

# Northwestern Journal of International Human Rights

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Volume 11 | Issue 2

Article 2

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Spring 2013

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### Recommended Citation

Christine M. Evans, *Challenging “Unnatural Crimes”: The Connection between LGBTI Rights and Gender-Specific Sexual Violence Laws in Belize*, 11 NW. J. INT'L HUM. RTS. 189 (2013).  
<http://scholarlycommons.law.northwestern.edu/njihr/vol11/iss2/2>

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# Challenging “Unnatural Crimes”: The Connection between LGBTI Rights and Gender-Specific Sexual Violence Laws in Belize

Christine M. Evans\*

## I. INTRODUCTION

¶1 In the Western Hemisphere, the Caribbean region remains the last stronghold against the rights of lesbian, gay, bisexual, transgendered, and intersex (hereinafter “LGBTI”) persons. Anti-gay attitudes remain strong in the region with homophobic slurs common in popular music, public discourse, and religious messages.<sup>1</sup> A number of countries maintain the laws that criminalize same-sex consensual relationships<sup>2</sup>—known as “sodomy laws”—that were first introduced under colonialism.<sup>3</sup>

¶2 Though the prevalence of homophobic attitudes remains a significant obstacle for activists, the fight for LGBTI rights has been heating up in the region. Slowly, public officials have begun to show support for LGBTI rights,<sup>4</sup> and the Organization of American States, the regional intergovernmental body of which many Caribbean nations are members, has recently adopted the Inter-American Convention against All Forms of Discrimination and Intolerance, which explicitly names “sexual orientation” as a ground for protection against discrimination.<sup>5</sup> In addition, activists have filed and had accepted court cases challenging discriminatory laws in countries such as Jamaica<sup>6</sup> and Guyana.<sup>7</sup>

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<sup>1</sup> See JO BECKER, *CAMPAIGNING FOR JUSTICE: HUMAN RIGHTS ADVOCACY IN PRACTICE* 197-221 (2013).

<sup>2</sup> The countries in the Western Hemisphere that maintain criminalization of same-sex sexual relations, at least between males, are Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, and Trinidad & Tobago. Timothy Otty, Fraser Campbell & Marie Lucienne Lambert, *The Commonwealth and the Criminalisation of Homosexuality: An Overview*, in PAPER FOR THE MEETING OF SENIOR OFFICIALS OF COMMONWEALTH LAW MINISTRIES (2010). All of these countries are former colonies of the United Kingdom, *id.*, and members of the Caribbean Community (CARICOM), a Caribbean regional organization founded to promote economic integration and coordinate foreign policy among its member States, *CARICOM Member States*, CARIBBEAN COMMUNITY (CARICOM) SECRETARIAT, [http://www.caricom.org/jsp/community/member\\_states.jsp?menu=community](http://www.caricom.org/jsp/community/member_states.jsp?menu=community).

<sup>3</sup> HUMAN RIGHTS WATCH, *THIS ALIEN LEGACY: THE ORIGINS OF “SODOMY” LAWS IN BRITISH COLONIALISM* (2008).

<sup>4</sup> See, e.g., Yvonne Baboolal, *PM Promises Rights for Gays in Gender Policy*, THE GUARDIAN (Dec. 18, 2012), <http://www.guardian.co.tt/news/2012-12-17/pm-promises-rights-gays-gender-policy>.

<sup>5</sup> Organization of American States, *Inter-American Convention against All Forms of Discrimination and Intolerance*, art. 1(1), June 6, 2013, OEA/Ser.P AG/RES.2804.

<sup>6</sup> Jamaica has had two challenges filed within the last two years, first one before the Inter-American Commission on Human Rights, Owen Bowcott & Maya Wolfe-Robinson, *Gay Jamaicans Launch Legal*

¶3 Of all of the countries in the region currently involved in examining LGBTI rights, the fight seems to be most quickly coming to a head in the small country of Belize. Though situated on the eastern edge of the Mexican Yucatán peninsula in Central America, Belize identifies itself more with its island neighbors in the Caribbean Sea than with the Spanish-speaking countries—Mexico and Guatemala—with which it shares borders. The country’s regional connections show this identification most clearly. Belize is the only Central American member of CARICOM (Caribbean Community), the regional economic and trade partnership. Additionally, as a former British colony and current member of the Commonwealth of Nations, like many Caribbean countries, Belize retains English as its official language.<sup>8</sup> Belize has also adopted the Caribbean Court of Justice as the final arbiter of legal cases for the country.

¶4 Moreover, like many of its Caribbean Island neighbors and fellow Commonwealth members, Belize maintains colonial laws criminalizing same-sex sexual relationships and the attendant discrimination toward its LGBTI citizens. This history has come under scrutiny, however, as the country’s sole lesbian, gay, bisexual, and transgender advocacy organization, United Belize Advocacy Movement (hereinafter “UNIBAM”), and its founder, activist Caleb Orozco, have sought to attack the law through a number of actions, most recently through legal action challenging the constitutionality of the law in the Supreme Court of Belize. With this case, Orozco, the members of UNIBAM, and their supporters seek to overturn Section 53 of the Belize Criminal Code—the provision that criminalizes same-sex intercourse as an “unnatural crime.”<sup>9</sup>

¶5 While LGBTI rights activists in Belize understandably target Section 53 as their first and most important goal, another significant part of this fight appears to be relegated to a subordinate status. The treatment of LGBTI citizens unfortunately goes hand-in-hand in Belize with the treatment of male victims of rape, sexual assault, and other sex-based crimes. As nearly all Belizean criminal statutes on sex-based crimes require the victim to be female for one of those crimes to be charged, law enforcement regularly resorts to Section 53 for criminal charges when sexual violence against boys or men does occur, making Section 53 an important—and, in the minds of the public, a nearly indispensable—part of the Criminal Code. Without addressing this concern alongside their attempts to abolish Section 53’s application to same-sex consensual relationships, Belize’s LGBTI rights activists miss a pivotal step in garnering public support for and answering opponents’ arguments against their efforts.

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*Action over Island’s Homophobic Laws*, THE GUARDIAN (Oct. 26, 2012, 12:21 PM), <http://www.guardian.co.uk/world/2012/oct/26/jamaica-gay-rights-homophobic-laws?INTCMP=SRCH>, and second and most recently, a challenge in front of its own Supreme Court, *Jamaican Seeking Changes to Gay Sodomy Law*, USA TODAY (June 25, 2013, 8:24 AM), <http://www.usatoday.com/story/news/world/2013/06/25/jamaican-gay-law/2458117/>.

<sup>7</sup> *Challenge in the High Court to Address Guyana’s Nineteenth Century Cross-Dressing Law*, GUYANA OBSERVER NEWS (May 13, 2013), <http://www.guyanaobservernews.org/challenge-in-the-high-court-to-address-guyanas-nineteenth-century-cross-dressing-law/>.

<sup>8</sup> English is retained as the official language of Belize despite an influx of Central American immigrants who have changed the linguistic make-up of the country. *World Fact Book: Belize*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/bh.html>. As of 2013, only 3.9 percent of the population speaks English as a first language, while Spanish-speaking persons make up 46 percent of the population. *Id.*

<sup>9</sup> Belize Criminal Code, chap. 101, § 53 (2000).

¶6 This article examines the treatment of LGBTI citizens in Belize, their fight to abolish Section 53’s application to same-sex consensual relationships, and its connection to sexual violence perpetrated against male victims. After looking at the incidents of violence against the LGBTI community in Part II, I turn to Orozco’s current case before the Supreme Court of Belize and the parties’ arguments in Part III. In Part IV, I address the intersection between the parties’ arguments for overturning or retaining Section 53, and the need for a gender-neutral approach to combatting sexual violence in Belize, highlighting the importance of gender-neutral rape and sexual assault laws as part of Belize’s overall policy to implement LGBTI rights.

