

# Behind the Prison Gates

Findings and  
recommendations from  
a visit by Joseph Middleton  
to Belize Central Prison



In association with:



# Acknowledgements

This report was made possible by grants awarded to The Death Penalty Project from the United Kingdom Foreign and Commonwealth Office, the Swiss Federal Department of Foreign Affairs, Oak Foundation, Open Society Foundations, Sigrid Rausing Trust, United Nations Voluntary Fund for Victims of Torture, and Simons Muirhead & Burton.

© 2014 The authors

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or any information storage retrieval system, without permission in writing from the authors.

Copies of this report may be obtained from:

The Death Penalty Project

8/9 Frith Street

Soho

London

W1D 3JB

or via our website: [www.deathpenaltyproject.org](http://www.deathpenaltyproject.org)

ISBN: 978-0-9576785-3-8





# Contents

Preface: The Honourable Mr Justice Kenneth Benjamin Chief Justice of Belize .....	ii
Foreword: Saul Lehrfreund and Parvais Jabbar Executive Directors, The Death Penalty Project .....	iii
<b>Introduction: Eamon Courtenay SC President, Bar Association of Belize .....</b>	<b>vi</b>
<b>Report of findings: Joseph Middleton .....</b>	
Part 1: Introduction .....	2
Part 2: Summary.....	2
Part 3: Mentally ill inmates .....	6
Part 4: Young offenders.....	11
Part 5: The death penalty and death row .....	14
Part 6: Inmates serving life sentences ('lifers') .....	15
Part 7: Pre-trial delays and excessive remands in custody .....	19
Part 8: Manifestly excessive sentences .....	21
<b>Recommendations: Godfrey Smith SC.....</b>	<b>24</b>

# Preface

The Constitution of Belize has clothed the judiciary with the important role of interpreting it, safeguarding the fundamental rights and freedoms enshrined in Part II, and adjudicating on questions relating to the validity of legislation. These overarching functions can only be carried out effectively with the assistance of a vigilant legal profession. To this end, the indefatigable efforts of The Death Penalty Project and the Belize Bar in compiling and presenting this incisive report are complementary to the work of the courts. The issues highlighted have brought into sharp focus the problems impacting inmates of the prison system. The path towards addressing the several troubling matters has been delineated in this report, and the findings of Joseph Middleton are already providing the basis for a structured approach by stakeholders.

In recognition of the need to re-examine the processes in the criminal justice system, there is a critical review in progress of the summary and indictable procedures of the criminal courts, with a view to meeting the imperative of a fair, effective and expeditious system. While no system of justice can boast of being perfect, the relentless quest for the optimal attainment of acceptable human rights standards must be a constant objective.

Significantly, the roundtable discussion, held in July 2014, provided a forum for practical approaches to the issues of mental health, vulnerable offenders, anomalies in the spheres of sentencing, and detention and pre-trial incarceration. I have every confidence that positive changes are imminent, though hampered by resource constraints.

**Kenneth A Benjamin**  
**Chief Justice of Belize**

# Foreword

For more than 20 years, The Death Penalty Project has provided free legal representation to those facing the death penalty and has worked to identify miscarriages of justice in the Commonwealth Caribbean. Our first-hand work with prisons and prisoners has exposed significant failures in the criminal justice systems, leading to fundamental human rights violations. This is of especial concern to vulnerable prisoners, such as mentally ill and young offenders, who may not have the resource or capacity to seek to protect and enforce their rights.

Many other dedicated professionals – from those who run the prisons to those who administer the law – have also raised similar concerns about persons who find themselves incarcerated. As a result, in July 2013 we commissioned Joseph Middleton, a leading human rights lawyer in the UK, to visit Belize Central Prison (the only prison in Belize) to identify problems and produce a report of his findings, with a particular focus on those still facing the death penalty, mentally ill prisoners, young offenders, and those serving long-term or life sentences. Based on this report, a one-day roundtable discussion was held in Belize City in July 2014, in partnership with the Bar Association of Belize. It brought together other stakeholders who, through their professional work, come into contact with the prison, prison staff, and its inmates.

The purpose of this meeting was to discuss some of the live issues identified in Joseph Middleton's report. As the President of the Bar Association has said in his thoughtful introduction, the objective of the meeting was not to name or shame, but to consider how best to confront these problems.

We would like to thank Joseph Middleton for conducting a thorough review of the Central Prison and producing his excellent report. We would also like to thank the Honourable Kenneth Benjamin, Chief Justice of Belize, for his insightful Preface and enthusiastic support, and Eamon Courtenay SC and Godfrey Smith SC for their assistance with this project. We are extremely grateful to all those who provided invaluable contributions to the roundtable discussion. Our sincere thanks, especially, to: John Woods, of the Kolbe Foundation; Earl Jones, the former CEO of Prisons, and his staff, for facilitating the visit and for all their help; and Sir Keir Starmer QC and Edward Fitzgerald QC for their expert guidance throughout.

We hope the recommendations for change and better practice will act as an indispensable starting point for government ministers, prison authorities, legal and mental health professionals, educational institutions, NGOs and other interested parties, who now need to take urgent action to address these fundamental human rights issues within the Belizean criminal justice system, and to improve the standards of treatment for vulnerable prisoners. We understand that a number of the recommendations are already being initiated and this, of itself, is a positive move in the right direction.

**Saul Lehrfreund and Parvais Jabbar**  
**Executive Directors, The Death Penalty Project**







# Introduction

Even when – especially when – we look ‘behind the prison gates’, our touchstone is the Belize Constitution. Belize became a nation on the 21 September 1981, ‘affirm[ing] that the nation of Belize shall be founded upon principles which acknowledge the supremacy of God, faith in human rights and fundamental freedoms, the position of the family in a society of free men and free institutions, the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by their Creator’. These fundamental tenets and principles, woven throughout the Belizean Constitution, are an ‘umbilical cord’ to the Universal Declaration of Human Rights. It domesticates Belize’s universal commitment.

The fundamental rights and freedoms that are found in Part II of the Constitution are there as guarantees of the dignity of the human being. Over the years, people in Belize have used them to check unlawful state action, and to vindicate their inalienable rights.

Our courts have found that an unmarried teacher, employed by a church-run school, cannot have her employment terminated because she is pregnant. That is unconstitutional discrimination and a violation of her right to work. A citrus farmer cannot be forced to join an association in order to deliver his fruit to a citrus factory – that deprives him of his constitutional right to associate and disassociate as he chooses. The penalty of death cannot be automatically imposed on all persons convicted of murder. Punishment must fit the crime, and it is cruel and inhuman to condemn to death a murderer except in cases that are ‘the rarest of the rare’. The indigenous Maya have a constitutional right to customary land title in respect of their traditional lands; that is their collective property right.

These few and varied examples demonstrate that, in very practical ways, the human rights guaranteed to all in Belize can be – and have been – enforced. While we can draw comfort from these decisions, we are painfully aware that others continue to have their rights denied to them. There is work to be done.

Our courts have held that ‘a generous and purposive interpretation is to be given to constitutional provisions protecting humans, and that a court is required to consider the substance of the fundamental right at issue and ensure contemporary protection of that right in the light of evolving standards of decency that mark the progress of a mature society’. Attitudes change; standards evolve; needs and desires are refined and reformed. Society and institutions are, therefore, required to adapt. Most of all, over time, rights require ‘contemporary protection’.

As a society, we have to design appropriate solutions to trending issues. Are people on remand in prison for years truly innocent until proven guilty – are they being afforded fair trials within a reasonable time? What are the fundamental rights of an insane person who has languished in prison for nearly 40 years? Can a democratic state ignore that person? Is the possibility of a pardon or remission of sentences, provided for in section 52 of the Constitution, illusory? Is the Belize Advisory

Council truly discharging its constitutional mandate? As a nation founded on the respect for human rights, Belize is now called upon to answer these questions – and to do so promptly.

