



MEMORANDUM

To: Nancy Nicol, Principle Investigator, York University, Envisioning Global LGBT Human Rights (funded by the Social Science and Humanities Research Council of Canada)*
From: Atrisha Lewis (3L) & Zahra Ahmed (LL.M.), International Human Rights Clinic
Date: January 13th, 2012
Re: **Guyana's Interactions with the UN System on the Issue of LGBT Rights**

This document was prepared by law students and highlights publicly-accessible information available at the time it was prepared. It is not exhaustive, nor is it updated on a regular basis. The information provided here is not a substitute for legal advice or legal assistance, and the International Human Rights program at the University of Toronto, Faculty of Law cannot provide such advice or assistance.

Overview of the UN System

There are two major human rights systems at the United Nations (the "UN"): the Treaty based system and the Charter based system.

The treaty-based human rights system consists of nine treaty bodies that monitor state compliance with the obligations under their respective conventions. Each treaty body is comprised of a committee of independent experts that interpret and apply the convention in reviewing and commenting on periodic state reports and individual complaints. The treaty bodies are not judicial institutions and there is debate as to the nature of the body of law that the treaty bodies produce.¹ Regardless of whether these normative findings are actually law, they have legal significance as they are referenced in international and domestic decisions.²

The Charter based human rights system derives its authority from the UN Charter itself. The UN Human Rights Council, the successor to the Human Rights Commission, is the main organ in this Charter based system. The mandate of the Human Rights Council is to make recommendations on situations of human rights violation, while being guided by principles of "universality, impartiality, objectivity, and non-selectivity."³ This intergovernmental body, which meets in Geneva 10 weeks a year, is composed of 47 elected United Nations Member States who serve for an initial period of 3 years, and cannot be elected for more than two consecutive terms. The Human Rights Council oversees the Universal Periodic Review (UPR), which is a process that involves a review of the human rights records of all 193 UN Member States once every four years.

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¹ Burgenthal, *The Evolving International Human Rights System* 100 A.J.I.L. 788, 787-791

² *Ibid*

³ G.A. Res. 60/251 (March 15, 2006)



While not a human rights system, the General Assembly also deals with human rights issues through its broad mandate. Established in 1945 under the Charter of the United Nations, the General Assembly is the chief deliberative, policymaking and representative organ of the United Nations. Comprising all 193 Members of the United Nations, it provides a unique forum for multilateral discussion of the full spectrum of international issues covered by the Charter.

GUYANA

1. Summary

This is a summary of Guyana’s interaction with UN mechanisms on Sexual Orientation and Gender Identity (“SOGI”) issues.

- Guyana is the only country in South America where homosexual acts are still illegal.
- Guyana’s constitution provides for equality and non-discrimination but does not specifically include any reference to sexual orientation.
- Guyana has signed and ratified key human rights treaties. See chart below.
- Guyana has submitted reports to the treaty-based bodies in the past. Guyana’s reporting is out of date, as Guyana has failed to submit reports to the Committees.
- Guyana’s does not actively participate in the discussion and the voting respecting SOGI issues. Guyana frequently abstains during the vote.
- During its *Universal Periodic Review* in 2010, the Human Rights Committee expressed concern about the status of LGBTI people in Guyana, the criminalization of consensual adult same-sex sexual relations, and the lack of legislation to prevent discrimination on basis of sexual orientation and gender identity.

2. Treaty/ Convention Status

International Conventions are subject to ratification, acceptance or accession by States. They define rules with which the States undertake to comply.

The following chart highlights the international conventions that protect sexual orientation and gender identity rights through affirming international human rights principles such as the right to equality.

Guyana has ratified all relevant treaties. The chart highlights when Guyana has ratified these conventions.

Treaty	Date of Signature	Date of Accession(a), Succession(s), Ratification
International Convention on the Elimination of	11 Dec. 1968	15 Feb. 1977



all forms of Racial Discrimination (“CERD”)		
Article 14 of CERD		--
International Covenant on Civil and Political Rights (“ICCPR”)	22 Aug. 1968	15 Feb. 1977
First Optional Protocol to the ICCPR ⁴		5 Jan 1999 a (with reservation) ⁵
International Covenant on Economic, Social and Cultural Rights (“ICESCR”)	22 Aug. 1968	15 Feb. 1977
Convention on the Elimination of all forms of Discrimination Against Women (“CEDAW”)	17 July 1980	17 July 1980
Optional Protocol to CEDAW ⁶		--
Convention against Torture (“CAT”)	25 Jan. 1988	19 May 1988
Article 22 of CAT		--
Convention on the Rights of the Child (“CRC”)	30 Sept. 1990	14 Jan. 1991

In accordance with the various treaties, Guyana has an obligation to report its compliance with the treaties. The tables below set out the status of Guyana’s reporting.

