



**THE EQUAL OPPORTUNITIES BILL:
HISTORY AND SUMMARY OF CONSULTATION FEEDBACK AND AMENDMENTS**

I. HISTORY

In 2018, the Government of Belize recognized the need to address the violence and discrimination in our society, and committed to introduce comprehensive anti-discrimination legislation protecting all Belizeans during the third cycle of its Universal Periodic Review under the United Nations.

Immediately afterwards, a Steering Committee, led by the National AIDS Commission, was formed to guide and oversee the development of an Equal Opportunities Bill, comprising representatives from the Human Rights Commission of Belize, the Ministry of Human Development, the Office of the Special Envoy for Women and Children, the Ministry of Health, the Office of the Ombudsman, the National Committee for Families and Children, the Belize Council of Churches, the Attorney General's Ministry, as well as civil society organizations representing marginalized groups.

What followed was the convening of a team of legislative drafters from the Caribbean, and international experts on anti-discrimination legislation from Australia, England, and Scotland, who embarked on a process of wide-ranging research, consultation and drafting to develop the draft Equal Opportunities Bill based on the CARICOM Anti-Discrimination Model Bill.

A consultation process engaging both the general public and key stakeholders was then undertaken by the Steering Committee, providing all those who have an interest in this subject the opportunity to be involved and to comment on the proposals in the Bill.

II. CONSULTATIONS

The engagement process for researching and drafting of the Bill began with stakeholder meetings in August 2019 and November-December 2019. Stakeholder meetings were conducted with:

Non-Government Stakeholders

- National Committee for Families and Children
- National Evangelical Association of Belize
- National Council on Aging
- Council of Churches
- Chamber of Commerce
- Indigenous Council
- Insurance Industry
- UNIBAM
- GoJoven Belize
- PETAL
- Belize Family Life
- Empower Yourself Belize



Belize Assembly for Persons with Diverse Abilities
UNICEF

Government Stakeholders

CEO Judith Alpuche, Ministry of Human and Social Development

Mr. Lionel Arzu, Ombudsman of Belize

Dr. Russell Manzanero, Head of Epidemiological Unit

Mr. Randall Sheppard, Attorney General's Ministry

Special Envoy for Women and Children

Hon. Laura Tucker Longworth, Speaker of the National Assembly and NAC Chair

Assistant Commissioner of Police

Ministry of Labour

Ministry of Education

Chief Justice

In these meetings, stakeholders offered their views and recommendations on the scope and content of the Bill. The meetings confirmed a general support for anti-discrimination legislation in Belize but concerns and questions were raised about its scope and practicalities.

The Bill was also subjected to public consultations nation-wide between the period January-February 2020. This involved a total of eight separate public consultations. During these consultations, a legal consultant, a representative from the Attorney General's office, the CEO of the Ministry of Human Development, and a representative of the National AIDS Commission presented the contents of the Bill. Members of the public were able to individually ask questions and make comments for the consideration of the Steering Committee. Additional time was also given for members of the public to provide written feedback following the sessions.

III. RESPONSE TO THE CONSULTATIONS

The concerns and questions of stakeholders and the public at large mainly related to the following:

1. Religious freedoms;
2. The scope of the protected characteristics;
3. The implications on the education system;
4. Employment;
5. Goods and services;
6. Land;
7. Medical care services;
8. Duties of Accommodation;
9. Burden of proof;
10. The creation of criminal offences;
11. The powers and composition of the Commission; and
12. Enactment/entry into force.



1. Religious Freedoms

Religious freedom was probably the more common, visible, and contentious area of concern. Religious groups and members of the public worried about the religious implications of the Bill. Persons questioned whether religious bodies would be able to continue administering educational institutions in accordance with their respective religious tenets. They questioned whether religious bodies would have to rent or allow persons who do not share their religious views to use spaces owned by them. The religious sector also expressed unease about the impact which the Bill could have on the institution of Marriage, especially as the draft Bill contained a provision stating that the Bill shall supersede all other laws and legislation, except for the Constitution. The concern, thus, was that the Bill would be amending or superseding the laws relating to marriage as established under the Marriage Act, the Supreme Court of Judicature Act and the common law.

Response:

- *To address the concerns about religious freedoms, the EOB specifically sets out protections preserving the autonomy of religious bodies in respect of their administration and the rental and use of premises owned by them. In addition, greater latitude has been given to private religious educational providers to make decisions on admissions, hiring and revocation of appointments. Private educational providers are subject only to procedural protections in their decision-making processes (i.e. requiring these Educational Authorities to publish their policy with respect to admissions and recruitment, and ensure such policies are accessible to students and the public).*
- *In order to remove all doubts about the Bill's impact on the institution of marriage, the draft EOB was amended to remove the provision setting it above all other laws. More specifically, the EOB explicitly provides for the non-application of the Bill to all legislation and common law frameworks which govern the issue of marriage including the Marriage Act, the Supreme Court of Judicature Act, Cap. 91 in relation to marriages or common law unions, and any rule of law in Belize relating to marriages.*

2. Scope of the protected characteristics

Related to concerns about religious freedoms, objections were made to the inclusion of gender identity and sexual orientation in the list of protected characteristics covered by the Bill. The countercampaign advanced against the Bill actively pursued a narrative of a "hidden agenda" that intended to provide special rights to the LGBT group. Persons also worried about the corruption of Belizean values that would result through the recognition of these groups in the Bill.

