



PART 3

Guyanese Law and YOU



Caribbean
Vulnerable
Communities
Coalition

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OBJECTIVES AND INTENDED OUTCOMES

This module builds on the information in Parts One and Two of the Legal Literacy Manual. It provides specific case studies on relevant aspects of the Guyanese legal system and framework and provides a guideline on legal options for persons in Guyana, especially vulnerable populations. This section is also intended to serve as a reference point in relation to legal and policy issues.

GENERAL OBJECTIVE OF THIS PART

This module seeks to:

1. provide a basic introduction to the Guyanese legal and court system;
2. equip participants with relevant information to guide persons who have complaints against state institutions;
3. provide an opportunity for discussions around possible options for redress and policy changes both locally and internationally.

SPECIFIC OBJECTIVES OF THIS PART

At the end of this session you should be able to outline:

1. describe the court/legal structure in Guyana;
2. discuss the basic principles civilians should know for basic police interaction;
3. explain how judicial and / or civil remedies can be obtained when one's rights are breached;
4. apply lessons learnt from other organizations to address population-specific problems;
5. name the different government entities and NGOs where redress can be sought;
6. suggest various avenues for legal options, including appeals, judicial review and declarations in Guyana; and
7. outline the steps involved in engaging international institutions when seeking redress or documenting complaints

MODULE 15

LAWS AFFECTING SPECIFIC GROUPS IN GUYANA

POINTERS FOR KEY POPULATIONS

Citizens interact with the police and each other daily. Some persons, however, especially vulnerable populations, face challenges. This module makes a case study out of some of the laws that affect vulnerable Guyanese.

In this section we will:

- I. Define vulnerable Guyanese
- II. Discuss challenges vulnerable populations face;
- III. Determine how Guyanese laws compound challenges faced by vulnerable populations
- IV. Identify solutions to challenges faced by vulnerable populations.

Vulnerable Guyanese include:

- A. sex workers
- B. persons who use drugs
- C. marginalized youths
- D. lesbians
- E. gays
- F. bisexual persons
- G. transgender persons
- H. migrant population
- I. women and girls
- J. persons with disabilities

Challenges faced by specific groups include:

- 1. discrimination by members of the general population
- 2. diminished job opportunities
- 3. loss of family life/alienation from family
- 4. harassment by law enforcers and the courts
- 5. greater potential for being arrested, assaulted
- 6. unequal access to justice and the legal system
- 7. barriers to accessing health services.
- 8. lack of protection from the legal and political systems
- 9. physical and emotional abuse/violence

DISCUSSION

In your group, please discuss the following. Be prepared to share your responses with the other groups.

- A. Who are vulnerable citizens?
- B. What challenges do vulnerable persons face?
- C. How can these challenges be addressed?

LAWS AFFECTING KEY POPULATIONS



CONSTITUTION OF GUYANA

The Guyanese Constitution prohibits discrimination against Guyanese by virtue of Article 149 (1). The law allows certain privileges or advantages to be extended to disabled persons. The rationale behind extending these privileges is that due to the nature and special circumstances of disabled persons, it is reasonably justified to extend certain privileges to them to allow them to properly function in society.

The exact text of The Constitution is below:

Article 149 guarantees freedom from discrimination, stating:

149. (1) Subject to the provisions of this article –

- (a) no law shall make any provision that is discriminatory either of itself or in its effect; and*
- (b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public author it.*

(2) In this article the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not afforded to persons of another such description.

(3) Paragraph (1) (a) shall not apply to any law so far as that law makes provision --

- (a) with respect to persons who are not citizens of Guyana;*
- (b) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; or*
- (c) whereby persons of any such description as is mentioned in the preceding paragraph may be subjected to any disability or restriction or may be accorded any privilege or advantage which , having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable.*

(4) Nothing contained in any law shall be held to be inconsistent with or in contravention of paragraph (1) (a) to the extent that it makes provision with respect to standards or qualifications (no t being standards or qualifications specifically relating to race, place of origin, political opinion, colour or creed) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, or any office in the service of a local democratic organ or of a body corporate established by any law for public purposes.

(5) Paragraph (1) (b) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in either of the two preceding paragraphs.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question makes provision --

- (a) whereby persons of any such description as is mentioned in paragraph (2) may be subjected to any restriction on the rights and freedoms guaranteed by articles 143, 145, 146, 147 and 14 8, being such a restriction as is authorised by article 143 (2), article 145 (5), article 146 (2), article 147 (2), or article 148 (3), other than subparagraph (c) thereof, as the case may be;*
- (b) for the appropriation of revenue or other funds of Guyana; or*
- (c) for the protection, well-being or advancement of the Ameridians of Guyana.*

(7) Paragraph (1) (b) shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(1) Subject to the provisions of this article –

(a) no law shall make any provisions that is discriminatory either of itself or in its effect;

(b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

Discrimination is defined in Article 149 (2).

This section is remarkable since it does not include a specific clause to prevent the following persons from being subjected to discrimination:

- I. Persons with disabilities
- II. Lesbian, gay and bisexual persons
- III. Sex Workers
- IV. Persons who use drugs

The failure of the constitution to protect these vulnerable Guyanese is remarkable.

LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) PERSONS

Laws affecting the LGBT persons include express provisions such as the Criminal Law Offences Acts (CLOA), which, in Sections 351 to 353, criminalise consensual sexual intimacy between adult men in private.

The CLOA, in Section 351, makes it a criminal offence for any male person to commit any act of indecency with another male person. A person who commits this act of indecency may be imprisoned for up to two years. Section 352 of the CLOA also makes it a crime for anyone to attempt to commit buggery. Buggery is anal intercourse. Anal intercourse is a form of sexual expression between same-sex male couples.

A person who attempts to commit buggery is a felon and is liable to imprisonment for up to ten years. Section 353 makes any person who commits buggery a felon. This person is liable to imprisonment for life.

The text of the law is quoted below for your information and record:

Criminal Law (Offences) Act, Chapter 8:01

351. Any male person who, in public or private, commits, or is party to the commission, or procures or attempts to procure the commission, by any male person, of any act of indecency with any other male person shall be guilty of a misdemeanour and liable to imprisonment for two years.

352. 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,*
- shall be guilty of felony and liable to imprisonment for ten years.*

353. 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.

The law affects LGBT persons by its failure to expressly:

- i. prohibit certain discriminatory behaviours by members of the public.
- ii. include sexual orientation and gender identity as protected groups in the Constitution under the Articles that deal with discrimination.

DISCUSSION

Divide yourselves into two groups:

GROUP ONE: One group is to pretend that you are politicians representing the Government. Explain to a group of Christian Lawyers why there is a continued need to have the discriminatory laws on the books.

GROUP TWO: The other group is to pretend to be the executive director of the largest gay- rights group in Guyana. Explain to your organization why it is not in Trinidad's interest to have these discriminatory laws on the book.

TRANSGENDER PERSONS

Laws affecting transgender persons include the archaic Summary Jurisdiction (Offences) Act. This Act criminalizes the actions of transsexuals and cross dressers. It makes it a criminal offence for a man to dress as a woman, and vice versa. Any male person who dresses as a female person is liable to a fine of up to Seven Thousand Dollars (\$7,000.00).

The text of the law is below:

Summary Jurisdiction (Offences) Act, Chapter 8:02

In Section 153 (1) of the Summary Jurisdiction (Offences) Act, Chapter 8:02 – minor offences

(1) Every person who does any of the following acts shall, in each case, be liable to a fine of not less than seven thousand nor more than dollars –

(xlvii) being a man, in any public way or public place, for any improper purpose, appears in a female attire; or being a woman, in any public way or public place, for any improper purpose, appear in male attire;

makes it an offence for a man to appear in female attire or a woman in male attire “for any improper purpose”, in any public way or public place.

The law specifically requires the offender to be dressed in attire of a different gender to their sex assigned at birth for any improper purpose. The law does not define improper purpose and is therefore open for abuse.

DISCUSSION

What is meant by an improper purpose?

Did the Court in Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and Society Against Sexual Orientation Discrimination v The Attorney General (of Guyana) define what is meant by an improper purpose?

SEX WORKERS

The laws affecting sex workers are found in the Summary Jurisdiction (Offences) Act Chapter 8:02 ('SJOA'). This Act criminalizes actions related to sex work, making it difficult for sex workers to enjoy the freedom to work safely or to decide how to utilize their own bodies.

Criminal offences related to Sex Work

The SJOA makes it an offence to run a brothel and for a man to live off the earnings of sex work "prostitution." The SJOA does not define "prostitution." Sex work is the practice of engaging in sexual activity with someone for payment. The person who engages in this activity as an occupation is often considered in law to be a "prostitute." The terms "sex work" and "sex worker" are the preferred language of the sex worker rights movement.

The SJO contains provisions that prohibit:

- A. owners or occupiers from permitting known sex workers to live in their homes, shop, room or other places of public resort. *See Section 133*
- B. a person from dealing with brothels from owning, managing, assisting or managing, being the tenant, the lessor or landlord of the brothel. *See Section 166*
- C. male persons from living on the earnings of prostitutes. *See Section 166*
- D. male persons from soliciting or harassing someone to do something for an immoral purpose. *See Section 165.*

Sentences:

- 1. A person who is convicted of offences under the SJOA for the first time may be:
 - a. fined between \$15,000 to \$30,000 Guyanese dollars or
 - b. imprisoned for 18 months.
- 2. In the second conviction of an offence under the SJOA, a person may be:
 - a. imprisoned for 3 years and
 - b. if it's a male offender, he may be whipped or flogged.

The text of the law is quoted below for your information and record:

Summary Jurisdiction (Offences) Act, Chapter 8:02

Section 166

Every person who –

- a) being a male person, knowingly lives wholly or in part on the earnings of prostitution; or*
- b) being a male person, in any public place persistently solicits or importunes for immoral purposes;*
- or*
- c) loiters about, or importunes any person in, any street or other public place for the purpose of prostitution,*
- (i) in the case of a first conviction, to a fine of not less than fifteen thousand dollars nor more than thirty thousand*

dollars or to imprisonment for eighteen months, and
(ii) in the case of a second or subsequent conviction, to imprisonment for three years, and if the
offender is a male he shall in addition, be liable to a whipping or flogging.

