

HUMAN RIGHTS COUNCIL

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Discrimination against the LGBT community



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Introduction

1. This report is a submission from the International Network of Human Rights (INHR) on the situation of the Guyana's LGBT peoples' rights.
2. The INHR is a Geneva-based NGO with ECOSOC Consultative Status since 2014. The organisation is specialised in the promotion and protection of human rights in Latin America and facilitates the link between Latin American civil society actors and the UN Human Rights System.

Context and background

3. Guyana is the only Latin American country where same-sex sexual activities between consenting adults are criminalised and one of the last ex-British colonies where it is still in effect. The survival of this type of incrimination encourages harassment and discrimination by civilians and police officers. Same-sex couples are forced to see each other in hidden places and are not able to have a normal relationship as heterosexual couples. Even people who are thought to be part of the LGBTIG+ community are harassed in the streets.
4. Besides the fact that female same-sex couples are decriminalised, male same-sex couples are subject to a judicial proceeding. In fact, when Guyana was a British colony, it applied the Common law entitled Buggery Act 1533, which punished buggery with the death penalty. After the independence, on 26 May 1966, the country has maintained the law in force but, nowadays, the penalty has been softened: 15 years of criminal detention instead of the death penalty.
5. Furthermore, cross-dressing is forbidden in this country. In fact, this law, which was enacted in 1893, was first elaborated to regulate and control the ex-slave population by prohibiting them to use the same clothes as their masters. Then, the scope *ratione materiae* has changed and prohibited cross-dressing
6. The United Kingdom has always tried to encourage its former colonies to implement laws that respect human rights as far as possible. For this reason, it exhorts Guyana to abandon its position concerning same-sex relationships and cross-dressing, as it did to the other Commonwealth members, such as India.

The situation of the rights of the LGBTIQ+ community

7. In the previous Universal Periodic Review, held on the 29th of January 2015, Guyana committed to hold consultations on 28 recommendations, including both decriminalisation of consensual sexual relations between adults of the same sex and discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons¹.
8. However, the Criminal Law (Offences) Act in Chapter 8:01 of the Laws of Guyana is still in force. This Law represses same-sex sexual activities among adult men² and buggery is illegal:
 9. *352. Any male person who, in public or private, commits, or is a party to the commission, or procures or attempts to procure the commission, by any male person, of any act of gross indecency with any other male person shall be guilty of a misdemeanour and liable to imprisonment for two years.*
 10. *353. Everyone who—
 - a. attempts to commit buggery; or
 - b. assaults any person with intent to commit buggery; or
 - c. being a male, indecently assaults any other male person,*
 11. *Shall be guilty of felony and liable of imprisonment for ten years.*
 12. *354. Everyone who commits buggery, either with a human being or with any other living creature, shall be guilty of felony and liable to imprisonment for life.*
13. The State has not demonstrated any political will to reform this legislation. Only public statements were made in January 2016. About these public statements, Prime Minister Granger said that he is “prepared to respect the rights of any adult to indulge in any practice which is not harmful to others”. Indeed, no legislation aimed at decriminalising homosexuality has been presented to the legislative branch. The only time legislation in Guyana bent in relation to homosexuality was in June 2018 when there was a permission to organise the first gay pride parade.
14. According to the United States department, these laws were not applied neither in 2017 nor in 2018³, nevertheless these laws are enforced and can be putted in action. Henceforth, it is a violation of article 2 of the Universal Declaration of Human Rights and article 2 paragraph

¹ Point 9 of the *Report of the Working Group of Universal Periodic Review*, 13 April 2015, 29^d session of Human Right Council, A/HCR/29/16

² Section 352 of the Criminal Law (Offences) Act, chapter 8:01

³ <https://www.state.gov/documents/organization/289546.pdf>

2 of the International Covenant on Civil and Political Rights ratified on 15 February 1977. The respect of the International Covenant on Civil and Political Rights can be raised in the view of the delay to transmit the last report, which had to be handed in 2003.

