

TRAPPED

CYCLES OF VIOLENCE AND DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PERSONS IN GUYANA[†]

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PREFACE

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Human rights fact-finding aims to uncover and describe human rights concerns to expose both the abuses themselves and the factors that enable their perpetuation. Giving voice to survivors and victims is central to the fact-finding methodology: After all, “. . . if one really wishes to know how justice is administered in a country . . . [o]ne goes to the unprotected – those, precisely, who need the law’s protection most – and listens to their testimony.”¹

Through Georgetown Law’s *Fact-Finding Practicum*, the Human Rights Institute works with a small group of students on a cutting-edge human rights research project each year. Student researchers develop the focus of the project and design their research methodology, conduct extensive interviews with stakeholders on the ground, draft a comprehensive report on their findings, and engage in related advocacy. The report you are about to read, “Trapped: Cycles of Violence and Discrimination Against LGBT Persons in Guyana,” is a product of these efforts.

Globally, forty-five states criminalize relationships between females, and seventy-two states criminalize relationships between males.² Guyana, a small Caribbean country located in South America, is the only country on the South American continent that still criminalizes same-sex intimacy. Recently, a few Caribbean countries have repealed or overturned laws criminalizing same-sex intimacy — including Belize in 2016³ and Trinidad and Tobago in April 2018⁴. While Guyana still criminalizes buggery, there has been at least one positive development since the publication of this report: The Caribbean Court of Justice (CCJ) ruled that Guyana’s law criminalizing “cross-dressing” for an “improper purpose”

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1. JAMES BALDWIN, *NO NAME IN THE STREET* (1972).

2. *Sexual Orientation Laws in the World – Criminalisation*, THE INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION, (May 2017), https://ilga.org/downloads/2017/ILGA_WorldMap_ENGLISH_Criminalisation_2017.pdf.

3. Brooke Sopelsa, *Belize Supreme Court Overturns Anti-Gay Law*, NBC NEWS, (Aug. 10, 2016), <https://www.nbcnews.com/feature/nbc-out/belize-supreme-court-overturns-anti-gay-law-n627511>.

4. *Trinidad and Tobago: Court Overturns Same-Sex Intimacy Ban*, Human Rights Watch, (Apr. 13, 2018), <https://www.hrw.org/news/2018/04/13/trinidad-and-tobago-court-overturns-same-sex-intimacy-ban>.

is unconstitutional on November 12, 2018.⁵ Guyana's Prime Minister, Moses Nagamootoo affirmed that Guyana will respect the CCJ decision.⁶ Eliminating laws that perpetuate and legitimize violence and discrimination against LGBT individuals is a step in the right direction. However, there is still a great deal of change needed to disrupt—as detailed in this report—the pervasive cycle of violence, discrimination, and abuse that permeates all aspects of life for LGBT individuals in Guyana.

5. CCJ Declares Guyana's Cross-Dressing Law Unconstitutional, CCJ Press Release No. 44:2018 (Nov. 12, 2018).

6. *Guyana Respects CCJ Decision on Cross-Dressing – PM Nagamootoo*, (Nov. 20, 2018), <http://guyanachronicle.com/2018/11/20/guyana-respects-cj-decision-on-cross-dressing-pm-nagamootoo>.

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We are immensely grateful to our Professor, Fanny Gomez-Lugo, for her wisdom and guidance throughout this project. We would also like to give special thanks to Ashley Binetti, in her capacity as the Dash-Muse Teaching Fellow, for her tireless dedication, advice, and support, particularly for her edits on earlier drafts of this report.

We would like to thank the practitioners and organizations that helped facilitate our field research in Guyana. We offer our sincere appreciation to Twinkle Kissoon from Guyana Trans United (GTU) and Joel Simpson and Anil Persaud from the Society Against Sexual Orientation Discrimination (SASOD) for generously sharing their time and knowledge with us throughout the year. Their valuable insights and support during the planning process made our fact-finding trip possible. We also extend our gratitude to Gulliver McEwan (GTU); Valini Leitch (SASOD); Colleen McEwan from the Guyana Rainbow Foundation (GuyBow); Karen De Souza from Red Thread; and the employees of Comforting Hearts.

