid.*, n. 342.

³⁴⁴ Oceania TV News, *Conference on Gays and Lesbian Rights in Tonga Sparks Public Uproar*, *Ibid.*, n. 342.

³⁴⁵ Oceania TV News, *Conference on Gays and Lesbian Rights in Tonga Sparks Public Uproar*, *Ibid.*, n. 342.

³⁴⁶ According to a local observer.

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As demonstrated by the failure to pass the Hate Crimes Bill and the confinement of marriage within the Constitution to those of the opposite sex, further legal progress to ensure and protect the rights and equality of LGBT people in Palau has not yet materialised.³⁴⁷ In its 2016 UPR submission, Kaleidoscope Australia Human Rights Foundation – an Australian NGO – urged Palau to ensure that proposed legislation punishing hate crimes on the basis of sexual orientation and/or gender identity be enacted as soon as possible.³⁴⁸ Whilst there was no direct response to the Kaleidoscope recommendations, Palau did respond to UPR recommendations on sexual orientation, gender identity and same-sex marriage.³⁴⁹ It concluded that further work and consultation needed to be undertaken to progress this issue in Palau, and did not commit to change.

More recently and positively, in July 2019, the President expressed his support for a citizens-led initiative aiming to legalise same-sex marriage (see Areas of Ongoing Work section below for more detail).

Areas for Ongoing Work

Although the legislative reforms achieved in Palau are remarkable, and there has been a concerted effort to fully implement the FPA, this work needs to be maintained. Further work is also needed to raise awareness and educate the public on wider sexual offences, as this appears to have been an aspect that has not been tackled directly. Going forward, enhanced data collection and production mechanisms and processes, especially the maintenance of disaggregated data on specific crimes and gender, will also be important in order to monitor the effectiveness of the legal changes that have been made.

³⁴⁷ CRC Committee, *Consideration of reports 2017*, *Ibid.*, n. 33.

³⁴⁸ Kaleidoscope Australia, UPR Submission, *Ibid.*, n. 40.

³⁴⁹ UN HRC, Report of the Working Group on the Universal Periodic Review, Addendum, 21 June 2016, A/HRC/32/11/Add.1, para. 21 (available at: <https://undocs.org/A/HRC/32/11/Add.1>).

Procedural Rules

As far as we have been able to establish, the evidentiary and procedural rules were not reformed at the same time as the substantive law either in respect of the FPA or the New Penal Code, nor were specialised procedural rules developed as part of the FPA.³⁵⁰ As such, Palau, to a large extent, retains antiquated evidentiary rules, based on historic US law.³⁵¹ Whilst these rules have long been modified and amended in the US, they continue to apply in Palau, creating obstacles in the efficient investigation and prosecution of crimes under the New Penal Code and the FPA.³⁵² For example, under Palauan procedural law the strict restriction on producing evidence of prior offending in cases of domestic violence is an example of the hurdles created by outdated evidentiary rules.³⁵³ In cases of domestic violence, where it is necessary to prove a pattern of violence, being unable to raise historic issues clearly creates challenges to successful prosecution and the implementation of protective remedies.³⁵⁴ Whilst this hurdle exists to a lesser extent in other jurisdictions, recent legislative developments in the UK, which allow a person to obtain information on whether their partner has had an abusive or violent past, show that this approach to historic conduct is changing, particularly for victims of domestic abuse.³⁵⁵ The requirement for regular reviews of protection orders in court, combined with the requirement for victims to attend and face their abuser,³⁵⁶ also creates a distressing environment for the victim and likely has a deterrent effect.³⁵⁷ In this respect, applying the general principles and rules of criminal procedure is seemingly unsuitable.

The reform of the New Penal Code, undertaken some two years after the FPA, was a prime opportunity to review the procedural law. Not doing so could be viewed as a missed opportunity to build upon the substantive changes made in the FPA and improve the practical application of laws on domestic abuse and sexual violence. This demonstrates the need to take a holistic and contextual approach to legal reform, ensuring that when specific laws are reformed or enacted, those laws are accompanied by suitable procedural rules.

350 HDT interview with Kena Njoya, attorney of Micronesian Legal Services Corp, conducted on 10 April 2019. The new versions of the Rules of Evidence and Rules of Criminal Procedure promulgated in 2014 were amended mainly to reflect the introduction of trial by jury in Palau and not the updated sexual offences laws.

