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**United Nations Human Rights Council**

**Interim Periodic Review 2020**

**Submission on Guyana**

Justice Institute Guyana (JI) 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 international bill of rights and the Constitution and to work for environmental justice. JI is an independent and impartial institute. Its governance structure consists of an international board of directors and a local team. JI has a successful track record and of its former team, one is now a judge and one is a magistrate.

JI has trained over 1,500 citizens on their fundamental legal rights and responsibilities as citizens. We have enabled the voiceless and the marginalised to obtain access to justice. We have brought about changes in government action, policy and law. JI continues to provide legal advice and assistance on the rule of law and fundamental human rights through lawyers who are experts in national and international law.

## **SUBMISSION ON GUYANA**

### **1. Introduction**

Guyana is a constitutional democracy. Guyana's constitution enhances the protection of fundamental human rights by incorporating international human rights treaties into the Constitution (Article 154A) and by requiring courts to pay due regard to international human rights law when interpreting fundamental rights (Article 39(2)).

### **2. Violation of Article 25 International Covenant on Civil on Political Rights**

3. On 21<sup>st</sup> December 2018, the National Assembly passed a vote of no-confidence in the government. The Constitution required the government to resign and hold elections within 3 months. The Caribbean Court of Justice, the apex court, has held that between the passing of the no-confidence motion and the holding of elections the government is merely a "caretaker" or "interim government". Nearly 7 months have elapsed and no elections have been held. This is a dangerous situation in which the current government is openly undermining democracy and the rule of law. It is also contrary to the right in Article 25 to vote in periodic elections since periodic elections in this case must include elections that are required to be held in the time specified by the Constitution.

4. Guyana's electoral laws state that a person may not stand for election to the National Assembly unless that person is on a party list. This has contributed to two political parties – the PNC/R and the PPP/C – dominating national politics for nearly 60 years and contributing to the creation of a deeply divided society with ethnic insecurity. The requirement to be on a party list does not satisfy any objective criterion and is an unreasonable restriction on the right of individuals to stand for office. It also restricts the voters' right to freely choose which candidates they wish to vote for.

5. In addition to the restrictions on individuals there are restrictions on the parties themselves. The electoral system requires every party taking part in elections to

- (i) contest seats in at least sixty percent (60%) of Guyana's regions;
- (ii) contest at least fifty-two percent (52%) of the seats in geographic constituencies;  
and
- (iii) submit a further list with at least 42 names on it.

6. This section therefore restricts the ability of individuals to form small parties or local parties in order to stand for election. The restrictions are arbitrary and do not meet any objective requirement and are unnecessary. They violate Article 25 by making it more difficult for individuals to stand for election and they restrict the choice of candidate available to the electorate.

### **Recommendations: the current administration should**

- (1) Amend the electoral laws to allow individuals to stand for election to the national assembly;**

- (2) Remove the restrictions on small parties and local parties;**
- (3) Immediately cease to award any contracts, make any national awards, enter into any arrangements or otherwise exercise any of the powers of government save as may be strictly necessary to carry out the functions of an interim or caretaker government;**
- (4) Hold free and fair elections.**

### **Right to life: Death penalty**

7. The death penalty (judicial execution) is barbaric and has no place in a civilised society. JI deplores Guyana's action in associating itself with Singapore's statement on the death penalty at the UN High Level panel (February 2019). All sovereign states must protect their citizens and for a state to execute one of its citizens constitutes a grave abuse of power.

8. Guyana has an obligation under the ICCPR, which is also incorporated into the Constitution, to move towards abolition. In defiance of Guyana's obligations under international law (and the Constitution), the government has extended the death penalty in laws on anti-terrorism and money laundering.

### **Recommendations: Guyana should**

- (i) Abolish the death penalty for all offences, no matter how heinous the crime.**
- (ii) Amend Article 138 of the Constitution to remove the power of the court to order execution.**

### **Right to life: the threat from Guyana's proposed oil production**

9. Climate change and catastrophic biodiversity loss threaten human survival.<sup>1</sup> Climate change poses, "an existential threat" to some countries.<sup>2</sup> It poses a grave threat to Guyana whose capital city, food production and main business sector are all located on land that is below sea-level. Guyana is a party to the United Nations Framework Convention on Climate Change and has ratified the Paris Agreement, which requires a reduction in greenhouse gas emissions. Despite this the government proposes to **start** producing oil in 2020. The Minister of Finance claims that Guyana will produce 1 million barrels of oil per day<sup>3</sup>. This proposed oil production will (1) emit greenhouse gases which cause climate change; (2) cause significant damage to marine life if it goes ahead as proposed; and (3) in the event of an accident (e.g. well blowout) it could devastate the marine environment. Petroleum production will make it harder for present and future generations to survive. The young will bear a greater part of the burden of climate change and biodiversity loss which will reduce further their ability to survive. Petroleum production conflicts with the right to life set out in Article 3 of the Universal

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<sup>1</sup> See World Scientists Warning to Humanity: a second warning

<sup>2</sup> UN Human Rights Council Resolution 38/4 July 2018

<sup>3</sup> <https://guyaneseonline.net/2019/03/08/guyana-to-produce-1m-barrels-of-oil-per-day-by-2025-finance-minister/>

Declaration of Human Rights and Article 6 ICCPR. It also conflicts with the Convention on the Rights of the Child namely Article 3 containing the State's duty to act in the best interest of the child and Article 6 containing the child's inherent right to life.

