

COVER PAGE



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United Nations Human Rights Council **Interim Periodic Review 2014**

Justice Institute Guyana _Submission on Guyana

Justice Institute Guyana was registered on 1st April 2008 as a charitable/nor-for-profit legal institute to promote the rule of law, to uphold and promote the human rights of the Guyanese people as enshrined in the international bill of rights and the Constitution, and to work for environmental justice. Justice Institute Guyana is an independent and impartial institute. Its governance structure consists of an international board of directors and local staff including the executive director.

The Justice Institute Guyana has trained over 500 citizens on fundamental legal rights as well as responsibilities. The Justice Institute Guyana provides legal advice and assistance on the rule of law and fundamental human rights through lawyers who are experts in national and international law. This work includes engaging with ministers and government officials to prevent or stop executive abuse of power.

NB: This is the additional page required for an organisation submitting for the first time. It does not count in the 5-page limit or the word limit.

SUBMISSION ON GUYANA

1. Introduction

Guyana is a constitutional democracy founded upon respect for the rule of law and respect for the fundamental rights of all citizens. Guyana also recognises and protects collective rights. Guyana is rich in cultural and ethnic diversity but deeply divided by party politics. Guyana is signatory to several international human rights instruments and has shown a serious commitment to human rights by incorporating seven¹ of them into the Constitution of Guyana.

Right to life: Death penalty

2. The death penalty is the ultimate violation of the dignity of a human being. The death penalty is incompatible with the right to life. The Government is commended for setting up a special committee to consider capital punishment. JI has made a submission to the select committee² but the committee appears to be unwilling to advocate abolition without greater public support. Experience shows that prior to abolition, the majority often support the death penalty. Abolition depends on an enlightened and courageous minority. 150 countries, including most of South America, have already abolished the death penalty. Guyana is ready to join them.

Recommendations: Guyana should:

- (i) **abolish the death penalty for all offences**
- (ii) **amend Article 138 of the Constitution to remove the power of the court to order execution**
- (iii) **ratify the Second Optional Protocol to the ICCPR**
- (iv) **carry out a national programme of education on the right to life, the state of the death penalty worldwide, the reasons for abolition.**

Corporal Punishment

3. Article 19 of the Convention on the Rights of the Child which Guyana has ratified and incorporated into the Constitution, requires Guyana to take legislative and other actions to protect children from violence. Article 38 of the Constitution requires Guyana to act in the best interest of the child. Despite these international and national legal obligations, Guyana allows corporal punishment in schools and within families.

4. The Government is commended for setting up a select committee to consider the question of corporal punishment. In March 2013 JI made a written submission to the select committee and an oral presentation in May 2013³. Unfortunately the select committee appears to be unwilling to act because of public support for corporal punishment. Some churches, mainly those originating in the USA, have been strong supporters of beating children on the grounds that it is sanctioned by the Bible. Violence against children results in damaged human beings who, often, believe that violence is acceptable.

Recommendations: Guyana should

- (i) **ban corporal punishment**
- (ii) **conduct a widespread public education programme on the Rights of the Child Convention.**
- (iii) **train teachers to show greater respect for the dignity of children**
- (iv) **educate teachers on non-violent alternatives to corporal punishment.**

¹The 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.

²http://justiceinstituteGuyana.org/pdf/Death%20penalty_Submission%20to%20the%20Select%20Committee_15%20March%202013.pdf

³http://www.justiceinstituteGuyana.org/pdf/Corporal%20Punishment_Final.pdf

Lesbian, Gay, Bisexual and Transgender People

5. There is violence and discrimination against the LGBT community. In recent years, 4 transgender individuals have been murdered.⁴ Some religious organisations, particularly churches originating in the USA, have adopted a homophobic stance which contributes to a culture of fear-based hostility towards LGBT persons. National law violates the freedom of expression of transgender individuals by criminalising cross dressing, and violates the right to privacy⁵ of homosexual men by criminalising same sex activity. The LGBT community suffers violations of their rights to life and to privacy, and violations of their freedom of expression and freedom from discrimination.