The said sections seek to limit sex workers from engaging in the sex trade. It legislates against the customers soliciting or importuning for immoral purposes and prevents the prospective worker from loitering about or importuning any person in the street or other public place for the purpose of prostitution. The said sections seem to be silent on other forms of sex work which do not involve public solicitation.

Section 165

(1) Any person who—

- (a) keeps, or manages, or acts or assists in the management of, a brothel; or*
- (b) being the tenant, lessee, occupier or person in charge of any premises knowingly permits such premises or any part thereof to be used as a brothel; or*
- (c) being the lessor or landlord of any premises, or the agent or such lessor landlord, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel; or*
- (d) being the lessor or landlord of any premises, or the agent of such lessor or landlord, is wilfully a party to the continued use of such premises or any part thereof, as a brothel, shall be liable on summary conviction—*
 - (i) in the case of a first conviction, to a fine of not less than fifteen thousand dollars nor more than thirty thousand dollars or to imprisonment for eighteen months; and*
 - (ii) in the case of a second or subsequent conviction to a fine of not less than thirty thousand dollars nor more than sixty thousand dollars or to imprisonment for three years.*

Section 133

Every owner or occupier, and every person in the employment of an owner or occupier, of any house, shop, room, or other place of public resort wherein provisions, liquors, or refreshments of any kind are sold and consumed (whether they are kept or retailed therein or are procured elsewhere), who knowingly permits drunkenness, gambling, or any other disorderly conduct therein, or knowingly permits known prostitutes, or convicted felons, vagrants, rogues and vagabonds, or incorrigible rogues to meet together or remain therein, shall be liable to a fine of not less than fifteen thousand dollars nor more than thirty thousand dollars.

The said sections seek to ostracize sex workers by criminalizing the renting of any premises to sex workers.

Sex Workers are Prohibited Immigrants

The Immigration Act 1947 also ensures that by virtue of the law books, sex workers and their children are not allowed to visit the country. This provides legal basis for sex workers to be deprived of access to Guyana.

If a sex worker tries to enter Guyana and declares his/her occupation as a 'prostitute,' s/he may be ordered to leave the country or prevented from even leaving the plane or vessel in which s/he arrived. They may also be arrested and brought before a court for a Judge to order them deported to their home country.

This law is still on the books and can be enforced by immigration officers. It provides opportunity for immigration officers to 'probe' persons who they may believe are sex workers. If the immigration officer believes that someone is a sex worker, this person may be arrested and placed in a cell like a common criminal. The perceived sex worker could also be prevented from entering or leaving the island.

The text of the law is quoted below for your information and record:

Immigration Act, 1947

3. (1)..., every person who –
 (c) is a prostitute
 (d) lives on, or receives, or has lived on, or has received, the proceeds of prostitution; shall be a prohibited immigrant; or
 (h) is a dependant of a prohibited immigrant
 shall be a prohibited immigrant for the purposes of this act.

15. ...No person (a) who is a prohibited immigrant...shall enter or remain in Guyana.

The aforementioned sections are self explanatory.

The law affects Sex Workers by expressly:

1. prohibiting their right to work
2. prohibiting rights of associations
3. making it a criminal offence for family members to benefit financially from their work
4. making it a criminal offence for persons to rent them their premises
5. creating an environment which fosters abuse since, if a sex worker is forced to report any harassment by members of the public, s/he may himself/herself be arrested for participating in 'criminal activities.

ACTIVITY

Ms. Cherry, the president of the Sex Workers' Association visits your office to find out what are your views on the issue of whether the above laws unconstitutionally target sex workers. Using your knowledge of these above laws, advise her.

Do you think that the laws should be changed to protect the health and human rights of sex workers? Give reasons for your views.

CASE STUDY: CANADA'S ANTI-SEX WORK LAWS UNCONSTITUTIONAL

Attorney General of Canada v. Terri Jean Bedford, Amy Lebovitch and Valerie Scott [2013] 3 SCR 1101

This is a ruling of the Supreme Court of Canada (Canada's highest court) in relation to sex work. The Applicants – Bedford, Lebovitch and Scott – argued that Canada's prostitution law was unconstitutional. The law includes a number of provisions, such as outlawing public communication for the purposes of prostitution, operating a bawdy (brothel) house or living off the avails (earnings) of prostitution. Bedford argued that the laws deprive sex workers of their right to security by forcing them to work secretly.

The Applicants won at all stages of the case. The government appealed to the Supreme Court, which ruled on the 20 December 2013 that three provisions of Canada's Criminal Code violate the s. 7 right to security of the person protected by the Charter of Rights and Freedoms. These provisions are s. 210 (keeping or being found in a bawdy house), s. 212(1)(j) (living on the avails of prostitution), and s. 213(1)(c) (communicating in public for the purpose of prostitution) violate the s. 7 right to security of the person protected by the Charter of Rights and Freedoms. All three laws have been struck down.

In a decision written by the Chief Justice, the court said:

"The prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further by imposing dangerous conditions on prostitution; they prevent people engaged in a risky – but legal – activity from taking steps to protect themselves from the risk." (para 60)

s. 210 (keeping or being found in a common bawdy house)

The SCC held that the bawdy house law violates sex workers' constitutionally protected right to security of the person and is struck down. The Court found that this law prevents sex workers from working a fixed location that is safer than working on the street or meeting clients at different locations. (Para. 64)

Specifically, the Court stated, "The harms identified by the courts below are grossly disproportionate to the deterrence of community disruption that is the object of the law. Parliament has the power to regulate against nuisances, but not at the cost of the health safety and lives of prostitutes. A law that prevents street-prostitutes from resorting to a safe haven, such as Grandma's House, while a suspected serial killer prowls the streets is a law that has lost sight of its purpose." (Para. 136)

s. 212(1)(j) (living on the avails of prostitution)

The SCC held that the living-on-the-avails provision violates sex workers' constitutionally protected right to security of the person and is struck down.

The SCC writes that the law is overbroad in that

"The law punishes everyone who lives on the avails of prostitution without distinguishing between those who exploit prostitutes (such as controlling and abusive pimps) and those who could increase the safety and security of prostitutes (for example, legitimate drivers, managers, or bodyguards". (Para. 142)

The full decision is available at

<http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/13389/index.do>

- A. Do you agree with the above-mentioned decision?
- B. What implications would it have for the laws in our country that discriminate against sex workers?

PERSONS WHO USE DRUGS

The law affecting persons who use drugs includes the Narcotic Drugs and Psychotropic Substances (Control) Act.

This Act makes it illegal for persons to be found guilty for possession of control substance named in the act including ganja. The Act does not provide for a drug treatment court or an explicit state sponsored method to avoid conviction by 'opting' into any programme which seeks to reduce occurrences of drug use.

It is important to note that this approach is dissimilar to the Jamaican approach. In that jurisdiction, there is no drug treatment court nor an option to avoid any criminal record by opting to seek treatment

The Narcotic Drugs and Psychotropic Substances (Control) Act of 1988

The Act makes provisions which prohibits possessions of and trafficking in narcotics and cultivation of certain plants in Sections 3 – 14.

Section 4 (1) Any person who has in his possession any narcotic or any substance represented or held out by him to be a narcotic, shall be liable –

(a) In respect of any narcotic –

- i. on summary conviction, to a fine of not less than thirty thousand dollars, together with imprisonment for not less than three years nor more than five years; or*
- ii. On conviction on indictment, to a fine of not less than thirty thousand dollars or three times the market value of the narcotic, whichever is the greater, together with imprisonment for not less than five years nor more than ten years.*

(b) In respect of any substance, other than a narcotic, which he represents or holds out to be a narcotic –

- i. On summary conviction, to a fine of not less than fifteen thousand dollars nor more than thirty thousand dollars, together with imprisonment for not less than six months nor more than three years; or*
- ii. On conviction on indictment, to a fine of not less than thirty thousand dollars nor more than sixty thousand dollars, together with imprisonment for not less than two years nor more than five years.*

Section 8 (1) notes that any person who cultivates any prohibited plant or permits the land or other premises to be used for the purposes of the cultivation, gathering or production of any prohibited plant shall be liable on

- a. summary conviction to a fine of not less than \$15,000 nor more than \$30,000 together with imprisonment for not less than three years nor more than 5 years; or
- b. conviction on indictment to a fine of not less than \$30,000 or three times the market value of the prohibited plant, whichever is the greater, together with imprisonment for not less than five years nor more than ten years.

Section 8 (2) notes that where a person is convicted by a court of an offence under subsection whether on summary conviction or on conviction on indictment, with reference to the cultivation of any prohibited plant on any land, not being State or Government land, and such person was at the time of the commission of the offence –

- a. the owner of the land on which the prohibited plant was cultivated; or
- b. the holder of a lease, licence, permit or any other similar right in the land and he has carried on the cultivation of the prohibited plant with the consent, co-operation or assistance of the owner of the land, then, subject to the provisions of subsection (5) and section 9, the court convicting him shall, in addition to the penalty provided for that offence in subsection (1), order the land and
 - i. all machinery, equipment or other implements used for such cultivation; and
 - ii. all other machinery, equipment or other implements which could be used for such cultivation and found on the land, to be forfeited to the State.