Reporting to Human Rights Council under Universal Periodic Review

	Date of Report	Next reporting date
Universal Periodic Review ⁷	2010	2015

⁴ Authorizes the Human Rights Committee to hear complaints by private persons alleging violations of their rights under the ICCPR

⁵ *Reservation* “[...] Guyana re-accedes to the Optional Protocol to the International Covenant on Civil and Political Rights with a Reservation to article 6 thereof with the result that the Human Rights Committee shall not be competent to receive and consider communications from any persons who is under sentence of death for the offences of murder and treason in respect of any matter relating to his prosecution, detention, trial, conviction, sentence or execution of the death sentence and any matter connected therewith.

Accepting the principle that States cannot generally use the Optional Protocol as a vehicle to enter reservations to the International Covenant on Civil and Political Rights itself, the Government of Guyana stresses that its Reservation to the Optional Protocol in no way detracts from its obligations and engagements under the Covenant, including its undertaking to respect and ensure to all individuals within the territory of Guyana and subject to its jurisdiction the rights recognized in the Covenant (in so far as not already reserved against) as set out in article 2 thereof, as well as its undertaking to report to the Human Rights Committee under the monitoring mechanism established by article 40 thereof.”

⁶ Authorizes the CEDAW Committee to receive complaints from individuals alleging violations of their rights under CEDAW

⁷ Information regarding Universal Periodic Review, including calendar.
<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>



Reporting to Treaty-based bodies

Treaty-based bodies	Date of Review	Comments
Human Rights Committee (CCPR)	2000	Third report overdue since 2003
Committee on the Elimination of Racial Discrimination ("CERD")	2003, 2004, 2006	Reports overdue since 2008
Committee on Economic, Social and Cultural Rights ("ICESCR")	--	Second and Third Report overdue since 2000 and 2005 respectively.
Committee on the Elimination of all forms of Discrimination Against Women ("CEDAW")	1994, 2001, 2005	Seventh report was overdue since 2006. A review is scheduled for 2012
Committee against Torture ("CAT")	2005, 2006	Follow up response submitted in 2008
Committee on the Rights of the Child ("CRC")	2004	Combined second, third, and fourth report overdue since 2008

3. All Official State Positions on LGBT Rights as Reflected in Voting Patterns

Human Rights Council

The Human Rights Council is an inter-governmental body within the UN system made up of 47 States responsible for strengthening the promotion and protection of human rights around the globe. The Council was created by the UN General Assembly on 15 March 2006 with the main purpose of addressing situations of human rights violations and make recommendations on them.

Guyana has not yet been a member of the Human Right Council.

Year	Resolution	Vote
2011	Resolution 17/19 Human rights, sexual orientation and gender identity⁸ The resolution requested that the UN High Commissioner on Human Rights conduct a study on SOGI Human Rights violations in all regions of the world, convene a panel to discuss the	Guyana was not a member at the time of the vote.

⁸ A/HRC/RES/17/19



	results, and remain seized of the issue.	
	Resolution adopted 23 to 19 with 3 abstentions, at the Human Rights Council on June 17, 2011	

Prior to the June 2011 resolution, in 2003, Brazil put forward a resolution pertaining to human rights and sexual orientation at the Human Rights Committee. There was no vote on the actual resolution instead the debate was postponed. In 2008, the debate respecting the resolution was further postponed.

General Assembly Resolutions

The votes on the draft resolutions relating to the *Special Rapporteur on Extra-judicial executions* are tracked in the following chart. The resolution relates to whether the scope of investigation should specifically include investigating extra-judicial killings on the basis of sexual orientation. The chart tracks draft resolutions because this is where the clear statements and votes relating to include or remove the explicit reference to “sexual orientation” actually occur. The final resolutions are typically passed without any discussion relating to the inclusion or removal of the words “sexual orientation.”

Final Resolution	Draft Resolution	Vote
57/214	2002 Draft Resolution ⁹ at Third Committee	
	New reference to "sexual orientation"	No record of vote
59/197	2004 Draft resolution ¹⁰	
	Retain words "sexual orientation"	No record of vote
63/182	2009 Amendment ¹¹ to Draft Resolution ¹² at Third Committee	
	Remove words "sexual orientation"	Abstain
	Vote to Adopt Draft Resolution with sexual orientation in it.	In Favour
65/208	2010 Amendment ¹³ to Draft Resolution ¹⁴ at Third Committee	
	Remove words "sexual orientation"	In Favour

⁹ A/C.3/57/L.56/Rev.1

¹⁰ A/C.3/59/L.57/Rev.1

¹¹ A/C.3/63/L.75

¹² A/C.3/63/L.35/Rev.1

¹³ A/C.3/65/L.65

¹⁴ A/C.3/L.29/Rev.1



2010 Amendment ¹⁵ to Draft Resolution ¹⁶ at Plenary	
Re-include "sexual orientation"	Abstain

Other Statements

Over the years, countries have made joint statements at the Commission on Human Rights (predecessor of the Human Rights Council), the Human Rights Council and the UN General Assembly on sexual orientation and human rights seeking recognition of sexual orientation as a fundamental aspect of an individual and as recognition of discrimination on the basis of sexual orientation.