Recommendations: Guyana should

- (i) amend article 149(2) of the Constitution to include sexual orientation and gender identity as prohibited grounds of discrimination**
- (ii) amend section 4 of the Prevention of Discrimination Act to include sexual orientation and gender identity as prohibited grounds of discrimination**
- (iii) repeal Section 153(i)(xlvii) of the Summary Jurisdiction (Offences) Act which criminalises cross-dressing**
- (iv) repeal the sections of the Criminal Law Offences Act which criminalise same sex relations and practices.**

Freedom of Religion/Conscience

6. The State respects freedom of religion as guaranteed by the ICCPR and freedom of conscience as guaranteed by the Constitution. Guyana is a faith based nation with Christianity, Hinduism, Islam, Baha'i and other religions existing in mutual tolerance and respect. The Roman Catholic Church, Hindu pandits and others have promoted love, tolerance and respect for other humans. Unfortunately there is a small number of religious leaders who express views which are contrary to the dignity of human beings and which are an abuse of freedom. Recently a pastor of the unification church expressed views that were condemnatory of homosexuals and threatened that the wrath of God would be visited on the Guyanese society.⁶ On 15th June 2014, the PPP/C minister within the Ministry of Finance, Juan Edghill, who also describes himself as a bishop and a pastor, stated that homosexuality is destructive, unwholesome and unhealthy and should not be tolerated in Guyana.⁷ Mr Edghill's comments are totally unacceptable, especially from a Member of Parliament and a Minister.

Recommendations:

- (i) The Government of Guyana must immediately remove Juan Edghill as a Minister**
- (ii) The PPP/C should immediately ensure that Juan Edghill resigns as an MP**
- (iii) Guyana should conduct a widespread public education programme on the Universal Declaration of Human Rights, with special emphasis on the fact that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.**

Local Government Elections

7. Article 25 of the ICCPR enshrines the right of citizens to vote in genuine periodic elections guaranteeing the free expression of the will of the electors. In the Constitution, Article 9 states that sovereignty belongs to the people who exercise it through their

⁴<http://www.stabroeknews.com/2014/opinion/letters/04/27/transgender-persons-right-everyone-else-treated-consideration/>

⁵ Article 17 ICCPR: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

⁶<https://soundcloud.com/#ardalkuyana/hard-talk-june-8-guests-pastor-ronald-mcgarrell-and-joel-simpson>

⁷<http://www.inewsguyana.com/homosexuality-is-destructive-should-not-be-tolerated-bishop-edghill-defends-pastor-mcgarrell/>

representatives; Article 71 states that local government is a vital aspect of democracy. However there have been no local government elections for 20 years in violation of international and national law. The Government has said that it will hold local elections when it, "sees it necessary."⁸ There is no indication when this will be.

Recommendation: The Government should hold local government elections without delay.

Amerindian Peoples

8. The first people who inhabited Guyana were Amerindian. There are nine recognised peoples today⁹. Others, such as the Taruma and Atorad have disappeared or been absorbed by other Amerindian peoples, who now occupy their territory. Amerindian peoples migrated to Guyana at different times in their history e.g. the village of Moruca was created by the migration of Spanish Arawaks from Venezuela to Guyana in 1817 followed by a grant of land in 1834 from the British Governor.¹⁰ Amerindian peoples have moved from a nomadic lifestyle to settled villages usually with the encouragement of the Catholic Church. Villages were originally based on family units e.g. Rupenau was started by one family but is now a village with land title. In the last 40 years, the Amerindian population has increased from approximately 30,000 to about 85,000.¹¹

9. The Amerindian peoples have made an enormous contribution to Guyana's political development. The first Amerindian MP entered Parliament in 1956. The first Amerindian minister was appointed in 1977. Amerindian MPs have participated in each Parliament since independence. There have been Amerindian Ministers in each Parliament since 1992. The Minister of Foreign Affairs and the Minister of Amerindian Affairs are both Amerindian women.

