

GUYANA

INSUFFICIENT ACTION ON LONG-STANDING HUMAN RIGHTS CONCERNS

*Amnesty International
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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Guyana in January 2015. In it, Amnesty International evaluates the implementation of recommendations made in the previous cycle of the UPR, assesses the human rights situation on the ground, and makes recommendations to the government of Guyana on how to address the key human rights challenges with which it is faced.

Violence against women and girls remains widespread within Guyana. While the government has taken legislative steps to address this problem, serious implementation gaps remain and must be urgently addressed. Discrimination against lesbian, gay, bisexual, transgender, and intersex (LBGTI) persons is prevalent in Guyana, and sex between men continues to be criminalised. Allegations of excessive use of force by members of the Guyana Police Force are of serious concern to Amnesty International, as is the pattern of impunity which persists in relation to these abuses. Finally, Amnesty International is concerned at the retention by Guyana of the death penalty.

FOLLOW UP TO THE PREVIOUS REVIEW

During its first UPR in May 2010, Guyana accepted recommendations related to the ratification of a number of international human rights standards. These included ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the Optional Protocols to the Convention on the Rights of the Child, on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, respectively;¹ and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.²

Amnesty International welcomes that Guyana acceded to the Optional Protocols to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography and on the involvement of children in armed conflict on 30 July 2010 and 11 August 2010, respectively, and also that it ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families on 7 July 2010. However, the country has yet to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Among the recommendations which Guyana accepted and considered “already implemented or in the process of implementation”³ was one related to increasing the capacity of the Police Complaints Authority to investigate allegations of extrajudicial killings and the excessive use of force by police in prompt and impartial proceedings.⁴ Amnesty International is concerned, however, that the capacity of the Police Complaints Authority remains very limited, with all investigations still being carried out by the Guyana Police Force itself. Police abuses continue, with impunity being the norm, and there has been a spate of allegations of egregious police brutality in recent months (see below).

In its response to recommendations related to the abolition of the death penalty,⁵ abolition of corporal punishment in schools,⁶ the decriminalization of consensual same-sex relations, and discrimination on the basis of sexual orientation or gender

identity,⁷ Guyana pledged to hold national consultations on these issues. The Guyanese National Assembly established a Special Select Committee on 9 August 2012 to coordinate such consultations.⁸ Public meetings have been held on the issue of corporal punishment in schools and oral hearings were held at the end of 2013 with the participation of civil society. However, at the time of writing, no such meetings have been held on the death penalty or on same-sex relations and discrimination against LGBTI persons. Moreover, the Special Select Committee has yet to report to the National Assembly on any of the consultations.

Guyana supported a recommendation to invite the UN Special Rapporteur on Torture to conduct an assessment of torture in the country⁹ as well as recommendations calling for an open invitation to UN Special Procedures mandate holders to be issued.¹⁰ To Amnesty International's knowledge, no such invitations have been extended.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

THE DEATH PENALTY

The last execution in Guyana took place in August 1997.

Amnesty International welcomes that on 14 October 2010, the National Assembly amended the Criminal Law (Offences) Act to remove the mandatory death penalty for anyone convicted of murder. However, death sentences continue to be imposed in Guyana. At least five people were sentenced to death in 2013, and according to information from the government, as of June 2014 there were 14 people on death row.

Amnesty International is also disappointed to note that, since its last UPR, Guyana has continued to vote against the UN General Assembly resolutions on a moratorium on the use of the death penalty, in December 2010 and December 2012, respectively.¹¹

As referred to above, following its last UPR, Guyana announced that it would hold public consultations into "the attitude of Guyanese, particularly the families of victims, criminologists, and professionals, on capital punishment and its possible abolition".¹² At the time of writing, however, such consultations have yet to start.

Amnesty International opposes the death penalty in all circumstances as a violation of the right to life and an ultimately cruel, inhuman and degrading punishment.

VIOLENCE AGAINST WOMEN AND GIRLS

Amnesty International remains concerned about the very high levels of physical and sexual violence against women and girls in Guyana.