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We would especially like to thank Victor Madrigal-Borloz, UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, for authoring the Foreword for this report.

Most of all, we would like to thank all the brave and inspiring members of the Guyanese LGBT community for sharing their experiences with us. We hope this research amplifies their voices and assists human rights defenders in Guyana in their ongoing advocacy to make Guyanese society more inclusive and to end violence and discrimination against LGBT persons there.

VIOLENCE AND DISCRIMINATION AGAINST LGBT PERSONS IN GUYANA

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DEFINITIONS & ABBREVIATIONS

A. *Definitions*

Anti-man Derogatory Creole term for a homosexual male, transgender person, or man who is perceived to be feminine.⁷

Batty boy / batty man Derogatory terms for a homosexual male, transgender person, or man who is perceived to be feminine. “Batty” is a Jamaican Patois term for anus, thus the term refers to anal sex.⁸

Bisexual A person who is romantically and emotionally attracted to both men and women.⁹

Cisgender Describes a person whose sense of their own gender is aligned with the sex assigned at birth. For example, a person who was assigned male sex at birth and who identifies himself as a man is cisgender.¹⁰

Fire / fire bun Derogatory term that conveys rejection of anything considered evil, sinful, or wrong, especially homosexuality. The term stems from biblical references to “fire and brimstone,” and the torments facing sinners in hell.¹¹

Gay A man who is romantically and emotionally attracted to other men.¹²

Gender expression A person’s presentation of gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioral patterns, names, and personal references.¹³

7. INT’L GAY AND LESBIAN HUMAN RIGHTS COMM’N & UNITED AND STRONG, CARIBBEAN MEDIA TRAINING MANUAL 17 (2015), <https://www.outrightinternational.org/sites/default/files/MediaGuideAugust102015.pdf>.

8. *Id.* at 17, 19.

9. RYAN HIGGITT, SOC’Y AGAINST SEXUAL ORIENTATION DISCRIMINATION [SASOD], LGBT MENTAL HEALTH FACT SHEET 1 (2014), http://www.sasod.org.gy/sites/default/files/resources/SASOD_FactSheet_LGBT_MentalHealthfinal.pdf.

10. *Definitions*, U.N. FREE & EQUAL, <https://www.unfe.org/definitions/> (last visited Mar. 25, 2018).

11. Interview with Joel Simpson, 35, Managing Dir., SASOD in Georgetown, Guy. (March 11, 2018).

12. HIGGITT, *supra* note 3, at 1.

13. INT’L COMM’N OF JURISTS, THE YOGYAKARTA PRINCIPLES PLUS 10: ADDITIONAL PRINCIPLES AND STATE OBLIGATIONS ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION AND SEX CHARACTERISTICS TO COMPLEMENT THE YOGYAKARTA PRINCIPLES 6 (Nov. 10, 2017) [hereinafter YOGYAKARTA PRINCIPLES PLUS 10], http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.

Gender identity Each person's deeply felt internal and individual experience of gender, which may or may not correspond with his or her sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical, or other means) and other expressions of gender, including dress, speech, and mannerisms.¹⁴

Hate crime Aggression based on rejection, intolerance, scorn, hate, and/or discrimination, usually against an individual because of a personal characteristic such as race, religion, national or ethnic origin, sex, sexual orientation, or gender identity or expression.¹⁵

Homophobia An irrational fear of, hatred, or aversion towards lesbian, gay, or bisexual people.¹⁶

Lesbian A woman who is romantically and emotionally attracted to other women.¹⁷

Person with non-normative SOGIE An individual who identifies as lesbian, gay, bisexual, transgender, or any other sexual orientation and/or gender identity and/or gender expression that is not heterosexual or cisgender.

Region Guyana is divided into ten Regions for the purposes of local government administration.

Sexual orientation Each person's capacity for profound emotional, affectional, and sexual attraction to, and intimate and sexual relations with, individuals of a different gender, or the same gender, or more than one gender.¹⁸

Transgender Describes a person whose sex assigned at birth does not match that person's gender identity¹⁹ or expression. Transgender women identify as women but were classified as male at birth. Transgender men identify as men but were classified female at birth.²⁰

14. INT'L COMM'N OF JURISTS, THE YOGYAKARTA PRINCIPLES: PRINCIPLES ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY 8 (Mar. 2007) [hereinafter YOGYAKARTA PRINCIPLES], http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf.