10. Under the laws of Guyana Amerindian peoples are protected against discrimination. There are special provisions in the Constitution to protect Amerindian cultures.¹² The right to property is a fundamental right which is recognised in the Constitution of Guyana. Compared to other countries, Guyana has made outstanding progress on land rights. Over 90 Amerindian communities have title to land. The title is constitutionally protected against a taking by the State. Only 13 Amerindian communities do not have any form of land title.

11. Guyana recognises the juridical personality of the Amerindian community. Under national law Amerindian village councils are legal entities with legal rights and duties. Guyana's laws provide for collective land ownership for Amerindian communities. Amerindians communities control the resources on their lands (including a veto against mining) and they have a measure of internal self-government and lawmaking power. These rights are set out in the Amerindian Act 2006.

12. The Amerindian Act 2006 was the result of 3 years of consultations with Amerindian peoples plus 2 years of public hearings and discussion at a special select committee. This committee comprised government and opposition MPs, including 1 Amerindian minister and 2 Amerindian MPs. This select committee approved every word of every section of the Amerindian Act 2006 on the basis of consensus. The process for developing the Amerindian Act 2006 was a text book example of participatory democracy.¹³

13. The Amerindian Act 2006 establishes a land claims process. The claim for title is based on occupation and use. The required period of time is 25 years which is considerably less than the time required for aboriginal or native title in Canada or Australia. The relevant criteria for assessing a claim include the Amerindian community's physical, traditional and

⁸ <http://guyanachronicle.com/speaking-at-freedom-house-rohee-declares-ppp-blameless-for-delayed-local-elections/>

⁹ Akawaio, Arawak, Arecuna, Carib, Macushi, Patamona, Warrau, Wapishan, WaiWai

¹⁰ British Guiana Boundary: Arbitration with the United States of Venezuela. The counter-case on behalf of the Government of Her Britannic Majesty Volume 2

¹¹ Figures taken from previous census and current estimate from the Ministry of Amerindian Affairs

¹² Article 149G: Indigenous peoples shall have the right to the protection, preservation and promulgation of their languages, cultural heritage and way of life.

¹³ Toward Limited Self-Determination: Melinda Janki *OAS Workshops on International Law 2005 P477*

cultural association with the land. In keeping with the jurisprudence of the Inter-American Court of Human Rights¹⁴ the community's spiritual attachment to the land must be taken into account. There is a process of negotiation leading to agreed boundaries and a formal title. The Amerindian land title takes the form of a grant which is absolute, unconditional, and forever. The demarcation must be carried out by the State. An Amerindian community which is not satisfied with the process or the outcome, can reject the title and move to the courts for a decision.¹⁵

14. The Amerindian Act 2006 imposes time limits on the Minister of Amerindian Affairs to reduce delay. Within 6 months of receiving a land claim the Minister must start an investigation to establish the facts on the ground with a view to validating the claim.

15. Unfortunately, in recent years, the Government has changed its practice of settling Amerindian land claims. The Government has failed to comply with its legal obligations and has violated the rights of Amerindian communities seeking to resolve their land claims through the Amerindian Act 2006.

16. In 2010 the Minister of Amerindian Affairs attempted illegally to force the Wapichan people of Sawariwau to transfer their land to a smaller group within their community. When the elected council refused the Minister told them they would remain in limbo. On 11th December 2011 Sawariwau applied through the Amerindian Act for title to additional land which they have traditionally occupied and used. The Minister has not started the investigation which is required by the Amerindian Act 2006. This delay of 2½ years is a violation of the property rights of the Wapichan community of Sawariwau and an abuse of power by the Minister of Amerindian Affairs. Ministry documents show that under the Minister's proposed Amerindian land titling project, communities have been selected arbitrarily by the Minister without taking into account the requirements of the Amerindian Act 2006. Sawariwau's claim is to be delayed to 2016, in further violation of Sawariwau's rights.¹⁶

17. The Amerindian community of St Ignatius have submitted their land claim. The time limit for starting their investigation has also expired without the investigation being started. This is a violation of St Ignatius rights under the Amerindian Act 2006. They are not listed for title under the Amerindian land titling project.¹⁷

18. This Amerindian land titling project which is funded by the Norwegian government violates the rights of Amerindian communities under national and international law.