351 HDT interview with Delanie Prescott-Tate, *Ibid.*, n. 10.

352 HDT interview with Kena Njoya, *Ibid.*, n. 350.

353 Rule 404(b) of the Rules of Evidence, *Ibid.* n. 298: “Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial”.

354 HDT interview with Kena Njoya, *Ibid.*, n. 350.

355 See, *Domestic Violence Disclosure Scheme*, (available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575361/DVDS_guidance_FINAL_v3.pdf).

356 Section 825(b) of Title 21 of the PNC.

357 HDT interview with Kena Njoya, *Ibid.*, n. 350.

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Future Legislative Agenda

Child Protection

In 2016, a Child Protection and Care Bill was put before the Senate.³⁵⁸ The purpose of this bill was to set up a foster family system to ensure that children without a stable or safe family home can be fostered. Foster children are more likely to be victims, or members of households that suffer from domestic and sexual abuse, and as such this bill would have added to the protections already in place regarding domestic and sexual abuse of children. The bill provided for the system to fall under the supervision of the Ministry of Health, but it appears to have not yet been passed.

In 2018, at a meeting of the UN Committee of Experts on the Rights of the Child, the Palauan government confirmed that Palau is prioritising the protection of children and focusing on educating the public about human rights.³⁵⁹ The Minister of Community and Cultural Affairs indicated that, with financial and technical support from international partners, the Palauan government would continue to analyse national laws and further amend them to ensure the protection of children's rights.³⁶⁰ Discussions were also held between the Committee experts and the Minister of Community and Cultural Affairs. Specifically, the potential decriminalisation of abortion in cases of rape and incest was discussed, as well as issues of trafficking of children. We have not been able to establish if further progress has been made on this issue.

Emergency Family Shelter Bill and Counselling

In 2016, Senator Senior introduced the Emergency Family Shelter Bill, which sought to authorise the Ministry of Community and Cultural Affairs to establish an emergency shelter for women and children seeking safety.³⁶¹ A shelter was put in place in 2016.³⁶² As well as the provision of an emergency shelter, it was noted that a domestic violence counsellor is reachable through the Bureau of Public Health.³⁶³

CEDAW

CEDAW has still not been ratified by Palau despite being signed in 2011, amongst other human rights conventions. Palau is thus among a small minority of countries that have not done so, including Iran and Sudan. CEDAW provides an international standard for protecting and promoting women's human rights and is the only international instrument that comprehensively addresses women's rights within political, civil, cultural, economic, and social life. Whilst there have been strong

³⁵⁸ L.N. Reklai, *Bills aimed at family protection studied*, *Ibid.*, n. 335.

³⁵⁹ United Nations Human Rights, OHCHR, *Committee on the Rights of the Child examines Reports of Palau*, 25 January 2018 (available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22609&LangID=E>).

³⁶⁰ United Nations Human Rights, *Committee on the Rights of the Child examines Reports of Palau*, *Ibid.*, n. 359.

³⁶¹ L.N. Reklai, *Bills aimed at family protection studied*, *Ibid.*, n. 335.

³⁶² HDT interview with Ron Ledgerwood, *Ibid.*, n. 67..

³⁶³ US Department of State, *Palau 2017 Human Rights Report* (available at: <https://www.justice.gov/eoir/page/file/1056001/download>).

calls from civil society for the government to refrain from ratifying CEDAW on the basis that it conflicts with Palau's customs and traditions, CEDAW has proved invaluable across the world in opposing the effects of discrimination, which include violence, poverty, lack of legal protections, along with the denial of inheritance, and property rights. The President referred to CEDAW in the 2013 State of the Republic address urging the OEK to take necessary steps to ratify the Convention.³⁶⁴ Ratification of the treaty could thus be a further force for change in Palau.



A Civil Group of Palau – Submission for the UN HRC (UPR Submission) by Palau Think Tank (PTT) of September 21st, 2015

Certain assertions in CEDAW conflict with our customs and traditions... [the government should limit itself to establishing] laws that reflect the value of CEDAW such as to protect women from abuse, to ensure economic equal

opportunities and protection and to establish access to resources on the empowerment of women and their roles in society.



H.E. Thomas Remengesau Jr., President of the Republic of Palau, State of the Republic Address, 30 April 2013

For a matrilineal society that vests significant decision making authority with women, the Republic already has strong women leadership. There is simply no reason that the Republic is not a party to this Convention; in fact, the

Republic should be taking steps to move our strong women leaders to the international stage whenever possible. I look forward to watching the 9th Olbiil Era Kelulau take the action necessary to ratify this Convention.