## II. TREATMENT OF LGBTI CITIZENS AND SEXUAL ASSAULT OF MALES

¶7 The country of Belize as a whole suffers from a high rate of violence and crime, as well as a lack of accountability and significant corruption among law enforcement officers.<sup>10</sup> This sustained state of violence exposes vulnerable groups who suffer from social stigma, especially LGBTI individuals, to even greater risk of attack, coercion, and hate.<sup>11</sup> This vulnerability is further intensified by the lack of legal protection afforded LGBTI citizens and the criminalization of their relationships under Section 53 of the Belize Criminal Code, known as the sodomy law, which states, “[e]very person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years.”<sup>12</sup>

¶8 Although the consensual “carnal intercourse” criminalized by Section 53 of the Code is not explicitly limited to sexual relations between two men, in practice the law has been interpreted as such.<sup>13</sup> LGBTI rights activists have argued that this criminalization of sexual relations between men creates a hostile environment against sexual minorities and permits law enforcement officials to detain gay men who engage in activities that they consider in contravention of Section 53.<sup>14</sup> They also contend that it serves as an excuse for denying a range of constitutional protections and human rights based on sexual orientation and legitimizes the social stigma and pervasive discrimination directed at sexual minorities in Belize.<sup>15</sup>

¶9 Though acknowledging that the true extent of discrimination based on sexual orientation is difficult to definitively ascertain due to the lack of reporting instances through official channels, the U.S. State Department determined that enough evidence

<sup>10</sup> See Julie López, *Organized Crime and Insecurity in Belize*, INTER-AMERICAN DIALOGUE 1 (Jan. 2013), [http://www.thedialogue.org/PublicationFiles/IAD9014\\_Belize\\_Lopez\\_Paper\\_FINAL.pdf](http://www.thedialogue.org/PublicationFiles/IAD9014_Belize_Lopez_Paper_FINAL.pdf).

<sup>11</sup> Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Interim Report of the Special Rapporteur of the Commission on Human Rights on Extrajudicial, Summary or Arbitrary Executions*, ¶ 37, U.N. Doc. A/57/138 (July 2, 2002).

<sup>12</sup> Belize Criminal Code, chap. 101, § 53 (2000).

<sup>13</sup> *Belize 2012 Human Rights Report*, U.S. DEP’T OF STATE 19 (2012), <http://www.state.gov/documents/organization/204638.pdf> (hereinafter “Belize 2012 Human Rights Report”). Although it appears that Section 53 also could be used to prosecute the sexual assault or abuse of a boy or man by a female perpetrator, this author was unable to find any instances of the law being used in this way.

<sup>14</sup> UNITED BELIZE ADVOCACY MOVEMENT & HEARTLAND ALLIANCE FOR HUMAN NEEDS & HUMAN RIGHTS, *HUMAN RIGHTS VIOLATIONS OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBT) PEOPLE IN BELIZE: A SHADOW REPORT* (Mar. 2013) (hereinafter “2013 UNIBAM & Heartland Alliance Submission”).

<sup>15</sup> *Id.* at 10.

exists to name discrimination based on sexual orientation as one of the two “most important human rights abuses” in Belize in 2012.<sup>16</sup> Anecdotal and media reports show that this discrimination has led to prejudice against sexual minorities throughout the government,<sup>17</sup> social stigmatization among the public, including in the media,<sup>18</sup> and violent attacks against LGBTI persons, causing harm, and at times, loss of life.

¶10 The United Belize Advocacy Movement (“UNIBAM”) stated that harassment and insults by the public and police affected LGBTI activities, but its members were reluctant to file complaints.<sup>19</sup> This claim is in line with what has been reported globally.<sup>20</sup> International observers have found that the mere existence of a “sodomy” law institutionalizes homophobia, intensifying existing social prejudices and fostering a culture of hate and community violence against sexual minorities.<sup>21</sup> This increased social stigmatization creates dangerous conditions and an environment of fear for LGBTI persons, rendering them more vulnerable to human rights abuses, which are often left unreported and unpunished.<sup>22</sup> Moreover, due to the discretion these laws give law enforcement, sexual minorities face a constant threat of being detained, arrested, or even brutalized by officers<sup>23</sup> simply due to their presence. LGBTI citizens therefore likely underreport instances of violence, assault, and other crimes against them and widely mistrust law enforcement.<sup>24</sup>

¶11 Despite the likely underreporting, UNIBAM has been able to document a number of incidents of violence and threats against gay men and other LGBTI citizens. Specific events, which UNIBAM says exemplify many of the incidents faced by sexual minorities, have included the following:

- On February 8, 2012, UNIBAM founder Caleb Orozco was assaulted by a group of men as he walked down the street in Belize City. The men shouted homophobic slurs and threw a beer bottle at his face, causing damage that required surgery. Though Mr.

<sup>16</sup> Belize 2012 Human Rights Report, *supra* note 13, at 1. The other human rights abuse identified is the use of excessive force by security forces. *Id.*

<sup>17</sup> See 2013 UNIBAM & Heartland Alliance Submission, *supra* note 14, at 12 (citing two reported incidents in which persons seeking to enter Belize were detained by immigration officials ostensibly due to their perceived sexual orientation), 13 (citing a reported incident in which an LGBTI citizen reported facing recurring homophobic remarks from an employee of the Land and Surveys Department assigned to process and mark his land; this employee also refused to complete the land survey over the course of one year and received no reprimand or consequences for this behavior).

<sup>18</sup> See *id.* pp. 8-9.

<sup>19</sup> Belize 2012 Human Rights Report, *supra* note 13, at 19.

<sup>20</sup> See *Violence Based on Sexual Orientation and Gender Identity Bias: 2008 Hate Crime Survey*, HUMAN RIGHTS FIRST 11 (2008), <http://www.humanrightsfirst.org/wp-content/uploads/pdf/fd-080924-lgbt-web2.pdf>. Researchers found that, even in countries where sodomy laws do not exist, underreporting of violence against LGBT persons still exists and may be attributed to ongoing “cultural or social obstacles.” *Id.*

<sup>21</sup> Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, ¶ 20, U.N. Doc. A/HRC/14/20 (Apr. 27, 2010).

<sup>22</sup> Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *supra* note 11, at ¶ 37.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

Orozco filed a police report, authorities failed to pursue an investigation.<sup>25</sup>

- In February 2011, in the village of Esperanza in the Cayo District, four police officers pulled up beside a car in which two gay men were driving. The officers kicked the door of the car, insulted the men, and demanded they each pay \$200 USD or be arrested.<sup>26</sup>
- In May 2006, two gay men were assaulted, beaten, and stripped of their clothes near Dolphin Park in Belize City by a police officer. Their clothes were not returned to them until they were detained and transported to the police station a half hour later. One of the victims reported the abuse to the police internal affairs department in Belize City, but no action was taken on the report.<sup>27</sup>

¶12 Evidence also exists to show that sexual minorities have been murdered due to their sexual orientation or gender identity. As law enforcement and the media often omit the detail of sexual orientation as a motive in the crime out of respect for families, homicides motivated by a person's sexual orientation are "grossly underreported."<sup>28</sup> A few accounts have come to light, however, including:

- On June 18, 2012, a prominent Guatemalan doctor was beaten to death in his flat. The doctor was a well-known member of the gay community and had been socializing with other gay men on the night of his murder.<sup>29</sup>
- In September 2010, a prominent politician, known to be a gay man, was found murdered in his bathroom, with trauma to his head and chest.<sup>30</sup>

<sup>25</sup> Owen Bowcott & Maya Wolfe-Robinson, *Belize Gay Rights Activist in Court Battle to End Homophobic Colonial-Era Laws*, THE GUARDIAN (May 2, 2013, 6:32 PM), <http://www.guardian.co.uk/world/2013/may/02/belize-gay-rights-supreme-court>. See also Letter from Alli Jernow, Int'l Comm. of Jurists, to the Special Rapporteur on the Situation of Human Rights Defenders (Feb. 14, 2012), <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/06/Belize-attention-situation-defenders-open-letter-2012.pdf>.