15. INTER-AM. COMM'N ON HUMAN RIGHTS [IACHR], VIOLENCE AGAINST LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX PERSONS IN THE AMERICAS, ¶ 42, OAS/Ser.L/V/II.Rev.I Doc. 36 (Nov. 12, 2015), <http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf>.

16. LGBT RIGHTS: FREQUENTLY ASKED QUESTIONS, U.N. FREE & EQUAL 1 (2017), <https://www.unfe.org/wp-content/uploads/2017/05/LGBT-Rights-FAQs.pdf>.

17. HIGGITT, *supra* note 3, at 1.

18. YOGYAKARTA PRINCIPLES, *supra* note 8, at 6.

19. IACHR, *supra* note 9, ¶ 20.

20. U.N. FREE & EQUAL, *supra* note 10, at 1.

Transphobia An irrational fear, hatred, or aversion towards transgender people.²¹

B. *Abbreviations*

CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CARICOM Caribbean Community

CEDAW Convention on the Elimination of All Forms of Discrimination against Women

CERD Convention on the Elimination of All Forms of Racial Discrimination

CESCR Committee on Economic, Social and Cultural Rights

CRC Convention on the Rights of the Child

CSO Civil society organization

GTU Guyana Trans United²²

IACHR Inter-American Commission on Human Rights

IACtHR Inter-American Court of Human Rights

ICCPR International Covenant on Civil and Political Rights

ICESCR International Covenant on Economic, Social and Cultural Rights

LGBT Lesbian, gay, bisexual, and transgender individuals

OAS Organization of American States

OHCHR Office of the High Commissioner of Human Rights

MSM Men who have sex with men

NGO Non-governmental organization

SASOD Society Against Sexual Orientation Discrimination²³

SOGIE Sexual orientation, gender identity, and expression

UDHR Universal Declaration of Human Rights

UN United Nations

UPR Universal Periodic Review

USAID United States Agency for International Development

21. *Id.*

22. Guyana Trans United (GTU) is the only trans-led organization in Guyana dedicated to addressing the needs and interests of transgender people. For more information on GTU and their work, visit <https://www.facebook.com/Guyana-Trans-United-GTU-148525782006659/>.

23. SASOD is a human rights movement and organization, leading change and educating and serving communities to end discrimination based on sexuality and gender in Guyana. Initially formed in 2003, SASOD advocates for the enactment of laws and policies that protect the human rights of LGBT persons in Guyana, seeks socio-cultural change by raising awareness of anti-LGBT prejudice, and connects LGBT individuals with access to basic human services. For more information on SASOD and their work, visit <http://www.sasod.org.gy/>.

FOREWORD

This Georgetown Law Human Rights Institute Fact-Finding Project report examines the broad spectrum of discrimination and violence the LGBT community faces in Guyana. Based on interviews from a wide range of stakeholders, including rights holders, it presents a nuanced set of findings through stories and patterns of abuse and discrimination in every major facet of life including health, education, employment, and access to justice. The report highlights that systematic violations of human rights do not exist in a vacuum, but are connected and informed by other violations and the law, policies, and attitudes of the government and its people.

The promotion of the human rights of individuals with non-normative sexual orientation, gender identity, or gender expression (SOGIE) are best served by a comprehensive lifecycle analysis of discrimination and violence such as the one utilized as the basic methodology in the report. The rippling effects of discrimination reach far beyond the initial violating act, as experienced by many LGBT and other marginalized groups throughout the world. The interconnectedness, interdependence, and intersectionality of human rights are underscored by the findings of the report.

The report highlights a deeply felt experience by those who suffer violations of their human rights, one that is often difficult to articulate: a life of systematic and endless violations of human rights is a life without the recognition of one's own dignity. To experience discrimination, stigmatization, violence, and a general silencing of one's authentic self at home, at school, in the workplace, in public spaces, and especially at the hands of those with the responsibility to protect persons from such abuse is overwhelmingly damaging to one's ability to enjoy human rights and live a life of dignity.

