

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE AGAINST TORTURE 37TH SESSION, GUYANA, INITIAL REPORT

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Information submitted to the Committee

Guyana submitted its initial report on the *Convention Against Torture* (the Convention), due in 1989, to the Committee Against Torture (the Committee).¹

The Committee received numerous alternative reports from the Guyana Human Rights Association (GHRA), on the topics of torture, police brutality, fatal shootings, sexual violence and the rule of law.²

The Committee expressed disappointment over the 17 year delay in submitting the report. In this time Guyana should have submitted five periodic reports. Although the initial report consolidated the last five reports and included an updated core document,³ the Committee expressed some concern that it contained a lack of updated information. Guyana's report adequately complied with the Committee's guidelines, although it largely omitted specific statistics, cases and effective measures undertaken by the State Party. During its opening statement, the Guyanese delegation verbally updated much information lacking in both the State report and core document.

¹ The State report, Concluding observations and NGO alternative reports as well as the reservations, declarations and understanding of the State party are available at <http://www.ohchr.org/english/bodies/cat/cats37.htm>.

² The six separate reports of the Guyana Human Rights Association are available at <http://www.ohchr.org/english/bodies/cat/cats37.htm>

³ The core document was submitted as annexes to the initial report, and is available in the files of the Committee Secretariat.

Themes and issues⁴

Guyana's delegation consisted of only one member, Ms Gail Teixeira, Presidential Adviser on Governance and a Member of Parliament.

Incorporation of the Convention in domestic law

The Committee repeatedly inquired into the status of the Convention in Guyana's domestic law, specifically whether the Convention could be invoked in court. The Committee noted that under Guyanese law, international instruments⁵ were automatically given legal effect upon ratification. The Committee noted however that there was a contradiction in the core document, which stated both that the Convention could be used to appeal directly to a superior court and that it could only be invoked indirectly. Guyana replied that there were no legal impediments to citing the Convention in court, although it could not produce any examples where this had occurred.

Guyana assured the Committee that the prohibition of torture, cruel, inhuman and degrading treatment is absolute and non-derogable even during a state of emergency. However, the Committee viewed with concern Guyana's assertion that a two-thirds majority vote in the National Assembly would be sufficient to abrogate any human rights treaty or obligation. The delegation responded that the nature of political alliances in the Assembly made securing a two-thirds vote on such issues virtually impossible.

Domestic provisions relating to torture

The Committee noted that torture as well as inhuman or degrading punishment was expressly prohibited⁶ in the Guyanese Constitution of 2003. However, it raised the issue of Guyana's lack of a distinct offence for torture in the Criminal Code, as well as the related absence of a definition for the term. The delegation responded that sanctions for torture are present in domestic legislation, such as the *Police Discipline Act*. Furthermore, it stated that the courts have the ability to directly apply the stronger definitions given by the instruments of the *Rome Statute*, the *International Covenant on Civil and Political Rights* (ICCPR) and the Geneva Conventions. The Committee commented that these definitions apply in different contexts, and strongly recommended in its Concluding observations that Guyana adopt a definition in compliance with the Convention. The Committee also pointed out that having no definition of torture inhibited the State from keeping proper statistics on the practice.

The Committee expressed concern that the five-year maximum sentence applicable to the crimes under which torture would be prosecuted was too weak. Guyana replied that the sentence for these crimes ranged from seven years imprisonment to the death penalty. However, the delegation later added that the death penalty was not applied in practice.

The Committee questioned the delegation about a provision in its Constitution that allowed for non-citizens to be expelled from Guyana if found to be in the 'public interest'. It also asked if torture was an extraditable offence. Guyana answered that its Government was opposed in principle to the practise of rendition. Moreover, since torture is constitutionally prohibited, it would automatically qualify as an extraditable offence. In its concluding observations, the Committee stated that it was not entirely clear about Guyana's position on this issue, and reminded the State Party of the absolute prohibition on the extradition of persons to a State where there is substantial cause to believe that they would be subjected to torture.