Same-Sex Marriage

A recent citizens' initiative led by Pearl Marumoto and Rondy Ronny, announced on a Palauan television talk show, has been launched to legalise same-sex marriage in Palau.³⁶⁵ The organisers of the initiative are seeking the support of 25 per cent of registered voters in Palau, as required by the Palauan Constitution, to facilitate a vote on repealing the constitutional provision that restricts marriage to heterosexual couples.³⁶⁶ For the Constitution to be amended, a simple majority of votes cast and approval in 12 of the 16 states of Palau is required. At the time of writing, no bill has been introduced in the OEK to repeal the relevant constitutional provision.³⁶⁷

³⁶⁴ President Remengesau, State of the Republic Address, 30 April 2013 (available at: <https://alekokau.wordpress.com/2013/05/04/remengesau-2013-state-of-the-republic-address/>).

³⁶⁵ HDT interview with Ongerung Kesolei, *Ibid.* n. 43.

³⁶⁶ HDT interview with Ongerung Kesolei, *Ibid.* n. 43.

³⁶⁷ *Ibid.*

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The President recently made statements in support of greater equality for LGBT people and the repeal of the constitutional ban on same-sex marriage.³⁶⁸ Despite the President's endorsement, a local observer believes that the citizens' initiative faces an uphill battle to successfully repeal the constitutional provision prohibiting same-sex marriage.³⁶⁹



H.E. Thomas Remengesau Jr., President of the Republic of Palau, 24 July 2019

I want it to be on record that I support the rights of each individual, any Palauan, to be treated equally...Let us treat each other with respect and dignity [....] This won't be

positive for us at the UN level as the trend worldwide is opening up to these individual rights, but we are taking a step backward,

³⁶⁸ Ongerung Kambes Kesolei, Palau's leader backs same-sex marriage, Pacific Note, 24 July 2019, (available at: https://www.pacificnote.com/single-post/2019/07/24/Palaus-leader-backs-same-sex-marriage?fbclid=IwAR22A-FaAl50ThFZUr77bV62u-l6GQgSuzF_Kisn1N2Ek6izAUCsxpsttlw); Shannon Power, 'Palau President supports same-sex marriage, but there's a catch', Gaystar News, 25 July 2019, (available at: <https://www.gaystarnews.com/article/palau-president-supports-same-sex-marriage-but-theres-a-catch/#gs.uj67pk>).

³⁶⁹ *Ibid.*

CONCLUSION

CONCLUSION

The FPA and the New Penal Code provide examples of reforms where civil society influence, and international efforts and support, played key roles in nurturing the domestic political will to carry out legal reforms.

As a small nation highly dependent on tourism and international financial support, the views of the international community are important to Palau.³⁷⁰ As such, the recommendations received in the context of its UPR processes,³⁷¹ and the regional movement toward better protection of women and children against abuse,³⁷² likely had a significant impact in Palau.

From a pure reform process standpoint, one key element of the Palauan reform is that relevant revisions to sexual offences laws were adopted as part of the general domestic violence reforms widely supported by politicians and the public. As a result, the repeal of the more controversial offences under the Old Penal Code did not trigger opposition from the public until a few years later.³⁷³ It has not been possible to fully establish the reasons for extending the FPA to include the replacement of Palau's sexual offences laws and there is, no evidence that the repeal of section 2803 (sodomy) was a conscious strategy. More likely, the revisions were motivated by the need to have more appropriate and comprehensive offences to cover the multitude of different cases of domestic abuse and violence and, at the same time, consciously remove a number of discriminatory provisions from the Old Penal Code. As such, the Palauan experience demonstrates that where there is broader reform certain aspects are not highlighted or targetted but become particular issues amongst many that are being addressed.

Palau is also a good example of the need to involve all stakeholders within the reform process. Such reforms would have likely not been possible or even a reality without the support and initiative of one key civil society actor, the Mechesil Belau. Palau is a matrilineal and matriarchal society, and Mechesil Belau plays an important influencer role over the legislative agenda, in particular through its annual resolutions.³⁷⁴ As such, no reform affecting the situation of women and families could have been achieved without the Mechesil Belau's support.

