

Report on Guyana
21st Round of the Universal Periodic Review – January/February 2015

This report is submitted by the Society Against Sexual Orientation Discrimination (SASOD)¹ and the Sexual Rights Initiative (SRI). This report deals with the situation of sexual rights in Guyana, with special focus on the rights of Lesbian, Gay, Bisexual and Transgender (LGBT) people, as at the date of submission, June 15, 2014.

Key Words: LGBT People-Sexual Orientation-Gender Identity and Expression- Discrimination based on SOGIE

Introduction

1. Guyana is a Constitutional Republic located on the North Coast of South America. The population of 750,000 lives mostly on the coastland of the country. The population descends from the indigenous Amerindians, slaves from Africa, indentured immigrants from India, China and Portugal, and other settlers. The country is a former British colony. The cultural influences are from these diverse backgrounds, and the religious influences stem from Christianity in various denominations, Islam, Hinduism, the Bahai faith and others.

2. Guyana is a member of the Caribbean Community (CARICOM) and the Organisation of American States (OAS).

Legal Framework

3. The legal structures of Guyana are inherited from the British colonial legal system. Many of the laws have remained the same since Independence in 1966.

4. The Constitution of Guyana has enshrined within it the principles of equality and non -discrimination. The constitution prohibits discrimination on the basis of sex, gender, race, place of origin, political opinions, colour or creed. However, it does not expressly prohibit discrimination on the grounds of sexual orientation or gender identity. The Constitution includes a Fundamental Rights section that specifies the rights that all citizens can enjoy. It includes the rights to equal protection under the law (Article 149D of the Constitution); freedom of movement (Article 148), freedom of expression (Article 146) and freedom from inhumane treatment (Article 141). However, it does not include an enshrined right to privacy. Guyana is signatory to several international human rights instruments; seven² of which are directly incorporated into the Constitution of Guyana.

5. In 2003, the 'Sexual Orientation' Amendment Bill was introduced in Guyana's Parliament to be voted on as a constitutional amendment which would include "sexual orientation" as one of the grounds for discrimination. The bill was not voted on, as it received significant opposition from sections of the religious community. The government decided not to support the bill even though they had introduced it to parliament – an unprecedented manoeuvre.

Discriminatory Laws

6. The Criminal Law Offences Act Chapter 8:01 in Sections 351 to 353 criminalises consensual sexual intimacy between adult men in private.

7. Section 153 (1) (xlvii) of the Summary Jurisdiction (Offences) Act Chapter 8:02 makes it an offence for a man to appear in female attire or a woman in male attire "for any improper purpose", in any public way or public place.

¹ SASOD is a Guyanese human organisation, founded in 2003, working for equality and justice of all Guyanese, especially those who suffer discrimination based on their sexuality, gender, sexual orientation, gender identity and gender expression. Website: www.sasod.org.gy

²The seven are listed in the Fourth Schedule of the Guyana Constitution: International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Elimination of All Forms of Racial Discrimination, Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

Rights at Stake

Rights to Life, Liberty and Personal Security

8. In a national survey,³ 25% of Guyanese admitted to being homophobic while 18% approved of using violence against LGBT persons. Much of this violence is fuelled by socio-cultural norms. The discriminatory laws reinforce these homophobic and transphobic prejudices. Discriminatory responses from the police,⁴ manifested in lack of or inadequate investigations and mostly unsolved cases often lead to injustice and foster impunity for anti-LGBT hate crimes. Additionally, over the past two years, there have been several unsolved murders of LGBT persons of which the police are not actively investigating. In 2013 alone, at least three transgender and gay persons were murdered across the country in circumstances suggesting they were targeted hate crimes: Tiffany (Wesley Holder) in January,⁵ Delon Melville in August⁶ and Champa (Nandkumar Poonwassie) in November.⁷ To date, there are no charges in any of these unsolved cases.

Recommendations

The Government of Guyana should:

9. Educate members of the uniformed forces (police, prison and army) and evaluate their performance based on their obligations in terms of non-discriminatory treatment towards marginalised groups, especially LGBT people.