10. The oil deal, which was signed secretly in 2016, has been widely criticised (including by the IMF) for being heavily biased towards ExxonMobil's subsidiary and partners. Transparency International Guyana Inc.<sup>4</sup>, lawyers and economists have all questioned the legality of the oil deal under national and international law. It is argued that the proposed oil production will impoverish Guyana.<sup>5</sup> The grant of the petroleum production licence is currently being challenged in court.<sup>6</sup> The government has violated the Constitution by refusing to put into the Consolidated Fund money it received secretly for signing the oil deal.<sup>7</sup> There are widespread concerns about corruption and the misuse of national assets in the petroleum sector.<sup>8</sup> Taken together these actions indicate that the government is not acting in the interests of the Guyanese people as a whole. This is a violation of Article 25(c) of the ICCPR which guarantees the right of equal access to public service.

#### **Recommendations: Guyana should**

- (1) Immediately halt all petroleum operations and related activities until all illegalities in the proposed petroleum production have been identified and eliminated.**
- (2) Refrain from any petroleum production whatsoever unless and until Guyana can show that such production will not contribute to climate change or loss of biodiversity and will not therefore compromise the right to life of present and future generations.**

#### **Corporal Punishment**

11. 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. However Guyana allows corporal punishment in schools and within families.

**Recommendation: Guyana should ban corporal punishment.**

#### **Lesbian, Gay, Bisexual, Transgender and Inter-sex People**

12. There is consistent and repeated violence and discrimination against the LGBTI

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<sup>4</sup> <https://www.stabroeknews.com/2019/news/guyana/06/06/exxonmobil-contract-illegal-irretrievably-flawed-and-is-either-the-result-of-grand-corruption-or-grand-incompetence/>

<sup>5</sup> <https://www.youtube.com/watch?v=5OaJzvQjr2U>

<sup>6</sup> <https://www.theguardian.com/environment/2018/mar/22/guyanese-campaigners-mount-legal-challenge-against-three-oil-giants>

<sup>7</sup> <https://www.kaieteurnewsonline.com/2017/12/16/u-s-18m-exxon-signing-bonus-first-set-of-oil-money-they-attempted-to-steal-it-jagdeo/>

<sup>8</sup> <https://www.kaieteurnewsonline.com/2019/06/09/the-oil-blocks-distribution-what-stems-from-an-illegality-is-illegal/>

community. Transwomen are routinely ridiculed and attacked; some have even been murdered. Transwomen have been prohibited from entering magistrates' courts because they have 'cross-dressed.' Transgender individuals have also been ill-treated and subjected to violence at police stations and in prison. The treatment of LGBTI individuals violates their rights under Articles 2, 7, 9, 10, 14, 17, and 18 of the International Covenant on Civil and Political Rights.

**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 the sections of the Criminal Law Offences Act which criminalise same sex relations and practices**
- (iv) carry out a programme of judicial education on respecting the fundamental rights of those who are lesbian, gay, bi-sexual, transgender, inter-sex.**

**Amerindian Peoples**

**13.** The UN Declaration on the Rights of Indigenous Peoples requires Guyana to settle land claims. The Amerindian Act 2006 provides for government to settle Amerindian land claims on the basis of traditional occupation and use as required by the UNDRIP. The Amerindian Act 2006 recognises collective identity and collective ownership of land. However the government is failing to settle land claims contrary to the UNDRIP, including the claim submitted by Sawariwau in 2011.

**Recommendation: the Government should**

- (i) Immediately 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 in accordance with the Amerindian Act 2006.**
- (ii) Deal with all outstanding land claims by Amerindian communities in accordance with the Amerindian Act 2006.**

**Right to self-determination**

**14.** 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 provides for each Amerindian community to elect a council and Toshao (chief). All decisions must either be made by Amerindian communities in

their traditional village meetings or by the elected Amerindian councils. Through this democratic process Amerindian councils and Toshias are the only people who can legitimately represent Amerindian peoples in Guyana. However the government continues to treat Amerindian NGOs as representing Amerindian peoples in Guyana while ignoring the actual Amerindian communities and their elected leaders. Such conduct violates Article 1 ICCPR and ICESR as well as Articles 4 and 5 of the UN Declaration on the Rights of Indigenous Peoples.

**15. Recommendation:**

**On matters that affect Amerindian communities the government should respect the collective identity and rights of that Amerindian community and deal only with the Amerindian community and their elected councils.**

**Indigenous peoples:**

**16.** In 2015, the Government arbitrarily abandoned the traditional terminology of “Amerindian Peoples” and replaced it with “indigenous peoples.” However, the government has been unable to provide a single objective criterion, such as ‘first in time’ or ‘prior to colonisation’ to determine who are Guyana’s indigenous peoples. Amerindian groups whose ancestors migrated to Guyana in the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> centuries are treated as “indigenous” while the descendants of enslaved Africans forcibly brought to Guyana in the 16<sup>th</sup> and 17<sup>th</sup> centuries are not. To equate “indigenous” with “Amerindian” is a classification based on race. This is contrary to Article 2 of the ICCPR which prohibits discrimination on grounds of race.

**Recommendations.**

- (1) The government should acknowledge that all Guyanese are free to self-identify as indigenous;**
- (2) Refrain from arbitrary distinctions between different sections of society.**