The research team has illuminated gaps in the protection of the LGBT community in Guyana, and underscored the State's duty to encourage and nurture acceptance within all strata of society, thereby protecting and promoting the rights of persons with non-normative SOGIE. The report encourages the Government of Guyana to uphold its international obligations to protect the LGBT community within its borders by enacting nondiscrimination legislation, rejecting outwardly discriminatory laws, and educating and encouraging State actors and others to apply law and policy in a neutral and inclusive manner.

I strongly encourage all relevant stakeholders from the national and international community to review the report's findings, and I sincerely

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hope that the State will carefully consider the recommendations provided therein.

Victor Madrigal-Borloz

UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity

EXECUTIVE SUMMARY

“To be a gay person in Guyana and survive you have to have a lot of tolerance and you have to be brave and you have to be proud of yourself. If you are not brave, if you are not proud of yourself, if you are not tolerant to the ignorance that is going to be approaching you, then you can’t survive here.”²⁴

This report is the result of an investigation of the discriminatory treatment of LGBT individuals in Guyana in various social, economic, civil, and political sectors. Drafted by members of the Georgetown Law Human Rights Institute Fact-Finding Project, the report is a culmination of desk and field research, including reports from sixty-eight interviewees, and an analysis of the trends and state of Guyanese law and policy affecting LGBT persons and their rights. The team interviewed LGBT individuals, human rights defenders and activists, academics, members of the Guyanese government and police force, religious leaders, and regional experts in preparing this report. The findings illustrate a severe dearth in the protection and fulfillment of the rights of LGBT persons in nearly every aspect of daily life that was examined, despite clear obligations by the State to ensure such rights are respected.

Guyana has signed and ratified a number of treaties, both international (at the United Nations level) and regional (at the Inter-American level), and must comply with the binding obligations contained therein. Those treaties enumerate a wide range of fundamental rights afforded to individuals – including those with perceived or actual non-normative sexual orientation, gender identity, or gender expression (SOGIE) – that Guyana must respect, protect, and fulfill.

LGBT individuals in Guyana experience violence and discrimination across all sectors of their lives, with instances combining and intersecting to create an existence in which LGBT persons are *trapped* in a life cycle of violence and discrimination. Starting at home and in school, LGBT children experience homophobic- and transphobic-motivated bullying, directly impacting their ability and right to access education guaranteed by the Guyanese Constitution and international human rights law. Such discrimination is perpetrated by other students, teachers, and administrators and often continues at home. Interviewees reported leaving the education system, and oftentimes their home, before finishing secondary-level education as a direct result of such discrimination and harassment.

Lack of formal education combined with societal discrimination against those with perceived or actual non-normative SOGIE make it

24. Interview with Adam, 26, gay man, in Georgetown, Guy. (Feb. 16, 2018).

difficult to find and keep formal-sector employment. Guyanese employment law fails to protect against discrimination on the grounds of SOGIE, thereby giving employers the discretion to discriminate. Those who do obtain formal employment are often subjected to the same discrimination and harassment described above. LGBT individuals are thus faced with the difficult decision of staying in a hostile work environment or risking unemployment – which leads to poverty and further rights violations.

As with education and employment, healthcare is another sector rife with discrimination. Interviewees reported overt stigmatization and breaches of confidentiality based on their non-normative SOGIE and/or on their HIV status. Although the State offers universal healthcare, discrimination by some doctors and nurses at state facilities has discouraged a significant number of interviewees from seeking this public benefit.

LGBT persons also regularly face threats, intimidation, harassment, and violence in public spaces. This violence is perpetrated by both private and state actors. Moreover, impunity for such acts is pervasive. Access to justice is often denied in its initial stages by some law enforcement officers who refuse to take, or investigate, reports proffered by LGBT individuals. Interviewees who experienced futility in reporting violence to the police noted that they are unlikely to attempt reporting again in the future. The inability to report crime leads to a lack of access to the complete justice system, including courts and remedies.

Based on these trends and findings, this report makes several recommendations to the Guyanese government and other stakeholders. In documenting and analyzing the treatment of LGBT individuals in Guyana vis-à-vis the State's human rights obligations, this report seeks to motivate the Government to adopt remedial measures to protect the fundamental rights of LGBT persons in Guyana.