10. Investigate, and punish where necessary, discriminatory and abusive behaviour by the uniformed forces.

Right to Equality

11. Because the law does not identify sexual orientation and gender identity as grounds for discrimination,⁸ LGBT persons suffer discrimination in many sectors, including but not limited to, employment, housing, healthcare and social services.⁹ The discriminatory laws, contributing to a repressive socio-cultural environment, have also been found to limit LGBT people's access to public, semi-public and private spaces.¹⁰

Recommendation

The Government of Guyana should:

12. Amend Article 149 of the Guyana Constitution to include sexual orientation and gender identity as grounds for discrimination in order to provide legal protection for LGBT people's right to equality and non-discrimination.

Right to Privacy

13. As stated above, Guyana's laws does not include an enshrined right to privacy. However, Guyana is signatory to, has

³CADRES (2013) 'Attitudes towards homosexuals in Guyana,' P.24

http://ufdcimages.uflib.ufl.edu/AA/00/01/61/51/00001/Attitudes_Toward_Homosexuals_in_Guyana.pdf

⁴Transgenders, supporters picket police over sloth in drive-by shooting probe (Stabroek News, May 12, 2014)

<http://www.stabroeknews.com/2014/news/stories/05/12/transgenders-supporters-picket-police-sloth-drive-shooting-probe>

⁵Teenaged sex worker found dead in St. Phillip's Church (Stabroek News, January 12, 2013)

<http://www.kaieteurnews.com/2013/01/12/teenaged-sex-worker-found-dead-in-st-phillips-church-green>

⁶Mocha Murder... Who killed Delon Melville? (Kaieteur News, August 19, 2013)

<http://www.kaieteurnews.com/2013/08/19/mocha-murderwho-killed-delon-melville>

⁷Port Mourant man found dead on road (Kaieteur News, November 27, 2013)

<http://www.kaieteurnews.com/2013/11/27/port-mourant-man-found-dead-on-road>

⁸Article 149 of the Guyana constitution prohibits discrimination based on race, place of origin, political opinion, colour, creed, age, disability, marital status, sex, gender, language, birth, social class, pregnancy, religion, conscience, belief or culture. It does not include sexual orientation and gender identity.

⁹Carrico (2012) P.23:<http://www.sasod.org.gy/pdf-social-impact-laws-affecting-lgbt-persons-guyana>

¹⁰Ibid, P.21

ratified and has directly incorporated into its constitution, the International Covenant on Civil and Political Rights (ICCPR). Article 17¹¹ of the ICCPR guarantees the right to privacy. Guyana maintains on its statute books, invasive laws which criminalise consensual private sexual activity between adult men.¹² By retaining these laws, the rights of same-sex/gender practising persons to privacy are being violated.

14. Researchers have documented that some police have been using the existence of these laws for extortion as men who are found in compromising positions are made to pay bribes rather than face charges.¹³ Although consensual same-sex/persons activity between adult men is difficult to prove, the damage is done in the charge itself due to the stigma attached to homosexuality.

Recommendations

The Government of Guyana should:

15. Repeal Sections 351 to 353 of the Criminal Law Offences Act Chapter 8:01 which criminalise same-sex/gender intimacy between consenting adult men in private.

16. The Ministry of Home Affairs and the Ministry of Labour, Human Services and Social Security should include training on human rights and vulnerable groups, especially LGBT people, in the curriculum for police officers training college.

17. The Ministries of Home Affairs, Labour, Human Services and Social Security should hold constant job training on human rights and vulnerable groups, especially LGBT people, for police officers.

Freedom of Expression

18. Despite having the constitutional right to the freedom of expression (Article 146), LGBT persons oftentimes choose not to express their orientations and identities because they are threatened, discriminated against and victimised. Transgender persons are expressly forbidden from expressing their gender identity because of Section 153 (1) (xlvii) of the Summary Jurisdiction (Offences) Act which makes it an offence of cross-gender dressing. This violates rights to human dignity, freedom of expression and protection from discrimination based on gender.