Recommendations: the Government should

- (i) immediately start the investigation into Sawariwau's land claim, complete the investigation without delay, negotiate in good faith with the Wapichan community of Sawariwau to agree on the boundaries of their land, demarcate the agreed area and provide Sawariwau with the relevant title document without delay**
- (ii) immediately start the investigation into St Ignatius land claim, complete the investigation without delay, negotiate in good faith with the community of St Ignatius to agree on the boundaries of their land, demarcate the agreed area and provide St Ignatius with the relevant title document without delay.**
- (iii) revise the Amerindian land titling project to comply with national law and to respect the rights of Amerindian communities.**

Right to self-determination

19. Under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, all peoples have the right of self-determination by which they freely determine their political status. Both covenants have been incorporated into the Constitution of Guyana. The right to self-determination has been given effect in the Amerindian Act 2006 which gives recognises the collective identity of each

¹⁴ See http://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf at

¹⁵ Amerindian Act Section 64

¹⁶ All relevant documents are on file with Justice Institute

¹⁷ All relevant documents are on file with Justice Institute

Amerindian community. The Amerindian Act 2006 also recognises the toshao (chiefs) and councillors elected by an Amerindian community as the legal representatives of their communities. There is a National Toshias Council which has a statutory role and functions.

20. Unfortunately, despite this statutory recognition, the Government of Guyana is ignoring Amerindian collective identity and Amerindian elected leaders. Instead of ascertaining the wishes of the Amerindian communities, the Government has put Amerindian NGOs and their nominees into various stakeholder bodies, including bodies whose decisions affect the Amerindian communities. Amerindian NGOs are not elected by the Amerindian communities and are not accountable to them or their village councils. Amerindian village councils are the elected representatives of the Amerindian communities. In contrast, Amerindian NGOs can only legitimately represent their small membership base. By allowing Amerindian NGOs to claim a representational function the Government is undermining the rights of the Amerindian communities to self-determination and undermining the collective legal identity of the Amerindian communities. Amerindian culture is based on collective rights. Civil society organisations are collections of individuals. By privileging Amerindian NGOs over Amerindian communities the Government is discriminating against Amerindian culture and tradition and the Amerindian system of governance.

Recommendation:

The Government should remove all Amerindian NGOs and their nominees from the various stakeholder bodies and replace them with individuals freely chosen by the Amerindian communities and their village councils.

21. Article 212S of the Constitution allows Amerindian organisations to nominate representatives to the Indigenous Peoples Commission (IPC). It was adopted 5 years before the Amerindian Act 2006 was passed. It should be revised to recognise Amerindian collective rights to self-determination.

Recommendation: Guyana should revise Article 212S of the Constitution to bring it in line with the principles of self-determination by removing the right of Amerindian NGOs to make nominations to the IPC and replacing it with a right for Amerindian communities to make the nominations through a free choice.

22. It has been suggested that Guyana should ratify ILO 169. In a multi-ethnic society such as Guyana where there is no dominant settler group, nearly all Guyanese would be able to invoke the protection of ILO169. There is a danger that competing claims from different ethnic groups could lead to division and conflict. The question of whether to ratify ILO 169 was considered during the debate on the Amerindian Act 2006. The idea was rejected. Instead through a democratic process, Guyana incorporated the relevant principles into the Amerindian Act 2006.

Recommendation: Guyana should not ratify ILO 169.