Section 12 – Penalty for certain other acts connected with narcotics

12. (1) Any person, who

- (a) smokes, inhales, sniffs or otherwise uses opium, cannabis, heroin or cocaine;
- (b) without lawful and reasonable excuse, is found in any house, room or place to which persons resort for the purpose of smoking, inhaling, sniffing or otherwise using of opium, cannabis, heroin or cocaine;
- (c) being the owner, occupier or concerned in the management of any building, land or other premises, permits the building, land or other premises to be used for the purpose of –
 - (i) the preparation of opium for smoking or sale, or the smoking, inhaling, sniffing or otherwise using of opium, cannabis, heroin or cocaine; or
 - (ii) the manufacture, production, sale or distribution of any narcotic in contravention of this act; or
- (d) has in his possession any pipe or other utensil for use in connection with the smoking, inhaling or sniffing or other using of opium, cannabis, heroin or cocaine or any utensil used in connection with the preparation of opium for smoking,

shall be liable –

- i. on summary conviction, to a fine of not less than six thousand dollars nor more than fifteen thousand dollars, together with imprisonment for not less than one year nor more than three years; or
- ii. on conviction on indictment, to a fine of not less than fifteen thousand dollars nor more than thirty thousand dollars together with imprisonment for not less than three years nor more than ten years.

12 (2) Any person who, knowing or having reason to believe that a parcel, package, container or other thing contains any narcotic, handles the parcel, package, container or other thing, shall, be liable on summary conviction to a fine of fifteen thousand dollars together with imprisonment for three years.

Section 30 - Enhanced penalty in certain cases

Where any person is convicted on indictment for any offence under section 7 (1), 8 (1), 12, 13, 17 or 18 and he had been convicted earlier of any offence under any of those sections, he shall, on the convictions first mentioned, be liable to be sentenced to imprisonment for life.

Section 72 – Committal of person to centre - Rehabilitation

(1) A court convicting any person for an offence under section 4 may, if the court is satisfied that he is addicted to a narcotic and that he is in possession of the narcotic only for his personal consumption, order that such part, as it thinks fit, of the period of imprisonment imposed on him be spent in a Centre specified by the Court.

(2) The court may vary or revoke the order on the application of the DPP or the person who was convicted.

(3) The Court may, having regard to all the circumstances of the case, including a report of the officer in charge of the centre to which a convicted person is committed, grant remission of the whole or part of the remaining period of imprisonment imposed on him.

It is important to note that unlike Jamaica there is no drug treatment court nor an option to avoid any criminal record by opting to seek treatment.

ACTIVITY

Paul, a drug addict, is arrested and charged for the offence of possession of a very small 'spliff' of ganja in your capital city. He states that he uses the drugs for his own use. His next court date is two weeks from the date he sees you. He wants advice on what he should do in court, especially since he cannot afford a lawyer. What advice would you give to Paul?

PERSONS WITH DISABILITIES

The Guyanese Constitution specifically prohibits discrimination against persons with disabilities. Article 24 of the Constitution specifically states that persons with disability has a right to medical attention and social care. Under Article 149, disability is included as one of the protected class. A person with disability will be able to rely on the anti discriminatory clause if they are the victims of discrimination.

Article 149 D

1. *The state shall not deny to any person equality before the law or equal protection and benefit of the law*
2. *The state, shall, for the purpose of promoting equality, take legislative and other measures designed to protect disadvantaged persons and persons with disabilities.*
3. *Equality includes the full and equal enjoyment of all rights and freedoms guaranteed by or under this Constitution or any other law.*

You may recall that on the list of ratification, reporting and documentation for Guyana, that Guyana became a signatory to the United Nations Convention on the Rights of Persons with Disabilities on the 11 April 2007 and ratified the Convention on the 02 September 2014.

In 2010, the Persons with Disabilities Act was passed. This act established a National Commission on Disabilities. It requires in section 6, that every person with disability in Guyana be registered with this commission and any organization for persons with disabilities to be registered with the commission.

In **section 8**, it legislates equal opportunity for employment.

1. *An employer shall not deny a person with disability on the basis of the disability, access to opportunities for employment including open employment.*
2. *An employer shall not discriminate against a persons with a disability in relation to employment by way of advertisements, recruitment, classification of posts, wages, choice for advancements and provision of facilities.*
3. *An employer shall ensure that a qualified person with a disability is subject to the same terms and conditions of employment and the same compensations, privileges, benefits, incentives and allowances as a qualified person who does have a disability.*
4. *An employer who fails to comply with subsection (1), (2) or (3) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.*

Section 9 of the Act also allow persons with a disability who feels discriminated against by an employer contrary to this Act may complain to the Commission or Chief Labour Officer.

Section 10 also preserves the rights of the person with disability to take any other action to seek redress as the person thinks fit.

Section 12 imposes statutory responsibilities on the certain ministers to ensure that programmes are created to provide persons with disabilities with skills to enable them to be gainfully employed and to provide appropriate vocational measures which serve to develop the skills and potential of persons with disabilities and enable them to compete favourably for available, productive and remunerative employment opportunities in the labour market. Minister of Education (Section 14 – 19), Health (Section 20 – 22), Housing and Water (Section 23), Human Services

and Social Security (Section 24), Sports and Culture (Section 25) must ensure that their respective ministries properly serve these communities. The commission is empowered to institute or cause to be instituted prosecutions for the purpose of enforcing the provisions of the Act. A general penalty of \$100,000 is provided for breach of the relevant provisions of the act.

ACTIVITY

1. Compare the protection received by persons with disabilities with the protection received by sex workers, LGBT persons. Please state specifically the different laws affecting the following groups:
 - A. Gay Men
 - B. Transgender persons
 - C. People who use drugs
 - D. Sex workers
 - E. Persons with disabilities
2. David Smith, a person with a disability, applied for a job as a receptionist at Free For All Institute. He was the top student in his receptionist class. His best friend, Ruddy Manners, also applied for the job. Ruddy came 20th in the class of 20 students. They were both given phone interviews. David was advised that he would be offered a job if he brought proof of his certification. After which, they could agree on salary. He wanted \$46,000 per month. They were only prepared to offer him \$42,000. He was told to come and speak with the chairperson of the institute, Ms. Volda Manners. Once he arrived for the interview in his wheelchair, he was told that they could not employ him because the institute could not accommodate a 'cripple'. He was told to go home. While he was at home mulling his next actions, he received a call from an elated Ruddy Manners, informing him that he was the new receptionist at Free For All Institute and that he would be getting a whopping salary of \$60,000.00

David Smith approaches you for advice. What are his options?

MODULE 16

TIPS FOR INTERACTION WITH THE GUYANESE LAW ENFORCEMENT OFFICIALS

INTERACTION WITH THE POLICE

- I. Being approached by the Police
- II. Being questioned by the Police
- III. Being searched by the police
- IV. Being arrested by the police
- V. Reporting police misconduct
- VI. Reporting crime to police

WHEN APPROACHED BY THE POLICE, WHAT SHOULD I DO?

1. **Stay calm! Do not run away.** It may be best to stand/sit exactly in the same position you were when the officer starts to approach you. If you run away, it may make you appear guilty and may also provide the officer with a lawful reason to arrest or shoot you.
2. **Be polite as possible.** It may be best to greet the officer with a greeting. This would be helpful in diffusing any potentially explosive scenario. It is important to ensure that you show no hostility towards the officers. The showing of hostility may escalate a situation.
3. **Tell the officer your name and try to get his name, identity or any reference number** that you can use to identify him if the situation escalates.
4. You should also seek to **record the licence plate number or any special number or reference number being worn by the officer.** Examine your surroundings and record the name and faces of any witnesses in the event you may need it.
5. You could also **ask the officer to produce their identification card or to indicate their name and the police station/department that they are attached or assigned to.** This information is particularly necessary if the officer is in plain cloths and has no other visible identifying or reference information.
6. **Listen carefully to every word spoken by the officer.** If the situation becomes tenuous you may be requested to repeat EXACTLY what you were told.
7. If you have a reason to feel mistreated, you should **make a note of everything that occurred and was said to you by the officer.** This note may take the form of a written statement, a voice note sent to a dear friend which is saved for future reference.
8. Please note that **you have the right not to answer any self-incriminating questions and to seek legal assistance before you are questioned by the police.**

WHAT SHOULD I DO IF I AM BEING QUESTIONED BY THE POLICE?

1. If the officer is asking you basic questions in relation to your identity and address, It may be best to answer these questions.
2. If the questions are in relation to a specific offence, You may clearly but in a respectful tone, ask the officer to indicate whether you are a suspect in the commission of a specific crime.
3. If the Officer indicates you are a suspect, you may ask him to allow you to call a lawyer or a friend to indicate where you are at the material time.
4. You may then ask if he intends to charge you with the relevant offence or if he intends to gather evidence from you to charge you.
5. If you feel your actions have been misunderstood, you may clarify any ambiguity and seek to diffuse the situation.

WHAT TO DO WHEN I AM BEING STOPPED AND SEARCHED BY POLICE?

1. You must stop when requested by a police officer to stop.
2. Show restraint and remain calm, even if you believe the police have stopped you unnecessarily.
3. Apart from giving your name and address and showing your licence, you can refuse to answer other questions. Failure to produce your driver's licence when requested by an officer is an offence in Guyana pursuant to section 24 (2) of the Motor Vehicles and Road Traffic Act.
4. If the police officer behaves in an unprofessional manner, write down or try to remember his/her badge number, name, vehicle registration plate or other identifying marks, should you need to make a complaint
5. In the event that you are not in possession of your driver's licence, offer to provide some other form of identification.
6. The officer is also empowered by law to take a specimen of breath for a breath test where he has reasonable cause to suspect that your alcohol level is higher than the prescribed level.
7. If police ask to search your vehicle, you can refuse consent if they fail to provide a reasonable basis for the search. The police do not have the right to search your vehicle as a matter of routine.
8. If you refuse consent to the search, you must ensure that you avoid engaging in physical resistance against the police

SEARCH WARRANT

1. If the officers state that they are searching your premises pursuant to a warrant, you have the right to see and read the search warrant.
2. Demand to see it and ask for a copy of it. If they don't have a copy available ask for permission to take a picture of the warrant.
3. Once the officers have a search warrant, you could enquire what are their powers pursuant to the warrant. Even if they refuse to answer this
4. Once the officers have a warrant they should be allowed to enter the premises to conduct the search. If you refuse permission, they can simply use force to gain entry to the premises.
5. It may be wise to remain in the presence of the officers conducting the search at all times.
6. Do not answer any police questions while they are searching your premises. Your answer may provide the basis for an arrest.
7. If the officer finds any illegal or suspicious items on the premises, they may use this as a basis to arrest you.