15. The discrimination against LGBTIQ⁺ community is clearly present in Guyana. Guyana adopted the Prevention of Discrimination Act in 1997 to repress and eliminate discrimination. This Act seeks to eliminate discrimination in employment, training, recruitment and membership or professional bodies, and prohibit discrimination on the grounds of race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, economic status, political opinion, disability, family responsibilities, pregnancy, marital status or age. Despite this measure, the LGBT movement was not mentioned in this act and it is not protected in any way through legislation. As a matter of fact, the Prevention of Discrimination Act protects every person except lesbian, gay, bisexual and transgender persons.
16. The lack of legislative protections exposes the LGBT community to discrimination, exactly as the Working Group of Experts on People of African Descent reported on 15 August 2018⁴. The Working Group highlighted that “lesbian, gay, bisexual and transgender persons often choose not to express their sexual orientation or identity out of fear of being threatened, subjected to discrimination or victimized”.
17. Furthermore, the Preventive of Discrimination Act promotes equal remuneration for men and women performing work of equal value. Today in Guyana people are not being paid equally, there is a gap between the salaries of people who belong to the LGBTI community and those who do not.
18. Nevertheless, same-sex sexual activities are not the only felony, which could be incriminated, cross-dressing is also punished by the authorities. Regarding the Summary Jurisdiction (Offences) Act, chapter 8:02 of the Laws of Guyana in section 153 (xlvi) “*wearing of female attire by man; wearing of male attire by woman*” is a minor offence, that means it was prohibited to wear other sex garments. However, in 2015, the interpretation of this section changed to consider it should be possible to wear other sex garments if it represents your actual sexuality, but it is not possible in public places.
19. Simultaneously, a case was being examined by the Caribbean Court of Justice: On 6 February 2009, four people: Quincy McEwan, Seon Clarke, Joseph Fraser and Seyon Persaud, were arrested by the police and placed in custody during the weekend. On the morning on 9 February 2009, they were taken to the Georgetown Magistrate’s Court, and

⁴ Report of the Working Group of Experts on People of African Descent on its mission to Guyana, Human Right Council, A/HRC/39/69/Add.1. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/248/27/PDF/G1824827.pdf?OpenElement>

they found out they were being charged with the offences of loitering and wearing female attire in a public place for “an improper purpose”. They all pleaded guilty, and they were fined. The appellants proceeded in the High Court against the State and alleged a series of constitutional rights violations; nevertheless, the judge denied all allegations. Therefore, the appellants resorted to the Court of Appeal. The Court of Appeal expressed its “complete agreement” with the trial judge’s view that, according to section 153, carried no taint of gender discrimination and not any constitutional rights violations. The appellants appealed to the Caribbean Court of Justice.

20. The Caribbean Court of Justice on the 13th of November 2018⁵ ruled that the law, which makes it a criminal offence for a man or a woman to appear in a public place while dressed in clothing of the opposite sex for an “improper purpose” is unconstitutional⁶. The Court considered that the section 153 (xlvi) reinforces stereotypes, stigmatisation and discrimination in its formulation and operation. In addition, the Court ruled that this section is unconstitutionally vague and fulfils no legitimate purpose. While the State is binding to the judgement, Guyana has not started any draft reform yet.

Recommendations

In light of the situation we have exposed, we suggest the following recommendations to the State of Guyana:

1. We recommend **the abrogation of sections 352 to 354 of the Criminal Law (Offences) Act of Chapter 8:01 of the Laws of Guyana**, as well as to take the necessary measures to support and guarantee the right to equality and non-discrimination as stipulated in section 149 and 149D of the Constitution. Furthermore, **we recommend to the State to define the offence of inciting hatred on the basis of sexual orientation or gender identity.**
2. **Take into account and integrate the Caribbean Court of Justice’s decision on the unconstitutionality of the felony of cross-dressing** existing under section 153 (xlvi) of the Summary Jurisdiction (Offenses) Act of Chapter 8:02 of the Laws of Guyana. Alternatively, to define the concept of an “an improper purpose”.
3. We especially call on **the amendment of the Prevention of Discrimination Act 1997 to include sexual orientation, gender identity, and gender expression** as grounds for discrimination.
 1. **Enact a law on gender identity** to ensure the protection of the LGBTIQ+ population from discrimination.

⁵ MC EWAN and al c. Guyana, [2018] CCJ 30 (AJ), No. GYCV2017/015

⁶ <http://www.ccj.org/ccj-declares-guyanas-cross-dressing-law-unconstitutional/>

2. **Develop a body for the protection of workers' rights** able to observe the inequalities applied on the basis of the sexual orientation of employees.
3. **Provide the opportunity for an effective remedy** to be taken by persons who had to endure such types of discrimination, as article 8 of the Universal Declaration of Human Rights, and articles 2, 14, 15, 26 of the International Covenant on Civil and Political Rights provide.
4. We summoned Guyana **to sign and ratify all Human Rights treaties to which the State is not a Member State**, especially the Convention for the Protection of All Persons from Enforced Disappearance; the Optional Protocol of the Convention against Torture; and the American Convention on Human Rights. In the same vein, **submit all periodic reports overdue to the treaty bodies** in particular to Human Right Committee whose report is due in 2003; the Committee on the Elimination of Racial Discrimination (2008); the Committee on the Rights of the Child (2018) and the Committee on the Rights of Persons with Disabilities (2016).