Amnesty International welcomes the passing of the Sexual Offences Act on 24 May 2010 as a significant improvement on previous legislation aimed at combatting gender based discrimination, including by widening the definition of rape and criminalizing marital rape. However, it did not come into force until February 2013 when the Sexual Offences (Amendment) Act was passed, following successful legal

challenges that sections of the Act were unconstitutional (for example, that the accused person did not have the same rights as the prosecution to present evidence or written statements at preliminary inquiries).

The Act also envisages an inter-agency task force, the National Task Force for the Prevention of Sexual Violence, which is tasked with developing and implementing a National Plan for the Prevention of Sexual Violence as well as establishing a Sexual Offences Unit. More than a year after its enactment, however, implementation of the Act remains slow: the National Task Force has apparently met only once, not every three months as stipulated in the Act, the National Plan has yet to be drafted, and the Sexual Offences Unit yet to be created. Women's rights organizations have also stated that there is not enough specialized training on the provisions of the Act for officials from the justice, health and law enforcement sectors, and that not enough has been done to inform the public of the Act.

Conviction rates for sexual offences remain alarmingly low. Women's rights organizations have reported that before the Act came into force nearly 1,000 sexual offence cases had been referred to the High Court of Guyana; however, these are unable to go forward until the amendments to the Sexual Offences Act have been passed. According to the Ministry of Legal Affairs, in 2012 and 2013 there were no conviction for sexual offences in a total of 22 cases.¹³

The National Domestic Violence Policy was launched in June 2008 with the aim of providing a multi-sectoral response to domestic violence. However, the policy is still not being implemented in an effective and coordinated manner, and the National Oversight Committee on Domestic Violence has not been convened. The policy states that the government will "ensure reasonable access to temporary refuges for survivors". However, there is still only one shelter for victims of domestic violence in Guyana, located in the capital, Georgetown. As with the Sexual Offences Act, there is also a need for training of judicial, health and law enforcement officials as well as for public education on the provisions contained in the Domestic Violence Act. Improved collection of statistical data is also required on cases of domestic violence and sexual violence.

EXCESSIVE USE OF FORCE BY THE SECURITY FORCES

Allegations of excessive use of force by the Guyana Police Force during arrests and detentions remain an ongoing concern for Amnesty International, as does the lack of independent and effective investigation into such incidents.

There is no independent body to investigate allegations of abuses committed by members of the security forces in Guyana. The Police Complaints Authority (PCA) is the body which currently receives such complaints from the public; however, all complaints are merely referred to the Guyana Police Force for investigation. Moreover, the PCA is dependent on the Ministry of Home Affairs for staffing and financing.

Several serious allegations of ill-treatment by members of the Guyana Police Force have been reported recently:

- At 3:30 am on 15 November 2013, four police officers called at Teanisha Evans' house in Timehri, apparently stating they were searching for stolen goods. Three police officers took her boyfriend Colwyn Harding into the bedroom where he was reportedly beaten and sodomized with a police baton. Teanisha Evans and Colwyn Harding were subsequently arrested,

along with Tiffany Edwards. Tiffany Evans, who was two months pregnant at the time, stated she was kicked three times in the stomach by a police officer. The three of them were then taken to Timehri police station where Teanisha Evans has stated that she was pushed over by a police officer causing an injury to her eye. According to several witnesses, Colwyn Harding was beaten several times over the following two days and had visible injuries. On 19 November 2013, all three of them were charged with assaulting a peace officer and with disorderly conduct. Colwyn Harding was unable to post bail so was taken to the Georgetown Prison. He was not able to inform prison officers of the beatings he had sustained and therefore did not receive any medical attention until he was rushed to hospital on 17 December with a strangulated inguinal scrotal hernia. Tiffany Edwards also did not receive any medical attention during the four weeks she was held at Timehri police station and at East La Penitence police lock-up despite having been reportedly bleeding. She subsequently suffered a miscarriage. On 13 January 2014, a court ordered Colwyn Harding's release on bail from Georgetown Public Hospital where he had been shackled and guarded by a prison officer. However, it appears the court order for his release was not received by the prison authorities and he remained detained until 17 January. The evening before his release, it is alleged that four prison officers used force to try to confiscate a mobile phone in Harding's possession, causing his stitches to re-open. On 2 June 2014, two police officers were charged with causing actual bodily harm; one of them was also charged with common assault. Their trial was scheduled to start on 17 July 2014.