19. As a result of this law, transgender persons face high levels of direct discrimination and targeted violence from both the police and private actors. As recent as April 7, 2014, two transgender sex workers were injured in a drive-by shooting by assailants using pellet guns.¹⁴ Even though the victims have reported the matter to the police and they have provided vital information which helps to identify of the assailants, the police took over a month to charge the perpetrators.¹⁵

20. Moreover, on September 6, 2013, Chief Justice Ian Chang issuing his ruling in the case of *Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) vs. Attorney*

¹¹ International Covenant on Civil and Political Rights: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹²The Criminal Law Offences Act (8:01) in Sections 351 criminalises consensual same-sex intimacy in public and in private. Sections 352 and 353 criminalise 'attempted buggery' and 'buggery.'

¹³Carrico, C (2012) *Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana*, P. 19
<http://www.sasod.org.gy/pdf-social-impact-laws-affecting-lgbt-persons-guyana>

¹⁴'Cross dressers shot on King street,' Kaieteur news (April 8, 2014)
<http://www.kaieteurnews.com/2014/04/08/two-cross-dressing-men-shot-on-king-street>

¹⁵'Sex workers picket Brickdam Police station over plight of shot colleagues,' Guyana Chronicle newspaper (May 8, 2014)
<http://guyanachronicle.com/sex-workers-picket-brickdam-station-over-plight-of-shot-colleagues>

General of Guyana on Section 153(1) (xlvii) of the Summary Jurisdiction (Offences) Chapter 8:02¹⁶ stated that cross-dressing in a public place is an offence only if it is done for an improper purpose. This ruling while seen as a minor victory for the transgender Guyanese, as the Chief Justice states that cross-dressing to express sexual orientation or gender identity could never be an offence, it still very unclear as he did not say what the term “improper purpose” means.

Recommendation

The Government of Guyana should:

21. Repeal section 153 (1) (xlvii) of the Summary Jurisdiction (Offences) Act Chapter 8:02 which sanctions cross-dressing thereby facilitating arbitrary arrests, police harassment and abuse, targeted violence and other forms of discrimination against transgender people.

Restrictions on Hate Speech

22. While legal protection of the freedoms of expression and conscience are all enshrined in the constitution,¹⁷ free speech has its limits, as prescribed under international human rights law and under Article 149 (3) which excludes “hate speeches or other expressions, in whatever form, capable of exciting hostility or ill-will against any person or class of persons.” On June 8, 2014, a local pastor, Ronald McGarrell, shared his opinions about homosexuality from his religious perspective on a local radio programme,¹⁸ saying that homosexuality is learnt behaviour and that all gay persons should live on an island by themselves to prevent it from spreading.¹⁹ A week later on June 15, 2014, Minister within the Minister of Finance, Juan Edgehill, who is also a pastor, appeared on the same programme to defend McGarrell. Edgehill used the most inflammatory language describing homosexuality as “destructive, unwholesome and unhealthy.”²⁰ The Government Minister is a Member of Parliament for the ruling People’s Progressive Party / Civic (PPP/C). Edgehill went on to state that it is “scientifically proven” that homosexuals are more promiscuous, disease laden and violent than “normal” people.²¹ Edgehill was adamant and unapologetic for his hateful comments which were clearly intended to incite and ill-will against LGBT people, which is a violation of Article 149 (3) of the Guyana Constitution.

Recommendations

The Government of Guyana should:

23. Remove Juan Edgehill as a Government Minister and from all state 24. Recall Juan Edgehill as a Member of Parliament as he has flagrantly incited hatred and intolerance in the public sphere in direct contravention of the Guyana constitution positions as he has blatant disregard for international human rights standards and fundamental rights and freedom in the Guyana constitution.

and international human rights law.