The ultimate guardian of human rights in any democratic society is an independent and impartial judiciary. Unless the judicial system is able to provide effective relief to all who are incarcerated, the hope and promise eloquently expressed in the Universal Declaration and the Constitution is as if writ in water.

The Bar Association of Belize is delighted to produce this report in partnership with The Death Penalty Project, and we are grateful for the work of Joseph Middleton in bringing some important issues to the fore. The report is not about blaming, naming or shaming; it is an occasion for us all to find new ways to continue the work of respecting the rights of those behind the prison gates. In the words of Dostoevsky: ‘The degree of civilization in a society can be judged by entering its prisons.’

**Eamon Courtenay SC**  
**President, Bar Association of Belize**





## Part 1: Introduction

I visited Belize on behalf of The Death Penalty Project, an NGO based in London, from 22 July to 2 August 2013. The purpose of the visit was to identify general issues of concern, and individual problem cases, within Belize Central Prison, with a particular focus on young offenders, mentally ill prisoners, condemned prisoners, and those serving life sentences. This was with a view to finding ways to help address these concerns, whether by litigation or other means.

I am very grateful to a number of people for making time to see me during my visit: in Belize Central Prison – Taheera Ahmad, Superintendent of Prisons, and Anthony Howes, in charge of prisoner records; at the Office of the Director of Public Prosecutions – Cheryl-Lynn Vidal, Director of Public Prosecutions, Shanice Lovell, Crown Counsel, and Sabita Maharaj, Crown Counsel; at the Ministry of Health – Eleanor Bennett, mental health nursing administrator; and the following attorneys at law – Naima Barrow, Eamon Courtenay SC, Antoinette Moore SC,<sup>1</sup> Leo Bradley and other members of the Human Rights Commission of Belize, and Simeon Sampson SC.

I am particularly grateful to Earl Jones, former CEO of the Kolbe Foundation, for his help and cooperation during my visits to the prison, and to Godfrey Smith SC – and his colleagues at Marine Parade Chambers – for their practical support and advice.

## Part 2: Summary

In summary, the issues identified were as follows:

- i. **Mentally ill inmates.** There is a dire shortage of resources available for the diagnosis and treatment of mentally ill prisoners. Until recently, there was not a single psychiatrist in government service available to deal with inmates at the prison. The recent appointment of a psychiatrist, who was expected to spend two days a month in the prison, is a step in the right direction, but much more needs to be done. The plight of inmates detained indefinitely by reason of insanity – with no periodic review of their mental health or the justification for their continued imprisonment – is a particular cause for concern.
- ii. **Young offenders.** There is at least one inmate serving a life sentence for an offence committed while he was a minor. The Supreme Court of Belize has previously ruled that such sentences are unlawful. This inmate and any others in the same position need to be resentenced. Issues arising from long pre-trial remands and the lack of a separate facility for juvenile female

---

<sup>1</sup> Now the Honourable Justice Antoinette Moore SC.

prisoners should also be explored. The mandatory refusal of bail for some offences in the Magistrates' Court, and the imposition of mandatory minimum sentences on juveniles, also need to be examined.

- iii. **Condemned prisoners.** There is only one condemned prisoner. He was given an unlawful mandatory death sentence in 2001. Having spent 13 years in prison under the shadow of an unconstitutional capital sentence, he needs to be resentenced as a matter of urgency.
- iv. **Inmates serving irreducible life sentences.** The exclusion of parole and remission for inmates serving life sentences for murder means, in reality, that these inmates have no prospect of release. The hopelessness thus engendered creates serious problems for the prison administration. There are also serious, principled objections to such a regime. There is a strong argument that irreducible life sentences violate the prohibition of inhuman and degrading punishment under Belize's Constitution and its obligations under international law.
- v. **Pre-trial delays.** There are long pre-trial delays in Belize, particularly in murder cases. These have caused very long remands in custody – in some cases, up to seven years. Delays of this kind violate fundamental rights; they undermine the prospect of successful prosecutions and, thereby, undermine confidence in the criminal justice system. They are also a waste of public funds.
- vi. **Manifestly long sentences.** A number of individual cases were identified in which the imposition of multiple consecutive sentences has, arguably, produced manifestly excessive total sentences. Some of these cases may warrant more detailed examination. The issue of mandatory minimum sentences for certain offences should also be addressed.

This is not a comprehensive or definitive assessment; it merely reflects the issues identified during a fairly short visit.

There are a number of ways in which these problems might be addressed, some of which are outlined at the end of each part of my report.

During my visit, I had the benefit of meeting with key personnel from the prison, the Office of the Director of Public Prosecutions, and the legal profession. I am grateful for the help received from all of these people, but any errors in this report are my responsibility. I did not manage to discuss these issues with members of the judiciary or representatives of the ministry responsible for prisons (the Ministry of National Security).

On 18 July 2014, a draft of this report was discussed in Belize City, at a one-day roundtable meeting, *Behind the Prison Gates*. This event was organised by the Bar Association of Belize and was attended by the Honourable Mr Justice Kenneth Benjamin, Chief Justice of Belize, together with other justices of the Supreme Court. Other participants included representatives of the government of Belize and

the police, Crown Counsel, leading members of the Bar, and most of my interlocutors from the visit to Belize in 2013. This event produced very constructive discussions of the issues arising in this report, and a number of specific recommendations for addressing these have now been formulated. Progress on developing and implementing these recommendations is anticipated in the near future.

## Belize Central Prison

The Belize Central Prison, at Hattieville, is Belize's only prison, and lies 15 miles west of Belize City. The previous prison, in Belize City, was grossly overcrowded, and inmates were transferred to the new prison in 1993.

The new prison was 'privatised' in 2002, when management was contracted to the Kolbe Foundation. This is a non-profit, faith-based NGO, set up by members of the Rotary Club, with a strong emphasis on reform and rehabilitation.<sup>2</sup> During my visit, the prison population reached its highest ever point, with a headcount of 1,608.

The person in charge of the prison is the Superintendent of Prisons, Taheera Ahmad. She was appointed by the Governor General, under section 4 of the Prisons Act, and works at the prison. Decisions about prisoners' classification, where they are held, and whether they are released are, ultimately, her responsibility. Day-to-day management is the responsibility of the Kolbe Foundation, under its CEO, Earl Jones.<sup>3</sup>

The prison receives government funds according to the number of inmates. The Kolbe Foundation obtains additional funds from various other sources and donors.

## Basic prison data<sup>4</sup>

The following figures were provided by the prison as of 23 July 2013:

- Total head count: 1,586
- Female prisoners (all): 37 (2.3% of total population)
- Male juveniles (Wagner Youth Facility): 77
- Addiction rehabilitation centre: 86
- Foreign inmates: 183
- Foreign inmates awaiting deportation ('illegals'): 71<sup>5</sup>
- Lifers: 33 (including three females)
- Condemned: 1

---

<sup>2</sup> See [www.kolbe.bz](http://www.kolbe.bz). For a useful article on the background, see <http://kolbe.bz/addressing-the-prisons-needs-by-john-c-woods/>

<sup>3</sup> Earl Jones resigned from his position at the Kolbe Foundation in September 2014.

<sup>4</sup> Updated figures as of 18 July 2014 were: total head count – 1,452; remand prisoners – 489; female prisoners – 38; juvenile prisoners – 62; foreign prisoners – 162.

<sup>5</sup> All foreign nationals awaiting deportation are detained at the prison.