JOINT STATEMENTS RE SEXUAL ORIENTATION AND HUMAN RIGHTS	
	Guyana
<p>March 2011 Joint Statement at Human Rights Council by 85 countries¹⁷ which stated:</p> <p>We call on States to take steps to end acts of violence, criminal sanctions and related human rights violations committed against individuals because of their sexual orientation or gender identity, encourage Special Procedures, treaty bodies and other stakeholders to continue to integrate these issues within their relevant mandates, and urge the Council to address these important human rights issues.</p>	Did not support
<p>Dec 2008 Joint Statement at UN General Assembly by 66 countries¹⁸ in which the States called upon States and international human rights mechanisms to "commit to promote and protect human rights of all persons, regardless of sexual orientation and gender identity".</p>	Did not support
<p>Dec 2006 Joint Statement at Human Rights Council by 54 countries¹⁹ in which the countries stated:</p> <p>We express deep concern at these ongoing human rights violations. The principles of universality and non-discrimination require that these issues be addressed. We therefore urge the Human Rights Council to pay due attention to human rights</p>	Did not support

¹⁵ A/65/L.53

¹⁶ A/C.3/L.29/Rev.1

¹⁷ For the complete text of the Joint Statement go to <http://arc-international.net/global-advocacy/human-rights-council/hrc16/joint-statement>

¹⁸ For the complete text of the Joint Statement go to <http://arc-international.net/global-advocacy/sogi-statements/2008-joint-statement>

¹⁹ For the complete text of the Joint Statement go to <http://arc-international.net/global-advocacy/sogi-statements/2006-joint-statement>



violations based on sexual orientation and gender identity, and request the President of the Council to provide an opportunity, at an appropriate future session of the Council, for a discussion of these important human rights issues.	
March 2005 Joint Statement at Commission on Human Rights by 32 countries ²⁰ calling for the recognition of “Sexual orientation is a fundamental aspect of every individual’s identity and an immutable part of self.”	Did not support

4. All UN Statements on the situation of LGBT rights in Guyana

Universal Periodic Review

The Universal Periodic Review (UPR) is a unique state-driven process conducted under the auspices of the Human Rights Council, which involves a review of the human rights records of all 192 UN Member States once every four years. The Universal Periodic Review process began in 2006 and the first round will be completed by 2011. The documents on which the reviews are based are: 1) information provided by the State under review, which can take the form of a “national report”; 2) information contained in the reports of independent human rights experts and groups, known as the Special Procedures, human rights treaty bodies, and other UN entities; 3) information from other stakeholders including non-governmental organizations and national human rights institutions. Following the State review, a report referred to as the “outcome report” is produced. This report consists of the questions, comments and recommendations made by States to the country under review, as well as the responses by the reviewed State.

Year	National Report/Comments during the review process	Outcome of the Review	Response of the State to the Recommendations
2010 ²¹	There was no mention of SOGI issues in the National Report. Questions respecting Guyana’s treatment of LGBT persons were	The reviewing states made the following recommendations: ²⁴ 70.47. Remove legislation which discriminates against individuals on the basis of their sexual orientation or gender identity	In May 2010, Guyana responded to the recommendations: ²⁵ Recommendations 70.47, 70.48, 70.49, 70.50, 70.51, 70.52,

²⁰ For the complete text of the Joint Statement go to <http://arc-international.net/global-advocacy/sogi-statements/2005-joint-statement>

²¹ All documents relating to Guyana’s 2010 review can be found at <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/GYSession8.aspx>