STOPPED BY THE POLICE WHILE DRIVING?

1. You must stop when requested by a police officer to stop.
2. Show restraint and remain calm, even if you believe the police have stopped you unnecessarily.
3. Apart from giving your name and address and showing your licence, you can refuse to answer other questions from the Officer.
4. If the police officer behaves in an unprofessional manner, write down or try to remember his/her badge number, name, vehicle registration plate or other identifying marks, should you need to make a complaint
5. In the event that you are not in possession of your driver's licence, offer to provide some other form of identification.
6. The officer is also empowered by law to take a specimen of breath for a breath test where he has reasonable cause to suspect that your alcohol level is higher than the prescribed level.
7. If police ask to search your vehicle, you can refuse consent if they fail to provide a reasonable basis for the search. The police do not have the right to search your vehicle as a matter of routine.
8. If you refuse consent to the search, you must ensure that you avoid engaging in physical resistance against the police

WHAT TO DO WHEN YOU ARE BEING ARRESTED

1. If you are arrested or about to be arrested asked the officer to indicate the basis for the arrest.
2. You should cooperate. Do not resist arrest. Do not become violent or aggressive. Remain calm, polite and show self-control. Even if you think you have been wrongfully detained and the officer does not show you the respect that is due to you as a citizen, keep calm and continue to show restraint and self-control. Keep a mental note of everything that happens. You may take action against the officer later.
3. Do not 'twitch' nor make any physical contact with the police. Please note that officers often seek to trigger a lawful basis for arrest by the virtue of 'apprehending you'. The officers may then charge you for resisting arrest or any of the related offences.
4. Ask the officer to indicate the reason for the arrest either before, during or after the arrest. The Officer MAY also indicate that you are entitled to legal representation.
5. You may ask for a moment to call a friend or a lawyer. This may be helpful in securing your early release.
6. Record everything that takes place after your arrest.
7. You have the right to refuse to answer questions until your legal representative is present. If you can not afford a lawyer, you can apply for legal aid.
8. If you are carried away from where you were in a police vehicle, ask a friend or bystander to take down the licence number of the vehicle and tell your family.
9. Obtain the name and rank of at least one of the officer who is arresting you.
10. Ask for a phone call or ask to send a message or a note right away and keep asking until you can reach someone. Let them know what has happened and where you are.
11. You should be taken to a station or police lock-up or, if injured, to the hospital
12. Whilst you are at the station, you may be granted station bail.
13. If you are not granted station bail, you are taken into custody and put in police lock-up until you appear in court.
14. The final decision about granting or denying you bail lies with the Court
15. You should note the time of your arrest and the time of your release.
16. As soon as you are released make written notes in relation to the reasons for your release and the length of your detention.

WHAT TO DO AFTER YOU ARE ARRESTED?

1. Verify that you are under arrest by confirming that you are NOT free to leave the police compound/presence. The police have the right to hold you for up to 72 hours before they charge you.
2. Ensure that you are advised of the charge/reason for your detention. If the police fail to provide same, please ensure that you request the reason for your detention.
3. Ensure that you ask for phone call or to make phone call. You should then call either a family member or trusted friend or lawyer to advise them of your location and to request that they visit you.
4. Ensure that you ask to see a doctor if you are ill or injured. This request should be noted by the police. If you do not receive medical attention, your family/friends may seek to engage a medical doctor who may visit you at the holding area. This Doctor may be required to carry proof of his accreditation and an official ID from the relevant accreditation entity.
5. Ensure that you ask if bail would be offered to you. If bail will not be offered ensure that you find out the basis for the refusal of bail.
6. If you are being wrongfully denied bail, ask to see a Justice of the Peace/Senior Police In Charge of Station.

WHAT TO DO TO GET BAIL

1. If you are arrested, you may be granted bail by the police. Section 20 of the Police Act makes it lawful for any superior officer or any non-commissioned officer or constable in charge of a police station, when any person is in custody without warrant for any offence punishable upon summary conviction to take bail for the appearance of such persons before the nearest court of summary jurisdiction at a day, time and place to be named in the recognisance.
2. Bail is a temporary release on the condition that you will attend court on your court date. This risk may be secured by certain condition such as the requirement that you produce a sum of money or travelling document to secure your appearance in court.
3. Bail - on your own recognizance (that means you are known by the officer and can be trusted to appear in court) or someone will have to agree to swear that you will not run away and you will appear in court as scheduled. This means that the person stands 'surety' for you. Under the Bail Reform Act, you could seek the services of an official bondsman to assist you to meet the bail amount.

REPORTING POLICE MISCONDUCT

1. If you are the victim of a police beating, or any general police misconduct, you have a right to report this misconduct to Police Complaints Authority and the Commissioner of Police who is mandated to investigate same by the Police (Discipline) Act and Regulations.
2. Ensure you receive some proof of the making of the complaint from the PCA and the that the Commissioner's Office has admitted receipt of the complaint.
3. Get a date or timeline that you can check back to see what steps have been taken to investigate this matter.
4. Follow up to receive a copy PCA's report with suggested action or the Commissioner's decision whether he will initiate a disciplinary charge against the accused officers

REPORTING CRIME TO THE POLICE

1. To report a crime, simply visit a police station . It may be best to call in before visits – and to give idea of the nature of the complaint to the officer who answers the call and also to advise them that you are coming. It may be best to get an idea as to which officer will take your complaint before you enter the station.
2. Ask for written confirmation of statement, some officers will photocopy same and others will allow you to take picture of same
3. Ask what is the next step and who is responsible for your case
4. Ask when can you call the respective officer to check up on progress of case or to provide additional information
5. Remember to be polite and firm since a soft answer may turneth away wrath whilst grievous words may stir up anger.

ACTIVITY

In FOUR groups, review the following questions and present your findings.

1. You are an upright, citizen of your country. You are driving a car when the police officers stopped you and tell you that they want to randomly search the car. You ask them to produce their ID. They refuse and instead demand that you produce your ID. You do not have a copy of your identity on you and remark that you can produce it within 24 hours at the nearest police station. The police then order you out of the car and say that they will randomly search your car. You refuse the search after you came out of the car. They then demand a search of your person and then start to search you. You resist and you are arrested for assaulting a police officer. You are released within 4 hours of your arrest without charge.

Please consult with your group on the best way that you should deal with this problem. Please then explain to us how you will deal with the problem.

MODULE 17

LEGAL REMEDIES IN GUYANA

BRIEF CONTENTS OF MODULE

- I. Options for legal assistance for rights violation in Guyana
- II. Legal Remedies
- III. Legal Systems
- IV. Court structure and framework in Guyana

WHAT TO DO IF YOU ARE BEING MISTREATED?

It is important to know the possible options that you have if you are being mistreated or abused by police officers. The most important thing is to keep calm and to try your best to not cause the situation to escalate. Make every effort to comply first and then complain later. Please ensure that you try to document the name of the relevant offending officers or any other information that can be used to identify them later.

The following entities may be able to assist you in seeking redress for Human Rights Violations in Guyana:

Governmental Organisations

Guyana Legal Aid Clinic

Legal aid services are for persons who cannot afford an attorney. Most legal aid services conduct a 'means' test to find out whether the persons applying for a legal aid lawyer is able to afford the services of a lawyer. To determine this issue, the legal aid authority would often examine the applicant's financial means and other criteria. It is necessary for you to contact the closest legal aid provider to get further information. Many non-governmental organizations are also able to provide either legal services or some directives as to how you can get legal assistance.

A. The Georgetown Office

First Floor, Eastern Section, Maraj Building,
Lot 185 Charlotte and King Streets, Georgetown
Tel: 225 9238; email: legalaid@networksgy.com

B. The Essequibo Office

RDC Compound, Anna Regina,
Essequibo Coast
Tel: 771 4007, 4008

C. The West Coast Berbice Office

RDC Compound, Fort Wellington,
West Coast Berbice
Tel: 232 0952, 0953

D. The East Berbice/Corentyne Office

RDC Compound, Vryman's Erven
New Amsterdam, Berbice
Tel: 333 5254

The Police Complaints Authority

D'urban Park, Georgetown
Tel: 592 226 0 6715
Email: info@dpi.gov.gy, ginagovgy@gmail.com

The Commissioner of Police

Young Street, Eve Leary
Georgetown, Guyana
Tel: 592 – 225 6411
Email: Info@guyanapoliceforce.gy

Ministry of Legal Affairs

95 Carmichael Street
North Cummingsburg
Georgetown, Guyana
Tel: +592 226 2616 - 8
Email: info@legallaffairs.gov.gy

Civil Society Organizations

Society Against Sexual Orientation Discrimination

203 Duncan Street,
Lamaha Gardens, Georgetown
Tel: 1-592-623-5155/592-225-7283

Guyana Human Rights Association

56 "B" Hadfield Street (Austin Place)
Georgetown, Guyana
Tel: 1-592-226-1789

Guyana Trans United (GTU)

Lot 102 Thomas Street, Kitty
Back Lot, Georgetown, Guyana
Tel: 1-592-231-4703

Guyana Sex Work Coalition

Georgetown, Guyana
Tel: 1-592-683-3639
Email: guyanasexworkcoalition@yahoo.com

Comforting Hearts

6 – 16 Coburg Street, New Amsterdam
Berbice, Guyana
Tel: 1-592-333-4722 / 592-333-6351

Family Awareness Consciousness Togetherness (FACT)

72 Public Road, # 78 Village, Corriverton
Correntyne, Berbice, Guyana

LEGAL REMEDIES

The appropriate remedy for each case is dependent on the duty the person owed to the injured party as well as the nature of the said breach of the duty. For example, if Tom Strokes is wrongfully detained by Officer Big Stick for 14 days without being advised of his remedies. This would clearly be in breach of the law.

