

Stakeholder submission of the Commonwealth Human Rights Initiative (CHRI) for the 2nd Universal Periodic Review of Guyana

15 June 2014



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**Commonwealth Human Rights Initiative (CHRI) stakeholder submission for the 2nd Universal
Periodic Review of the Guyana
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This Universal Periodic Review (UPR) stakeholder submission for Guyana includes information on the following areas: cooperation with international human rights mechanisms, the death penalty, torture and ill-treatment, freedom of expression and access to information and sexual orientation and gender identity.

A. Cooperation with international human rights mechanisms, core international human rights instruments and their monitoring bodies

1. Since its last UPR, Guyana has not ratified any core international human rights treaties or their optional protocols.
2. Guyana has a poor record of treaty reporting. At the time of writing, Guyana has four overdue reports, including a report to the Committee Against Torture, pending since 2008, a report to the Human Rights Committee, pending since 2003, a report to the Committee on the Elimination of Racial Discrimination, overdue since 2008, a report to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, pending since 2011, and two reports to the Committee on the Rights of the Child (regarding both Optional Protocols), overdue since 2012.
3. A visit request by the Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment has been pending since December 2010.
4. Guyana does not have a standing invitation for the Special Procedures mandate holders.

CHRI recommends that the Government of Guyana:

1. **extend an open invitation to all special procedures of the UN Human Rights Council and facilitate, without further delay, the visit of Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment; and**
2. **demonstrate its commitment to the UN human rights mechanisms by complying with its treaty reporting obligations.**

B. The death penalty

1. Despite being a *de facto* abolitionist country since 1997, Guyana took an ambiguous position regarding abolition of the death penalty during its last UPR. Whilst Guyana did not respond specifically to the eighteen recommendations on ratifying the second Optional Protocol to the ICCPR and completely abolishing the death penalty, Guyana voluntarily pledged to continue its consideration of this issue over the next two years and report its findings to the UNHRC. In 2012, Parliament established a Special Select Committee to examine the possibility of abolishing the death penalty and facilitate a wide national consultation on the subject matter¹. At the time of writing, no Committee report on the results of deliberations is available.
2. Guyana retains a mandatory death penalty for murder and death resulting from armed robbery, piracy, hijacking, terrorism and drug trafficking. A discretionary death sentence is also possible for treason and certain military offences not resulting in death.

¹ Kaieteur News, "Parliament to start review of homosexual, death penalty laws this week", 5 August 2012, at: <http://www.kaieteurnews.com/2012/08/05/parliament-to-start-review-of-homosexual-death-penalty-laws-this-week/> (last accessed 11 June 2014)

3. At least six people were known to be sentenced to death and eleven people had their death sentences commuted to life imprisonment in 2013. At least 25 individuals were on death row by the end of 2013².

CHRI recommends that the Government of Guyana:

1. **adopt a formal moratorium on executions and immediately repeal the mandatory death penalty provisions; and**
2. **intensify efforts to review the possibility of abolishing the death penalty.**

C. Torture and ill-treatment

1. Although according to law the national Guyana Police Force is under civilian control, there have been many accusations that the police are manipulated by the government for its own purposes³.
2. Public confidence in the police is low due to allegations of corruption, brutality and discrimination against members of the public, as well as lack of ability to control gang violence and solve crimes⁴.
3. During the intervening period since its last UPR, there have been several reports of alleged police torture and ill-treatment, as well as persistent discrimination against Indo-Guyanese by the predominantly Afro-Guyanese police, ignoring and not providing adequate protection against Afro-Guyanese criminals⁵. In 2011, police officers, accused of torturing a fifteen year old by burning his genitals in order to extract a confession, were freed after the victim and witnesses failed to testify in court⁶. In April 2014, a police officer was arrested for unlawfully assaulting a fifteen-year old boy by shooting him in his mouth in an alleged Russian roulette-style torture practice⁷. One month later, other police officers were accused of allegedly burning the hands of a detainee in custody following his involvement in a fight with another detainee at a police station⁸.
4. The Police Complaints Authority (PCA) in charge of investigating complaints of police misconduct does not have an independent investigation unit. The PCA refers all cases to the Commissioner of Police for investigation, thus, endangering impartiality of investigations, and often resulting in delays⁹. Furthermore, the PCA is completely dependent on the Ministry of Home Affairs for its staffing and budgetary requirements.