- At HM/Governor General/Supreme Court's pleasure: 6
- Requiring psychiatric treatment: 82
- Remands: 591, of which
  - On remand to Supreme Court: 171
  - On remand to Magistrates' Courts: 420

## Structure and accommodation

There are separate units for:

- Male juveniles (Wagner Youth Facility) – see below
- Female prisoners (adults and juveniles, if any)
- Remand prisoners
- Lifers
- Rehabilitation (for voluntary treatment of substance and emotional abuse)
- Multimax (medium and high security)
- Inmates under psychiatric care
- Administrative segregation (for prisoners' own safety etc)

All female prisoners are held in the female prisoners' unit; all the other units are male-only.

## Health facilities in the prison

There is a full-time and highly regarded nurse on site. She is very busy. According to her, the incidence of hypertension and diabetes has risen dramatically in recent years, and this is a significant concern. There is a small sick bay, and an adjacent unit where sick inmates 'under psychiatric care' are held. A GP works part-time at the prison, and a psychiatric nurse visits twice a month. Psychiatric services are described in more detail below. Other medical personnel, including a dentist, visit on occasion. The prison only has resources to deal with emergencies and other basic treatment. The costs of any other treatment normally has to be met by the inmate or his/her family. This reflects the position in Belize generally.

## Part 3: Mentally ill inmates

### Mental health provision in Belize generally

Psychiatric services in Belize are a major problem. They have never been particularly well funded, but they have suffered from significant cuts in recent years. There is no mental health hospital and there is only one inpatient facility in the country, with very limited capacity. Specialist psychiatric care is provided by a small number of hard-pressed psychiatric nurses. At the time of my visit, there were no psychiatrists in government employment providing psychiatric services. The problem is exacerbated by the low level of community support for the mentally ill, and by the absence of measures to divert the mentally ill from offending and imprisonment, such as mental health diversion programmes and community treatment orders.

There used to be one mental health hospital, Rockview, serving the whole country. When fully functional, this accommodated about 200 patients. About a decade ago, this was reduced to 50 male and 50 female patients, and – in October 2008 – the hospital closed, and was not replaced. There is an acute mental health unit in Belmopan, serving acute inpatients and outpatients. This is attached to Belmopan Hospital, but is not designated as a mental health hospital, and has no secure ward. This unit has only four beds, and is designed for short-stay inpatients only, with an expectation that longer-term care will be dealt with in the community. It has little, if any, capacity to provide intensive, long-term therapeutic care. Outpatient care is provided in clinics in Belmopan, Belize City, and elsewhere. There is also an extended care facility, Palm Center, which has about 45 beds – but demand exceeds this capacity. Patients living here had been residing at Rockview Hospital before its closure.

There are 18 psychiatric nurses in government service. Five are assigned to Belize City, and one of these is assigned to the prison. The nurses' work is coordinated by Eleanor Bennett, mental health nursing administrator at the Ministry of Health, in Belmopan.

At the time of my visit, a psychiatrist from the Philippines had recently joined government service, and was completing his orientation. Three Cuban psychiatrists were also due to arrive, to take up positions in different parts of the country, but none of them was expected to be attached to the prison.

### Mental health provision in the prison

Mental health provision is a serious issue in the prison. At the time of my visit, there had been no psychiatrist providing regular services at the prison for more than a year and a half. The previously assigned psychiatrist had been making sporadic visits to the prison, to conduct clinical assessments and prepare court letters, but she left Belize in January 2013. After that, there was no psychiatrist in government service available generally. The psychiatric nurse attached to the prison visits about twice

a month, and is able to prescribe medication. Between these visits, there is no emergency call-out service for mentally ill patients. There is a full-time psychologist counsellor at the prison, but he is not medically qualified. It was hoped that the new psychiatrist would visit the prison two days a month, accompanied by the psychiatric nurse attached to the prison.

Some psychiatric medication is dispensed in the prison. This is generally limited to such antidepressants and antipsychotics as are available in the government dispensary. If other medications are needed, they have to be paid for by the inmate or his/her family.

## Indefinite detention of mentally ill prisoners

There are various provisions in the Indictable Procedure Act under which an accused person can be deemed unfit for trial, or not responsible for his actions, by reason of insanity (see sections 119-121). In such cases, indefinite detention may be ordered. This is variously referred to as detention at the pleasure of Her Majesty, the Governor General, or the Supreme Court. The court ‘may order the person to be detained in safe custody, in such place and manner as the court thinks fit, until Her Majesty’s pleasure is known’ (section 122(1)). The case must be reported to the Chief Justice, ‘who shall order the person to be dealt with as a person of unsound mind under the laws of Belize for the time being in force for the care and custody of persons of unsound mind, or otherwise as he thinks proper’ (section 122(2)). In practice, detention is ordered in the prison. There is no secure mental health facility in Belize – although see the case of Ms C, below.

Once a person has been detained at the pleasure of Her Majesty etc, there appear to be no rules requiring periodic review of the inmate’s mental health. Nor, it seems, are there any rules requiring periodic review of the justification for their continuing detention. Although some psychiatric reviews had taken place, I was told that not a single inmate in this category has ever been returned to court so that the justification for further detention can be reviewed. These inmates are at risk of disappearing into the prison system; they have little, if any, prospect of adequate psychiatric intervention, and, in effect, seem to have been condemned to die in prison.

There are six inmates at the prison detained under the above provisions, by reason of insanity or unfitness to stand trial. The details in some of their cases illustrate the problems facing prisoners in this category.

### The case of Mr M

Mr M’s case is particularly striking and troubling. He stood trial for manslaughter in 1976, aged about 20. He was found to be insane and has been kept in prison ever since, for 37 years. He is held in a cell of his own, in a unit housing other inmates with mental health problems. It is not clear that there has been any effective psychiatric evaluation of Mr M since his trial, or any attempt by a court or tribunal to review the justification for his continued detention.

### **The case of Mr L**

Mr L was charged with murder. In May 2002, a doctor wrote that he was undergoing treatment for psychoneurosis and was unable to reason properly. In October 2002, Mr L was presented for bail arraignment in the Supreme Court, which was of the opinion that he ‘may be insane and unfit to take his trial’, and ordered his detention until Her Majesty’s pleasure be known. He was then received into the psychiatric hospital, and transferred to the prison in 2005. It is not clear whether, in the 12 years since 2002, there has been any review of Mr L’s case in court, or any progress in ascertaining whether he is, in fact, fit to stand trial.

### **The case of Mr B**

Mr B was charged with arson and admitted to the prison in 2009. In 2011, a letter was obtained from the psychiatrist then providing services to inmates, and Mr B was produced in court. The letter was short on substance and the judge indicated that, unless the psychiatrist came to court to give evidence on the matter, the court would be unable to intervene. There seems to have been no further progress since then.

### **The case of Ms C**

Ms C was not one of the six detained inmates in this category, but her case provides a rare example of a mentally ill suspect in a serious criminal case being diverted away from imprisonment at an early stage in the proceedings. Ms C was charged with multiple murders in April 2013, aged 22. She was alleged to have drowned three of her children in the sea before trying to drown herself. At a subsequent hearing, the magistrate was persuaded to make an order for psychiatric assessment under the Medical Service and Institutions Act. Ms C was taken to the acute mental health unit in Belmopan and, at the time of my visit, was still undergoing assessment of her mental health.

This pragmatic solution was found before Ms C obtained legal representation, and might not have been achieved without the personal support of the Director of Public Prosecutions. It was evidently prompted by concerns about the suitability of detaining Ms C in the prison, and the risk that she might take her own life there. However, there were also concerns that the unit in Belmopan is not an appropriate facility for Ms C.

After my visit to Belize, Ms C was moved from the psychiatric unit in Belmopan to the prison. She is held in the female unit with all the other female prisoners. Given the very limited psychiatric services available at the prison, this was not, on the face of it, a satisfactory solution.<sup>6</sup>

---

<sup>6</sup> By way of an update, in July 2014 Ms C was sentenced to eight years’ imprisonment on three counts of manslaughter. She is now serving her sentence at the prison.