<sup>26</sup> UNITED BELIZE ADVOCACY MOVEMENT & HEARTLAND ALLIANCE FOR HUMAN NEEDS & HUMAN RIGHTS, HUMAN RIGHTS VIOLATIONS OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBT) PEOPLE IN BELIZE: SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE ON RELEVANT ISSUES PRIOR TO REPORTING (LOIPR) (BELIZE) 1 (Aug. 2012), <http://www.heartlandalliance.org/international/research/human-rights-violations-of-lesbian-gay-bisexual-and-transgender-lgbt-people-in-belize.pdf> (hereinafter "2012 UNIBAM & Heartland Alliance Submission").

<sup>27</sup> SEXUAL RIGHTS INITIATIVE & UNITED BELIZE ADVOCACY MOVEMENT, REPORT ON BELIZE – 5<sup>TH</sup> ROUND OF THE UNIVERSAL PERIODIC REVIEW, ¶ 10 (May 2009), [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/BZ/UNIBAM\\_SRI\\_BLZ\\_UPR\\_S5\\_2009\\_UnitedBelizeAdvocacyMovement\\_theSexualRightsInitiative\\_JOINT.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/BZ/UNIBAM_SRI_BLZ_UPR_S5_2009_UnitedBelizeAdvocacyMovement_theSexualRightsInitiative_JOINT.pdf) (hereinafter "2009 SRI & UNIBAM Report").

<sup>28</sup> 2013 UNIBAM & Heartland Alliance Submission, *supra* note 14, at 15.

<sup>29</sup> *Guatemalan Doctor Murdered*, CHANNEL 5 BELIZE (July 27, 2010), <http://edition.channel5belize.com/archives/71829>.

<sup>30</sup> *Former Secretary General of P.U.P., Carlos Espot, Murdered*, CHANNEL 5 BELIZE (Sept. 7, 2010), <http://edition.channel5belize.com/archives/38016>.

- In February 2009, another gay man was beaten and had his throat slit in his home after spending an evening partying with two other men.<sup>31</sup>

¶13 LGBTI persons have also suffered from sexual violence, though cases frequently go unreported due to the “psychological barrier” posed by the sodomy law.<sup>32</sup> Reported incidents include:

- In 2010 a drunken man raped a transgendered woman at machete-point in Guinea Grass village in the Orange Walk District. This individual did not report the rape because she believed it would bring shame on her family. “To be gay or trans in my village is a disgrace for my family,” she stated.<sup>33</sup>
- In 2005 a transgendered individual was raped by a man from her community as she swam in a river. Although the victim knew the perpetrator, she chose not to report the assault due to negative past experiences with the police and fear of bringing disgrace on her family.<sup>34</sup>
- In 2005, a 16-year-old boy, known among his peers as being gay, was sexually assaulted at Kings College School, in rural Belize. The assailant, an older student who was an adult, reportedly announced to his peers that he had assaulted the victim but was suspended for only three days. Neither the victim nor the school reported the incident to the police.<sup>35</sup>

¶14 Despite this trend of victimization, LGBTI persons often face accusations of perpetration of sexual assault. Media accounts appear to reflect a public attitude that when sexual abuse or violence against a boy occurs, the perpetrator must have been a gay man, even though no evidence is given to support this supposition.<sup>36</sup> The mass media also perpetuate this stigma by publishing incendiary and misleading opinion articles and

<sup>31</sup> *Brutal Murder in Orange Walk: Throat Slit and Beaten with Bat*, 7 NEWS BELIZE (Feb. 13, 2009), <http://www.7newsbelize.com/sstory.php?nid=13346&frmsrch=1>.

<sup>32</sup> Stephen Gray, *Decriminalizing Homosexuality in Belize*, PINKNEWS (July 6, 2012, 11:34 AM), <http://www.pinknews.co.uk/2012/07/06/feature-decriminalising-homosexuality-in-belize/>.

<sup>33</sup> CARIBBEAN VULNERABLE COMMUNITIES, CASE STUDY REPORT ON TRANSPHOBIA IN BELIZE 6 (Mar. 30, 2011).

<sup>34</sup> *Id.*

<sup>35</sup> CENTRE FOR CIVIL AND POLITICAL RIGHTS ET AL., A JOINT REPORT TO HUMAN RIGHTS COMMITTEE FILED BY VARIOUS CIVIL SOCIETY GROUPS AND NGOs IN RESPONSE TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, PREPARED IN THE ABSENCE OF THE INITIAL REPORT OF BELIZE 2 (Feb. 9, 2013), [http://www.ccprcentre.org/wp-content/uploads/2013/02/Joinsubmission\\_Belize\\_HRC.107-1.pdf](http://www.ccprcentre.org/wp-content/uploads/2013/02/Joinsubmission_Belize_HRC.107-1.pdf).

<sup>36</sup> See, e.g., Roy Davis, *34-Year-Old Homosexual Allegedly Attempts to Rape Youth, 19, in His Home*, AMANDALA (Oct. 30, 2007), <http://amandala.com.bz/news/34-year-old-homosexual-allegedly-attempts-to-rape-youth-19-in-his-home/>; Stephen Okeke, *Understanding the Homosexual Factor—Part IV: Homosexuality, Pedophilia, and Bestiality—The Deadly Connection*, AMANDALA (May 21, 2007), <http://amandala.com.bz/news/understanding-the-homosexual-factor-part-iv-homosexuality-pedophilia-and-bestiality-the-deadly-connection/>.

allowing hateful comments on their websites. For instance, the editor-in-chief of *Amandala*, a widely circulated tabloid newspaper, wrote in his column in 2011:

[t]his particular column is not for the faint-hearted. I am going to deal with homosexuals, and I'll use strong language . . . I can think of no more obscene, disgusting, evil, wicked and perverted act that one man could do to another . . . Now you understand why, all over the world, homosexuals prey on young boys. They need a steady supply of young, tight anuses. Now if that is not evil in the face of God, then what is? Is this what Belize wants for our young boys?<sup>37</sup>

¶15 This column, filled with assertions related to gay men “preying” on children, garnered much feedback, leading *Amandala* to publish a number of follow-up letters, all of which portrayed homophobic attitudes and stigma against the LGBTI community.<sup>38</sup>

¶16 This information shows that in Belize, sexual violence against boys and men is intimately tied to the perception of the LGBTI community in the country. Yet in the efforts to further LGBTI rights in Belize, activists appear to be subjugating this connection, mentioning it only briefly, if at all, in their arguments rather than using it to bolster efforts to overturn Section 53.

