

Report on Guyana 8th Round of the Universal Periodic Review – May 2010

This report is submitted by the Society Against Sexual Orientation Discrimination (SASOD)¹ and The Sexual Rights Initiative². 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.

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 are Christianity in various denominations, Islam, Hindu, Bahai 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 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 inhuman treatment (Article 141). However, it does not include an enshrined right to privacy. Guyana is signatory to several international human rights instruments³.

5. In January 2001, the Parliament of Guyana voted for a constitutional amendment that would amongst other bases, include “sexual orientation” as one of the grounds for discrimination. The President refused to assent to this Constitutional Amendment Bill. This refusal was done under pressure from sections of the Christian and Muslim communities. The issue was raised again in May 2003, when the Constitutional Amendment bills were passed to establish the various human rights commissions. The Constitutional Reform process sought to ensure that all amendments would have had the full approval of the wider society. The ruling Party was expected to introduce the amendment bills and then the National Assembly was expected to vote in approval. This particular bill was introduced by the Government and then for the first time in Guyana's independent history, the Government said that it would not support a bill it had introduced. The ‘sexual orientation’ Amendment Bill floundered in Parliament, with no vote being taken.

1 SASOD was founded in June 2003 and is committed to eradicating discrimination on the grounds of sexual orientation and gender identity.

2 The Sexual Rights Initiative is a coalition including Mulabi – Latin American Space for Sexualities and Rights; Action Canada for Population and Development; Creating Resources for Empowerment and Action-India, the Polish Federation for Women and Family Planning, and others)

3 They are: 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, among others.

Discriminatory Laws

6. The Criminal Law Offences Act (8:01) in Sections 351 criminalises consensual sexual activity between males. Section 352 and Section 353 criminalises 'buggery'.

7. Some police have reportedly used the existence of these laws for extortion. Males who are found in compromising positions are made to pay bribes rather than face charges and the possibility of prosecution. Although consensual same-sex activity between adult men is difficult to prove, the damage is done in the charge itself by the stigma attached to homosexuality.

8. The existing legislation related to sexual offences has a definition of rape which does not include anal penetration. The laws also do not have specific provisions to protect boys from sexual abuse, and there is no age of consent for boys. As a result of this lack in typification, prosecutors have used section 352 and section 353 to try to prosecute adult men who abuse of boys.

9. In 2007, some organizations promoted discussions to reform the sexual offences legislation and made relevant proposals for the repeal of the 'sodomy' laws. Help & Shelter noted that the failure to decriminalise consensual same-sex relationships will further contribute to the homophobia which prevents the reporting of sexual violence from male victims and recommended section 351 of the Criminal Law Offences Act to be repealed as part of the reform⁴. SASOD expressed that "the continued presence of section 351 in its present construction is a violation of the human rights to privacy, equality, non-discrimination and health"⁵; and proposed: a) to establish the age of consent for boys and girls at 18 years of age, b) to decriminalise same sex consensual relationships, and c) to call for a broader gender neutral definition of rape⁶.

10. The Sexual Offences Bill was laid in Parliament in July 2009 and is currently before a Special Select Committee. It does not repeal the 'sodomy' laws. There are new provisions for an equal age of consent of 16 years for all persons and for a gender-neutral definition of rape. SASOD asserts that the retention of the sodomy laws in circumstances where there are new provisions to cover sexual abuse of boys and men only serve to re-criminalise and stigmatise same-sex intimacy between consenting adult men.

Discrimination and Harassment of Male-to-Female Transgender⁷ Persons

11. Transgender persons are discriminated against in Section 153 of the Summary Jurisdiction (Offences) Act⁸, because it establishes as an offence the fact that a man appears in female attire or a woman in male attire, "for any improper purpose", in any public way or public place⁹. Section 153 violates the right to freedom of expression, the right to privacy and personal dignity.

12. Frequently, cross-dressers are attacked in the streets, especially in the nights. Police have been accused by cross-dressers of harassment and physical violence. Transgender sex workers mentioned that many police also

4 Help & Shelter' is one of the leading NGOs in Guyana dealing with domestic violence and sexual abuse. Its comments and recommendations available at <http://www.sdn.org.gy/hands/>

5 <http://sasod.blogspot.com/2007/12/submission-made-on-reform-of-sexual.html>

6 Toonen v. Australia, the UN Human Rights Committee found that the right to privacy under the International Covenant on Civil and Political Rights (which Guyana has signed, ratified and directly incorporated into our Constitution) was breached by laws which criminalise private homosexual acts between consenting adults. Principle 6 of the Yogyakarta Principles also recommends that States shall repeal all laws which criminalise consensual sexual activity among persons of the same sex who are over the age of consent.

7 There are some persons who are born with male sex organs but identify and/or express their gender as female and some of them practise what is commonly called 'cross-dressing' in Guyana.