## Issues of concern

### (1) General standards of psychiatric treatment in prison

As will be clear from the above account, there are obvious concerns about the availability of effective psychiatric care in the prison. It seems most unlikely that psychiatric provision for prisoners in Belize would meet international minimum standards.<sup>7</sup> Mentally ill prisoners are contained and medicated with basic drugs. This must be seen in the context of poor mental health provision in Belize generally. However, prisoners are in a particularly vulnerable position, not least because of their imprisonment, and the fact that the conditions of their imprisonment are liable to make their mental illness worse. Their mental health is often connected with their offending, which means that – once they are released – they are likely to continue with their offending behaviour. So there is an onus on the State to ensure mentally ill offenders are afforded a minimum standard of treatment in accordance with international norms. They require effective diagnosis and therapeutic treatment, not mere containment. Regular visits by a psychiatrist would be a step in the right direction, but this will achieve little unless it is supported by broader changes in the provision of mental healthcare.<sup>8</sup>

### (2) Treatment of inmates detained indefinitely

The treatment of inmates detained indefinitely by reason of insanity is a source of acute concern. The absence of periodic reviews of the justification for continued imprisonment, whether by psychiatrists or by the courts, appears to be a stark failing in the system. It has resulted in serious breaches of the human rights of mentally ill prisoners. It means that a diagnosis of mental illness in criminal proceedings can amount to a sentence of life imprisonment, with no prospect of release. This, in effect, has been the fate of Mr M, who has spent nearly 40 years in prison on the basis of a decision, in 1976, that he was not fit to stand trial.

<sup>7</sup> See rule 22 of the UN Standard Minimum Rules for the Treatment of Prisoners:

'(1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organised in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.'

The European Court of Human Rights has acknowledged that the lack of appropriate medical care, including for mentally ill prisoners, may amount to inhuman and degrading treatment in breach of Article 3 of the European Convention on Human Rights. It observed that 'the assessment of whether the particular conditions of detention are incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently, or at all, about how they are being affected by any particular treatment. (*Musial v Poland*, 28300/06, at [87]).

<sup>8</sup> In 2008, the World Health Organization (WHO) and the World Organization of Family Doctors (Wonca) paid tribute to the progress made in Belize in the development of a community mental health programme and the work of psychiatric nurse practitioners. In this respect, Belize is no doubt doing better than other countries in the region. The report did not address mental health provision for prisoners. See *Integrating Mental Health into Primary Health Care: a Global Perspective*, WHO and Wonca, 2008.

The failure to properly identify and treat mental health problems is a universal problem, in rich and poor countries alike.<sup>9</sup> But the difficulties arising from the proper treatment of mental illness are no excuse for inaction.

## Potential interventions

To a large extent, these problems stem from a general lack of resources, so progress will depend on political engagement. Raising awareness of these problems may help. The case of someone such as Mr M cannot fail to shock the conscience. It may also help if a sceptical public is helped to understand that failure to diagnose and address mental health problems undermines the fight against crime. It means mentally ill prisoners may be as likely – or even more likely – to commit further offences after their release.

There are two broad objectives. The first is to divert mentally ill individuals from the prison whenever possible. The second is to ensure significant improvements in the diagnosis and effective treatment of mental illness within the prison. The means by which these objectives can be advanced need to be explored as a priority with all interested parties.

The position of mentally ill prisoners detained indefinitely without review needs urgent consideration. It may be possible to prioritise psychiatric evaluation of these prisoners, of whom there were only six at the time of my visit. Litigation could be brought to challenge the continued detention of inmates in this category. There are strong arguments that can be raised that their plight is an affront to human dignity, as protected under the Constitution of Belize and international law. The remedies sought in such litigation would have to be realistic; there is little point in seeking the release of a mentally ill inmate if there is no safe place for him to go. If no suitable therapeutic facility has been made available outside the prison, the litigants' remedy may include an order for such a facility to be provided. The courts will not make such orders lightly. These are all issues that need to be explored with care.

---

<sup>9</sup> See for instance this assessment of the position in the United States:

'The number of incarcerated men and women with severe mental illness has grown so tremendously in the last few decades that prisons may now be the largest mental health providers in the United States. Yet US prisons are not designed or equipped for mentally ill prisoners. Prison conditions are hard on mental health in general, because of overcrowding, violence, lack of privacy, lack of meaningful activities, isolation from family and friends, uncertainty about life after prison, and inadequate health services. The impact of these problems is worse for prisoners whose thinking and emotional responses are impaired by schizophrenia, bipolar disease, major depression, and other serious mental illnesses. The mentally ill in prison also face inadequate mental health services that leave them undertreated or mistreated. In addition, poor mental health services leave many prisoners receiving... inappropriate kinds or amounts of psychotropic medication that further impairs their ability to function.' (Jamie Fellner, 'A corrections quandary: mental illness and prison rules', (2006) 41 Harv CR-CL 391).

## Part 4: Young offenders

The Wagner Youth Facility (WYF) is a compound within the prison where male young offenders are held separately from adults. At the time of my visit, there were nearly 80 inmates in the WYF, aged from 13 to 21, so there are some adults within the unit. Most inmates in the WYF were remanded pending trial for murder or attempted murder, usually gang-related. Any juvenile female prisoners are held in the smaller women's section of the prison, with the other female inmates. Juveniles on remand are not held separately from convicted juveniles.

The juvenile population has grown considerably in recent years. This is connected with the increased involvement of juveniles in gang-related crime.

Three concerns were identified in relation to the treatment of young offenders:

- Lengthy imprisonment on remand
- Offenders given life sentences for offences committed while they were minors
- No segregation of juvenile female inmates

### Lengthy imprisonment on remand

Many young offenders are facing long delays waiting for their trials. In the worst cases, the inmates have been waiting for more than three years for their trials to be heard. The situation is even worse for adult inmates (see below), but this is still a concern. All accused people are entitled to a trial within a reasonable time (see Part 7, below). However, given the vulnerability of children, ensuring a prompt trial is particularly important (see Article 37(b) of the UN Convention on the Rights of the Child, which emphasises that children must be imprisoned 'only as a measure of last resort and for the shortest appropriate period of time'). In fairness to the prison, the inmates held in the youth facility for the longest time (since 2011) are now adults, aged 18 or over, but there are a number of minor inmates who have been awaiting trial in prison for a year or more. This is an issue that needs to be addressed in conjunction with lengthy pre-trial remands generally, and the alarming trend of an increasing number of offences for which magistrates cannot grant bail, even for juveniles (see below).<sup>10</sup>

<sup>10</sup> By way of an update, some excellent *pro bono* work on bail applications for juvenile remanded prisoners has recently been done by Audrey Matura-Shepherd and other attorneys. This has led to a significant reduction in the juvenile population at the prison. (See below.)



## Offenders given life sentences without parole for offences committed when they were minors

The imposition of life sentences without minimum terms on offenders who were minors when they committed their offences is unlawful: see *Bowen and Jones v Attorney General of Belize*, Claim No. 214 of 2007, judgment 27 September 2010. In that case, the Supreme Court held that such sentences violate the prohibition of inhuman punishments in the Constitution of Belize and the UN Convention on the Rights of the Child.

There is at least one inmate at the prison who is serving a life sentence for murder, despite having committed the offence when he was a minor. Like other prisoners serving sentences for murder, he has no prospect of either parole or remission (see below). He is, therefore, entitled to be resentenced and given a determinate sentence. He has an appeal pending before the Supreme Court.

It is not clear whether the above prisoner was sentenced before or after the judgment in *Bowen and Jones*, or whether other individuals in this category have been given life or determinate sentences. In any event, this inmate was identified by looking at his date of birth and the dates of his admission to the prison. According to the prison records, he was under 18 when he was admitted to prison, so he was under 18 when he committed his offence (the offence was not committed in prison). There may be other prisoners who were 18 or older when they were admitted to prison, but under 18 when they committed their offences. For instance, prisoner MF was only 18 and five months when he was admitted, so it may be that his offence was committed before his 18th birthday. The records will need to be checked in more detail to obtain a fuller picture, and to establish how many inmates fall within this category.