### III. CHALLENGING CRIMINALIZATION: OROZCO V. ATTORNEY GENERAL OF BELIZE

#### A. *The Initial Claim and Pre-Trial Matters*

¶17 On September 24, 2010, Caleb Orozco and UNIBAM filed a fixed date claim form before the Supreme Court of Belize, asserting that the words “any person or” in Section 53 of the Belize Criminal Code<sup>39</sup> violate Orozco’s right to sexual freedom and therefore should be struck from the law.<sup>40</sup> In their written claim, Mr. Orozco and his organization—on behalf of its 68 members—contended that Section 53 violates the right to recognition of human dignity and the right to the protection of personal privacy and privacy of the home guaranteed by Section 3(c); the prohibition of arbitrary and unlawful interference with privacy and the right to respect for private life guaranteed under Section 14(1); and the right to equal protection of the law without discrimination guaranteed by Section 6(1) of the Belize Constitution.<sup>41</sup>

<sup>37</sup> Russell Vellos, *Of This and That*, AMANDALA (Nov. 17, 2011), <http://amandala.com.bz/news/of-this-and-that/>.

<sup>38</sup> See, e.g., “A Happily Married Man” Writes on Homosexuality, AMANDALA (Nov. 29, 2011), <http://amandala.com.bz/news/a-happily-married-man-writes-on-homosexuality/>; Maria Wagner, *Don’t Let the Christians Do It Alone*, AMANDALA (Nov. 25, 2011), <http://amandala.com.bz/news/dont-let-the-christians-do-it-alone/>; Macal Rivera, *We Are a God-Fearing Nation . . . Say No to UNIBAM!*, AMANDALA (Dec. 1, 2011), <http://amandala.com.bz/news/we-are-a-god-fearing-nation-say-no-to-unibam/>.

<sup>39</sup> Section 53 states, “Every person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years.” Belize Criminal Code, chap. 101, § 53 (2000).

<sup>40</sup> Orozco v. Att’y Gen. of Belize, 2010 Belize 668, Written Submissions on behalf of the Claimants, ¶ 7.5 (Jan. 30, 2012) (hereinafter “2012 Claimants’ Written Submissions”). Mr. Orozco has separately stated that the case was originally initiated by the University of the West Indies through its Rights Advocacy Project. Gray, *supra* note 32.

<sup>41</sup> 2012 Claimants’ Written Submissions, *supra* note 40, at ¶ 7.6.



¶18 Specifically, by this action, the claimants sought relief under Rule 56 of the Supreme Court (Civil Procedure) Rules in the form of the following:

- Declaration by the court that Section 53 “contravenes the constitutional rights of the applicant as enshrined in Sections 3, 6 and 14 of the Belize Constitution and is accordingly null and void and of no effect to the extent that it applies to carnal intercourse between persons.”
- An order removing the words “with any person or” from Section 53.
- Any other declarations, orders and directions the court deems appropriate.<sup>42</sup>

¶19 After languishing in the court system with little notice for nearly two years, UNIBAM and Orozco’s claim finally picked up steam when the Roman Catholic Church of Belize, the Belize Church of England Corporate Body, and the Belize Evangelical Association of Churches, which had been granted Interested Party status in support of the defendant Attorney General of Belize, moved in early 2012 to have UNIBAM struck as a claimant from the case, in that, as an “inanimate object,” the organization had no standing under Section 20(1) of the Belize Constitution.<sup>43</sup> For their part, the claimants argued that UNIBAM should be allowed to continue its claimant status as it was acting in the interest of its 68 members, many of who are affected by the law.<sup>44</sup>

¶20 In her ruling, Supreme Court Justice Michelle Arana found for the churches, holding that “[w]hile it is true that the Courts generally adopt a pragmatic approach to the question of locus standi, and the test is generally satisfied by proving that the party is an aggrieved person and not just a meddlesome busybody,” UNIBAM could not satisfy that the alleged violation was “*in relation to him*” as required by Section 20(1) of the Constitution.<sup>45</sup> The Justice would later allow UNIBAM to remain part of the case, however, as an Interested Party<sup>46</sup>—along with other Interested Parties the Commonwealth Lawyers Association, the Human Dignity Trust, and the International Commission of Jurists<sup>47</sup>—in support of the now sole claimant, Mr. Orozco.

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<sup>42</sup> *Id.* at ¶ 8.

<sup>43</sup> Orozco v. Att’y Gen. of Belize, 2010 Belize 668, Ruling of J. Michelle Arana, ¶ 4 (Oct. 18, 2007), [http://www.belizejudiciary.org/web/supreme\\_court/judgements/arana2012/claim%20no%20668%20of%202010.pdf](http://www.belizejudiciary.org/web/supreme_court/judgements/arana2012/claim%20no%20668%20of%202010.pdf) (hereinafter “Ruling of J. Arana”). Section 20(1) of the Belize Constitution states, “If any person alleges that any of the provisions of sections 3 to 19 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him . . . then, without prejudice to any other action with respect to the same matter which is lawfully available, that person . . . may apply to the Supreme Court for redress.” Belize Constitution, chap. 4, § 20(1) (2000).

<sup>44</sup> Ruling of J. Arana, *supra* note 43, at ¶ 5.

<sup>45</sup> *Id.* at ¶ 6 (emphasis in original).

<sup>46</sup> Orozco v. Att’y Gen. of Belize, 2010 Belize 668, Skeleton Arg. of the Fourth to the Sixth Interested Parties, ¶ 24, (May 3, 2013) (hereinafter “Skeleton Arg. of Interested Parties”).

<sup>47</sup> The International Commission of Jurists is an international human rights organization comprised of 60 jurists who are representatives of different legal systems around the world. The Commonwealth Lawyers Association is a legal organization “dedicated to Rule of Law throughout the Commonwealth.” The Human Dignity Trust is a non-governmental organization focusing on the decriminalization of homosexuality globally. *Caleb Orozco Fights to Uphold His Dignity and Rights in Belize*, HUMAN DIGNITY TRUST 3 (May

¶21 Following a series of delays after this initial ruling, proceedings were finally scheduled for and actually began in May 2013. Prior to this court date, the Attorney General of Belize and the Interested Parties filed written submissions of their skeleton arguments with the court. The Attorney General of Belize, as the named defendant, focused its arguments on the claimed non-justiciability of Orozco’s claim. Contending that the Belize Constitution contains no existing right to have anal intercourse in private with another male, the defendant argued that to find otherwise would be tantamount to judicial legislating.<sup>48</sup> As new fundamental rights can only be added through constitutional amendments, the Attorney General argued, the court does not have the authority to find for the claimant, and the Supreme Court is therefore not the correct venue for this challenge. The defendant concluded his argument on the claim’s non-justiciability by focusing on the public effect of what the claimant was seeking, stating that the matter at hand “is a divisive issue that is at the core of public morality within Belize and has immense social impact that it ought properly to be in the domain of the legislature to change the law.”<sup>49</sup>

¶22 For their part, the Interested Parties supporting Mr. Orozco, led by the former UK attorney general, Lord Peter Goldsmith, QC, and the former attorney general of Belize, Godfrey Smith, focused their arguments on the international human rights documents ratified by Belize, asserting that international law clearly makes the criminalization of same-sex sexual relations a breach of the country’s treaty obligations.<sup>50</sup> As explained by Jonathan Cooper of the Human Dignity Trust, “[t]he Interested Parties’ joint submissions to the Supreme Court of Belize are intended to assist the court by providing a comprehensive summary of international and comparative law in this area[.]”<sup>51</sup>

¶23 Finally, the churches in their skeleton argument, while echoing many of the same arguments of the Attorney General, also spent a significant amount of time focusing on public morality, arguing that “in the plainest terms, the derogations or limitations of public morality and public interest as set forth in the Constitution of Belize undeniably and indisputably trump certain fundamental rights and freedoms, including but not limited to” those rights claimed by Mr. Orozco in his filing.<sup>52</sup> They further contended:

The Court is left to decide simply whether the weight of public morality as a constitutional derogation in the context of our Belizean society founded upon respect for moral and spiritual values and principles which acknowledge the supremacy of God is less than that of the (claimant’s appeal to the court for) recognition of an individual and constitutional right and freedom to have anal intercourse with another man as a

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2, 2013),

[http://www.humandignitytrust.org/uploaded/News/Belize\\_Press\\_Release\\_Orozco\\_v\\_AG\\_FINAL.pdf](http://www.humandignitytrust.org/uploaded/News/Belize_Press_Release_Orozco_v_AG_FINAL.pdf).