Rights to Work and Housing

25. LGBT people face higher levels of unemployment, underemployment, and if employed are paid lower wages, are denied promotions and are forced to perform tasks outside of their job descriptions or are not adequately paid if they

¹⁶Constitutional Court Rules Cross-Dressing is Not a Crime if Not for “Improper Purpose” - Rights Groups Plan Appeal on Dubious Decision-SASOD Blog (September 27, 2013) <http://www.sasod.org.gy/sasod-blog-constitutional-court-rules-cross-dressing-not-crime-if-not-%E2%80%9Cimproper-purpose%E2%80%9D-rights>

¹⁷ Article 146 and Article 145 of the Guyana constitution, respectively.

¹⁸ Podcast of radio programme “Hard Talk” with Ronald McGarrell and Joel Simpson (June 8, 2014)

<https://soundcloud.com/ardalkuyana/hard-talk-june-8-guests-pastor-ronald-mcgarrell-and-joel-simpson>

¹⁹ Gays should live on an island by themselves-Inter-Religious Organisation Vice-Chair Says (iNews Guyana, June 8, 2014):

<http://www.inewsguyana.com/gays-should-live-on-an-island-by-themselves-pastor-mcgarrell-says-homosexuality-is-spreading>

²⁰ Podcast of “Hard Talk” radio programme with Juan Edgehill and Rabindranath Persaud (June 15, 2014)

<https://soundcloud.com/ardalkuyana/hard-talk-june-15-guests-bishop-juan-edghill-pandit-rabindranath-persaud>

²¹ ‘Homosexuality is destructive, should not be tolerated’ – Bishop Edgehill defends Pastor McGarrell (June 15, 2014)

<http://www.inewsguyana.com/homosexuality-is-destructive-should-not-be-tolerated-bishop-edghill-defends-pastor-mcgarrell>

work over time. These discriminatory workplace practices oftentimes go unreported because the LGBT people have no legal protection from discrimination on the basis of their sexual orientation or gender identity in employment. This directly impacts the abilities of LGBT persons to access housing. Researchers have documented the struggles of LGBT Guyanese to access housing on the rental market.²² The evidence suggests that landlords, like employers, are biased.

Recommendation

The Government of Guyana should:

26. Amend section 4 of the Prevention of Discrimination Act, Chapter 99:09, to include sexual orientation and gender identity as grounds for discrimination in employment, training and recruitment.

Right to Health

27. The existence of these discriminatory laws in Guyana has contributed to the barriers LGBT people face accessing healthcare. LGBT persons continue to face high levels of stigma and discrimination from healthcare workers and auxiliary staff which deters them from visiting hospitals and other health facilities.²³ Reports²⁴ have found that HIV prevalence rates are higher among men who have sex with men (MSM) and transgender persons in countries with these punitive laws. Despite experiencing a reduction in HIV cases annually, the incidence of HIV still remains vexingly high for vulnerable groups, especially MSM²⁵ and transgender people, who face these social barriers to accessing healthcare.

Recommendations

The Government of Guyana should:

28. Conduct continuous sensitivity training of healthcare workers on providing optimum care to LGBT clients.

29. Ensure all healthcare facilities adopt policies which unequivocally prohibit discrimination of all of persons accessing healthcare and have measures in place to sanction persons who violate these regulations.

Right to Education

30. In Guyana, children who may identify as being LGBT or are perceived to be, are often labelled with pejoratives, suffer extreme violence and discrimination in schools and other childcare institutions because of their real or perceived sexual orientation and/or gender identity. Further, because of the homophobic views of many teachers, LGBT students are unable to report incidents of abuse to teachers as they, the victims, are sometimes punished instead of the offenders.²⁶

31. Additionally, while Guyana subscribes to both the CARICOM and the LAC regional declaration 'prevention through education,' the current Health and Family Life Curriculum²⁷ (HFLE) implemented in schools, adopts a very heteronormative approach to teaching about sex and sexuality. The programme does not provide comprehensive information on sexuality and gender and it does not provide students with adequate information on how to protect against sexually transmitted diseases, infections and unwanted pregnancy, if they are LGBT, and/or sexually active.