## No segregation of juvenile female inmates

International law requires juvenile inmates to be separated from adults unless separation is not in the child's best interests: see Article 37(c) of the United Nations Convention on the Rights of the Child. In this prison, there is no separate accommodation for juvenile female inmates, so there is no scope for an individualised assessment of whether separation is in the child's best interests. That said, there were no female juvenile inmates in the prison at the time of my visit. If there had been, they would have been accommodated with the other female inmates. If only one or two such inmates were in the prison, the undesirability of housing them in isolation, without the opportunity to socialise with any other female prisoners, might outweigh the presumption in favour of separation. It might be in their best interests to be accommodated with the adult female inmates. This is an issue that may warrant further consideration.



## Potential interventions

The prisoner identified in paragraph 38 above has an appeal pending before the Supreme Court. It would be prudent to check the prison records to see if there are any other inmates who were given unlawful life sentences for offences committed while they were minors. If there are, such cases need to be brought back before the courts, possibly as out-of-time appeals against sentence, so that a lawful determinate sentence can be imposed.

The causes of pre-trial delays for young offenders, and the issue of segregating juvenile female offenders, need to be looked at in more detail.

Cases in which juveniles have been given long minimum mandatory sentences should be examined as a priority, with a view to potential applications for review of sentence by the Supreme Court (see Part 8, below).

On 19 July 2014, a further visit to the prison was made by a local attorney, Audrey Matura-Shepherd, and Edward Fitzgerald QC. In particular, they visited the Wagner Youth Facility. The visit identified a number of juveniles who have been held on remand for a number of years for petty offences. These included a 13-year-old who has been held on remand for two months for theft; a 14-year-old who has been held on remand for cultivation of cannabis; and a teenager who rode a bicycle without lights and has been remanded for two weeks instead of being given bail for such misdemeanour. Around 50 per cent of juveniles on remand were detained for minor offences for which bail can be granted at the Magistrates' Court; however, because they appear unrepresented at the Magistrates' Courts – and neither they nor their parents know their rights and how to access bail – they are left to linger for months in prison until the magistrate is inclined to grant bail. Their situation is compounded by the fact that there is a belief they will be rehabilitated through incarceration, and, thus, not even the social workers or rehabilitation officers dealing with their case push for bail over incarceration.

A legal clinic project has since been established, led by Audrey Matura-Shepherd, Leslie Mendez and others, and held at the Wagner Youth Facility on a monthly basis with the cooperation of the Kolbe Foundation. The programme aims to provide free legal advice and assistance to juveniles who have been remanded. As a result, 34 juvenile offenders have been assisted with bail and representation at their hearings.

## Part 5: The death penalty and death row

The landmark case of *Reyes v The Queen* [2002] 2 AC 235 established that the mandatory sentence of death for all murders in Belize was unconstitutional, and that the ultimate sanction of death should be reserved for the worst of the worst cases. No-one has been sentenced to death in Belize since then. I was told that the view taken by the Court of Appeal is that the only sentencing options in murder cases are death or life imprisonment, although there has been no express ruling to that effect.

There has been no execution in Belize since 1985. The separate unit at the prison previously used to house death-row inmates is not used. There is a gallows in the prison, but it has never been used.

### GB's case

There is only one condemned inmate, GB. He is accommodated with the lifers. He was convicted in 2001, before *Reyes* was decided, and sentenced to death. In the light of *Reyes*, that sentence was unconstitutional. GB petitioned the Belize Advisory Council in 2010, but his application was refused in 2011. He is undoubtedly entitled to have his case brought back before the court so that his unconstitutional sentence can be revoked and a lawful sentence imposed.

Another inmate, Adolph Harris, was in a similar position to GB. In 2006, he brought a constitutional motion under section 20(1) of the Constitution (enforcement of protective provisions). He complained that his constitutional rights had been infringed by the imposition of what was now recognised to be an unconstitutional sentence and by his subsequent long imprisonment in execution of that sentence. The Supreme Court accepted these arguments and his death sentence was substituted with a determinate sentence of 20 years' imprisonment.<sup>11</sup> This took into account not only the fact that his original sentence was unconstitutional, but that there had been a very long delay – in his case 11 years – before a lawful sentence was imposed.

### GB's case: potential intervention

Counsel in Belize has offered to represent GB *pro bono* in an application for resentencing under section 20(1) of the Constitution. The Death Penalty Project could help by providing such support as is needed in this process.

---

<sup>11</sup> *Adolph Harris v Attorney General of Belize*, Claim no. 339 of 2006, judgment 11 December 2006.

## Part 6: Inmates serving life sentences ('lifers')

All 33 inmates serving sentences of life imprisonment ('lifers') were convicted of murder.<sup>12</sup> All but one of the inmates convicted of murder are serving life sentences. Again, the approach adopted by the courts in practice is that the only alternative to death in murder cases is life imprisonment. Adolph Harris, who had his death sentence commuted to 20 years' imprisonment, is the exception. This is because he was resentenced under provisions that envisage remedial orders at the discretion of the Supreme Court (section 20(2) of the Constitution).

### Eligibility for parole

After a change to the Prison Rules in 2002, inmates convicted of murder can never be eligible for parole, whatever their sentence. If sentenced to a determinate sentence, prisoners may be eligible for remission (see below).

Parole is governed by the Prison Rules. These are part of the subsidiary laws of Belize and are adopted by the Minister under section 17(1) of the Prisons Act. In general, serious offenders sentenced to life imprisonment or a determinate sentence of 21 years or more are eligible for parole after serving 10 years of their sentence. Those serving shorter sentences are eligible for parole after serving half of their sentence (rule 267). As long as murder was liable to a mandatory death sentence, this rule obviously had no application to offenders convicted of murder. After the mandatory death sentence was ruled unconstitutional in *Reyes*, the Prison Rules were amended to the effect that offenders convicted of murder were ineligible for parole (SI 2002/121). That remains the position today. A further offence is now also excluded – negligent manslaughter due to a motor vehicle incident (SI 2010/32).

### Applications to the Parole Board

The Parole Board meets every month, and comprises nine members, including three appointed by the prison. Under the Rules, the Board is required to include a registered medical practitioner, preferably a psychiatrist – but there is currently no psychiatrist on the Board. The Director of Public Prosecutions was recently appointed as a Board member.

The prison is proactive in making applications to the Board, as required under the Rules. As soon as an inmate is eligible for parole, the Superintendent of Prisons must refer his/her case to the Parole

<sup>12</sup> This includes Antonio Guevarra, but his offence is not clear.

Board for consideration (rule 267(2)). In practice, inmates are made available to be seen by the Board, but, normally, decisions are made without the inmate appearing before it.

Inmates who are refused parole are allowed to re-apply after six months, provided they have not breached prison discipline in that time. There is no right of appeal against a refusal of parole, and no right to challenge such refusal by way of judicial review (rule 268(7)).

Inmates released on parole must report to a parole officer as part of their supervision. The Parole Board may not be willing to release foreign nationals on parole, on the basis that they will have to leave Belize and will, therefore, be unable to comply with supervision (see the case of HL, below, in Part 8).

## Remission

Inmates who do not qualify for parole are eligible for remission, or discharge ‘by good conduct and industry’. They must first complete at least two-thirds of their sentence (rule 42). Inmates serving a life sentence for murder, or any other offence, cannot meet this requirement, and, therefore, are ineligible for remission. Inmates convicted of murder and serving a determinate sentence are eligible for remission (this was the position of Harris: see Part 5, above), but – if they decline to engage in the prison’s rehabilitation programme – they are liable to refusal of remission.