Given that none of these organizations are headquartered in Belize, their participation in the case has given rise to claims of a “foreign agenda” in which Orozco is merely being used as a “pawn.” *See Finally, It Has Begun: Caleb vs. GOB*, 7 NEWS BELIZE (May 7, 2013),

<http://www.7newsbelize.com/sstory.php?nid=25429>.

<sup>48</sup> Orozco v. Att’y Gen. of Belize, 2010 Belize 668, Skeleton Args. of the Def., ¶ 18 (Apr. 30, 2013).

<sup>49</sup> *Id.* at ¶ 7.

<sup>50</sup> *Caleb Orozco Fights to Uphold His Dignity and Rights in Belize*, *supra* note 47, at 1.

<sup>51</sup> *Id.* at 2.

<sup>52</sup> Skeleton Arg. of Interested Parties, *supra* note 46, at ¶ 124.

component part of his constitutional rights and freedoms. We say, we submit, that the answer is a resounding no. There is no individual and constitutional right and/or freedom to have anal intercourse with another man that is protected under the Constitution of Belize. The public morality of Belize abhors this.<sup>53</sup>

¶24 The church parties' argument also touched briefly on the use of Section 53 in combatting sexual abuse of minors. Noting that the statute is "gender neutral and of general application," the church parties concluded that Section 53 is not inherently discriminatory as it prohibits the act of "carnal intercourse against the order of nature" for all genders and "in Belize [] is also applied in relation to minors."<sup>54</sup> Although not explicitly stated, this reference appears to imply that, because law enforcement has used Section 53 to charge perpetrators of sexual violence against boys, the law must be kept as is. This argument follows one that is often presented by church representatives in the media, specifically that Section 53 must be preserved, as it is a "good law preserving human dignity" often used for criminal charges in sexual abuse cases.<sup>55</sup> None of the other parties appear to touch on this issue in their written submissions.

*B. Orozco v. Attorney General in Court: May 7-10, 2013*

¶25 After nearly three years, Caleb Orozco's constitutional claim finally arrived for oral arguments at the Supreme Court of Belize. Over four days, attorneys for Orozco, the Interested Parties supporting the claimant, the Attorney General, and the church parties presented their arguments before Chief Justice Kenneth Benjamin, hoping that their side would win the day.

¶26 Christopher Hamel-Smith, QC, the lead counsel for the claimant, began and concluded the proceedings, rarely straying from the focus on the constitution and the rights claimed by his client, those of privacy, home and family life, and the recognition of human dignity.<sup>56</sup> Arguing that the case does not address gay rights in particular but rights enshrined in the constitution, Mr. Hamel-Smith asserted, "Only in the most trivial sense is this case about who does what to whom with what body part or orifice. It touches a much more profound issue of how do you accommodate all people in a pluralistic society to allow them a sense of self, privacy, and freedom of conscience, not to disparage and diminish anyone's dignity."<sup>57</sup>

¶27 Concluding his arguments on the last day in court, Mr. Hamel-Smith addressed the Attorney General's contention that this issue was one for the legislature, rather than the courts, stating, "The court has the right to make deletions, strike out, substitute, alter or

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<sup>53</sup> *Id.* at ¶¶ 129-30.

<sup>54</sup> *Id.* at ¶ 166.

<sup>55</sup> Bowcott & Wolfe-Robinson, *supra* note 25. Pastor Scott Stirm of Belize Action has stated on behalf of the churches: "What we are saying is that the Section 53 is a good law, and we've done the research on this, and the sections where we have found Section 53 was used—78 percent of those cases were sexual abuse cases against children. The UNIBAM has been blinded by their own desires and what it is that they are trying to push for change, whereas the statistics show that 78 percent where section 53 was used was abuse against children." *Finally, It Has Begun: Caleb vs. GOB*, *supra* note 47.

<sup>56</sup> *Dramatic Scene: Challenge to Belize Sodomy Law under Way*, ERASING 76 CRIMES BLOG (May 7, 2013), <http://76crimes.com/2013/05/07/dramatic-scene-challenge-to-belize-sodomy-law-under-way/>.

<sup>57</sup> *Id.*

otherwise tell us what a law says. It has the duty to determine the constitutionality of a law. That right does not belong to the legislative branch.”<sup>58</sup>

¶28 Like the claimant, the counsel for the Attorney General stayed well within the boundaries of their written submission. Speaking for the defendant and providing what some saw as a “very perfunctory defense,”<sup>59</sup> Deputy Solicitor General Nigel Hawke continued to claim that the rights Orozco said he is entitled to do not exist in the Belize constitution. “Sexual orientation is not in the constitution,” he argued, “but by some mystical, magical process, they claim it is there.”<sup>60</sup> Mr. Hawke concluded as the Attorney General’s submission did—by urging the court to “leave social policy to elected officials.”<sup>61</sup>

¶29 As for the Interested Parties supporting the claimant, Lord Goldsmith also provided a rather brief argument, focusing on the international human rights that the parties claimed were violated by Section 53.<sup>62</sup> The counsel for the church parties, Eamon Courtenay, however, appeared to address only a small portion of its original 55-page submission to the court. Apparently seen by some to be avoiding religious arguments,<sup>63</sup> Mr. Courtenay focused the thrust of his argument, which he presented over five hours, on the fact that Mr. Orozco had never been prosecuted under Section 53. “The current argument seems to be that no one is arrested under Section 53 for consensual same-sex intimacy. Had Orozco suffered a real risk of prosecution under Section 53, this would be an entirely different case,” he concluded.<sup>64</sup>

### C. Confusion over Relief Requested

¶30 With the arguments, both written and oral, concluded, the case is now left in the hands of the chief justice. Yet discussion still remains over what exactly is being asked for in the case. Although court documents filed by the claimant appear clearly to request that the words “with any person” be struck from Section 53, thereby effectively ending the use of the provision against *any* sexual act between persons, Mr. Hamel-Smith stated that the claimant is actually requesting an amendment to the provision that would make only consensual acts between two persons of the same gender an exception to Section 53.<sup>65</sup> During a television interview after the conclusion of arguments, Mr. Hamel-Smith said:

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<sup>58</sup> Colin Stewart, *Final Arguments in Belize Sodomy Case*, ERASING 76 CRIMES BLOG (May 10, 2013), <http://76crimes.com/2013/05/10/final-arguments-in-belize-sodomy-case/>.

<sup>59</sup> Colin Stewart, *Day 3: Defenders of Belize Sodomy Law*, ERASING 76 CRIMES BLOG (May 9, 2013), <http://76crimes.com/2013/05/09/day-3-defenders-of-belize-sodomy-law/>.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Colin Stewart, *Belize Sodomy Law on Trial, Day 2*, ERASING 76 CRIMES BLOG (May 8, 2013), <http://76crimes.com/2013/05/08/belize-sodomy-law-on-trial-day-2/>.