	<p>sent in advance of the review.²²</p> <p>During the review process, the delegates from Guyana advised that:²³</p> <p>17. With regard to the advance questions concerning discrimination against lesbian, gay, bisexual and transgender persons, the delegation indicated that no cases involving the harassment of lesbian or gay persons had been received by the Government through any of its complaint mechanisms. There had been one case in which a person had been charged with cross-dressing, and the matter was still before the court. Changes to laws required widespread consultation and a major change in attitude on the part of the populace. The Government’s attempt to include the phrase “sexual orientation” in the anti-discrimination clause of the Constitution had been</p>	<p>(Australia);</p> <p>70.48. Combat discrimination on the basis of sexual orientation, and further promote dialogue in society so that no discrimination is justified on the grounds of culture, religion or tradition (Netherlands);</p> <p>70.49. Repeal the laws which criminalize sexual activity between consenting adults of the same sex (Slovenia);</p> <p>70.50. Decriminalize homosexuality between consenting adults, and repeal all legal provisions used to discriminate against LGBT persons (Italy);</p> <p>70.51. Repeal the laws that criminalize consensual sexual activities between people of the same sex, and protect lesbian, gay, bisexual and transsexual persons from discrimination and violence (Sweden);</p> <p>70.52. Repeal all provisions criminalizing sexual activities between consenting adults of the same sex, and reinforce its commitment to end violence and connected human rights violations committed against individuals based on their sexual orientation and identity (France);</p> <p>70.53. Reconsider those provisions which criminalize consenting sexual relations between adults of</p>	<p>70.53,</p> <p>66. The 2003 attempt to include “sexual orientation” in the constitution failed to receive the support of the National Assembly.</p> <p>67. Despite this, there is no discrimination by the state against persons based on their sexual orientation. Guyana does not deny that there may be interpersonal prejudices based on cultural attitudes and religious views.</p> <p>68. No case of discrimination on the grounds of sexual orientation has been brought to the courts, nor is there any known report before any of the human rights commissions or the Police Complaints Authority, nor any reported violence targeting persons based on their sexual orientation.</p> <p>69. Guyana is voluntarily committing to hold consultations on this issue over the next 2 years and based on the outcome of this democratic process,</p>
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²⁴ Report of the Working Group UN Doc. A/HRC/15/14

²⁵ Report of the Working Group Addendum 1. UN Doc. A/HRC/15/14/Add.1

²² Advance Questions to Guyana and Advance Questions to Guyana Addendum 2.

²³ Report of the Working Group UN Doc. A/HRC/15/14



	met with widespread consternation and protest.	the same sex, and intensify political initiative and legislative measures to combat any act of discrimination, including those committed against gender identity or sexual orientation (Spain);	these will be reflected in Guyana's law
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Human Rights Committee

The Human Rights Committee, composed of 18 independent experts, monitors the International Covenant on Civil, and Political Rights.

Guyana's last review was in 2000. Guyana's third report to the Human Rights Committee has been overdue since 2003. In its 2000 review of Guyana, the Committee did not address the criminalization of same-sex activities in Guyana or the treatment of LGBT persons in its Concluding Observations.

Year	Report	Concluding Observations
2000	Second Report	No specific reference to SOGI issues. The Committee was however, concerned with police brutality in Guyana.

Committee on the Elimination of Discrimination against Women

The Committee on the Elimination of Discrimination against Women, composed of 23 independent experts, monitors the Convention on the Elimination of All Forms of Discrimination Against Women.

In 2005, the Committee addressed LGBTI Human Rights in Guyana in its Concluding Observation

Year	National Report	Concluding Observations
2005	<p>Guyana in its report to the CEDAW Committee provided information respecting the Government's failed attempt to include sexual orientation as a basis for non-discrimination.</p> <p>Guyana's National Report to the Committee stated:²⁶</p> <p>1. The Constitution Reform Commission concluded its review of the 1980 Constitution of the Co-operative Republic of Guyana in July 1999. The Committee agreed that there should be an enforceable fundamental right enshrined in the Constitution providing for non-discrimination on the basis of race, sex, gender, marital status, pregnancy, ethnic or social origin, colour,</p>	<p>The CEDAW Committee made no comments respecting SOGI issues or in response to the Government's failure to include sexual orientation as a basis for non-discrimination in the Constitution.</p>

²⁶ National Report UN Doc. CEDAW/C/GUY/3-6



	<p>creed, sexual orientation, age, religion, conscience, belief, culture, language, birth or disability. A Bill to this effect was taken to Parliament.</p> <p>1.1 Despite the Bill being tabled and passed by the National Assembly it has not yet been assented to by the President in order to become law. Concerns raised by some sections of society with respect to the area of discrimination pertaining to sexual orientation have delayed the completion of this process. The process will require a re-tabling of the Bill in Parliament, which is dependent on clarification and revision of some of the terminology. This situation is still unresolved.</p>	
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Report of UN High Commissioner on Human Rights

In December 2011, the UN High Commission on Human Rights submitted a report to the Human Rights Council pursuant to its resolution 17/19, in which the Council requested the United Nations High Commissioner for Human Rights to commission a study documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity.

There was no reference to Guyana in the report.

5. Individual Complaints

Guyana has accepted the competence of the Human Rights Committee to consider complaints from individuals.²⁷ Presently, the Human Rights Committee has not received any individual complaints relating to SOGI issues. Guyana has not accepted the jurisdiction of any other committee to hear individual complaints.

Special Rapporteurs have not specifically identified SOGI issues in Guyana. The Rapporteurs have not specifically referenced any communications they have received respecting SOGI issues in Guyana.

²⁷ See Optional Protocol 1 to the ICCPR