- 15 year-old Alex Griffith was allegedly shot in the mouth by an officer from the Guyana Police Force on 30 April 2014 while the officer was playing "Russian roulette" with his firearm. The officer, accompanied by 12-15 colleagues, had reportedly gone to the East La Penitence area of Georgetown area to investigate an armed robbery allegedly committed against a member of Alex Griffith's family. Alex Griffith had also reportedly been physically assaulted before he was shot. The officer was charged on 9 June 2014 with discharging a loaded firearm with intent to maim, disfigure or cause bodily harm, with inflicting grievous bodily harm, and with unlawful assault. Two other police officers were charged with attempting to pervert the course of justice.
- 19-year-old Junior Thorrington sustained second degree burns to his hands when a police officer allegedly doused him with methylated spirits and set him on fire while in the custody of the police on 25-27 May 2014 at Sparendam Police Station in East Coast Demerara. He had been taken into custody for loitering and was later accused of being a member of a gang which had committed a robbery. At the time of this writing, an investigation was being conducted by the Office of Professional Responsibility of the Guyana Police Force.

Impunity for police abuses, including unlawful killings, remains the norm in Guyana:

- On 6 October 2012, Dameon Belgrave was standing with friends outside a bar in central Georgetown when he was shot and killed by a bullet allegedly fired from a vehicle belonging to the Tactical Services Unit of the Guyana Police Force in pursuit of a criminal suspect. He was taken by the police to

Georgetown Public Hospital, where he was pronounced dead on arrival. Two police officers were subsequently charged with manslaughter; however, on 8 May 2014 the case was dismissed by Georgetown Magistrates' Court, when a ballistics report showed that the bullet which killed Dameon Belgrave did not come from the firearms of the officers charged.

The Guyana Police Force reported that between 1 January 1997 and 18 October 2012, 255 people were fatally shot by the police.¹⁴ It also stated that 10 officers had been charged with murder and three with manslaughter in relation to these killings. No figures were provided for convictions.

DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PERSONS

Sex between men is criminalized in Guyana. Sections 352-354 of Chapter 8:01 of the Criminal Law (Offences) Act criminalize "acts of gross indecency with a male person" (punishable by two years' imprisonment), "attempts to commit an unnatural offence" (including buggery) with another man (10 years imprisonment), and buggery (life imprisonment).

Under international human rights law, lesbian, gay, bisexual, transgender and intersex (LGBTI) persons have the right not to be discriminated against on the basis of their real or perceived sexual orientation or gender identity, the right to equality before the law, the right to privacy, the right to health, life, liberty and security of the person, and the right to be free from torture and cruel, inhuman or degrading treatment or punishment. Laws criminalizing consensual sex between adults of the same sex breach the right to privacy, as set out in Article 17 of the International Covenant on Civil and Political Rights, to which Guyana is a state party.¹⁵

A report issued in March 2012 by the University of the West Indies which examines the social impact of laws affecting LGBTI people in Guyana, found that the majority of those interviewed were reluctant to report crimes against them for fear that charges would instead be brought against them because of their sexual orientation or gender identity.¹⁶

As referred to above, following its last UPR in 2010, Guyana announced that it would hold public consultations into "the attitude of Guyanese to any changes in legislative provisions and the criminal code regarding consensual adult same sex relationships and discrimination, perceived or real, against Lesbians, Gays, Bi-Sexual and Transgender persons".¹⁷ At time of writing, however, such consultations have yet to start. Amnesty International considers that the government should play a leading role in ensuring that the broader public understands that human rights must be guaranteed regardless of sexual orientation or gender identity.