Inmates who are eligible for remission are automatically put forward for consideration if they have engaged with the rehabilitation programme. Decisions are made by the Remission Committee, comprising the Superintendent of Prisons, the Kolbe CEO, the Controller of Prisons, and a prison counsellor. The Controller of Prisons is an official of the Ministry of National Security, and is responsible for calculating parole and release dates. The Committee meets once a month.

It is more difficult to obtain remission than parole. The Committee takes the view that a high standard has to be set because, unlike parolees, inmates released on remission are not subject to supervision. The inmate’s conduct must be exemplary. Only about 10% of applications are granted.

Foreign inmates are considered eligible for remission if they meet the relevant criteria, because inmates released on remission are not subject to supervision.

## Applications to the Belize Advisory Council/Governor General

The Governor General is empowered to grant pardons, substitute less severe punishments, and remit sentences: see section 52(1) of the Constitution. These powers are exercised on the advice of the Belize Advisory Council (BAC) and applications are submitted to the BAC. There is no right to a hearing or to make oral submissions. The BAC does not generally give reasons for its decisions, other

than that there are no exceptional circumstances to support the application.<sup>13</sup> Refusals cannot be challenged in any court (section 54(15)).

Most of the lifers at Central Prison have submitted applications to the BAC under these provisions, and many of these applications have been supported by recommendations by the prison. Decisions are made within about a year, sometimes within a few months. I was not made aware of any successful outcomes.

## Issues of concern

The lifer population is quite young. Most are in their 20s or 30s and have many years, if not decades, of their lives ahead of them. The central concern for these inmates is the absence of any hope of parole or remission. The seemingly uniform approach adopted by the Belize Advisory Council in rejecting applications for reduction of sentence means that, in practice, lifers convicted of murder have no hope of release. This is the position irrespective of the facts of their offence, the time they have served in prison, their conduct in prison, or their progress with reform and rehabilitation.

I was provided with a letter signed by nearly all the lifers – and all six inmates detained at the Governor General's/Supreme Court's pleasure – and addressed to whom it may concern. It appends a letter to the Attorney General, in March 2013, asking for the blanket exclusion of parole and remission for lifers convicted of murder to be re-examined. The letter recognises that public protection requires that some prisoners never be released. It points out, however, that the blanket exclusion of parole and remission for lifers convicted of murder – which, in practice, means all lifers – deprives them of any hope of release. They have no incentive to participate in the prison's rehabilitation programmes, and their lack of hope poses problems for the prison administration in managing their behaviour. The letter refers to developments in other jurisdictions in South and Central America, where life imprisonment without parole or remission is prohibited under the Constitution, or has been held to be unconstitutional by the constitutional courts.

The position of lifers is unlikely to evoke much public sympathy, but it raises serious issues of principle. These issues were recently addressed by the Grand Chamber of the European Court of Human Rights (ECHR): see *Vinter v UK*, 66069/09, judgment 9 July 2013. In that case, the Court held that whole-life tariffs in England and Wales, with no prospect of review, constitute inhuman and degrading punishment, in violation of Article 3 of the European Convention on Human Rights. The court recognised that there could be no complaint where, on review, an offender was found to pose a continuing threat to society and spent the whole of his natural life in prison. However, where a person is incarcerated without any prospect of release, and without the possibility of having his life sentence reviewed:

<sup>13</sup> The refusal letter typically includes a form of words along the following lines: 'In accordance with the Belize Advisory Council's Procedure Rules 1997, the Council has directed that only in exceptional circumstances will the Council advise the Governor General to exercise the prerogative of mercy in favour of a petitioner. In the absence of any such special circumstances, the Council is unable to consider your appeal.'

*'there is the risk that he can never atone for his offence: whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable'* [112].

The court found that a commitment to rehabilitation, even for life prisoners, was to be found in international law. Particular reference was made to the United Nations Standard Minimum Rules for the Treatment of Prisoners, and the Rome Statute of the ICC.<sup>14</sup>

Belize is not, of course, bound by the European Convention on Human Rights, but the prohibition of inhuman and degrading punishment features in Belize's Constitution, and in the International Covenant on Civil and Political Rights, which Belize ratified in 1996. Belize has also subscribed to the principles set out in the Rome Statute, which it ratified in 2000, and to the United Nations Standard Minimum Rules for the Treatment of Prisoners. So there is a strong argument to be made that the principles and international human rights norms addressed by the Grand Chamber in *Vinter* apply, with like effect, in Belize. Some murderers must spend the rest of their lives in prison, but irreducible life sentences for all murderers are inconsistent with Belize's domestic law, and with its international obligations.

## Potential interventions

The Kolbe Foundation has already engaged in dialogue with the Attorney General over this issue. Further discussion with the government might usefully be pursued, supported by a review of the legal principles under Belize's domestic and constitutional law, and under international law. Another option would be a direct constitutional challenge of the exclusion of eligibility for parole under the Prison Rules. Given that inmates released on parole continue to be subject to supervision, this is probably a more suitable target for challenge than the exclusion of remission. If the possibility of release on parole is to be afforded to lifers convicted of murders, this should not be to the exclusion of foreign nationals.

---

<sup>14</sup> *Vinter* was considered by the Court of Appeal of England and Wales in A-G's Ref. (No. 69 of 2013) [2014] EWCA Crim 188. The court held that whole-life orders can operate consistently with Article 3 of the ECHR because prisoners may be eligible for release on compassionate grounds in exceptional circumstances.

## Part 7: Pre-trial delays and excessive remands in custody

At the time of my visit, remand prisoners accounted for 37% of the total prison population (591 inmates). Of these, 171 were on remand to the Supreme Court (the vast majority for murder) and 420 to the Magistrates' Courts. Most of these inmates have been on remand for more than two years, and many for much longer. Several appear to have been on remand for seven years. All of the inmates awaiting trial in the Supreme Court have had their preliminary inquiry, so the problem does not appear to lie with delays in completing that stage of the proceedings. As noted above, many young offenders have also spent long periods on remand.

The direct cause of the present delays for remand inmates, both adult and juvenile, seems to be a rise in the number of murders committed in Belize, and the accumulation of unresolved murder cases. There is no consensus as to why there has been such limited progress in clearing this backlog. The law was recently changed to permit trial for murder without a jury, but this seems to have made little impact. In part, this is because it only applies where the preliminary inquiry occurred after August 2011. There are many remanded inmates whose preliminary inquiry occurred before that date, so they are awaiting trial by jury. Some interlocutors felt that delays were attributable to a shortage of available courts. Others suggested that trials are often delayed because the prosecution is not ready to proceed. A further cause is the mandatory refusal of bail for a growing number of offences (see below).

### Issues of concern

Whatever the causes of excessive pre-trial detention, such detention amounts to a violation of a fundamental human right. Everyone, however serious the allegation against them, is entitled to a trial within a reasonable time. This is one of the most ancient principles of the common law, and is enshrined in section 6(2) of the Constitution of Belize. Excessive remands may also reduce the prospect of successful prosecutions because, the longer the delay, the more likely it is that witnesses will be hard to find, or that their recollection will be impaired. Given the cost of imprisonment, and the possibility that an accused may be acquitted, excessive remands are also a waste of taxpayers' money. A limited investment focused on reducing pre-trial delays and remands may well produce net savings in the longer term, and help to restore public confidence in the criminal justice system.

The sheer length of delays is not the only cause for concern. Remand inmates at the prison are subject to a stricter security regime than convicted inmates. So it is particularly undesirable that their liberty should be denied, in relatively harsh conditions, for any longer than is strictly necessary.