⁴ For a press release of the proceedings, please see [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/458F376366A1CD43C1257225004719EF?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/458F376366A1CD43C1257225004719EF?OpenDocument) and [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/F314734E376A75B5C1257226005C31C1?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/F314734E376A75B5C1257226005C31C1?OpenDocument).

⁵ Guyana listed the relevant instruments in Paragraph 25(j) of its State report.

⁶ Article 141.

The Committee asked Guyana to clarify its criteria for ‘unlawful gathering’ of evidence, which would be inadmissible in court according to its Constitution. The delegation replied that this consisted of testimony obtained through torture, as well as evidence gained without legal due process. It admitted that its definition of ‘unlawful gathering’ did not extend to evidence obtained through cruel, inhumane and degrading treatment, nor to ‘derivative evidence,’ whereby the use of torture led to subsequent discovery of evidence.

In relation to Guyana’s recent accession to the Caribbean Court of Justice (CCJ), the Committee asked about the CCJ’s competence to hear appeals based on the Convention. Guyana replied that the CCJ was the highest court of appeal for the country.

The Committee also inquired about Guyana’s position on the February 2006 ruling of the Inter-American Commission, which had classified enforced disappearances as “cruel and inhuman treatment.” The delegate did not respond to this inquiry.

The judiciary and other enforcement mechanisms

Guyana recognised that the lack of resources, backlog and inefficiency of its judiciary presented one of the country’s most daunting challenges. It announced two recent loans from the International Development Bank (IDB) aimed at modernising the judiciary and prison system. The Committee raised the issue of judicial independence, on which the delegation commented that Chief Justices could not be removed by the President except with the approval of a Judicial Commission elected by the National Assembly. One Committee member voiced concern over a legal provision allowing for part-time judges, who do not enjoy security of tenure and thus are a threat to judicial independence. Another Committee member encouraged Guyana to engage part-time judges in order to address its personnel shortage. The delegation stated that the clause allowing for part-time judges had not yet been implemented.

The Committee questioned the Guyanese delegation about its practices with respect to pre-trial detention, which according to the 2000 concluding observations of the Human Rights Committee (HRC) could be extended to three to four years. Guyana assured the Committee that pre-trial detention was limited by law to a maximum of three months. The Committee urged Guyana in its concluding observations to ensure that the mandatory legal limits of pre-trial detention are respected in practice.

The Committee requested the delegation to provide more information on its National Human Rights Institutions (NHRIs). Guyana replied that it had recently created five new commissions, on human rights, women, children, indigenous peoples and ethnic relations. Members to these commissions are short-listed by the National Assembly by means of a two-thirds vote. The Committee also inquired as to why the position of Ombudsman had been vacant for the last year. The delegation answered that this was due to political reasons, but remarked that the climate had changed and this deficiency would soon be eliminated. In its concluding observations, the Committee took positive note of the creation of the five NHRIs, but urged the State to resolve all political obstacles and ensure appointments to the institutions, especially the position of Ombudsman.

Police issues

Quoting information from the GHRA, the Committee inquired as to what measures the State party had taken to investigate the alleged 60 cases of police abuse in the last year.⁷ The Committee questioned Guyana on whether its police complaints procedure was independent of the police. It responded that the Director of the Public Prosecutor (DPP) and Police Complaints Authority (PCA) have the authority to launch preliminary investigations without the approval of the police. In addition, the Coroner also has the authority to launch investigations into suspicious deaths, although Guyana acknowledged that the legal framework governing this option was ineffective and needed reform. Guyana reported that since the PCA had been created in the 1990s,

⁷ According to a survey conducted by the Guyanese Government in May 2006, 0.6-0.9% of the sample had claimed to be victims of police abuse in the previous 12 months.

over 4,000 complaints had been registered and 55 police officers had been criminally charged. It briefly described two cases resulting in convictions. It commented that an increase in fatal shootings by police was the result of the rise of gang and drug related violence, which the State has only begun to bring under control this year.