At the 15th session of the Human Rights Council in September 2010, when its UPR outcome was adopted, Guyana stated that "there was no discrimination of LGBT persons in the State sector".¹⁸ Amnesty International is concerned, however, at reports that the police refuse to receive complaints from members of the LGBTI community and often verbally abuse them.

Four transgender individuals were fired upon from a passing vehicle on the night of 7 April 2014 in central Georgetown. Two of them were wounded and required medical attention. The police refused to note down their complaint and reportedly made homophobic insults. The four individuals reported similar treatment from staff at Georgetown Public Hospital, who allegedly behaved in a discriminatory manner

and were unwilling to treat them. Through continued perseverance and with support from local LGBTI activists, they succeeded in having their complaint registered by the police nearly a month later.

At least three individuals were murdered in 2013 in what appear to have been killings motivated by their perceived sexual orientation or gender identity. The body of 26-year-old Delon Melville was found on 2 August 2013 in the village of Mocha, East Bank Demerara, three days after he went missing. He had previously been threatened by members of the local community and told to leave the area. The mutilated body of 19-year-old Wesley Holder, known as Tiffany, was found on the morning of 11 January 2013 near St. Phillip's Anglican Church in Georgetown. 36-year-old Nandkumar Purnwassie's badly beaten body was found on a street in Port Mourant, East Berbice-Corentyne on 26 November 2013. At the time of this writing, no one has been charged in relation to these killings.

At the 15th session of the Human Rights Council in 2010, Guyana also stated that "profound culture and religious beliefs, particularly those of the Christian evangelical movement, has strengthened the position against the LGBT issue".¹⁹ Religious, cultural and moral beliefs, however, cannot be used as justification for differential treatment, intolerance, violence, or the criminalization of intimacy between adults.

Archaic colonial laws continue to discriminate against transgender persons. Chapter 8:02, section 153 (1) xlvii of the Summary Jurisdiction (Offences) Act, punishes with a fine anyone "being a man, in any public way or public place, for any improper purpose, appears in female attire; or being a woman, in any public way or public place, for any improper purpose, appears in male attire".

A group of persons who had been arrested under the law presented a constitutional motion in February 2009 to have the law declared unconstitutional and repealed.²⁰ On 6 September 2013, the acting Chief Justice ruled that it was "not criminally offensive for a person to wear the attire of the opposite sex as a matter of preference or to give expression to or to reflect his or her sexual orientation" and that "it is only if such an act is done for an improper purpose that criminal liability attaches".²¹ The ruling did not specify what would constitute "improper purpose" which has led to concerns over how it will be interpreted. However, the Chief Justice did not accept that the law was unconstitutional, ruling that it had been in existence since 1893 and was therefore protected from challenge under Article 152 (1) of the Constitution which preserves pre-existing laws at the time of Guyana's independence. The litigants have filed an appeal.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Guyana:

Violence against women and girls:

- To ensure that the Sexual Offences Act is fully and promptly implemented, including through the development and implementation of a National Plan for the Prevention of Sexual Violence and the establishment of a Sexual Offences Unit;
- To ensure comprehensive data collection on all forms of violence against women and girls in order to support the effective implementation of laws, policies and programmes to eliminate violence against women and girls;
- To ensure the co-ordinated implementation of the National Domestic Violence Policy;
- To ensure there is ongoing specialized training on the provisions of the Sexual Violence Act and the Domestic Violence Act for officials from the justice, health and law enforcement sectors, and that the public is fully aware of both Acts;
- To ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Discrimination against lesbian, gay, bisexual, transgender and intersex persons

- To repeal all provisions that discriminate against persons on the basis of their sexual orientation or gender identity, including Sections 352-354 of Chapter 8.01 of the Criminal Law (Offences) Act;
- To repeal all provisions, including Chapter 8.02 section 153 (1) (xlvi) of the Summary Jurisdiction (Offences) Act, which are used to discriminate against LGBTI persons;
- To fully and thoroughly investigate all incidents and acts of violence suspected of being motivated by homophobia or transphobia, and bring to justice those responsible;
- To establish and implement policies and initiatives to address discrimination based on sexual orientation or gender identity.