A number of options for tackling this problem have been, or could be, considered, but have not yet been taken up. These include:

- Allocating a dedicated judge, or judges, to deal solely with murder trials with no jury
- Allocating greater resources to the judiciary, possibly to be ring-fenced for the reduction of pre-trial delays
- Allocating greater resources to the Office of the Director of Public Prosecutions, possibly to be ring-fenced for the reduction of pre-trial delays
- Imposing custody time limits<sup>15</sup>
- Introducing more muscular case management of pending trials, especially murder trials – for instance, by introducing periodic reviews of continued detention
- Reducing the number of offences for which magistrates must refuse bail, especially in relation to juveniles (see below)

The extent to which the Bar has the capacity to deal with the current backlog of murder trials should also be explored.

An issue raised at the Behind the Prison Gates roundtable was the increasing number of offences for which bail must be refused in the Magistrates' Courts. In principle, the accused can apply to the Supreme Court for bail, but they will need an attorney to do so, and few will have sufficient funds to instruct one. This issue needs to be looked at generally, but it raises particularly serious concerns for juvenile defendants.

## Potential interventions

There is an obvious need for further discussion about the causes of long pre-trial remands. Work needs to be done on highlighting the extent of this problem, and resources need to be deployed to address it, not least for the sake of promoting public confidence in the criminal justice system. Individual litigation is also an option. Inmates who have waited seven years to have their cases brought to trial are in a strong position to argue that their constitutional rights have been violated. The courts may be willing to take whatever remedial steps are needed to ensure that a trial proceeds promptly or, if not, that the prosecution is stayed and the accused released from custody.

The restrictions on granting bail in the Magistrates' Courts need to be reviewed. This may entail legislative reform, but – in the meantime – there may be procedural changes, or other mechanisms, to remove obstacles to release on bail in appropriate cases.

---

<sup>15</sup> English law imposes limits on the time an accused can spend awaiting trial on remand. The limit between committal for trial in the Crown Court and the trial itself is 112 days. Custody time limits can only be extended if there is good and sufficient cause, and where the prosecution can show that it has acted with all due diligence and expedition. See the Prosecution of Offences Act 1985, s.22 and the Custody Time Limits Regulations, SI 1987/299, regs 5-6. If the limit expires without extension, the accused is generally eligible for bail. This is subject to the general rule that bail is only granted in murder, and other very serious cases, if there are exceptional circumstances (Criminal Justice and Public Order Act 1994, s.25). Excessive remands in Belize are a problem, in large part, for inmates accused of murder. Even if bail in murder cases was introduced, most inmates would probably not be appropriate candidates for bail. So introducing custody time limits in Belize, even if coupled with an exceptional discretion to grant bail in murder cases, would have limited effect on the problem of excessive remands.



## Part 8: Manifestly excessive sentences

Several cases of possibly manifestly excessive sentences were brought to my attention.

### **FC and FW**

FC and FW were separate cases dealt with in the Supreme Court, but they raise similar issues. They both involved multiple convictions for sexual offences (carnal knowledge, unnatural crime and rape) committed against a relative. The accused were given very long total sentences arising from the imposition of numerous consecutive sentences – 75 years for FC and 80 years for FW. Both men have appeals pending in the Court of Appeal. At the time of my visit, the appeals could not proceed because the transcripts from the Supreme Court were not available. This is apparently a common cause of delay in the Court of Appeal.

### **HL**

HL was admitted to the prison in May 2001, and subsequently sentenced to 36 years' imprisonment. This arose from seven consecutive five-year sentences for robberies against tourists, plus a further year for an escape. The robberies took place over a period of a few days. According to current practice, HL will not be eligible for parole because he is a foreign national and, therefore, cannot comply with parole supervision in Belize.

### **DQ**

DQ is serving a total sentence of more than 30 years for a number of burglaries and escapes. He escaped in 2007, and was sentenced to 28 years in absentia. He was recaptured in the United States and extradited, but escaped again in 2010. He was given five years for each escape, the latter sentence being consecutive to the sentences imposed for his burglaries.

## Potential interventions

The Death Penalty Project has previously assisted Belize counsel in challenging excessive sentences arising from the imposition of consecutive sentences. In *R v Crawford*; *R v Hill*; judgment 6 July 2007, Conteh CJ exercised his power of review to reduce sentences of 41 and 36 years to seven and eight years respectively. It may be that some of the above cases also merit review or, in the first two cases, onward appeal to the Caribbean Court of Justice. These cases would need to be looked at in more detail.

## Mandatory minimum sentences

The imposition of mandatory minimum sentences raises separate, but related, issues. This subject was raised at the *Behind the Prison Gates* roundtable meeting, where participants were told of a juvenile (aged 16) who was given a mandatory 12-year minimum sentence for the offence of carnal knowledge. There are compelling arguments that the imposition of stringent mandatory minimum sentences constitutes indiscriminate, disproportionate and inhuman punishment, and is accordingly unconstitutional.<sup>16</sup> Such arguments are all the more cogent if the penalty is imposed for an offence committed by a juvenile. This is another point on which legislative change may be needed, but – in the meantime – there is scope for affected prisoners to seek a review of their sentences in the Supreme Court.

---

<sup>16</sup> See, for instance, *Smith v R* [1987] 1 SCR 1045 (Supreme Court of Canada); *A-G of Belize v Zuniga & Ors* [2014] CCJ 2 (AJ) (Caribbean Court of Justice).

# RECOMMENDATIONS



# Recommendations

Following on from the findings of the report by Joseph Middleton, the *Behind the Prison Gates* roundtable meeting was conducted to discuss some of the issues highlighted in the report and how best to tackle the problems raised. The roundtable included a number of key stakeholders, and participants from the criminal justice system and civil society. (See 'Annex' for the programme and participants).

The roundtable was chaired by Godfrey Smith SC, and a number of recommendations and suggestions made by the participants were collated and summarised by the chairman. These are set out below:

## A. Mental health

- That the Chief Justice of Belize consider issuing a practice direction that would establish guidelines for how the courts – in particular, the Magistracy – ought to treat the admissibility of evidence of psychiatric evaluation, to address the problem of inconsistent approaches by magistrates in admitting evidence of psychiatric evaluation
- That a trained health worker should, using an approved checklist, interview each new inmate of the Kolbe facility, with a view to ascertaining each inmate's basic state of mental health. These records would be reviewed periodically
- That litigation should be initiated to challenge the continued incarceration of mentally ill patients who have had no review of their status, and have been incarcerated for a long time
- That a mechanism should be established to periodically review the mental state of people who have been found unfit to plead, to ensure that they are not forgotten in the system and remain incarcerated for many years without any review of their status
- That a properly equipped mental health facility should be established

## B. Juveniles

- That an audit of current inmates be conducted to ascertain the number of inmates who committed their offences while they were minors
- That a mechanism be established for the frequent periodic review of people sentenced to indeterminate sentences when they were juveniles

- That the appropriate facilities be put in place to ensure that female juveniles are kept separate from male juveniles at the Kolbe facility
- That one uniform code for alternative sentencing of juveniles be established
- That the appropriate legislative measures be taken to ensure there is no life imprisonment for child offenders
- That all the various pieces of legislation concerning juvenile justice be reviewed, aggregated and compiled into one, central, juvenile justice act
- That the power of magistrates to grant bail to juveniles be reviewed and reformed
- That the Chief Justice of Belize consider issuing a practice direction setting out appropriate guidelines for people on trial who were minors when the offence for which they are standing trial was committed
- That the Chief Justice of Belize consider issuing a practice direction setting out appropriate guidelines for the granting of bail to juveniles
- That mandatory minimum sentences be revised, with a view to reforming such sentences
- That an education campaign be launched that would include – but not be limited to – presentations to schools on juvenile justice, mobilising civil society to engage in public awareness messages about juvenile justice
- That the Bar Association of Belize develops a programme in which some of its members provide pro bono services in the area of juvenile justice
- Where appropriate, that litigation be considered and initiated as a catalyst to trigger earlier potential reform, or to assist in speedier legislative changes