8 Laws of Guyana, Chapter 8:02, Summary Jurisdiction (Offences) Act; Section 153, (1)(xlvii), In: http://www.gina.gov.gy/gina_pub/laws/Laws/cap802.pdf

9 "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..."

rape and brutalise them, and even extort sexual favours from them. Most of the cases are not reported to the police, due to the lack of confidence in their response and reaction. "Petronella," a cross-dresser, openly reported¹⁰ that some police further participate in the harassment of gay men on the streets, adding that there is no recourse to complain since the existing laws criminalize same-sex sexual activities (male-male) and cross-dressing. In February, 2009, seven men were charged for cross dressing. The charges were not dropped and the seven men were each fined for this offence.

HIV/AIDS prevention and treatment of men who have sex with men

13. HIV is a serious health issue for men who have sex with men (MSM). A group study which was conducted among MSM in the most populous region of Guyana showed a rate of infection of 21% with a transmission through men who have sex with men estimated at 18%¹¹. The Government has also acknowledged that men who have sex with men are also a vulnerable group. The problem is that there is an inconsistent response to LGBT persons who are in need of health care and related social services since there is an accepted norm of discrimination. There are some health care professionals who would exercise their own discretion in terms of how they treat LGBT persons. The persons who are discriminated against do not have recourse to any remedies within the health system.

14. The existence of the sodomy laws prohibits the equal access to treatment, care and prevention by men who have sex with men. Sodomy laws facilitate discrimination within the health and social services sectors and the development of clear policies which will ensure that all persons who are affected and infected by HIV and AIDS will be able to access appropriate services without fear. Moreover, the existence of the sodomy laws places a burden on the health sector and that this is an additional reason to repeal these laws

Cultural traits which promote discrimination

15. There are two dominant cultural traits in Guyana which contribute to the discrimination of LGBT citizens. These are: a) the public tolerance of music with homophobic lyrics which call for the killing and maiming of homosexuals and b) the growing influence of churches from North America which fuel the religious homophobia in Guyana.

16. The music reinforces that killing of homosexuals is seen as a righteous thing, and the comments which are reportedly used by attackers of gay men come from these songs. In 2008, the Minister of Home Affairs noted that two singers were banned from Guyana because of their violent lyrics, but he did not mention the nature of those lyrics. Other homophobic singers have visited Guyana and have made statements at their concerts without any sanctions.

17. There has been growing influence of rhetoric from some Christian churches in North America which fuel the religious homophobia in Guyana. There are allegations, that although they have been rejected in the United States, they are often used in Guyana to defend discriminatory beliefs; for example that homosexuals are more likely than heterosexuals to be child molesters. This rhetoric is often used as a legitimate basis for discrimination of LGBT persons in Guyana.

Recommendations

Guyana, - by signing the two Organization of the American States (OAS) resolutions on Human Rights, Sexual Orientation and Gender Identity¹² - took an important step in its commitment to end violence and related human

10 National radio broadcast on May 17, 2006,

11 Guyana National AIDS Programme – <http://www.hiv.gov.gy>

12 The General Assembly of the Organization of American States in its plenary session on June 3, 2008 unanimously adopted the Resolution on Human Rights, Sexual Orientation, and Gender Identity [AG/RES. 2435 (XXXVIII-O/08)]. In June 2009, the GA adopted

rights violations committed against individuals because of their sexual orientation and gender identity. We therefore remind the Government of this commitment and make the following recommendations:

1. To amend the Constitution of the Republic of Guyana to include gender identity and sexual orientation as grounds for discrimination so as to protect LGBT citizens and allow for legal recourse.
2. To repeal section 153 (1) (xlvii) of the Summary Jurisdiction (Offences) Act Chapter 8:02, This law sanctions the wearing of clothes considered to be those of the other sex, stigmatizing -in this way - transgender people and facilitating arbitrary arrests and police abuse.
3. To repeal sections 351, 352, and 353 of the Criminal Law (Offences) Act) Chapter 8:01 , the Sexual Offences Legislation must first be reformed to include a gender-neutral definition of rape and to set an age of consent for boys.
4. To educate the members of the uniformed forces (police, prison and army) and to evaluate their performance based on their obligations in terms of non-discriminatory treatment towards sex workers, LGBT persons and people living with HIV. Discriminatory and abusive behaviour on the part of police officers should be investigated and punished where necessary.
5. To embark on the critical implementation of actions which ensure that the needs of LGBT citizens are addressed within the health care system. The health and well being of LGBT citizens should not be left to the selective judgements of the health care workers. Health education has to be targeted at the populations who are especially vulnerable to HIV and AIDS.
6. To open a broader dialogue on culture and human rights so to guarantee that no human rights violations will be perpetrated under the name of culture, religion or tradition. Representatives of the Government have stated that they seek moral guidance from the three main religions for example without considering any discussions with the groups who are affected by the discriminatory laws and policies. The dialogue should be between the faith based groups, cultural promoters, the Ministry of Health, the Guyana Police Force, and should include the citizens and groups who support the view that LGBT Guyanese are deserving of the same rights as any other Guyanese citizen.