What are the Possible Remedies

There are numerous remedies available for breach of citizen's rights in Guyana.

These remedies include:

1. declarations,
2. damages (monetary compensation),
3. judicial review remedies
4. protection orders,
5. occupation orders and
6. other court orders

These orders are available after the aggrieved party or their representative petition the respective court to seek these orders.

LEGAL SYSTEM

Guyana is a constitutional democracy. The Constitution of the Co-Operative Republic of Guyana is the supreme law of Guyana. On attaining independence in 1966, Guyana adopted a Constitution which was amended in 1970 when Guyana became a Republic. The constitution is the document that protects our fundamental rights.

According to **Article 8 of the Constitution ('the Supremacy of Constitution')**, it is the supreme law of Guyana and if any other law is inconsistent with it, that other law shall, to the extent of the inconsistency, be void.

The Constitution sets out the fundamental rights that the states and its agents agree that every citizen has the right to. These rights should not be violated. If they are violated, citizens can apply under the constitution for the courts to declare that their rights were violated. Citizens are entitled to seek monetary compensation for any violation. The constitution also makes provision for a Human Rights Commission. The Commission is still in its formative stage. It should once established provide protection against human rights violation.

The section of the Constitution relating to the protection of Human rights is captured in **CHAPTER III: Fundamental Rights and Freedoms of the Individual**

"Article 40 (1) Every person in Guyana is entitled to the basic right to a happy, creative and productive life, free from hunger, disease, ignorance and want. That right includes the fundamental rights and freedom of the individual."

Article 149 guarantees freedom from discrimination stating:

- a. *Subject to the provisions of this article –*
 - ii. *no law shall make any provisions that is discriminatory either of itself or in its effect;*
 - iii. *no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.*

Discrimination is defined in **Article 149 (2)** as affording different treatment to different persons attributable wholly or mainly to their or their parents or guardians respective description by race, place of origin, political opinion, colour, creed, age, disability, marital status, sex, gender, language, birth, social class, pregnancy, religion, conscience, belief or culture whereby person of one such description are not made subject or are accorded privileges or advantages which are not afforded to other persons of the same or another such description.

Also of note is the following Articles:

PART 2 – Specific Rules – Title 1

Protection of Fundamental Rights and Freedoms of the Individuals

The following rights are protected under the identified sections of the constitution:

- 138 – Right to life
- 139 – Right to personal liberty
- 141 – inhuman treatment
- 143 – arbitrary search or entry
- 144 – secure protection of law
- 145 – freedom of conscience
- 146 – Freedom of expression
- 147 – freedom of assembly, association and demonstration
- 149 – discrimination on the grounds of race, etc
- 149A – Right to work
- 149C – Right to participate in decision-making processes of the state
- 149D – equality of persons before the law
- 149E – equality of status
- 149F – Equality for women
- 149G – indigenous peoples' right
- 149H – Right to free education
- 149J – Everyone has right to an environment that is not harmful to his or her health or well-being
- 151 Reference to tribunal in certain cases

149D - Equality of persons before the law

1. *The State shall not deny to any person equality before the law or equal protection and benefit of the law*
2. *The state shall, for the purpose of promoting equality, take legislative and other measures designed to protect disadvantaged persons and persons with disabilities*
3. *Equality included the full and equal enjoyment of all rights and freedoms guaranteed by or under this constitution or any other law.*

Redress Clause

153. (1) Subject to the provisions of paragraph (6), if any person alleges that any of the provisions of articles 138 to 151 (inclusive) has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, or any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the high court for redress.

(2) The high court shall have original jurisdiction --

- i. to hear and determine any application made by any person in pursuance of the preceding paragraph;
- ii. to determine any question arising in the case of any person which is referred to it in pursuance of the next following paragraph, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of articles 138 to 151 (inclusive):

Provided that the high court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court subordinate to the high court any question arises as to the contravention of any of the provisions of articles 138 to 151 (inclusive), the person presiding in that court shall refer the question to the high court unless, in his opinion the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the high court in pursuance of paragraph (3), the high court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under this Constitution to the Court of Appeal, in accordance with the decision of the Court of Appeal.

COURT STRUCTURE AND FRAMEWORK IN GUYANA

Guyana's legal system is represented in the executive by the Ministry of Legal affairs. Guyana's court structure/hierarchy is as follows:

1. Caribbean Court of Justice
2. Supreme Court of Judicature
 - a. High Court of the Supreme Court
 - b. Court of Appeal of Guyana
3. Magistrates' Court
4. Land Court

EXAMINATION INTO THE DIFFERENT COURTS

Land Court

The Land Court is a court established by the Land Registry Act (Section 14) to adjudicate on matters involving lands, including prescriptive rights. A commissioner shall be the presiding judge at every sitting of a land court. The commissioner shall have jurisdiction in all claims made under the Act relating to land situated in the district(s) for which a Land Court is established with powers to determine any question that may need determination in connections with such claims.

Magistrates' Court

The magistrates' courts are the largest courts in Guyana in relation to the volumes of cases it would hear on any given day. The Summary Jurisdiction (Magistrates) Act Cap:3:05 provides for the constitution of the Magistrates' Courts.

Cases are presided over by magistrates who have jurisdiction to hear criminal and civil matters where the possible remedy/fine would be below a certain sum. For example, the magistrates are empowered to hear cases of minor assault, petty theft, abusive language, landlord and tenant claims and claims for debts under Fifty Thousand Dollars (\$50,000).

There are magistrates' courts in every county and most of the cases brought by the police and individuals are heard in them. A person may, however, bring a private criminal action in the Magistrates' Court.

This court also conducts hearings into the merits of charges for indictable offences such as rape, manslaughter, murder and treason. The magistrate, after hearing and assessing the evidence led before him/her, may commit the accused to stand trial in the High Court. If insufficient evidence was found to have been led, then the accused would be discharged. This discharge is not an acquittal. Charges may again be brought against a person for the same alleged offence.

Supreme Court

Article 123 of the Constitution provides for the establishment of a Supreme Court of Judicature, which consists of the High Court and the Court of Appeal.

The High Court comprises several divisions, including the Civil and Criminal Divisions. It is where serious cases such as murder and rape are heard, as well as civil claims for amounts over Fifty Thousand Dollars (\$50,000.00), cases involving trespass to land and claims for damages for injuries as a result of traffic accidents. The High Court also deals with custody and adoption of children, divorce, injunctions, applications for probate and letters of administration and the passing of transports to land and mortgages. There is one High Court, but cases are heard in each county, at the High Court buildings in Georgetown, New Amsterdam and Suddie.

Appeals from the Magistrates' Court and from a High Court judge's decision in chambers are heard by the Full Court of the High Court. The Court of Appeal is the court where both criminal and civil appeals from the High Court and some from the Full Court and Magistrates' Courts are heard. The Court of Appeal building is in Kingston, Georgetown.

Caribbean Court of Justice

This is the final appellate Court in Guyana. It hears both civil and criminal appeals that emanate from the Guyana Court of Appeal.

CASE STUDY:

Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and Society Against Sexual Orientation Discrimination v The Attorney General (of Guyana)

In February 2009, at least seven (7) persons were arrested and prosecuted in a two-day police crackdown against cross dressing. Four of the victims and the SASOD filed a constitutional suit challenging the validity of the colonial-era law. SASOD sought certain declarations, including a declaration that the law, which ‘allowed’ the police officers to arrest them for wearing ‘female attire’, was unconstitutional and void.

Section 153 (1) (xlvii) of the Summary Jurisdiction (Offences) Act, Chapter 8:02 of the Laws of Guyana makes it a criminal offence for a man to wear ‘female attire’ and for a woman to wear ‘male attire’, in public for any improper purpose.

The Applicant in this case argued that the law violated several sections of the Constitution of Guyana, including the rights to equality and non-discrimination under Articles 149 and 149D. It was also argued that the law violated the rule of law due to the uncertainty in its reference to ‘female attire’, ‘male attire’ and ‘improper purpose’.

The acting chief justice rejected these arguments, holding that the cross-dressing law did not violate the Constitution. The applicants appealed the High Court decision before the Court of Appeal. The applicants were appealing the refusal to make the declaration in relation to the invalidity of the law. The Court of Appeal dismissed the appeal on the 27 February 2017.

This decision was appealed before Guyana’s final appellate court, the Caribbean Court of Justice. On the 13th November 2018, the CCJ struck down the cross-dressing laws as unconstitutional and granted the declarations sought. The court also noted that

“ 2. The 1st-4th named appellants areperceived to be different. They are transgendered persons. Their senses of personal identity and gender does not correspond with their birth sex. As a result, their appearances, mannerism and other outward characteristics are not consistent with society’s expectation of gender-normative behaviour. That is their reality. It is a reality that is different from the one experienced by most persons. Unfortunately, it is a reality that, for whatever reason, confuses many and frightens, even disgusts, some in Caribbean societies often leading to derisions of, and sometimes violence against those who are different. It is for courts to afford the protection of the law to those who experience the brunt of such behaviour.” (our emphasis)

The Court noted that ‘In secular, democratic Guyana, the 1st – 4th named appellants were arrested, detained, charged, convicted and punished essentially for cross dressing in public.’ The Court found in [147] that the actions taken against the 1st – 4th named appellants were unconstitutional and that the law used to justify the treatment they suffered is itself in violation of the constitution since it breached the rights to equality and non-discrimination and freedom of expression. It was also held that the law was unconstitutionally vague and offended the rule of law. The Court struck down the section 153 (1) (xlvii) from the Summary Jurisdiction (Offences) Act and the laws of Guyana. The appellants were awarded costs here and in the courts below.

ACTIVITY

In four groups, review the following questions and present to the entire group.