METHODOLOGY

While incidents of systemic discrimination and abuse against persons with actual or perceived non-normative sexual orientation, gender identity, and gender expression (SOGIE)²⁵ are well known internationally, there is a significant information gap regarding the nature and scale of such incidents in the Co-operative Republic of Guyana (Guyana). The Georgetown Law Human Rights Institute (HRI) seeks to address this gap in this Fact-Finding Project report. The research covers the following issues regarding persons with non-normative SOGIE in Guyana:

- The nature of discrimination and violence suffered;
- Barriers that impede access to justice; and
- The Guyanese government’s response to these human rights concerns.

The research team includes eight Georgetown Law students, a human rights attorney and legal-teaching fellow (HRI’s Dash-Muse Fellow), and a human rights adjunct professor and legal practitioner specializing in human rights, gender, and sexuality. The team participated in a human rights fact-finding practicum in the 2017-2018 academic year. The team members identified the focus of the report after an extensive literature review and discussions with national and regional experts on SOGIE.

The study’s research methods follow the *Guidelines on International Human Rights Fact-Finding Visits and Reports by Non-Governmental Organizations, 2015* (Lund-London Guidelines);²⁶ and the *United Nations Office of the High Commissioner for Human Rights Training Manual on Human Rights Monitoring* (OHCHR Manual).²⁷ Georgetown University’s Institutional Review Board approved the study’s research methods.

The research methodology for this fact-finding project included desk research and field research. The team compiled desk research in the 2017–2018 academic year and conducted a weeklong field visit to

25. In this report, the conventional term “LGBT” (i.e. lesbian, gay, bisexual, and transgender) is used to ensure that the text and analysis are accessible to a variety of readers. However, the research team recognizes the limitations of this term as some individuals with non-normative sexual orientation, gender identity, and gender expression (SOGIE) do not identify themselves as belonging to any of the categories in the LGBT acronym. See IACHR, *supra* note 9, ¶ 11.

26. INT’L BAR ASS’N & RAOUL WALLENBERG INST., GUIDELINES ON INTERNATIONAL HUMAN RIGHTS FACT-FINDING VISIT AND REPORTS BY NON-GOVERNMENTAL ORGANIZATIONS (2015), http://www.ibanet.org/Fact_Finding_Guidelines.aspx (last visited Mar. 30, 2018).

27. Office of the U.N. High Comm’r for Human Rights, *Training Manual on Human Rights Monitoring*, U.N. Doc HR/P/PT/7/Rev.1 (2011), <https://ohchr.tind.io/record/4835?ln=en>.

Guyana in February 2018. The team conducted 52 interviews with 68 interviewees in the country's capital, Georgetown, as well as New Amsterdam and Vreed-en-Hoop. Four categories of interviewees participated in the study: 1) adults with non-normative SOGIE, 2) human rights defenders, 3) government officials including law enforcement and agency officers, and 4) civil society representatives. The team drafted interview questions for each category of interviewees and followed a semi-structured format for each interview. The team recruited interviewees primarily through convenience sampling and chain sampling, or referral sampling.²⁸ The team also analyzed narratives previously collected by Guyanese civil society organizations (CSOs) on acts of SOGIE-based violence and discrimination.²⁹

To ensure the anonymity of the interviewees and to reduce the likelihood of harm resulting from participation in the research, the team obtained verbal, anonymous consent from persons with non-normative SOGIE. All other interviewees, including human rights defenders, had the option to remain anonymous or to provide identifying information. The consent process described the study's objectives, interview process, data security plan, and risks and benefits of participation. The team conducted interviews in secure locations, generally in NGO offices for persons with non-normative SOGIE, or government offices for government officials. The team stored interview notes and audio recordings on secure devices and removed identifying information from interviewee responses used in the report, except where human rights defenders or government officials consented to attribution. All other names are pseudonyms. On the basis of demonstrated financial need, the team provided interviewees with a small travel stipend.

While these interviews provided rich, qualitative accounts of discrimination and violence faced by persons with non-normative SOGIE in Guyana, no statistical significance should be ascribed to the findings in this report. However, it is our hope that the report's findings will provide a strong, descriptive assessment of the status and treatment of persons with non-normative SOGIE in Guyana and that the recommendations herein spur legal and policy reform to ensure the full realization of fundamental human rights.