On the scope of the protected characteristics, persons also highlighted the difficulties faced by ex-convicts in obtaining gainful employment after they are released from prison. Stakeholders further suggested that engagement in industrial action should also be protected under the legislation in the context of employment.



Response:

- *To address the concerns about the protected characteristics, the EOB was amended to explicitly include irrelevant criminal record in the field of employment¹, and industrial activity in the field of employment as protected characteristics as was recommended by various stakeholders.*
- *Despite objections made by some to the inclusion of gender identity and sexual orientation as protected characteristics, these remained as protected characteristics. This was important in order to protect the integrity of the objectives of the Bill to protect vulnerable groups, in particular those disproportionately affected by HIV. In addition, the Supreme Court and the Court of Appeal have confirmed that sexual orientation is a protected ground under the Belize Constitution. The Caribbean Court of Justice, Belize's highest court, has also recognized the right of persons to express their gender identity.*

3. Education

On the topic of education, questions were raised about the impact which the obligations would have on the curriculum, dress code and bathroom arrangements. Stakeholders questioned whether schools would be required to mainstream gender into the curriculum and whether the current gender-binary dress code and bathroom arrangement would be disallowed.

Response:

- *The EOB was amended to permit the enforcement of reasonable dress codes.*
- *Exceptions for single-sex schools have also been made.*
- *The section on the curriculum was amended to apply only to the subject of persons with disabilities, so that the obligations under the Bill do not apply to anything done in connection with the content of the curriculum.*
- *As regards the operationalisation of gender identity in schools, it was clarified that it may be necessary that mixed schools are permitted to designate the use of bathrooms according to biological sex, with reasonable accommodation being made where possible.*

4. Employment

As regards non-discrimination obligations in employment, persons raised concerns about the implications these may have on employment within households and childcare facilities.

¹ With exception in relation to employment involving children



Response:

- To address the private life concerns about employment, the Bill was amended to allow for exceptions in cases of employment in the home or areas of childcare.

5. Goods and Services

Similarly, as regards goods and services, persons worried about the impact this would have on certain types of business and family type rentals. Questions were also raised about the right of owners of tourist accommodations² to refuse to rent rooms for double occupancy on the ground of their religious beliefs.

Response:

- *In relation to goods and services, exceptions were strengthened for:*
 - *Services involving physical contact in relation to discrimination on the ground of sex;*
 - *The beauty industry and services that can only be provided to a member of one sex; and*
 - *Varied pricing schemes on certain protected characteristics with respect to recreational facilities.*
- *There is an exception in the Bill for the rental of 'small premises' where the owner or their family members reside in those premises.*

6. Land

On the issue of land, the Mennonite community highlighted the special land arrangements which exist for different ethnic, cultural and indigenous groups in Belize, and which were not provided for under the EOB.

Response:

- *On the issue of land, provisions were added to exempt special land arrangement made on the basis of cultural and indigenous rights for different groups in Belize.*
- *Exceptions were also included for personal residential property and small premises (defined as properties with three households) so that private landowners retain the ability to choose who they want to rent to.*

²The Belize Tourism Act Cap 285 distinguishes between Tourist Accommodation and Hotels. Hotels are entities larger than 10 rooms.



7. Medical Sector

In addition, medical professionals, along with other members of the public, highlighted the need to provide for possible discriminatory treatment within the medical field is at times necessary based on the need to prevent the spread of infectious disease or some other legitimate clinical judgment.

Response:

- *To address the concerns within the medical field, exceptions were included for possible discriminatory treatment within the medical field, where a person is exercising clinical judgment, or where the conduct is directed at preventing the spread of infectious diseases.*

8. Duties of Accommodation

While there was generally support for the duties of accommodation, concerns were raised about the extent to which the Bill struck the appropriate balance between the duty to make accommodations and the financial hardship on businesses. Some stakeholders suggested that a fixed cap be set.

Response:

- *As regards fixed cap proposed for the duty of accommodations, it is considered that such an approach would be inappropriate. Enterprises vary in size and nature and a one-size fits all could result in significant disparities. The Tribunal should be given sufficient latitude to consider what is fair and reasonable on a case-by-case basis taking into account all relevant factors.*

9. Burden of Proof

Some concerns also emerged about the way the burden of proof was expressed and its potential implications. Many in public considered that this apparent reversal breached their right to the presumption of innocence.