While at your office, Ms. Tom Strokes attends stating that she was arrested by the police for wearing a dress in the middle of the town. She wore the dress simply because it was her best way to express how she felt inside. She has always worn dresses while inside her house because of a preference to wear female attire despite being assigned male at birth. She simply took a stroll down Georgetown and was seen by Officer Nuffy, who decided to arrest her as part of his personal bid to crack down on cross-dressers.

Ms. Tom Strokes is kept in custody for more than six days without being charged or advised on the reason for her arrest. She tells you that she asked numerous times to be advised of the reason for her arrest, but was never told the reason for the arrest until she was being released. She was told she needed to come and explain to the chief magistrate why she wears women's clothes.

Her matter is before the court. She is to appear in the Magistrate's Court within 14 days. Ms. Tom Strokes attends your office. She wants to know what she should do in court. She also wants advice on how she can assist to ensure that this type of police action does not continue to reoccur or go unnoticed.

Advise her.

MODULE 18

LEGAL OPTIONS OUTSIDE OF GUYANA

Persons aggrieved by decisions of the Guyanese authorities or state may also take up their grievances with international bodies which monitor any of the rights conventions to which Guyana is a party.

Aggrieved persons may not be able to present their individual complaints to every institution but at a minimum, they could engage local NGOs that who could document the specific problem and report it by meeting with or submitting information to a rapporteur/commission/committee.

They can use the committee report or concluding observations to educate the public and press. This can raise awareness of a human rights problem and increase pressure for action.

See the following Ratification, Reporting & Documentation for Guyana

Treaty	Signature Date	Ratification Date, Accession(a), Succession (s) Date
CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	25 Jan 1988	19 May 1988
CAT-OP - Optional Protocol of the Convention against Torture		
CCPR - International Covenant on Civil and Political Rights	22 Aug 1968	15 Feb 1977
NCCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
CED - Convention for the Protection of All Persons from Enforced Disappearance		
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women	17 Jul 1980	17 Jul 1980
CERD - International Convention on the Elimination of All Forms of Racial Discrimination	11 Dec 1968	15 Feb 1977
CESCR - International Covenant on Economic, Social and Cultural Rights	22 Aug 1968	15 Feb 1977
CMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	15 Sep 2005	07 Jul 2010
CRC - Convention on the Rights of the Child	30 Sep 1990	14 Jan 1991
CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict		11 Aug 2010 (a)
CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography		30 Jul 2010 (a)
CRPD - Convention on the Rights of Persons with Disabilities	11 Apr 2007	10 Sep 2014

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR, 1966)

The ICCPR is a multilateral treaty adopted by the United Nations (UN). It commits its state parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of expression, freedom of assembly, electoral rights, rights of due process and to a fair trial, as well as and the right not to be subjected to cruel, inhuman or degrading treatment or punishment. The Human Rights Committee (HRC) monitors implementation of the International Covenant on Civil and Political Rights (ICCPR) and its optional protocols.

The Universal Periodic Review (UPR) is a unique mechanism of the Human Rights Council (HRC) aimed at improving the human rights situation on the ground of each of the 193 United Nations (UN) member states. (see Upr-info.org for further info.)

Under this mechanism, the human rights situation of all UN Member States is reviewed every five (5) years. These three sessions are usually held in January/February, May/June and October/November.

The result of each review is reflected in an “outcome report” listing the recommendations the state under review (SuR) will have to implement before the next review.

The UPR is a full-circle process comprised of three key stages:

1. Review of the human rights situation of the state under review;
2. Implementation between two reviews (5 years) by the State Under Review of the recommendations received and the voluntary pledges made;
3. Reporting at the next review on the implementation of those recommendations and pledges and on the human rights situation in the country since the previous review.

Guyana next review session is January 2020. Its last session was on the 28 January 2015. Mid-term reporting is expected to occur on the 07/2017. Stakeholder’s deadline for submission is 20 June 2019. The recommended drafting period is March 2019 – 20 June 2019. This would ensure that there is sufficient time for advocacy before the next UPR in January 2020.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966 (ICESCR)

The ICESCR calls on its state parties to undertake and to work towards the granting of economic, social, and cultural rights to individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living. The UN Committee on Economic, Social and Cultural Rights (CESCR) monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966)

Guyana signed the ICESCR on 22 August 1968 and ratified it on the 15 February 1977. At the 56 Session, Guyana was reviewed by the UN Committee on Economic, Social and Cultural Rights.

Reporting Cycle

Document type	Symbol/Title	Due date	Submitted date	Publication Date
State party's report	E/C.12/GUY/2-4	30 Jun 2000	11 Sep 2012	14 Jul 2014
Annex to State party report	Guyana_Appendix II		08 Jul 2013	
List of issues	E/C.12/GUY/Q/2-4			01 Apr 2015
Reply to List of Issues	E/C.12/GUY/Q/2-4/ADD.1		11 Sep 2015	10 Sep 2015
Info from Civil Society Organizations (for the session)	Equal Rights Trust	01 Sep 2015		
Info from Civil Society Organizations (for the session)	Indigenous Rights Violations in Guyana - Submission from Cultural Survival			
Info from Civil Society Organizations (for the session)	Society Against Sexual Orientation Discrimination (SASOD)			
Info from Civil Society Organizations (for LOIs)	Global Initiative to End All Corporal Punishment of Children (PSWG)		07 Jan 2015	
Statement	Statement_Guyana	28 Sep 2015		
List of delegation/participants	Guyana_List of Delegation	28 Sep 2015		
Concluding observations	E/C.12/GUY/CO/2-4	12 Oct 2015	12 Oct 2015	27 Oct 2015
Summary records	E/C.12/2015/SR. 61			29 Sep 2015
Summary records	E/C.12/2015/SR. 60			29 Sep 2015

The following CSOs made submissions:

1. Equal Rights Trust
2. Indigenous rights violations in Guyana
3. Society Against Sexual Orientation Discrimination (SASOD)
4. Global Initiative to End All Corporate Punishment of Children (PSWG)

These group's submissions influenced the concluding observation that the UN Committee on Economic and Social and Cultural Rights made in relation to Guyana. The concluding observation is reflected in a ten-page document that made many of the recommendations that these groups requested.

The Government is to submit its fifth periodic report, by 31 October 2020.

CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

This Convention deals specifically with the protection of the rights of children, setting out the civil, political, social, health and cultural rights of children. Under the CRC, a child is defined as a person under the age of eighteen years, unless the domestic legislation in a particular State declares that the age of majority is attained earlier. The Committee on the Rights of the Child (CRC) monitors implementation of the Convention on the Rights of the Child (1989) and its optional protocols (2000).

The Committee invites the State party to submit its consolidated fifth and sixth periodic report by 12 February 2018 and to include in it information on the implementation of the present concluding observations (18 June 2013).

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

CEDAW is described by the United Nations as an international bill of rights for women. The Convention reaffirms its faith in fundamental human rights, in the dignity, and worth of the human person, and in the equal rights of men and women. It details the meaning of equality and how it can be achieved. Several dimensions of discrimination of women are addressed. These include the civil and legal status of women, reproductive rights, equality in relation to men on issues such as public and political life, education, cultural life and economic rights.

Committee on the Elimination of Discrimination against Women (CEDAW) monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (1999)

CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (CERD)

The CERD commits its members to the elimination of racial discrimination and the promotion of understanding among all races. As such state parties are obligated to ensure the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law and to the enjoyment of the rights and freedoms outlined in the Convention. The Committee on the Elimination of Racial Discrimination (CERD) monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1965).

INTERNATIONAL CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

CRPD commits its members to protect the rights and dignity of persons with disabilities. Parties to the convention are required to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law. It came into force on 3 May 2008. Committee on the Rights of Persons with Disabilities (CRPD) monitors implementation of the International Convention on the Rights of Persons with Disabilities (2006).

These Conventions are incorporated into the Guyanese Constitution. Courts are required by Article 39 (2) to pay due regard to international law, international conventions, covenants and charters bearing on human rights when interpreting the fundamental rights provisions in this constitution. In the Fourth Schedule of the Constitutions, the Conventions are specifically incorporated:

1. Convention on the Rights of the Child
2. Convention on the Elimination of all forms of Discrimination Against Women
3. Convention on the Elimination of all forms of Racial Discrimination
4. Conventions against torture and other inhuman or degrading treatment or punishment
5. Covenant on Economic, social and cultural rights
6. Covenants on Civil and Political Rights
7. Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

INTER-AMERICAN SYSTEM

The Inter-American System for the protection of human rights is one of the world's three regional human rights systems. It is responsible for monitoring and ensuring implementation of human rights guarantees in the 35 independent countries of the Americas that are members of the Organization of American States (OAS).

The Inter-American System is composed of two entities: a Commission and a Court. Both bodies can decide individual complaints concerning alleged human rights violations and may issue emergency protective measures when an individual or the subject of a complaint is in immediate risk of irreparable harm. Guyana is not a signatory to the Inter-American Court.

Mandate and Functions of the Commission

The principal function of the IACHR is to promote the observance and protection of human rights in the Americas. As Article 106 of the Charter of the Organization provides,

[t]here shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.

An inter-American convention on human rights shall determine the structure, competence, and procedure of this Commission, as well as those of other organs responsible for these matters.