The Committee also inquired about what measures were taken if the DPP decided not to act on a complaint. The Committee suggested that the DPP be allowed to directly approach a magistrate in lieu of launching an investigation, which Guyana dismissed as unrealistic due to judicial inefficiency. In its concluding observations, the Committee urged the State Party to clearly define the circumstances in which police are authorised to use force and firearms. In addition, it recommended effective steps to guarantee the accountability of the police, including prompt and impartial investigations, adequate sentences for perpetrators, and compensation for victims.

The Committee expressed regret that the Report on the Discipline Forces (RDF), whose purpose was to propose improvements to the police force, included no input from any NHRI and did not incorporate any of the suggestions of the GHRA.⁸ Guyana answered that the RDF's recommendations deal with human rights by inference, and that a better police force would improve the human rights situation in the country. It could not give a reason that the GHRA was not included in the process, but remarked that the work of the Discipline Forces Commission was not yet concluded.

Referring to reports from NGOs and the Human Rights Committee (HRC), the Committee repeatedly raised the issue of the unbalanced ethnic composition of the police force. Guyana stated that since 1992, efforts had been made to target recruitment at Indo-Guyanese as well as Amerindians. It announced that these measures had shown success among Amerindians, especially through the creation of new community police units, but not among Indo-Guyanese, who still feared discrimination. It also noted that the height restriction for police officers was removed ten years ago, further reducing discrimination against these groups. In its concluding observations, the Committee expressed concern over the low numbers of Indo-Guyanese in the police force, which it argued was an underlying cause of the high number of deaths in custody of persons of Indo-Guyanese origin. It encouraged the State Party to continue its efforts to diversify the ethnic composition of the police force.

In response to questioning, Guyana affirmed that members of the police and army can be prosecuted under civil law.

Prison conditions

The Committee welcomed the fact that Guyana employed Visiting Committees (VC) which conducted monthly inspections and submitted an annual report. In response to the Committee's questions, the delegation stated that VCs are not currently assigned to detention centres. Since the infrastructure already seemed to be in place, the Committee urged the State Party to ratify the *Optional Protocol* to the Convention.

The Committee questioned the use of flogging and reduction of diet as a punishment in prisons. Guyana remarked that while flogging remained a penalty imposed by the courts, it was no longer the practise to flog prisoners as punishment. It commented that due to the high rate of violent crime, there was little public sympathy for removing flogging from the statutes. Notwithstanding, the Committee suggested in its concluding observations that Guyana eliminate the legal provisions for these punishments.

The Committee inquired into whether prisoners underwent mandatory medical examinations. Guyana answered that they did, but added that staff were properly trained to carry out the procedure.

⁸ Of the 164 recommendations for police reform, none make reference to human rights.

The issue of women in the capital, Georgetown, being detained in the same facilities as men was also raised. Ms Teixeira emphatically denied this, citing her own personal experience as an occupant of the facility in question.

In its concluding observations, the Committee stated that the most widespread problems in Guyanese prisons were overcrowding and poor hygienic and physical conditions, caused by a lack of human and financial resources. It urged the State Party to address these issues through international technical assistance.

Children's issues

The Committee raised a number of issues related to the *Convention on the Rights of the Child* (CRC), including reports that juveniles and adults were imprisoned together in both prisons and detention centres. The delegation replied that children over 16 could be sent to the same prisons as adults, but were placed in a separate section. However, they may be placed with adults while in remand at police stations. A recommendation to create a safe haven in police stations was recently rejected by a Chief Magistrate, but it remains on the agenda. The Committee urgently recommended in its concluding observations that the State Party remedy this situation.

The Committee noted with disappointment that the age of criminal responsibility in Guyana remained at 10 years, contravening the CRC. Guyana responded that juvenile offenders aged 10-16 were not treated as 'prisoners,' but were remanded to training schools. Nonetheless, the Committee recommended in its concluding observations that Guyana raise the age of criminal responsibility to an internationally acceptable level.