<sup>63</sup> Stewart, *supra* note 59. This may have been a wise decision on Mr. Courtenay’s part, as Chief Justice Benjamin seemed less inclined toward these arguments. When Mr. Hamel-Smith himself wandered into this territory, referring to a verse from the Bible, the justice reportedly retorted, “Can we have less theology and more case?” Stewart, *supra* note 58.

<sup>64</sup> *Id.*

<sup>65</sup> *UNIBAM Says It Wants Same Sex Activity Legalized*, CHANNEL 5 BELIZE (May 10, 2013), <http://edition.channel5belize.com/archives/85324>.

[w]hat we are asking is very clear. We are saying that Section 53 of the act is inconsistent with the constitution to the extent, but only to the extent, that it applies to consenting sex between adults in private. And [] we are not asking for anything further than that. So we are simply saying that the constitution requires that any law inconsistent with the constitution be void to the extent of that inconsistency. So it only reaches to the question of consenting adult sex in private—no more, no less.<sup>66</sup>

¶31 Mr. Courtenay, on behalf of the churches, disagreed on this supposed clarity, however, offering for his part:

[t]he reason you [the media] are not clear about it is because their case is not clear. And I pointed it out to the Chief Justice. In fact, they have presented the court with four options. The one that they have not presented the court with is striking down section 53 completely. Once that is off the table, the question is what types of sexual practices are constitutional and what are not. And that is why they have to give the court four options to choose from.<sup>67</sup>

¶32 The confusion over exactly what relief the claimant is requesting seems to bolster the churches' claims that Section 53 must be maintained for use in sexual abuse cases. The media seem to have picked up this argument as well, pointing in their reporting to the "vacuum" that would be left in charging sexual assault crimes with male victims if Section 53 were struck down completely with relation to persons.<sup>68</sup> The churches' claim and this media attention surrounding this argument invents an atmosphere of fear and worry that male victims of sexual violence will be left without legal remedy against perpetrators, thereby generating public support to keep Section 53 intact.

¶33 This so-called "vacuum" arises, however, due solely to the near total exclusion of the victimization of boys and men from Belize's laws related to rape and other sexual assault offenses. As noted above, by limiting the use of these provisions only to cases where there are female victims, the government of Belize requires law enforcement to turn elsewhere for criminal charges in cases with male victims, inevitably leading them directly to the challenged statute—Section 53.

#### 1. The Connection between LGBTI Rights and Gender-Specific Rape Laws

¶34 In addition to the current court case, LGBTI rights activists, and specifically UNIBAM, have brought the fight against Section 53 to other forums as well, including to the United Nations Human Rights Committee<sup>69</sup> and Human Rights Council,<sup>70</sup> through stakeholder shadow reports, and to the Belizean legislature itself. Although utilizing many avenues to push for LGBTI rights, Belizean activists are still missing an important

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> See 2013 UNIBAM & Heartland Alliance Submission, *supra* note 14; 2012 UNIBAM & Heartland Alliance Submission, *supra* note 26.

<sup>70</sup> See 2009 SRI & UNIBAM Report, *supra* note 27.

step—a corresponding push for reformation of the current criminal laws on rape and sexual violence.

¶35 As noted in Part III, supporters of Section 53, specifically representatives of the churches challenging Mr. Orozco’s constitutional claims, have presented the argument that the statute must be maintained because it is used to combat and charge sexual violence when perpetrated against men and boys. Media reports on sexual violence against male victims only buttress and add legitimacy to the argument by using the term “unnatural” —straight from Section 53—in the coverage of these cases.<sup>71</sup> This argument, however, misses the point that law enforcement usually turn to Section 53 in these cases because the Belize Criminal Code offers only one other provision, with a significantly lower sentence,<sup>72</sup> for use in cases of male-victimization sexual violence.

¶36 Other than offering minimal references to the issue<sup>73</sup> or defensive press releases,<sup>74</sup> LGBTI rights activists fighting Section 53 also seem to be missing the point. By failing to address the lack of gender-neutral sexual violence laws and the conflation of homosexuality with male-victimization rape in Section 53, they essentially concede the argument that the statute is a “good law” that protects male victims of sexual assault to the backers of the sodomy law. Instead, as shown below, LGBTI rights activists could turn this argument on its head and expose its hollowness by adding dedicated advocacy for gender-neutral rape laws to their own efforts to strike down Section 53.

## 2. The Challenge Presented by Gender-Specific Sexual Violence Laws

¶37 The current criminal code of Belize defines rape as the “carnal knowledge of a female of any age without her consent.”<sup>75</sup> Likewise, nearly every related statute limits the scope of victims only to girls and/or women,<sup>76</sup> including, at its most basic, the age of

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<sup>71</sup> See, e.g., *Kareem Hamilton Guilty of Sodomizing 15-Year-Old Boy*, CHANNEL 5 BELIZE (May 4, 2013), <http://edition.channel5belize.com/archives/85405>; *70 Year Old Accused of Ugly Crime*, 7 NEWS BELIZE (Apr. 17, 2013), <http://www.7newsbelize.com/sstory.php?nid=25253&frmsrch=1>; *Honduran Detained for Unnatural Crime*, CHANNEL 5 BELIZE (Mar. 18, 2013), <http://edition.channel5belize.com/archives/83221>; *Roca Charged for Repeated Sodomy of Minor*, CHANNEL 5 BELIZE (Jan. 25, 2013), <http://edition.channel5belize.com/archives/81208>; *Arraignment for Brit Accused of Extreme Acts of Pornographic Exploitation*, 7 NEWS BELIZE (Dec. 10, 2012), <http://www.7newsbelize.com/sstory.php?nid=24252&frmsrch=1>.

<sup>72</sup> Only the crime of aggravated assault, which among its definitions includes “indecent assault on any person, whether male or female” and carries a sentence of two years’ imprisonment in the case of male adult victims or three years if the victim is female or a male child, acknowledges male victimization outside of Section 53. Belize Criminal Code, chap. 101, § 45(f) (2000).

<sup>73</sup> See Gray, *supra* note 32 (citing Mr. Orozco as stating that the age of consent needs to be clarified and made gender-neutral); Stewart, *supra* note 62 (quoting Mr. Hamel-Smith as noting in his oral arguments that “the legislature has delayed passing alternative, non-stigmatizing laws to protect all people against rape.”).

<sup>74</sup> *Arguments Close in UNIBAM Case*, 7 NEWS BELIZE (May 10, 2013), <http://www.7newsbelize.com/sstory.php?nid=25473> (noting that, after the conclusion of the four-day trial in Orozco’s case, UNIBAM released a statement “in which it condemned all of abusive sexual behavior, including all forms of rape and child molestation. According to the organization, Section 53 is not the answer to male on male rape, and that there needs to be legislative reform on the rape laws to make them gender-neutral.”).

<sup>75</sup> Belize Criminal Code, chap. 101, § 71(1) (2000).

<sup>76</sup> See *id.* at chap. 101, § 12(b) (Consent); § 47 (Carnal knowledge of female child, girl under 16, etc.); § 48 (Mandatory life sentence for habitual sex offenders); § 49 (Procuration); § 50 (Procuring defilement of

consent for sexual intercourse, which sets the age of consent for girls at 14 but offers no corresponding age for boys.<sup>77</sup> Therefore, as media reports show, law enforcement in Belize usually charges perpetrators of sexual violence against males with an “unnatural crime” under Section 53 and thereby equate these coercive acts with same-sex consensual intercourse.<sup>78</sup>

¶38 The existence of gender-specific rape and sexual assault laws and the conflation of consensual and coercive sexual acts has a number of consequences. First, by limiting the definition of rape to only “the carnal knowledge of a female,” the Criminal Code implies that males cannot be raped, essentially cloaking these crimes in silence. In reality, research has shown that, while occurring at a lower rate than for girls and women overall, males, especially of younger ages, can be victims of rape and sexual violence. In fact, a 15-year-old boy is more likely to suffer sexual assault than a 40-year-old woman.<sup>79</sup> As the reports cited in Part II above and throughout the Belize media<sup>80</sup> show, boys and men, including gay, bi-sexual, and transgendered men, clearly suffer sexual abuse and rape in Belize but without recourse or protection under the rape provisions of the criminal code.