In furtherance of its mandate, the Commission:

1. Receives, analyses and investigates individual petitions in which violations of human rights are alleged to have been committed either by a Member State of the OAS that has ratified the American Convention or by one that has not.
2. Observes the general situation of human rights in the Member States and publishes, when it deems appropriate, reports on the situation in a given Member State.
3. Conducts in loco visits to countries to conduct an in-depth analysis of the general situation and/or to investigate a specific situation. In general, these visits lead to the preparation of a report on the human rights situation observed, which is published and presented to the Permanent Council and to the General Assembly of the OAS.
4. Develops an awareness of human rights among the peoples of the Americas. To that end, the Commission prepares and publishes reports on specific issues, such as: the measures that must be taken to ensure greater access to justice; the effects that internal armed conflicts have on certain groups; the human rights situation of children, women, and migrant workers and their families, persons deprived of liberty, human rights defenders, indigenous persons, persons of African descent; freedom of expression; citizen security and terrorism, and how they relate to human rights, and so on.
5. Organizes and holds visits, lectures, seminars and meetings with government representatives, academic institutions, nongovernmental organizations and others for the purpose of communicating information and promoting a broad understanding of the work of the inter-American human rights system.
6. Recommends to the OAS member states the measures they should take the better to protect the human rights in the countries of the hemisphere.
7. In serious and urgent cases, requests member states to adopt precautionary measures, in keeping with Article 25 of its Rules of Procedure, in order to prevent irreparable harm to persons or to the subject matter

of the proceedings in connection with a pending petition or case. Furthermore, under Article 63(2) of the American Convention, in cases of extreme gravity and urgency the Commission may request that the Inter-American Court order the adoption of “provisional measures” to prevent irreparable harm to persons, even when the case has not yet been submitted to the Court.

8. Presents cases to the Inter-American Court and appears before the Court during the processing and consideration of cases.
9. Requests advisory opinions of the Inter-American Court, pursuant to Article 64 of the American Convention.
10. Receives and examines communications in which a State party alleges that another State party has committed a violation of a human right protected under the American Convention, pursuant to Article 45 thereof.

The following is an extract from the IACHR brochure which is found on its website at <http://www.oas.org/en/iachr/docs/pdf/HowTo.pdf>

WHAT IS THE COMMISSION'S FUNCTION?

The Commission's function is to promote the observance and defense of human rights in the Americas. The Commission performs this function by making visits to the countries, carrying out thematic activities and initiatives, preparing reports on the human rights situation in a certain country or on a particular thematic issue, adopting precautionary measures or requesting provisional measures before the Inter-American Court, and processing and analysing individual petitions with a view to determining the international responsibility of the States for human rights violations, and issuing the recommendations it deems necessary. The individual petitions that the Commission examines may be submitted by individuals, groups of individuals, or organizations that allege violations of the human rights guaranteed in the American Declaration of the Rights and Duties of Man (“the American Declaration”), the American Convention on Human Rights (“the American Convention”), and other inter-American human rights treaties.

Against whom can I file a petition alleging a violation of human rights?

The complaint must be filed against one or more member state(s) of the OAS considered to have violated the human rights contained in the American Declaration, the American Convention, and other inter-American human rights treaties.

The State may be responsible for violating human rights by:

- ▶ action (as a result of an act by the State or its agents),
- ▶ acquiescence (as a result of the tacit consent of the State or its agents), or
- ▶ omission (as a result of the State or its agents failing to take action when they should have done so)

Can the Commission determine the liability of an individual person?

No. The Commission is not competent to attribute individual liability, that is, it cannot determine whether an individual person is or is not guilty. The Commission can only determine the international responsibility of a member state of the OAS.

What results can I expect if I file a petition alleging a violation of human rights against a Member State of the OAS?

If the Commission determines that a state is responsible for having violated the human rights of a person or group of persons, it will issue a report that may include the following recommendations to the state:

- ▶ suspend the acts in violation of human rights;
- ▶ investigate and punish the persons responsible;
- ▶ make reparation for the damages caused;
- ▶ make changes to legislation; and/or
- ▶ require that the state adopt other measures or actions. In addition, a friendly settlement of the matter may be pursued with the state.

In which cases will the Commission not be able to help me?

The Commission cannot:

- ▶ issue a ruling with respect to a state that is not a member of the OAS;
- ▶ provide attorneys to assist in domestic judicial proceedings or to submit a petition or request for precautionary measures to the Commission;
- ▶ provide economic assistance or materials and supplies to persons;
- ▶ undertake immigration procedures, or process the granting of visas or political asylum.

Petition

By filing a petition before the Inter-American Commission on Human Rights, victims of human rights violations can obtain help. The Commission investigates the situation and can make recommendations to the state responsible to restore the enjoyment of rights whenever possible, to prevent a recurrence of similar events, to investigate the facts and to make reparations to victims of rights violation.

Every petition should include:

- a. the personal information of the alleged victim(s) and that of his/her next of kin;
- b. the personal information on the petitioner(s), such as complete name, phone number, mailing address, and email;
- c. a complete, clear, and detailed description of the facts alleged that includes how, when, and where they occurred, as well as the State considered responsible;
- d. an indication of the State authorities considered responsible;
- e. the rights considered violated, if possible;
- f. the judicial bodies or authorities in the State to which one has turned to remedy the alleged violations;
- g. the response of the State authorities, especially of the courts of justice;
- h. if possible, uncertified and legible copies of the principal complaints and motions filed in pursuit of a remedy, and of the domestic judicial decisions and other annexes considered relevant, such as witness statements; and
- i. an indication as to whether the petition has been submitted to any other international organization competent to resolve cases.

If possible, it is recommended that a list be included numbering the annexes attached to the petition to facilitate their identification.

Where do I send my request for precautionary measure?

Request for precautionary measures may be sent via::

email to cidhdenuncias@oas.org

Fax: +1 (202) 458-3992 or 6215 or

Online Portal: <https://www.oas.org/ipsp/default.aspx?lang=es>

via Mail to

Inter-American Commission on Human Rights

1889 F Street N.W.

Washington, D.C. 20006

United States

Who may submit petitions?

The individual petitions that the Commission examines may be submitted by individuals, groups of individuals, or organizations that allege violations of the human rights guaranteed in the American Declaration of the Rights and Duties of Man ("the American Declaration"), the American Convention on Human Rights ("the American Convention"), and other inter-American human rights treaties.

Against whom can I file a petition alleging a violation of human rights?

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- a. suspend the acts in violation of human rights;
- b. investigate and punish the persons responsible;
- c. make reparation for the damages caused;
- d. make changes to legislation; and/or
- e. require that the State adopt other measures or actions. In addition, a friendly settlement of the matter may be pursued with the State.

Franz Britton Case – Report No. 1/06²

Petition was presented to the Inter-American Commission on Human Rights (“the Commission”) by letter dated March 21, 2000, by I. Kamau Cush, Chairman for Economic Empowerment, Guyana, (“the petitioner”) against the State of Guyana (“the State” or “Guyana”), on behalf of Mr. Franz Britton, a.k.a. Collie Wills (“Mr. Britton”).

The petitioner alleges that the State has violated the rights of Mr. Britton as set forth in the American Declaration on the Rights and Duties of Man (“the Declaration”).

Mr. Britton, a Guyanese national and father of three children, was first arrested on January 19, 1999, by police officers at Cove and John Police Station, East Coast Demerara, Guyana and released on January 23, 1999. Mr. Britton was asked to report on January 25, 1999 to that same police station where he was re-arrested by a police division known as the Quick Reaction Group or the “Black Clothes”. The “Black Clothes” division is “a unit that functions as a death squad”.

Mr. Britton was last seen being forced by police officers into a car. Mr. Britton has not been seen since his re-arrest on January 25, 1999. Mr. Britton’s relatives including his mother, Ms. Irma Wills have received no information from the State about the whereabouts of Mr. Britton, despite multiple inquiries made of the police and other State official. Mr. Britton has not been seen since his re-arrest on January 25, 1999 and that his whereabouts remain unknown.

For the foregoing reasons, the petitioner claims that the State has violated the human rights of Mr. Britton the right to equality before the law, the right to the preservation of health and well-being, the right to a fair trial, the right to protection from arbitrary arrest, and the right to due process of law.

The Commissions called for the state to:

1. Carry out a serious, impartial and effective investigation by means of the competent organs, to establish the whereabouts of Franz Britton and to identify those responsible for his detention-disappearance, and, by means of appropriate criminal proceedings, to punish those responsible for such grave acts in accordance with the law.
2. Adopt the necessary legislative or other measures to prevent the recurrence of such events and provide, in all cases, the required due process and effective means of establishing the whereabouts and fate of anyone held in State custody.
3. It adopt measures to make full reparation for the proven violations, including taking steps to locate the remains of Franz Britton and to inform the family of their whereabouts; making the arrangements necessary to facilitate the wishes of his family as to an appropriate final resting place; and providing reparations for the relatives of Franz Britton including moral and material damages in compensation for the suffering occasioned by Mr. Britton’s disappearance and not knowing his fate.

Precautionary Measures

In certain serious and urgent situations, and provided that certain requirements are met, the Commission may adopt precautionary measures.

Precautionary measures calls on the state to take steps to protect a person(s) who is in imminent peril. A person needs a precautionary measure when there is reason to believe that he/she are at risk of injury to his/her basic human rights. The precautionary measure would normally be given where money would not be an adequate compensation to the injured person. The IACHR's authority to request urgent measures is reflective of a common practice in international human rights law.

You do not need a lawyer to file a request for precautionary measure. You can file your request for precautionary measure yourself without the assistance of a lawyer. There is no fee for submitting a request for precautionary measures.

The request for a precautionary measure can be sent in the form of a letter.

It should include the following information, listed as A – F. Once you have included the material information you should send off the precautionary measure or petition.

Material Information

A. Personal Information

- i. the applicant's name, telephone, mailing address, fax, email, contact number.
- ii. Whether the applicant wishes to keep his identity secret.
- iii. The name of [SM1] class of proposed beneficiary and contact number of the beneficiary. This information should be clear enough for the state to know which beneficiary should be protected.

B. Facts Alleged

- i. A detailed and chronological description of the facts that shows the existence of a serious and urgent situation and irreparable harm.
- ii. The current situation of the persons proposed as beneficiaries and their degree of risk.
- iii. If possible, legible, uncertified copies should be sent of the documents needed to understand the situation of the proposed beneficiary, such as copies of complaints presented to the authorities, medical certificates in situations involving health, and any other relevant legal motions that have been presented. If it is not possible to send these documents, the reasons should be provided. Photocopies of documents do not require any formality. That , that is, it is not necessary that they be certified, notarized or legally authenticated. One need not send several copies of the same document. If the request and its annexes are sent by mail, it is preferable that the documentation not be bound or laminated in any way.