The Committee also noted with appreciation that the age of sexual consent had been raised to 16 in 2005.

Extrajudicial killings

The Committee noted with concern reports by the GHRA of 12 recent extrajudicial killings, only four of which had been prosecuted.⁹ The delegation replied that extra-judicial killings were linked to increasing gang violence and these gangs' possession of AK-47s and other automatic weapons. The Committee referred multiple times to a Presidential Inquiry into the alleged involvement of the Minister of Home Affairs in extrajudicial killings. Guyana responded that the matter was related to firearms control, and that while the Minister had been exonerated, he had resigned his post. The delegation added that police training and amendments to firearms licensing legislation will address this issue. In its concluding observations, the Committee urged Guyana to control the indiscriminate issuance of firearm licenses, and to ensure that its firearm regulations are applied uniformly.

In a more general comment, the Committee expressed concern about the large number of legal exceptions to the guarantees of the right to life.

Sexual violence

Citing a report from the GHRA, the Committee expressed grave concern over the rising prevalence of sexual violence and a culture of impunity, highlighted by a 1.4% conviction rate. It commented about a case currently pending before the High Court for six years, constituting a denial of the right to a fair trial. It also asked for more information about incidents of sexual violence in detention centres and prisons. The delegation responded that such cases were common in the past, but currently there was only one case pending. Guyana commented that the high rate of sexual violence was due to cultural and historical factors, as well as male inadequacy caused by the higher grades earned by females in schools. It stated that new measures were being taken under the *Domestic Violence Act*, including more cases being brought before the court and the creation of a special police unit. The Committee recommended in its concluding observations that Guyana

⁹ Coroner's inquests have been ordered into the remaining eight cases, but have not proceeded.

establish a sexual violence complaints mechanism, ensure training for law enforcement officials, ensure prompt investigations and prosecution of offenders, appropriate sentences and compensation for victims and protect witnesses against intimidation and ill-treatment. It also suggested training for police and health personnel to combat domestic violence.

Other issues

The Committee asked whether a ‘death row’ existed in Guyana. Guyana replied that although the death penalty remained on the statutes, no one had been executed in the country in the last 10 years. Nonetheless, the Committee expressed concern in its concluding observations over the “deplorable conditions of detention” for death row inmates, and urged Guyana to take action to guarantee the basic needs and rights of these persons.

The Committee also noticed a lack of training aimed at teaching medical personnel how to recognise signs of torture and other cruel, inhumane and degrading treatment. It recommended in its concluding observations that Guyana seek international technical assistance in this area.

Conclusions and next steps

The Committee gave a very favourable overall impression of Guyana’s report, and praised Ms Teixeira for conducting the dialogue in a very competent manner despite being alone in the delegation. It congratulated Guyana for “considerable progress” made in many areas. Guyana repeatedly asserted that it required technical assistance in drafting future reports, and was encouraged by the Committee to seek such assistance from the Office of the High Commissioner for Human Rights (OHCHR). However, the Committee noted in its concluding observations that it lacked satisfactory replies from the delegation on the issues of criminal penalties for torture offences, extradition, cases of police abuse and statistics in relation to torture complaints, convictions of perpetrators and compensation provided to victims. In addition, the Guyanese delegation seemed at times to take a disparaging view of the Convention’s definition of torture, considering to be a ‘weaker’ definition than some others.

During its examination, the Committee made frequent use of information provided by NGOs, in particular the GHRA. It also made reference several times to reports by the Committee on the Rights of the Child and the Human Rights Committee, mostly with regard to prison conditions and the police.

Two Committee members seemed to contradict each other when asking questions about part-time judges, one viewing them as beneficial and the other as impediments to judicial independence. However, in its concluding observations the Committee encouraged the State Party to eliminate the Constitutional provision allowing for part-time judges.

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