¶39 Second, by forcing law enforcement to resort to Section 53 or the indecent assault statute, Belizean law minimizes the magnitude of the crime of rape against males, implying that it is somehow less heinous than the rape of girls or women<sup>81</sup> and thereby creating a fallacious and discriminatory distinction between genders.

¶40 This discrimination is most clearly seen when punishments for perpetrators of these crimes are compared. Those persons charged under Section 53 are subject to one sentence—ten years’ imprisonment—while those convicted under the rape statutes could be sentenced to a range of eight years’ imprisonment to imprisonment for life. Additionally, Section 48 of the Belize Criminal Code allows for life imprisonment for habitual sex offenders but only if the offenders have been convicted of rape of a female or carnal knowledge of a female child less than 14 years of age.<sup>82</sup> Perhaps most notably,

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female by threats or fraud or administration of drugs); § 51 (Householder permitting defilement of young females on his premises); §§ 56, 77 (Abduction); § 57 (Forcible abduction); § 62 (Incest by males); § 72 (Marital rape). *See also supra* text accompanying note 72.

<sup>77</sup> *Id.* at § 12(b).

<sup>78</sup> *See, e.g., Kareem Hamilton Guilty of Sodomizing 15-Year-Old Boy, supra* note 71; *70 Year Old Accused of Ugly Crime, supra* note 71; *Honduran Detained for Unnatural Crime, supra* note 71; *Roca Charged for Repeated Sodomy of Minor, supra* note 71; *Arraignment for Brit Accused of Extreme Acts of Pornographic Exploitation, supra* note 71.

<sup>79</sup> Richard B. Felson & Patrick R. Cundiff, *Sexual Assault as a Crime against Young People*, ARCHIVES OF SEXUAL BEHAVIOR 7 (May 2013), <http://link.springer.com/content/pdf/10.1007%2Fs10508-013-0127-8.pdf>.

<sup>80</sup> *See, e.g., Kareem Hamilton Guilty of Sodomizing 15-Year-Old Boy, supra* note 71; *70 Year Old Accused of Ugly Crime, supra* note 71; *Honduran Detained for Unnatural Crime, supra* note 71; *Roca Charged for Repeated Sodomy of Minor, supra* note 71; *Arraignment for Brit Accused of Extreme Acts of Pornographic Exploitation, supra* note 71.

<sup>81</sup> It should be noted that this applies as well when Section 53 is used to charge perpetrators of attacks on girls or women, implying that the orifice at which penetration occurs somehow reduces the severity of the crime.

<sup>82</sup> Belize Criminal Code, chap. 101, § 48 (2000). The consequences of this distinction were recently seen in Belize, where a man convicted a third time for sexual assault against a boy received only eight years’ imprisonment. For his previous convictions, he had been sentenced to nine months and seven years, respectively, and committed the most recent assault just over a year after his release from the second

the aggravated assault statute explicitly discriminates between male and female victims, claiming that the indecent assault of a man deserves only two years' imprisonment, while the same assault against a woman would net the perpetrator three years in prison.<sup>83</sup> These gender distinctions clearly lead to inequality and discrimination against boys and men who are victims of sexual assault, implying that the crimes they have suffered do not deserve an equal level of punishment as the same crimes if perpetrated against girls and women.

¶41 Finally, the conflation of male-victim sexual violence with consensual same-sex relationships likely leads to underreporting among boys and men who have been assaulted. Boys and men who have been assaulted may hesitate to report the crime out of a fear of being labeled as a homosexual or of appearing weak and not masculine.<sup>84</sup> Moreover, male victims may even fail to perceive the attack as rape or sexual assault because they are male and therefore under law cannot be “raped.” If the victim is a member of the LGBTI community, he will likely have even greater concerns, knowing that because his sexuality is criminalized completely, reporting an assault may be tantamount to “turning himself in” as violating the sodomy law in his personal life.<sup>85</sup> All of these fears lead to the high likelihood that male victims will underreport assaults, creating danger for the public overall.

### 3. Controlling the Argument against Section 53

¶42 What do these consequences mean for the LGBTI community in Belize and its fight against Section 53? LGBTI rights activists in Belize certainly understand that, at its core, Section 53 as it currently exists equates consensual and coercive sexual acts and that this conflation serves to “deepen the stigma around homosexuality.”<sup>86</sup> To attempt to remedy this situation and as expressed by Lord Goldsmith after the trial concluded, Mr. Orozco and his supporters appear to be attempting to carve out an exception from Section 53 solely for consensual relationships but allowing the statute to stand with regard to coercive acts.<sup>87</sup> By creating this delineation, it appears that all parties will get their way: sexual minorities will no longer be criminalized, while supporters of Section 53 as a “good law” will be able to continue using it to address sexual violence against boys and men. All parties can also then avoid the discussion of how to address the gender-specific sexual violence laws in Belize.

¶43 Granted, omitting these discussions is not a problem limited to Belize. There has been a perceived lack of discussion of male-victim sexual violence among gay rights

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imprisonment. *Henkis, Serial Pedophile, Jailed for a Third Time*, 7 NEWS BELIZE (Nov. 30, 2012), <http://www.7newsbelize.com/sstory.php?nid=24060&frmsrch=1>.

<sup>83</sup> Belize Criminal Code, chap. 101, § 45 (2000).

<sup>84</sup> Bennett Capers, *Real Rape Too*, 99 CALIF. L. REV. 1259, 1273-74 (2011).

<sup>85</sup> *Id.* at 1276.

<sup>86</sup> HUMAN RIGHTS WATCH, *supra* note 3, at 47. This report also highlighted the “lack of any separate punishment for same-sex acts with children” —also a feature of the Belize Criminal Code—as adding to this stigma. *Id.*

<sup>87</sup> While it is true that Mr. Orozco requested in his initial filing that the words “any person or” be struck from Section 53, removing any reference to sexual acts between persons, the statements made by his counsel in court and to the media, as noted above, appear to step back from this all or nothing approach, reducing the requested relief to a finding that Section 53 as applied to *consensual* sexual relationships only is unconstitutional. *See supra* Part III.C.



scholars overall.<sup>88</sup> This omission may be warranted, however, as the concern has arisen that any discussion by LGBTI rights activists of male-victimization could give opponents of gay rights “an opening to (re)cast gay men as sexual predators, notwithstanding the fact that most male perpetrators of male-victim rape identify as heterosexual.”<sup>89</sup>

¶44 This concern may be especially true in Belize, where this fear seems to be perpetuated throughout society, specifically by certain sectors of the media.<sup>90</sup> Due to this strong public stigma against same-sex relationships throughout the country, LGBTI rights activists in Belize may consider it preferable, and perhaps even more prudent, to continue to limit their efforts solely to striking down Section 53, without broadening the scope to include reform of the sexual violence legal framework. After all, Section 53 has been used against gay men in the past to reframe their consensual relationships as analogous to sexual violence against boys. It is therefore possible that any statute criminalizing sexual relations between men, even if limited to forced or coerced sex, could be used against the LGBTI community by law enforcement due to bias, stigma, or corruption. Additionally and for the same reason, adding more or reforming current criminal statutes to address male victims may not relieve the concern expressed by current victims of sexual assault and rape in the LGBTI community, who are reportedly reluctant to report the crimes against them due to the existence of Section 53. As they do not feel protected by Section 53 and its current use against sexual violence, they likely would not feel comforted by the addition of yet more laws that could be used to blame the victim.