C. Complaints to State Authorities

- i. An explanation of whether the facts alleged have been reported to the authorities or whether the sState has been asked to provide protection, and a description of the response, if any; or an explanation of why it has not been possible to put such protection in place.
- ii. An indication as to whether the person or group or persons proposed as beneficiaries already has any measures of protection domestically. If so, provide an explanation of how effective those measures have been.

D. Measures requested – A description of the measures of protection or others measures that have been requested.

E. Information as to whether you filed a petition/case before commission

- i. Indicate whether the applicant/beneficiary has already filed a petition or has a case pending before the Commission.
- ii. If so, the date of submission of the petition and the reference number assigned to the petition or case should be included.

Requests for precautionary measures may be sent

- A. via email to cidhdenuncias@oas.org
- B. via Fax: +1 (202) 458-3992 or 6215 or
- C. via Mail to

***Inter-American Commission on Human Rights
1889 F Street N.W.
Washington, D.C. 20006
United States***

The relevant article is set out below:

Article 25. Precautionary Measures

1. *In serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case.*
2. *In serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons under the jurisdiction of the State concerned, independently of any pending petition or case*
3. *The measures referred to in paragraphs 1 and 2 above may be of a collective nature to prevent irreparable harm to persons due to their association with an organization, a group, or a community with identified or identifiable members.*
4. *The Commission shall consider the gravity and urgency of the situation, its context and the imminence of the harm in question when deciding whether to request that a State adopt precautionary measures. The Commission shall also take into account:*
 - a. *whether the situation of risk has been brought to the attention of the pertinent authorities or the reasons why it might not have been possible to do so;*
 - b. *the individual identification of the potential beneficiaries of the precautionary measures or the identification of the group to which they belong; and*
 - c. *the express consent of the potential beneficiaries whenever the request is filed before the Commission by a third party unless the absence of consent is duly justified.*

CASE STUDY:

PM 458/14 – Members of Kaieteur News Journal, Guyana

On November 18, the IACHR requested the adoption of precautionary measures for members of Kaieteur News, in Guyana. The request for precautionary measures alleges that the proposed beneficiaries received threats against their lives and personal integrity as a consequence of their work as journalists. After analyzing the allegations of fact and law, the Commission believes that the information presented demonstrates prima facie that the members of the Kaieteur News Journal are in a serious and urgent situation, since their lives and personal integrity face an imminent risk of irreparable harm. Consequently, in accordance Article 25 of IACHR's Rules of Procedure, the Commission requires the Republic of Guyana to adopt the necessary measures to protect the lives and personal integrity of the three identified members of the Kaieteur News Journal; to agree on the measures to be adopted with the beneficiaries and their representatives; and to report on the actions taken to investigate the alleged incidents that gave rise to the adoption of this precautionary measure in order to prevent their repetition.

Precautionary measures can be helpful in bringing attention to a particular problem and in getting the state to actually take notice of potential human rights violation. It is reported to have worked for member of Kaieteur News Journal in Guyana.

Country Visit

The Inter-American Commission on Human Rights (IACHR) conducted a working visit to Guyana from September 21 to 23, 2016, to examine issues concerning poverty, as well as the respect and guarantee of the economic, social, and cultural rights in the country.

These reports are helpful since they allow the IACHR to conduct in loco visits to countries to conduct an in-depth analysis of the general situation and/or to investigate a specific situation. In general, these visits lead to the preparation of a report on the human rights situation observed, which is published and presented to the Permanent Council and to the General Assembly of the OAS.

This was the first time the IACHR visited Guyana.

See http://www.oas.org/en/iachr/media_center/PReleases/2016/148.asp

“The main objective of the visit was to gather information for the first thematic report of the IACHR on human rights and poverty in the Americas. While in Guyana, the IACHR received information on the acute levels of poverty in the country and what impact they have on human rights guarantees. The IACHR also received important data related to persons, groups, and collectivities in a special situation of vulnerability and affected by poverty and extreme poverty, as well as the exercise of rights in fundamental areas such as education, health services, and employment.”

During the visit, the IACHR met:

1. State Actors including Government Ministers, and
2. Civil Society Organizations in Guyana: Society Against Sexual Orientation and Discrimination (SASOD), Artistes in Direct Support, Monique's Caring Hands, Deaf Association of Guyana, Global Shapers Community, Guyana National Youth Council, Guyana Organization of Indigenous Peoples, Guyana Responsible Parents Association, Guyana Trans United, Human Rights Association of Guyana, and Volunteer Youth Corps.

The IACHR also visited Lombard Street in Georgetown, the Guyanese capital.

IACHR issued a press release which noted many of the issues and concerns reported by Civil Society Organization as well as document and recorded many of the promises made to the IACHR by Government Ministers.

Hearings

Hearings are helpful since they allow the IACHR to observe the general situation of human rights in the member states and publishes, when it deems appropriate, reports on the situation in a given member state.'

The IACHR hearing can be held either in private or in public. Public hearings brings international attention to many thematic issues. Civil Society actors and government can request thematic hearings. The request for a thematic hearing can be made by simply writing a letter to the IACHR through its online system. This is normally usually done at least 50 (50) days before the beginning of the Commission session. A request must include the purpose of the hearing and the names of the proposed civil society witnesses and experts, as well as a point of contact.

The purpose of the hearing could be to present issues before an international body. The presentation of the issues could very well ensure that they are addressed by the state party. The state party is normally usually present at these hearings. The state party is invited to present information on behalf of the state. This is often a very useful process for getting state parties to address long- standing problems. The IACHR will also be aware of the relevant issue and may also, on its own initiative, conduct further activities, including a country visit which can assist in remedying the problem.

CASE STUDY:

Hearing on human rights Situation of Guyanese young people

At the 161st Ordinary Period of Sessions at IACHR headquarters in Washington, D.C on the 22 March 2017 there was a hearing on the Human Rights Situation of Young People in Guyana. It was held at 12:15 pm – 1:15 pm. These hearing are helpful since they allow the IACHR to 'observes the general situation of human rights in the Member States and publishes, when it deems appropriate, reports on the situation in a given Member State.'

See a link to the Human Rights Brief which summarized what took place at the hearing: <http://hrbrief.org/2017/03/human-rights-situation-young-people-guyana/> . Present at the hearing were two Commissioners Margarette Macaulay (Rapporteur of Guyana & Women) and Esmeralda A. de Trotino (Rapporteur of Children & Young Persons).

At this Forum SASOD noted that:

1. LGBTI youth are discriminated against in school and because of this they often drop out of school.
2. LGBTI drop outs lack the needed education to enter into the workforce. This creates a gap in employment and sustainable income.
3. Some LGBTI youth are forced to join the sex-trade for work. They are attacked whilst doing this work and have no protections since this conduct is criminalized.
4. Some LGBTI youths often attempt suicide and are put into health institutions which do not recognize their gender identity.

At this Forum GRPA noted that:

1. certain religious groups are advancing notions of discrimination and homophobia against LGBTI youth.
2. the government's failure to introduce a "comprehensive reintegration policy for pregnant and parenting adolescent girls."
3. the Government of Guyana, specifically the Minister of Education, continues to violate rights of Guyanese children and young people that are protected under the United Nations Convention on the Rights of the Child (CRC).
4. The government, has an obligation to meet these standards under both CRC and Guyanese Constitution, which provides for an equal right to education.

At this Forum Guyana National Youth Council noted that:

1. Legislature drafted a National Youth Policy on the handling of youth misconduct, but never finalized it or made available to the public
2. actualization of policy implementation with an action plan to put mechanisms in place to monitor police activity and rehabilitation and care of juveniles.
3. finalization, publicity, and implementation of the 2016 Juvenile Justice draft bill to ensure an action plan.

At this forum, the Government of Guyana's Representative:

1. recognized the petitioners' arguments
2. described the government's desire to provide a "comprehensive response" to petitioners' grievances.
3. asked for more time to provide a plan and
4. apologizes for the government's "inability to do so at this time."

THE COMMISSIONERS: called for the revisions of policies and implementation in accordance with proper protections of young people.

IACHR hearing can be held either in private or in public. Public hearing brings international attention to many thematic issues. Civil Society actors and government can request thematic hearings. The request for a thematic hearing can be made by simply writing a letter to the IACHR through its online system. This is normally done at least fifty (50) days before the beginning of the Commission session. A request must include the purpose of the hearing and the names of the proposed civil society witnesses and experts, as well as a point of contact.

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CONCLUSION

Victims of rights violation and civil society organisations can seek assistance from various international bodies to address these breaches. The IACHR can be contacted to seek either (1) precautionary measure, (2) to file a petition, (3) for a hearing. As displayed above, these tools have been used to good effect to address rights violation. Civil Society Organisation can also take special notes of the various international bodies which monitors adherence to various treaties. CSO can share their properly databases with these bodies to demonstrate areas of rights violation that need special attention from state actors.

REFERENCES AND MATERIALS CONSULTED

A. DOMESTIC LAWS AND POLICIES

1. Constitution of Guyana, 1980, Cap 1:01
2. Persons with Disabilities Act, Cap 36:05, Act 11 of 2010
3. The Narcotic Drugs and Psychotropic Substances (Control) Act of 1988
4. The Summary Jurisdiction (Offences) Act, Chapter 8:02
5. Immigration Act, 1947
6. Criminal Law (Offences) Act, Chapter 8:01
7. Summary Jurisdiction (Offences) Act
8. The Police (Discipline) Act, 1975
9. The Police (Discipline) Regulations
10. The Police Complaints Authority Act, 1989

B. NATIONAL POLICIES AND WEBSITES

1. National Drugs strategy masterplan
2. National Policy paper on Women
3. Revised National HIV/AIDS policy
4. National HIV/AIDS strategy 2007 - 2011
5. Advocacy before the Inter-American System: Manual for Attorneys and Advocates (2014)
6. <https://www.upr-info.org/en/review/guyana>



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