CHRI recommends that the Government of Guyana:

1. **take all necessary measures to prevent torture and ill-treatment by law enforcement;**

² Amnesty International, "Death sentences and executions in 2013", 2014, at:

http://www.amnesty.org.uk/sites/default/files/amnesty_death_penalty_report_2014_final.pdf (last accessed 11 June 2014)

³ Freedom House, Guyana, 2013, at: http://freedomhouse.org/report/freedom-world/2013/guyana#.U5fr_XbbrFw (last accessed 12 June 2014)

⁴ UNDP, "Caribbean human development report – human development and the shift to better citizen security", 2012, at: http://www.undp.org/content/dam/undp/library/corporate/HDR/Latin%20America%20and%20Caribbean%20HDR/C_bean_HDR_Jan_25_2012_3MB.pdf (last accessed 12 June 2014)

⁵ Freedom House, Guyana, 2013, at: http://freedomhouse.org/report/freedom-world/2013/guyana#.U5fr_XbbrFw (last accessed 12 June 2014)

⁶ Jamaica observer, "Guyanese police freed in high profile torture case", 5 January 2011, at:

<http://www.jamaicaobserver.com/latestnews/Guyanese-police-freed-in-high-profile-torture-case> (last accessed 12 June 2014)

⁷ Guyana Times, "Cops charged for Alex Griffith's shooting", 10 June 2014, at: <http://www.guyanatimesgy.com/?p=65832> (last accessed 12 June 2014)

⁸ Kaieteur News, "Police set fire to prisoner's hands", 3 June 2014, at: <http://www.kaieteurnewsonline.com/2014/06/03/another-case-of-alleged-police-brutality-police-set-fire-to-prisoners-hands/>, (last accessed 12 June 2014)

⁹ Stabroek News, "The future of Guyana's Police Complaints Authority", 31 August 2010, at:

<http://www.stabroeknews.com/2010/guyana-review/08/31/law-order-the-future-of-guyana%E2%80%99s-police-complaints-authority/> (last accessed 12 June 2014)

2. **fully implement the principles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and**
3. **work to ensure the successful functioning of an independent police oversight mechanism and impartial police complaints and misconduct authority in compliance with international standards.**

D. Freedom of expression and access to information

1. Although the Constitution of Guyana provides for freedom of speech and of the press, a tension persists between the government and the media¹⁰. The government owns and controls two radio channels and a national TV station, as well as a daily newspaper¹¹. The state-owned media is known to give extended air-time to government spokespeople and limit the coverage of opposition figures. Moreover the government has allegedly interfered with the work of the independent media sector on several occasions. The starkest example of this occurred during the run up to the general elections in 2011, when broadcasting of opposition TV station CNS TV-6 was suspended by Guyana's Advisory Committee on Broadcasting¹².
2. Defamation and libel is regulated under sections 110-114 of the Criminal Code, punishable by up to three years imprisonment¹³. Although at the time of writing, there have not been any recent prosecutions of journalists under the criminal libel laws, a number of civil lawsuits by government officials against journalists have taken place¹⁴. The most prominent case concerns the pending libel lawsuit, filed in 2010 by a former President against the chief editor and journalist of "Kaieteur News" newspaper¹⁵.
3. In 2011, the government adopted the Broadcast Act, which came into force in 2012. The new law provides for the creation of a Guyana National Broadcasting Authority (hereafter, GNBA), with powers to grant or revoke licenses for private television and radio operators, in order to diversify the print and broadcasting sector, currently dominated by state-owned media. Nevertheless, the law allows the President to appoint six of the seven members of the GNBA and has in practice increased governmental control over the media. By the end of 2013, none of the licensed radio stations have commenced operation and the GNBA has declined to re-issue a private television licence to a private TV station in Linden, which is a well-known opposition stronghold¹⁶.
4. In 2011, the Parliament of Guyana adopted an Access to Information Act, which came into force in 2013. The law sets out a formal path to access information held by public authorities. The law also establishes the post of Commissioner of Information, appointed by the President and responsible for ensuring access to information and effective information management¹⁷. The law has received criticism as a result of a less than transparent appointment process and the effect this could have on the independence of the office which

¹⁰ Freedom House, Guyana, 2013, at: http://freedomhouse.org/report/freedom-world/2013/guyana#.U5fr_XbbrFw (last accessed 11 June 2014)

¹¹ BBC, Guyana Profile, 15 May 2013, at: <http://www.bbc.com/news/world-latin-america-19546912> (last accessed 11 June 2014)

¹² International Press Institute, "Guyana TV stations license suspended", 5 October 2011, at: <http://www.freemedia.at/special-pages/newssview/article/guyana-tv-stations-license-suspended.html> (last accessed 11 June 2014)

¹³ Section 110-114, Criminal Code, at: www.oas.org/juridico/mla/en/guy/en_guy-int-text-cl_act.pdf (last accessed 11 June 2014)

¹⁴ International Press Institute, "Final report on the 2013 IPI mission to Guyana: focus on criminal defamation", 20 April 2013, at: http://www.freemedia.at/fileadmin/resources/application/Guyana_Mission_Report_2013.pdf (last accessed 11 June 2014)

¹⁵ Guyana Times International, "Jagdeo versus Kissoon libel case continues", 21 February 2014, at: <http://www.guyanatimesinternational.com/?p=32131> (last accessed 11 June 2014)

¹⁶ International Press Institute, "In Guyana, unease over new broadcasting authority", 19 September 2012, at: <http://www.freemedia.at/home/singleview/article/in-guyana-unease-over-new-broadcasting-authority.html> (last accessed 11 June 2014)

¹⁷ Kaieteur News, "Access to Information activated", 23 May 2013, at: <http://www.kaieteurnews.com/2013/05/23/access-to-information-act-activated/> (last accessed 11 June 2014)

is further reliant on the State authorities for staffing and budgets. Moreover, the national exemption clauses have been criticised for being too broad and inclusive¹⁸.