28. See Barbara A. Sommer, *Sampling: Types of Samples*, PSC 41 Research Methods Module, UNIV. OF CAL. DAVIS (2006), <http://psychology.ucdavis.edu/sommerb/sommerdemo/sampling/types.htm>.

29. The individuals who shared their stories with these organizations consented to have their data shared with other researchers in the future. The team removed all direct identifiers associated with such individuals from their notes.

NONDISCRIMINATION AND THE RIGHT TO DIGNITY IN INTERNATIONAL LAW

“States fail in their duty to prevent torture and ill-treatment whenever their laws, policies or practices perpetuate harmful gender stereotypes in a manner that enables or authorizes, explicitly or implicitly, prohibited acts to be performed with impunity. States are complicit in violence against . . . lesbian, gay, bisexual and transgender persons whenever they create and implement discriminatory laws that trap them in abusive circumstances. . . . A clear link exists between the criminalization of lesbian, gay, bisexual and transgender persons and homophobic and transphobic hate crimes, police abuse, community and family violence and stigmatization. . . . Such laws foster a climate in which violence against lesbian, gay, bisexual and transgender persons by both State and non-State actors is condoned and met with impunity.”

–U.N. Special Rapporteur on Torture³⁰

For persons with non-normative SOGIE in Guyana, the rights violations and barriers to justice they endure reflect shortcomings in both Guyana’s domestic law and its implementation of international legal commitments.

Guyana’s legal system directly incorporates international conventions upon ratification³¹ without the need for domestic legislation to enforce treaty provisions. Moreover, Guyana’s Constitution recognizes the preeminence of international human rights law by emphasizing that its fundamental rights provisions shall be interpreted in light of international human rights standards.³² These aspects of Guyana’s law

30. Human Rights Council, *Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶¶ 10, 15, U.N. Doc. A/HRC/31/57 (Jan. 5, 2016).

31. CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA ACT 1980, c. 1:01, sch., art. 154A [hereinafter GUY. CONST.] (“[E]very person, as contemplated by the respective international treaties set out in the Fourth Schedule to which Guyana has acceded is entitled to the human rights enshrined in the said international treaties, and such rights shall be respected and upheld by the executive, legislature, judiciary and all organs and agencies of Government and, where applicable to them, by all natural and legal persons and shall be enforceable in the manner hereinafter prescribed.”) The Fourth Schedule names the following international human rights instruments: Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination Against Women, International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. GUY. CONST. 4th sch. Conventions.

32. GUY. CONST. art. 39(2) (“[I]n the interpretation of the fundamental rights provisions in this Constitution a court shall pay due regard to international law, international conventions, covenants and charters bearing on human rights.”).

demonstrate, at least nominally, its commitment to international human rights obligations.

International human rights instruments obligate Guyana to prevent, investigate, punish, and redress human rights violations.³³ In fulfilling its international human rights obligations, Guyana is explicitly prohibited from discriminating against persons on the basis of their actual or perceived SOGIE.³⁴

I. GUYANA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Under international law, the State's obligations are three-fold.³⁵ First, Guyana must *respect* every person's human rights. This can be realized by refraining from interfering with the enjoyment of those rights.³⁶ Second, Guyana must *protect* individuals from human rights violations by third parties. This can be realized by implementing laws, policies, and education campaigns aimed at ensuring private individuals and groups respect the human rights of others.³⁷ Third, Guyana must *fulfill* the human rights of all people within its jurisdiction. This obligation requires positive State action to facilitate the enjoyment of human rights.³⁸ Furthermore, under the Vienna Convention on the Law of Treaties, Guyana cannot invoke domestic law to justify a failure to perform its international obligations.³⁹

See Office of the U.N. High Comm'r for Human Rights, *Discrimination and Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*, ¶ 11, U.N. Doc. A/HRC/29/23 (May 4, 2015) [hereinafter *OHCHR Report on Discrimination and Violence*] (applying the obligation to violence directed at LGBT persons); see also Maria da Penha Maia Fernandes v. Brazil, Case 12.051, Inter-Am. Comm'n H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. ¶¶ 43–44, 55–57 (2001) (applying the obligation to violence against women); González et al. (“Cotton Field”) v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) no. 205, ¶ 252 (Nov. 16, 2009) (defining prevention as an obligation that “encompasses all those measures of a legal, political, administrative and cultural nature that ensure the safeguard of human rights”).