²² Carrico (2012) P. 26: <http://www.sasod.org/gy/pdf-social-impact-laws-affecting-lgbt-persons-guyana>

²³ Ibid, P. 32

²⁴ Global Commission on HIV and the Law: http://www.opensocietyfoundations.org/sites/default/files/HIV-and-the-Law-Men-Who-Have-Sex-with-Men-20130930_0.pdf

²⁵ 'Guyana lauded for progress in HIV/AIDS fight', *Guyana Times* (May 13, 2013): <http://www.guyanatimesgy.com/?p=14223>

²⁶ Violence, Sexuality and Gender Issues Affecting Children in Guyana: A Joint Submission to the Inter-American Commission on Human Rights (2013)P. 7: <http://www.sasod.org/gy/pdf-iachr-submission-violence-sexuality-and-gender-issues-affecting-children-guyana>

²⁷ Sexuality and Gender Issues Affecting Children in Guyana: A Joint Submission under the Convention of the Rights of the Child (2013): <http://www.sasod.org/gy/pdf-iachr-submission-violence-sexuality-and-gender-issues-affecting-children-guyana>

Recommendations

The Ministry of Education should:

32. Implement mechanisms for reporting and redress where teachers and other public servants who abuse children in their care, including because of their real or perceived SOGI, are held accountable for their misconduct.
33. Review the Sex and Sexuality theme in the HFLE curriculum, and incorporate objective information on SOGI.
34. Include training in the Cyril Potter Teachers College curriculum on managing “conflicting values” and understanding sexuality, gender, sexual orientation, gender identity and bodily diversity.

List of Recommendations to the Government of Guyana

Rights to Life, Liberty and Personal Security

1. Educate members of the uniformed forces (police, prison and army) and evaluate their performance based on their obligations in terms of non-discriminatory treatment towards marginalised groups, especially LGBT people.
2. Investigate, and punish where necessary, discriminatory and abusive behaviour by the uniformed forces.

Rights to Equality and Equality before the Law

3. Amend Article 149 of the Guyana Constitution to include sexual orientation and gender identity as grounds for discrimination in order to provide legal protection for LGBT people’s rights to equality and non-discrimination.

Right to Privacy

4. Repeal Sections 351 to 353 of the Criminal Law Offences Act Chapter 8:01 which criminalise same-sex/gender intimacy between consenting adult men in private.
5. The Ministry of Home Affairs and the Ministry of Labour, Human Services and Social Security should include training on human rights and vulnerable groups, especially LGBT people, in the curriculum for police officers training college.
6. The Ministries of Home Affairs, Labour, Human Services and Social Security should hold constant job training on human rights and vulnerable groups, especially LGBT people, for police officers.

Freedom of Expression

7. Repeal section 153 (1) (xlvii) of the Summary Jurisdiction (Offences) Act Chapter 8:02 which sanctions cross-dressing thereby facilitating arbitrary arrests, police harassment and abuse, targeted violence and other forms of discrimination against transgender people.

Restrictions on Hate Speech

8. Remove Juan Edgehill as a Government Minister and from all state positions as he has blatant disregard for international human rights standards and fundamental rights and freedom in the Guyana constitution.
9. Recall Juan Edgehill as a Member of Parliament as he has flagrantly incited hatred and intolerance in the public sphere in direct contravention of the Guyana constitution and international human rights law.

Rights to Work and Housing

10. Amend section 4 of the Prevention of Discrimination Act, Chapter 99:09, to include sexual orientation and gender identity as grounds for discrimination in employment, training and recruitment.

Right to Health

11. Conduct continuous sensitivity training of healthcare workers on providing optimum care to LGBT clients.
12. Ensure all state-run healthcare facilities adopt policies which unequivocally prohibit discrimination of all of persons accessing healthcare and have measures in place to sanction persons who violate these regulations.

Right to Education

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15. Include training in the Cyril Potter Teachers College curriculum on managing “conflicting values” and understanding sexuality, gender, sexual orientation, gender identity and bodily diversity.