CHRI recommends that the Government of Guyana:

1. **guarantee the right to freedom of expression as enshrined by the Constitution of Guyana and foreseen by the ICCPR; and**
2. **enact a Right to Information Act compatible with international best practice.**

E. Sexual orientation and gender identity

1. During its last UPR, Guyana provided no formal response, despite pledging to consider all seven recommendations that invited Guyana to repeal the laws that criminalise consensual sexual activities between consenting adults of the same sex. In 2012, parliament established a Committee to examine the possibility of decriminalising consensual adult same sex relations and promised to hold a public consultation on the subject¹⁹. At the time of writing, no Committee report on the results of any such deliberations has been made available.
2. At the time of writing, same sex activity between consenting adults remains a criminal offence. Section 352 of the Criminal Code stipulates that “*any male person who commits ... any acts of gross indecency with any other male person shall be ... liable to imprisonment for two years*”²⁰. Section 353 states that anyone who “*attempts to commit buggery; or assaults any person with intent to commit buggery; or being a male, indecently assaults any other male person*” is guilty of a felony and liable to ten years of imprisonment²¹. Furthermore, section 354 of the Criminal Codes states that “*everyone who commits buggery ... shall be guilty of felony and liable to imprisonment for life*”²². The same-sex sexual activity between women is legal.
3. In August 2013, a local gay man was murdered, in an apparent hate crime in the village of Mocha. Prior to his death the individual reported receiving regular death threats and being subjected to harassment. At the time of writing, this case remains unsolved²³.
4. In September 2013, following a four-year law suit by a group of transgender men, the Supreme Court partially repealed the controversial section 153 of the 1893 Guyanese Summary Jurisdiction Act on cross-dressing²⁴. The Court ruled that cross-dressing can only be considered a criminal offence if it is done for an “improper purpose”. The failure to define what exactly is meant by “improper purpose”, however, may be sufficient for arbitrary police arrests of cross-dressers and transgender citizens²⁵.
5. There is no explicit legislation against discrimination on sexual orientation and gender identity grounds.

¹⁸ Stabroek News, “A deeply flawed Access to Information bill”, 18 July 2011, at:

<http://www.stabroeknews.com/2011/opinion/editorial/07/18/a-deeply-flawed-access-to-information-bill/> (last accessed 11 June 2014)

¹⁹ Kaieteur News, “Parliament to start review of homosexual, death penalty laws this week”, 5 August 2012, at:

<http://www.kaieteurnewsonline.com/2012/08/05/parliament-to-start-review-of-homosexual-death-penalty-laws-this-week/> (last accessed 11 June 2014)

²⁰ Section 352, Criminal Code, 1893, at:

http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=GUY&p_classification=01.04&p_origin=SUBJECT (last accessed 11 June 2014)

²¹ Ibid., Section 353.

²² Ibid., Section 354.

²³ Kaieteur News, “Mocha murder...who killed Delon Melville?”, 19 August 2013, at:

<http://www.kaieteurnewsonline.com/2013/08/19/mocha-murderwho-killed-delon-melville> (last accessed 11 June 2014)

²⁴ Section 153, Guyanese Summary Jurisdiction Act, 1893, at: <http://legallaffairs.gov.gy/information/laws-of-guyana/58-chapter-00802-summary-jurisdiction-offences> (last accessed 11 June 2014)

²⁵ Reuters, “Guyana court rules cross-dressing is not a crime”, 9 September 2013, at: <http://www.reuters.com/article/2013/09/09/us-guyana-crossdressing-idUSBRE98811V20130909> (last accessed 11 June 2014)

CHRI recommends that the Government of Guyana:

- 1. promote and facilitate constructive dialogue on sexual orientation and gender identity with stakeholders, including government ministries, civil society and religious leaders;**
- 2. work towards repealing Sections 352-354 of Criminal Code;**
- 3. fully repeal all restrictions on cross-dressing;**
- 4. ensure that all allegations of hate crimes based on sexual orientation and gender identity are properly investigated and perpetrators held to account; and**
- 5. introduce policies and educational programmes aimed at ending discrimination and harassment based on sexual orientation and gender identity.**