¶45 While valid concerns, failing to address this issue head-on may actually perpetuate discrimination against LGBTI persons even if Section 53 is struck down solely for consensual relationships. Rather, focusing again on abolishing Section 53 for acts between persons completely and adding the fight for gender-neutral rape laws to already existing arguments may help to eventually decrease discrimination and increase protection of victims of sexual violence in the LGBTI community, while bolstering the arguments of LGBTI rights activists, for two specific and important reasons.

¶46 First, by attacking the gender bias of existing sexual assault laws, these activists could immediately expose the lack of protection Section 53 actually affords male victims and the inherently discriminatory nature of this law, which would undercut existing arguments that Section 53 is “good law.” Supporters of Section 53 are currently arguing that the law is not discriminatory because it is gender-neutral on its face and applies to “every person who has carnal intercourse against the order of nature.”<sup>91</sup> While this claim may be true with regard to perpetrators, it does not hold up when applied to victims on a gender basis. As already noted, Belize’s gender-specific rape and sexual assault laws offer law enforcement and the courts a variety of options for both the crime to be charged as well as the sentence to be imposed when the victim is female. But, when the victim is male, these legal entities must resort to Section 53 and its one sentence—ten years’ imprisonment—or the indecent assault statute, which provides for a punishment of only two or three years’ imprisonment depending on the age of the victim.

¶47 This dichotomy shows that, while Section 53 may be neutral on its face, the fact that law enforcement must resort to it or the indecent assault law in charging perpetrators

<sup>88</sup> Capers, *supra* note 84, at 1294.

<sup>89</sup> *Id.* at 1295.

<sup>90</sup> See *supra* Part II.

<sup>91</sup> Skeleton Arg. of Interested Parties, *supra* note 46, at ¶ 50.

of sexual violence against males creates fundamental discrimination, failing to protect males from sexual violence to the same degree as females. As noted by scholar Jocelyne Scutt:

[a] principle of criminal law is, surely, that all persons should be protected equally from harm of like degree . . . The case for treating crimes of like heinousness similarly appears to be stronger than that calling for a distinction to be made between penetration of the female body and penetration of the male body, whatever the sex of the actor.<sup>92</sup>

¶48 Focusing on this discriminatory application, which can be readily seen in media reports and court documents, will directly assist LGBTI rights activists in strengthening their current arguments on the unconstitutional discrimination posed by Section 53.

¶49 Second, since the introduction of the sodomy law by the British government through the retention of the law at Belizean independence to the present day, same-sex intercourse, whether consensual or coercive, has always been defined as “unnatural.” Consent—or lack thereof—in the current context is immaterial; the law allows no concern for male victims but focuses solely on the “unnaturalness” of the act.<sup>93</sup> To allow Section 53 to remain in any form regarding sexual acts between persons is to allow this definition to continue in some way, remaining in the minds of the public and perhaps even keeping alive the notion that gay men “prey” on boys. As Human Rights Watch researchers have found, “[e]quating consensual and coercive acts, and the lack of any separate punishment for same-sex acts with children, *together* deepen the stigma around homosexuality.”<sup>94</sup>

¶50 While striking down the criminalization of same-sex consensual relationships is, of course, an important goal, LGBTI rights activists should also pursue at the same time the underlying objective of changing social perception of this community. By again calling for the removal of the words “or any person” from Section 53 completely, activists can immediately create a clean break from these antiquated definitions and begin the process of redefining the way Belizean society and law enforcement perceive both LGBTI individuals as well as male victims of sexual assault.

¶51 The first step to changed attitudes and increased protection of male victims of sexual assault must be the legal recognition that men and boys, including those who are members of the LGBTI community, can and do suffer from the same sexual violence crimes perpetrated against girls and women, not just some ambiguous “unnatural crime.” While a change in the law may not immediately eliminate LGBTI discrimination, the acknowledgment that sexual violence against male victims is an actual crime separate and distinct from consensual and legal sexual relationships, especially when paired with ongoing education and advocacy efforts, will have an impact on perceptions of the LGBTI community by distinguishing consensual same-sex relationships from coercive sexual violence against boys and men.

<sup>92</sup> Philip N.S. Rumney, *In Defence of Gender Neutrality within Rape*, 6 SEATTLE J. SOC. JUST. 481, 484 (2007) (quoting Jocelyne A. Scutt, *Reforming the Law of Rape: The Michigan Example*, 50 AUSTL. L.J. 615, 616-17 (1976)).

<sup>93</sup> HUMAN RIGHTS WATCH, *supra* note 3, at 46.

<sup>94</sup> *Id.* at 47 (emphasis added).

¶52 Most importantly, law enforcement will not only have better defined laws with which to combat this sexual violence, they will no longer have the vague language of Section 53 to use as a tool of harassment. As noted above, concerns may arise that any laws criminalizing coercive same-sex acts could still be used against LGBTI individuals. If more clearly worded and defined laws were instituted, however, officers wishing to use these laws as a way to pursue LGBTI victim will have a higher burden to meet in that they would need to prove specific acts, not only that something “unnatural” occurred.

¶53 By pushing for gender-neutral rape laws, LGBTI rights activists can help the Belize Criminal Code “reflect a more modern understanding of the purpose of rape law—the protection of sexual autonomy from the harm of non-consensual penetrative sex acts.”<sup>95</sup> This advocacy would also help the activists in their fight for sexual autonomy for Belize’s LGBTI community by moving the present conversation away from the need to maintain Section 53 in any form and toward the need to end discrimination against LGBTI citizens overall.

#### IV. CONCLUSION

¶54 With the conclusion of oral arguments in *Orozco v. Attorney General of Belize*, the fate of Section 53, for the time being, now awaits the decision of Chief Justice Benjamin.<sup>96</sup> The decision will of course be subject to review before the Belize Court of Appeal and then possibly the Caribbean Court of Justice, of which Belize has been a member since 2010,<sup>97</sup> meaning that the debate over this statute is far from over.

¶55 In the meantime, Mr. Orozco and UNIBAM will likely continue their courageous fight to end discrimination against LGBTI citizens in Belize through a number of other venues. Although not a large part of their strategy at this point, these efforts could be greatly assisted with the inclusion of a corresponding push to make Belize’s rape and sexual assault laws gender-neutral. In addition to supporting the separation of consensual same-sex relationships from sexual violence against males for which LGBTI rights activists have been fighting, this much needed change would also help the Belize public reconceive rape not as a gendered crime but as a crime one person perpetrates against another from which all persons, no matter their gender identity or sexual orientation, deserve to be protected equally.

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<sup>95</sup> *Id.* at 483.

<sup>96</sup> *Caleb Orozco’s Case against Attorney General Now in Deliberation*, THE SAN PEDRO SUN (May 15, 2013), <http://www.sanpedrosun.com/community-and-society/2013/05/15/caleb-orozcoss-case-against-attorney-general-now-in-deliberation/>. Although the chief justice stated that he would hand down his decision by the end of July 2013, *id.*, no decision had been announced publicly as of September 2, 2013.

<sup>97</sup> Bowcott & Wolfe-Robinson, *supra* note 25.