Excessive use of force by the security forces

- To ensure that all complaints of excessive use of force by the security forces are subject to immediate, thorough and independent investigation and, if state agents are charged with misconduct, that their cases are brought to trial in an expeditious manner and in line with international standards for fair trial;
- To establish a fully independent and adequately resourced oversight body to receive and investigate complaints of police misconduct;
- To ensure that members of the Guyana Police Force are adequately trained on the appropriate use of force and firearms in accordance with international standards, including the Basic Principles on the Use of Force and Firearms by Law enforcement Officials.

The death penalty

- To establish an official moratorium on executions with a view to abolishing the death penalty, as provided by four UN General Assembly resolutions adopted since December 2007, including most recently resolution 67/176 of 20 December 2012;
- To commute without delay all death sentences to terms of imprisonment;
- Pending the full abolition of the death penalty, to ensure rigorous compliance in all death penalty cases with international standards for fair trial;
- To ratify without reservations the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty.

International human rights standards:

- To ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- To ratify the American Convention on Human Rights.

ENDNOTES

¹ Report of the Working Group on the Universal Periodic Review, A/HRC/15/14, 21 June 2010, paragraph 68.1 (Spain); 68.3 (Slovenia); 68.5 (Slovakia); 68.6 (Chile); 68.7 (Uruguay); 68.8 (Maldives).

² *Ibid*, paragraph 68.9 (Mexico).

³ *Ibid*, paragraph 69.

⁴ *Ibid*, paragraph 69.6. (United States of America).

⁵ *Ibid*, paragraph 70.9 (Australia); 70.23 (Italy); 70.24 (Brazil); 70.25 (Netherlands); 70.26 (France); 70.27 (Uruguay); 70.28 (United Kingdom of Great Britain and Northern Ireland); 70.29 (Slovenia); 70.30 (Hungary); 70.31 (Chile); 70.32 (Spain); 70.33 (Slovakia); 70.34 (Argentina); 70.35 (Haiti).

⁶ *Ibid*, paragraph 70.36 (Spain); 70.37 (Uruguay); 70.38 (Chile); 70.39 (Slovenia); 70.40 (Brazil); 70.41 (Brazil); 70.42 (Germany).

⁷ *Ibid*, paragraph 70.47 (Australia); 70.48 (Netherlands); 70.49 (Slovenia); 70.50 (Italy); 70.51. (Sweden); 70.52 (France); 70.53 (Spain).

⁸ http://parliament.gov.gy/documents/resolutions/410-resolutions_nos_23_-_26.pdf.

⁹ *Ibid*, paragraph 70.19 (Canada).

¹⁰ *Ibid*, paragraph 70.15 (Brazil); 70.16 (Latvia); 70.17 (Spain); 70.18 (Chile).

¹¹ UN General Assembly resolutions 65/206 (21 December 2010) and 67/176 (20 December 2012).

¹² http://parliament.gov.gy/documents/resolutions/410-resolutions_nos_23_-_26.pdf

¹³ <http://legalaffairs.gov.gy/information/legal-system/15-news-/206-budget-speech-2014>

¹⁴ <http://www.stabroeknews.com/2012/opinion/letters/11/11/255-not-288-persons-killed-by-police-in-past-17-years/>

¹⁵ UN Human Rights Committee, 1994, *Toonen v Australia*.

¹⁶ *Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana*, Christopher Carrico, University of the West Indies, March 2012.

¹⁷ http://parliament.gov.gy/documents/resolutions/410-resolutions_nos_23_-_26.pdf

¹⁸ Report of the Human Rights Council on its fifteenth session, A/HRC/15/60, 31 October 2011, paragraph 594.

¹⁹ *Ibid*.

²⁰ Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) vs. Attorney General of Guyana.

²¹ <http://ufdc.ufl.edu/AA00016900/00001>.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Amnesty International, AMR 05/001/2012, 30 November 2012, Death penalty in the English-speaking Caribbean: a human rights issue.

Amnesty International, ACT 50/001/2014, 27 March 2014, Death sentences and executions in 2013.

¹ All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/guyana>