370 Global Partnership for Effective Development Co-operation, Monitoring Profile, Palau, October 2016 (available at: https://effectivecooperation.org/wp-content/uploads/2016/11/Palau_2.11.pdf). International Monetary Fund ('IMF'), Staff Country Reports, Republic of Palau: 2005 Article IV Consultation, March 2006, No. 06/108, Background (available at: <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/REPUBLIC-OF-PALAU-Staff-Report-for-the-2005-Article-IV-Consultation-19023>).

371 UN HRC, *Report of the Working Group on the UPR*, Palau, 2011, *Ibid.*, n. 102.

372 See section Drivers of the reform, other factors.

373 According to a local observer.

374 9th OEK, 5th Special Session, Senate Joint Resolution, No. 9-21, 12 August 2013. A copy can be found at section 1.k of the Annex. UN HRC, UPR, *National report 2011*, para. 73, *Ibid.*, n. 8.

Despite being a step in the right direction, the reforms were an example of a change in the substantive laws which were not accompanied by changes in the procedural rules nor a pre-emptive and planned implementation programme. First, the implementation of the FPA was delayed by nearly two years and the State had to carry out extensive training programmes to accelerate the implementation process. Moreover, local observers noted that there is still some confusion as to the content of the reforms and that some local enforcement officers still use former legal provisions. Second, overhauling substantive provisions is insufficient without a concomitant reform of procedural rules.

As a whole, these reforms, whilst not perfect nor complete, have improved legal rights and protections of many Palauans, and it is hoped that the country can continue to build on this in the future.

Lessons Learned

- Progressive legislative reform, even in small countries, is possible in a reasonably short timeframe with a combination of political will and technical support, and can be pursued even where there may be societal resistance.
- Early engagement with the public and key stakeholders is important especially where controversial aspects of the legislation will inevitably lead to some societal resistance and/or opposition. It is important to ensure that affected groups, as well as the general public, are involved in the legislative reform process. Engaging people in an open dialogue allows for early education of the need for change and creates less opportunity for opposition later.
- International cooperation can also be highly beneficial. Law reform is a complex and technical process, and particularly for small countries. Engaging with other countries allows those seeking reform to leverage the experience of those who have designed and implemented similar changes and provides a greater prospect of success. Cooperation should not only be in respect of the early stages of the process but should encompass the review and drafting of the legislation as well as the post-reform implementation. Local sensitivities must also be considered and acknowledged as part of the process.
- A comprehensive implementation plan is as important as the legislation itself. Without an implementation plan, the risk of losing momentum behind the reform is greatly increased and could ultimately lead to policy failure. Proper education of the judiciary, law enforcement and support agencies as well as the general public should be planned for in advance, in order to ensure that the new legislative protections are adequately understood and available to those affected.
- Procedural rules should be reviewed and, as the case may be, amended to ensure that they do not create obstacles to the implementation of the new substantive provisions and enable victims to obtain redress.

CONCLUSION

- Post-reform impact, particularly in criminal legislative reform, should be measured and monitored over time to determine if the effect has been positive, negative or neutral. Without data gathering mechanisms, this is made all the more difficult. This also helps in determining if further education is required, if more protective measures should be implemented, or if the legislation requires further amendment. Proper procedures for post-reform implementation should include mechanisms for measurement of the impact of the reform.

ANNEX

ANNEX

1. Law and Legislation

- a. Constitution of the Republic of Palau (extracts)
- b. President of the Republic of Palau Signing Statement – RPPL No. 9-21
- c. RPPL No. 3-66
- d. RPPL No. 7-55
- e. RPPL No. 8-32
- f. RPPL No. 8-51 – Family Protection Act
- g. Title 17 of the PNC (New Penal Code) (extracts)
- h. Senate Bill No. 9-125 – Hate Crime Bill
- i. Old Title 17 of Palau National Code (extracts)
- j. Trust Territory Code – Title 11 (Crimes and punishments) and Title 39 (Domestic Relations) (extracts)
- k. 9th OEK, Senate Joint Resolution No. 9-21, 12 August 2013

2. Post-Reform Implementations

- a. Memorandum of Understanding Concerning the Family Protection Act dated 14 July 2014.

3. Media articles

- a. Peter Erick L. Magbanua, “Bill to amend to the Penal Code passes 3rd reading in HOD”, Island Times.
- b. L.N. Reklai, “Bills aimed at family protection studied”, Island Times.