Response:

- *The burden of proof remains as originally framed. However, some amendments have been made to the way in which the burden of proof is expressed in the Bill to help clarify that a prima facie case of discrimination must be established by a complainant **before** the burden of proving the discrimination did not take place, or the differential treatment was justified, falls upon the respondent. This formulation reflects the common standard of the burden in anti-discrimination legislation in the Caribbean as well as the approach adopted by Belizean Courts.*



10. Creation of Criminal Offences

Furthermore, many objections were raised in response to the imposition of criminal sanctions for acts of discrimination. The sentiment was that penal sanctions were inappropriate with and disproportionate to aims of the Bill.

Response:

- *To respond to the concerns about the creation of criminal offences, it was agreed that issues of inequality and discrimination are more appropriate addressed through alternative dispute mechanisms and civil liability.*
- *The criminal offences for breaches of the substantive equality provisions were removed, save for those created for the privacy breaches by healthcare providers*

11. The Commission and the Tribunal

As regards the Commission, the following issues were raised:

- The Commission was being vested with wide and unchecked powers, in particular as regards its capacity to initiate investigations on its own;
- The Commission was not subject to any oversight;
- Attorneys should be allowed to appear before the Commission;
- The Commission needed to be able to consult a diversity of views in the performance of its functions, particular as it relates to the impact its work may have on religious adherents;
- Similarly, it was suggested that the Commission should comprise of commissioners with relevant expertise to reflect the broad range of sectors and characteristics covered under the Bill. In particular, DPO representatives asked for DPO representation in the Commission, to ensure compliance with UNCRPD; and
- The ability of the Commission to pursue grants and receive philanthropic donations threatened its impartiality.

As regards the Tribunal, stakeholders considered that parties should be have the full right to appeal decisions made by the Tribunal to the Court of Appeal.

Response:

- *To address the lack of oversight of the Commission, a provision for judicial oversight of the exercise of the Commission's powers, including the power for compelling of the production of evidence, by the Tribunal was included.*



- *As regards the function of the Commission, greater emphasis was placed on resolving disputes through alternative dispute resolution with a heavy emphasis on conciliation.*
- *Further, in relation to the concerns about donations and bias, the provision in the Bill was amended to bring it into conformity with other Belizean legislation, such as the scheme under the National AIDS Commission and the Public Utilities Act. For the Commission to perform the full scope of its functions, it must have the ability to grant-funding, and partnerships with appropriate entities. Nonetheless, the Commission's funding must satisfy the following: it must be sufficient and adequate to ensure the effective functioning of the Commission and should be transparently disclosed.*
- *In order to ensure a diversity of views to be considered in the work of the Commission, a provision was included to give the Minister the power to provide for the establishment of a panel of advisers to the Commission. This would enable the concerns of religious bodies and other protected groups to inform the work of the Commission and present any concerns they may have about the impact of the Commission's work. The list of relevant public and civil society bodies that the Governor General must consult before appointing commissioners has also been expanded, and relevant training and experience requirements for commissioners inserted.*
- *Consideration may be accorded to the express inclusion of representation of disability rights organisations in terms of the bodies with whom the Governor General must consult prior to the appointment of commissioners, or in terms of the fields of expertise required for their appointment.*
- *To address the questions about the limitations on appearances by attorneys before the Commission (but never before the Tribunal), the provisions were removed and attorneys may now appear before the Commission.*
- *The limitations on the right to appeal from the Tribunal to the Court of Appeal, and to the Caribbean Court of Justice on questions of law and a narrowed range of grounds were also removed to ensure that parties have a full right of appeal.*
- *The power of the Commission to investigate complaints on its own motion has been retained in order to enhance access to justice in the country. The underlying framework moves away from an individual-focused remedies response and instead embraces a community model where the exclusive burden on individuals to initiate litigation have been found to be ineffective at best, and counterproductive at worst.*

12. Enactment/entry into force

Lastly, stakeholders underscored the need to provide significant training and public engagement in order for everyone to become aware and understand the rights and obligations created under the Bill.



Concerns were also raised regarding the resources required to establish an Equal Opportunities Commission and Tribunal.

Response:

- *A phased approach to commencement was introduced to provide time for effective implementation, including public education. The whole Act should be in force after two years. Furthermore, the temporary exemptions framework, and the Commission's power to develop Regulatory frameworks provides for flexibility, workability and clarity of the legislation as the society transitions to this new framework.*
- *An implementation report has been prepared considering options for implementation, and resource requirements and savings.*

IV. CONCLUSION

In conclusion, after a comprehensive process of meaningful consultations, the EOB underwent several changes in order to respond to the concerns raised. It was clear that, across the board, the values of the legislation in seeking to address, reduce and, to the greatest extent possible, eliminate discrimination and inequality were widely, if not universally embraced. Though it is not possible to capture every issue, group and need raised during the consultation, this paper identifies and discusses the key issues that were raised and illustrates the impact the feedback had on the content of the Bill.