## C. Long-term offenders

- That a system be put in place to ensure there is periodic review of life sentences
- That measures be taken – such as judicial training and one uniform code or guidelines for sentencing – with a view to getting sentencing right in the first place

- That appropriate measures be taken to ensure that prosecutors understand and appreciate that their role and function includes drawing the attention of the court to what the appropriate sentence should be, especially where the offender is unrepresented
- That the law governing the power and functions of the Belize Advisory Council be reformed, so that it might be empowered to refer cases of clearly inappropriate sentences back to the courts for review
- That the system of parole be reviewed, to ensure it is functioning efficiently and systematically
- That litigation be initiated, where appropriate, to challenge mandatory life sentences without the possibility of parole where it applies

## General recommendations

- That a comprehensive review of the functions of the Belize Advisory Council be undertaken, with a view to: giving it more flexible powers of commutation to deal with obvious practical cases of injustice; making it more efficient in the execution of its functions; defining circumstances where it might refer cases back to the Court of Appeal to deal with obvious injustices
- That an ombudsman be established, by law, to deal exclusively with matters concerning the justice system
- That adequate financial and human resources be earmarked to strengthen the capacity of Belize's legal aid system
- That the Bar Association of Belize develop a plan to ensure *pro bono* legal services are offered by its members to the general public on a consistent basis
- That the Bar Association of Belize consider implementing a programme to raise awareness among – and provide information to – members of the legal profession, including the judiciary, on principles of proportionality and totality of sentence
- That a working group be established to prioritise and implement these recommendations



# Programme

## **Opening and welcoming remarks**

*Eamon Courtenay SC, President of the Bar Association*

*Parvais Jabbar, Co-executive Director, The Death Penalty Project*

*The Hon Kenneth Benjamin, Chief Justice*

## **Session 1: The report by Joseph Middleton on Belize Central Prison**

Key issues and findings –

*Joseph Middleton, barrister, Doughty Street Chambers*

Response to report and identification of priority issues –

*Earl Jones, Chief Executive Officer of Prisons, Kolbe Foundation*

## **Session 2: Issue 1 – mental health**

Observations on domestic law and international standards –

*Edward Fitzgerald QC, Doughty Street Chambers*

Perspectives from a legal practitioner –

*Leslie Mendez, attorney at law, Marine Parade Chambers*

## **Session 3: Issue 2 – juveniles and young offenders**

Review of juvenile justice legislation in Belize, and recommendations –

*Chair for the National Committee for Families and*

*Children's legislative and policy reform sub-committee (NCFC)*

Challenges and perspective from the judiciary –

*The Hon Justice Antoinette Moore*

## **Session 4: Issue 3 – long-term offenders**

Legal principles governing long-term sentences –

*Sir Keir Starmer QC, former Director of Public Prosecutions, UK*

Management and release of long-term offenders –

*Cheryl-Lynn Vidal SC, Director of Public Prosecutions, Belize*



## Participants at the roundtable discussion



### **Back (L-R)**

Gianni Alamilla, Hector Guerra, Insp Julius Cantun, Lionel Arzu, Joseph Middleton, Lt Col Francis Thomas (Ret'd), Eamon Courtenay SC, John Woods, Hon Chief Justice Kenneth Benjamin, Simeon Sampson SC, Shanice Lovell, Herbert Panton, Sabita Maharaj, Godfrey Smith SC, Trienia Young, Edward Fitzgerald QC, Randall Sheppard, Parvais Jabbar, Leo Bradley, Sir Keir Starmer QC

### **Middle (L-R)**

Thara Blanco, Wesley Quimbo, Nigel Hawke, Liesje Chung, Earl Jones, Dylan Williams, Hon Troadio Gonzalez, Hon Denis Hanomansingh, Ivan Yerovi, Jannelle Villanueva, Trecia Pitts-Anderson, Avil Steadman

### **Front (L-R)**

Taheera Ahmad, Olabimpe Akinkuoilie, Pamela Killen, Pearleen Young, Audrey Matura-Shepherd, Hon Antoinette Moore SC, Sarah Fearnley, Leslie Mendez, Donelle Hawke.



# Author

## Joseph Middleton

Joseph Middleton is a barrister at Doughty Street Chambers, the UK's leading civil liberties and human rights chambers. He has a wide-ranging domestic and international practice, and is often instructed in complex matters that raise human rights in criminal, civil and immigration proceedings. He has appeared in cases at all levels of the UK's domestic courts. He has acted *pro bono* in a number of cases from the Commonwealth Caribbean in the Privy Council and before international tribunals. In recent years, his *pro bono* work has focused on death penalty litigation in Commonwealth Africa. As a result of this litigation, and building on the seminal authority of *Reyes v The Queen* [2002] 2 AC 235, PC, the mandatory death penalty for murder has been ruled unconstitutional in Malawi and in Kenya. Mr Middleton has conducted many missions around the world on behalf of leading human rights organisations, including Amnesty International, the International Commission of Jurists, the Interparliamentary Union, and the Human Rights Institute of the International Bar Association.

## Special adviser

### Edward Fitzgerald CBE QC

Edward Fitzgerald QC is head of Doughty Street Chambers. He specialises in criminal law, public law, judicial review, and international human rights law. Mr Fitzgerald frequently appears in the Judicial Committee of the Privy Council in death penalty appeals, miscarriages of justice and extradition cases. He has won numerous important appeals in the House of Lords and the Privy Council, including the cases of *R v Reyes* [2002] 2 AC 235, *R v Hughes* [2002] 2 AC 259 and *R v Fox* [2002] 2 AC 284, which abolished the mandatory death penalty in Belize and the Eastern Caribbean. Mr Fitzgerald's international practice has included representing the Belize government in its case against Guatemala before the Organization of American States, and challenging governmental decisions in numerous cases before international tribunals. He has been called to the Bar in several jurisdictions, including Belize, Grenada and St Vincent & the Grenadines, and has been granted rights of audience to appear in cases in Hong Kong, Trinidad & Tobago, St Lucia, the Bahamas and the British Virgin Islands. Mr Fitzgerald has won numerous awards, and was made a CBE in June 2008, for services to human rights.

# The Death Penalty Project

The Death Penalty Project works to protect the human rights of those facing the death penalty. We operate in all countries by providing free legal representation, advice and assistance.

For more than 20 years, our work has played a critical role in identifying a significant number of miscarriages of justice, promoting minimum fair trial guarantees in capital cases, and establishing violations of domestic and international law. Through our legal work, the application of the death penalty has been restricted in many countries, in line with international human rights standards. We have acted in a number of landmark cases in Belize including: *Reyes v The Queen*, [2002] 2 AC 235 (unconstitutionality of the mandatory death penalty); *The Queen v Reyes*, [2002] Supreme Court of Belize, unreported (strict sentencing criteria established in capital cases); *Harris v Attorney General of Belize*, Supreme Court of Belize, Claim no. 339 of 2006 (commutation of death sentence; delay); and *Bowen and Jones v The Queen*, Supreme Court of Belize, Claim No. 214 of 2007 (unconstitutionality of life sentences for juveniles).

Our training programmes and research projects create awareness of the issues – including the death penalty, public opinion, mental health, and prison conditions – and provide a platform to engage with experts and key stakeholders. Some of our publications include:

*The inevitability of error: the administration of justice in death penalty cases* (2014)

*Handbook of forensic psychiatric practice in capital cases* (2013)

*Report on prison conditions in Jamaica* (2011)

*Public opinion survey on the mandatory death penalty in Trinidad and Tobago* (2011)

*A penalty without legitimacy, Trinidad and Tobago* (2009)

*A guide to sentencing in capital cases* (2007)

*A rare and arbitrary fate, Trinidad and Tobago* (2006)

In association with:

