

**UNCT GUYANA CONTRIBUTION TO THE UN
COMPILATION FOR THE 2ND CYCLE OF UPR
PROCESS**

Submitted on June 30, 2014

I. Introduction

1. This joint submission by the United Nations Country Team (UNCT) Guyana is intended as a contribution to the compilation of the UN Report on Guyana for the 2nd Cycle of the Universal Periodic Review (UPR). The report is a collective review of the status of the implementation of the recommendations of the 1st Cycle of UPR for Guyana carried out in 2010. In particular, the report highlights key areas of progress since the last review and points out the outstanding challenges. However, it is not intended as a comprehensive record of all the achievements and challenges with regards to human rights in Guyana, in general or since the 1st Cycle review. The report also includes, in the Annexes, an overview of support to the Government of Guyana (GoG) by UN agencies, Funds and Programmes towards the implementation of the recommendations of the 1st Cycle of the UPR.

II. Background and framework

A. Scope of international obligations

2. Guyana is the signatory to following Treaties:

- i. Convention against torture and other Cruel Inhuman or degrading treatment or Punishment(CAT);
- ii. International Covenant on Civil and Political Rights (CCPR);
- iii. Convention on the Elimination of All forms of Discrimination against Women(CEDAW). *However Guyana is yet to ratify the Optional Protocols on CEDAW notwithstanding the urging by the CEDAW Committee on 27th July 2012;*
- iv. Convention on the Rights of the Child(CRC);
- v. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;
- vi. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
- vii. International Convention on the Protection of the rights of All Migrant workers and members of their families(CMW);
- viii. Convention on the Rights of Persons with Disabilities (CRPD) and
- ix. Inter- American Commission on Human Rights.

B. Constitutional and legislative framework

3. The supreme law of the land is the Constitution of the Co-operative Republic of Guyana, commonly referred to as ‘the 1980 Constitution’ and last amended in 2003. Like with other UN Member States, the Guyana Constitution is largely anchored upon the tenets of the 1948 Universal Declaration of Human Rights (UDHR) and affirms the protection of fundamental rights and freedoms of the individual. The Constitution affirms that an aggrieved person could seek redress in the judicial system of Guyana. It provides for the protection of Human Rights as contained in International Treaties to which Guyana acceded. Aggrieved persons are further entitled to apply to

the Human Rights Commission (HRC) for relief. *It is noted, however, that the HRC is yet to be established* (see below).

C. Institutional and human rights infrastructure and policy measures

4. Four 'Rights Commissions' (three sectorial and one overarching) are established in the 1980 Constitution for the 'the Promotion and Enhancement of Fundamental Rights and the Rule of Law.' Article 212G (1) further states that the 'Rights Commissions' are intended 'to strengthen social justice and the rule of law.' The four are:

- i. The Human Rights Commission;
- ii. The Indigenous Peoples' Commission;
- iii. The Rights of the Child Commission; and
- iv. The Women and Gender Equality Commission.

5. Whereas the Ethnic Relations Commission (ERC) is established separately under Article 212 A, it has appeared to be treated as one of the Rights Commissions and is, in fact, housed together with the other three sectorial commissions. The ERC is intended, among other things, to 'promote the elimination of all forms of discrimination on the basis of ethnicity.' *It is noted that the ERC is not fully functional due to the non-appointment of commissioners.*

6. The life of each of the foregoing commissions are currently expired; however the government has ensured that the work of the Commissions as it relates to their reporting/ investigative mandates remains in force.

7. The Concluding Observations of the CEDAW Committee held in July 2012 called on the Government of Guyana to establish a Human Rights Institution and observed that the Human Rights Commission was not operational.

Observations and Recommendations:

The 'Rights Commissions' are key in the human rights defense architecture of Guyana. Their human, financial and technical capacities are therefore crucial. The delayed appointment of the HRC means that overarching human rights issues not covered by the sectorial commissions could be left unattended. The absence of the HRC also leaves a gap in the monitoring of 'observance of international instruments to which Guyana accedes to' as mandated by the Constitution. It is recommended that:

1. The Human Rights Commission should be established without further delay;
2. GoG should urgently work towards the necessary political consensus to ensure the efficient and timely appointment of commissioners;
3. The GoG should ensure that all the Commissions have the required human, financial and technical resources to function effectively; and
4. The current practice of appointing persons active in politics, including Members of Parliament, as commissioners should be discontinued as it contrary to accepted international standards for the constitution of independent human rights commissions.

8. The following instruments are listed in the Fourth Schedule of the Constitution: CEDAW, CRC, Convention on the Elimination of All forms of Racial Discrimination, Convention against Torture and other Inhuman or Degrading Treatment or Punishment, Convention on Economic Social and Cultural Rights, Convention on Civil and Political Rights and Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

9. There have been no constitutional amendments since the last UPR submission in 2010. *However, in terms of the legislative framework, there have been a number of advancements which include:*

- i. Parliamentary motion on the abolition of corporal punishment;
- ii. The removal of corporal punishment in the recently tabled Education Bill; and
- iii. Parliamentary motion on the elimination of discrimination based on sexual orientation.

These positive changes are in keeping with the last cycle of UPR conclusions and recommendations 70.36-70.41 and 70.47-70.53 respectively.

10. In line with the Recommendations and Conclusions of the 1st UPR cycle, some policy measures have been implemented such as workplace 'No Tolerance for Discrimination' (recommendation number 70.22) and the 'Tell Campaign' which encourages children to disclose offences.

11. Whilst there was no specific action under the 'Stamp it Out' campaign (see recommendation 69.12) for this review cycle, the Ministry of Labour, Human Services and Social Security carried out awareness campaigns regarding sexual abuse, child pornography and prostitution through youth and adolescent development programmes.

III. Implementation of international human rights obligations, taking into account applicable international humanitarian law

Equality and non-discrimination;

11. The Prevention of Discrimination Act was passed in 1996. However, discrimination against women is not defined in the Act even though the 1980 Constitution protects the rights of women by eliminating discrimination based on gender, sex as well as pregnancy. The Domestic Violence Act (1996) and Sexual Offences Act (2010), both seek to address the issue of Gender Based Violence and provide protection and judicial recourse for its victims. In turn, the e Sexual Offences Act was amended in 2012 to address the issue of the right of the accused to be heard. *These pieces of legislation could be improved upon in terms of the quantum of the fines for breach of protection orders and for other infringements.*

12. The concluding observations of the Committee on the Elimination of all Forms of Discrimination against women and girls' 52nd Session in July 2012 highlighted some critical concerns in relation to the achievement of equality and non-discrimination. These concerns relate to ensuring access to justice for victims/survivors of gender-based violence and to ensuring the implementation of gender-equality policies and strategies at national level. Paragraph 15 of the Concluding

Observations calls upon the State Party: (a)To establish permanent magistrates' courts and to ensure that the judiciary is familiar with the Convention and the State party's obligations; (b)To provide legal aid services in all regions, to implement legal literacy programmes, to disseminate knowledge of ways to use available legal remedies against discrimination and to monitor the results of such efforts; (c)To take steps to establish an independent national human rights institution in accordance with the Principles relating to the status of national institutions (the Paris Principles); and (d)To appoint an ombudsman with a mandate to consider complaints and to ensure that the institution is provided with sufficient human, financial and technical resources to function effectively and so that its composition and activities will be gender sensitive and willfully address the issue of women's human rights.

13. Further, Paragraph 17 of the Concluding Observations calls upon the State Party (a)To clearly define the mandate and the responsibilities of the national machinery for the advancement of women and to expeditiously strengthen that machinery by providing it with adequate human, financial and technical resources for it to coordinate and work effectively for the promotion of gender equality and gender mainstreaming; (b)To provide training on women's rights to women and men working in the national machinery for the advancement of women; and (c) To strengthen its impact assessment of measures taken so as to ensure that such measures achieve their goals and targets.

The UN System commends the GoG on the appointment of the Ombudsman in 2014.

The UN System strongly supports the implementation of the remaining recommendations of the committee, recognizing the crucial role of the national gender machinery in the practical application of remedies for gender based discrimination and inequality in Guyana.

14. Actions taken towards the ratification of the Optional Protocol to CEDAW in accordance to UPR recommendations 68.1-68.3 include:

- i. Training with key State and civil society stakeholders related to CEDAW implementation and Optional Protocol ratification;
- ii. The development of the an Inter-ministerial strategic plan on gender based violence;
- iii. Development and implementation of multi-sectorial protocols; and
- iv. Social mobilization efforts at a community level

15. On the issue of equality, women in Guyana continue to hold key positions in the Judiciary; Ministries and other government positions. Women's participation in micro and small business initiatives is evident and they have been able to access funding through institutions such as EMPRETEC and the Small Business Council.

Observations and Recommendations

The Committee on Elimination of Discrimination urged the Government of Guyana to enforce the policy of equal work for equal pay but this is yet to be fully realised.

With regard to Discrimination, the 2010 Sexual Offences Act does not specifically protect males from sexual abuse. Further, by virtue of section 153 of the Summary Jurisdiction (Offences) Act, transgenders are discriminated against as that Act makes it an offence for a male to appear in female attire even though the Constitution guarantees the freedom of expression. *The Constitutional and Administrative Court recently missed the opportunity to declare that the freedom of expression encompasses the right to cross-dressing.*

It is recommended that:

- The GoG steps up its efforts regarding removal of all forms of discrimination;
- There be established a regulatory framework for the informal sector;
- Efforts be increased to eliminate discrimination in types of work; and
- Legislation be enacted which would criminalize discrimination against persons who have a different sexual orientation or gender

Right to Health

16. The GoG in adherence to UPR recommendations continues to make strides to incorporate Human Rights principles into the national health policies by providing technical cooperation aimed at the development and implementation of national policies and plans such as the Package of Publicly Guaranteed Health Care Services in the rural areas based on a human rights approach.

17. Further in keeping with UPR recommendation 69.26, the GoG has made progress in the development of a National Food and Nutrition Security Strategy and Action Plan which contains right to food provisions and actions.

18. The United System in Guyana commends the GoG (through the Ministry of Health) for the development of the draft Sexual & Reproductive Health (SRH) Policy and Reproductive Health & Commodity Services (RHCS) which would facilitate universal access to SRH information and family planning services for the entire population. The UN System further applauds the efforts of the MOH for the establishment of the Youth Friendly Health Centres initiatives which will enable Adolescents and Youth to benefit from non-discriminatory and friendly SRH information and services, which will in no doubt see a reduction in the incidence of adolescent pregnancy.

Remaining Areas of Challenge include

Access to basic water and sanitation continues to be a challenge

The agenda of Ministry of Health and Ministry of Education differ on sexual reproductive health as it relates to the age of consent. Minors in Guyana cannot access contraceptives as there is a policy against distribution of condoms which is in contradiction to the UN mandate which advocates for access. Whereas this challenge has been partially addressed by the GoG, there is a need for the harmonization of agendas.

Whereas Guyana continues to benefit from bilateral agreements such as the PEPfAR (with the USA but soon coming to an end) and the Global Fund for AIDS, Tuberculosis and Malaria (GFATM), there is the view that it is time for Guyana to take ownership for HIV/AIDS by allocating its own national funds and resources.

Recommendations

- i. Guyana is encouraged to implement UPR recommendation number 69.26 (Right to water);
- ii. Guyana should be encouraged to take full ownership of HIV/AIDS programmes;
- iii. Policy harmonization is required between government ministries as it relates to sexual and reproductive health; and
- iv. GoG is encouraged to develop and integrate Right to Food legislation into existing laws.

Administration of justice, including impunity, and the rule of law

19. The Juvenile Justice Bill has not been assented to. However, in accordance with the provisions of the Juvenile Offenders (Amendment) Act 2010 and recommendation 69.13 of the UPR, there has been an effort to separate juvenile offenders from adult offenders.

20. The GoG has moved to train Police, Prisons and to a lesser extent the Guyana Defense Force on the treatment of prisoners in accordance with the Protocols and Conventions against Cruel and inhumane treatment (Recommendation 68.19 of UPR).

21. There has been no action with respect to expanding the capacity of the Police Complaints Authority to investigate extra judicial killings and the alleged excessive use of force by the police, contrary to recommendation 69.6 of UPR.

22. There is, however, active engagement with the Ministry of Home Affairs and Ministry of Human Services on issues relating to Torture, Cruel and Inhuman Treatment. There have been programs for re-integration into society, care packages and paid for job training for trafficked persons (Recommendation 68.19 of UPR).

23. There has been no moratorium established on the death penalty (Recommendations 70.23-70.32).

Recommendations

- i. There should be a speedy passage of the Juvenile Justice Act;
- ii. The Police Complaints Authority should be strengthened;
- iii. Efforts are needed to ensure conditions of detention are in conformity with international standards; and
- iv. Step up efforts to end the Death Penalty.

Right to privacy, marriage and family life

24. Whilst the 1980 Constitution makes provision for these fundamental rights, the Criminal Offences Act chapter 8:01 criminalizes sexual activity between men.

Right to work and to just and favorable conditions of work

25. There are eight (8) ILO Conventions which deal with four (4) areas of the World of Work issues as a fundamental human right and all 8 Conventions have been ratified by Guyana. However, the contents of the Conventions have not always been adequately domesticated in local Law and as such the Rights and Protections enjoyed by workers and employers alike are inconsistent with the Conventions.

26. Guyanese workers are free to join a trade union without retribution by their employers and employers can form associations to address their concerns and protect their interests.

27. On work-place discrimination, there are a number of administrative mechanisms in place at Ministries to address concerns of women's rights and to ensure that women are included in consultations on all new policies and programmes of Government. For instance the Women's Affairs Bureau acts as the coordinating body for women's interests and provides a forum for consultation and advocacy. Also each of the ten (10) Regions has an established Regional Women Committee and advocates for women at the Regional Democratic Council for which it receives funding.

Recommendations

Guyana should:

- i. Update and enhance inadequate legislative definition and policy on what constitutes child labour and who constitutes a child;
- ii. Provide data on children employed in the informal sector and tourism industry;
- iii. Provide reports on the number of children involved in hazardous and exploitative work in logging, fishing, sawmilling;
- iv. Include in legal documents the types of hazardous work in which children are prohibited from being employed; and
- v. Ensure that legislation for equal work for equal pay is implemented.

IV. General Recommendations

28. These general recommendations are made in addition to the ones already made under the different headings in this document.

- i. Guyana needs to increase legal services especially in Hinterland Areas with respect of Administration of justice, including impunity, and the rule of law and all related areas which require that persons legal rights are recognised;
- ii. Guyana is encouraged to enact comprehensive Anti-Discrimination Legislation including the prohibition of all forms of discrimination and decriminalization of consensual adult same sex relations; prohibiting discrimination in employment; preventing delays in litigating complaints; amend Prevention of Discrimination Act No. 26 of 1996 (*in which there is an obligation on the part of every employer to pay equal remuneration to women and men performing work of equal value*) to state that if there is conflict with Equal Rights Act No 15 of 1990, the former will take precedence;
- iii. The Guyana Government is also encouraged to reduce Protocol and Treaty Provisions into local law;
- iv. Ratify the Optional Protocols on CEDAW and, specifically:
 - Develop a national strategy for Human Rights Education in school system (see UPR recommendation number 69.7) Implementation of the National Task Force for the Prevention of Sexual Violence;
 - Urge State level implementation and reporting mechanisms;
 - Utilize support provided and to report on the allocation of such resources;
 - Carry out more awareness-building and dissemination of the provisions of CEDAW to women in rural and remote areas and, where necessary, have the provisions translated into the languages of the indigenous women;
 - The GoG should incorporate CEDAW in its entirety into domestic law; and
 - The Sexual Offences Act should be fully implemented.

29. Recommendations on Capacity Building and Training include

- i. Guyana is encouraged to develop and measure specific indicators including for women involved in vocational training;
- ii. Guyana is strongly encouraged to provide mandatory training for Judges, Prosecutors and law enforcement officers on the provisions of CEDAW;
- iii. Strengthen capacity of shelters and crisis centers especially in the Hinterland;
- iv. Build the capacity for men and women from indigenous communities to enjoy equal opportunity for employment.

Annex II

Documentation Provided

AGENCY	DOCUMENTS
PAHO/WHO	<ul style="list-style-type: none"> ○ Sexual and Domestic Violence Protocol for Health Workers- <i>the objective of the protocol is to assist Health Workers in responding to victims of sexual and domestic violence.</i>
UN/AIDS	<ul style="list-style-type: none"> ○ HIVISION 2020 National HIV Strategic Plan (2013-2020) Guyana-this is a strategic plan which seeks to honor Guyana's commitment to 'achieve zero new HIV infections, Zero Discrimination and Zero AIDS related deaths by 2015'. ○ SASOD report on Guyana 21st round of the UPR Jan/Fen 2015 ○ Global AIDS Response Progress Report-which in essence states that whilst Guyana has non-discriminatory laws and regulations, however a majority of responses from government, civil society, bilateral and UN Organizations have reported no specific protection for the Men having Sex with Men population ○ National Country Policy ○ Sexual Offences Act ○ Summary Jurisdiction (Offences) Act
UNDP	<ul style="list-style-type: none"> ○ Criminal Law (Offences) Act Chapter 8:01 ○ Convention against Torture and other Inhuman or Degrading Treatment or Punishment
UNICEF	<ul style="list-style-type: none"> ○ Convention on the Rights of the Child; ○ Convention on the Elimination of Discrimination against Women
ILO	<ul style="list-style-type: none"> ○ Reports from NARTLEX and NORMLEX
FAO	
IOM	
UNFPA	
UNWOMEN	<ol style="list-style-type: none"> 1)CEDAW 2) Concluding Observations of the CEDAW Committee 9-27 July 2012 3) Consideration of Reports submitted by State Parties under article 18 of CEDAW. Combined 7th & 8th Periodic Review of State Parties. 12th August 2010