34. International Covenant on Civil and Political Rights art. 2(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

35. See *International Human Rights Law*, OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> (last visited Mar. 26, 2018).

36. *Id.*

37. *See id.*

38. *Id.*

39. Vienna Convention on the Law of Treaties art. 26, *opened for signature* May 23, 1969 (entered into force Jan. 27, 1980) 1155 U.N.T.S. 331 (“Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”)

II. THE PRINCIPLE OF NONDISCRIMINATION AND ITS APPLICATION TO SEXUAL ORIENTATION AND GENDER IDENTITY AND EXPRESSION

The principle of nondiscrimination underpins international human rights law. It confers upon states an obligation to ensure the equal treatment of all persons within their jurisdiction, which implies equal obligations to protect, respect, and fulfill the human rights of individuals with non-normative SOGIE. The principle was first formulated in the United Nations (U.N.) Charter (1945),⁴⁰ the Charter of the Organization of American States (1948),⁴¹ and the Universal Declaration of Human Rights (UDHR, 1948).⁴² Guyana has ratified numerous international human rights treaties that affirm this principle, detailed below.

A. *The Principle of Nondiscrimination in U.N. Treaty Bodies*

In accordance with the UDHR, the International Covenant on Civil and Political Rights (ICCPR, 1966), and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), Guyana must strive to create the conditions necessary for everyone to enjoy civil, political, economic, social, and cultural rights.

On February 15, 1977, Guyana ratified the ICCPR, which requires the State to enact legislation “*prohibit[ing] any discrimination and guarantee[ing] to all persons equal and effective protection against discrimination on any ground*” including “sex . . . or other status.”⁴³ This provision includes the protection against discrimination in the enjoyment of civil, political, economic, social, and cultural rights. The U.N. Human Rights Committee, in its General Comment 18, underlined the complementarity of the principle of nondiscrimination and equality before the law and equal protection of the law without discrimination,

40. U.N. Charter art. 55 (“Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”)

41. Organization of American States Charter art. 45(a), Apr. 30, 1948, 119 U.N.T.S. 3 (“All human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security.”)

42. G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 7 (Dec. 10, 1948) (“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”) [hereinafter UDHR].

43. ICCPR, *supra* note 28, art. 26 (emphasis added).

as one “basic general principle relating to the protection of human rights.”⁴⁴

The Human Rights Committee has also stated that the references to “sex” in ICCPR Articles 2(1) and 26 encompass sexual orientation.⁴⁵ It called on State parties to “guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation”⁴⁶ in multiple concluding observations. In particular, it highlighted the “legal obligation” of states to ensure that everyone can access these rights “without discrimination on the basis of sexual orientation,”⁴⁷ and it has consistently welcomed domestic anti-discrimination legislation including sexual orientation among protected grounds.⁴⁸

On February 15, 1977, Guyana also ratified the ICESCR, which requires states to “guarantee that the rights enumerated in the present Covenant will be exercised . . . *without discrimination of any kind*” including “sex . . . or other status,” and “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”⁴⁹ The Committee on Economic, Social

44. Human Rights Comm., *General Comment No. 18*, ¶ 1, U.N. Doc. 10/11/89, (Nov. 10, 1989).

45. *Toonen v. Australia*, Communication No. 488/1992, Human Rights Comm., U.N. Doc. CCPR/C/50/D/488/1992 ¶ 878.787 (1994).

46. Human Rights Comm., *Concluding Observations of the Human Rights Committee: Chile*, ¶ 16, U.N. Doc. CCPR/C/CHL/CO/5 (May 18, 2007); *see also* Human Rights Comm., *Concluding Observations of Belize in the Absence of a Report*, ¶ 13, U.N. Doc. CCPR/C/BLZ/CO/1 (Apr. 26, 2013); Human Rights Comm., *Concluding Observations of the Human Rights Committee: Jamaica*, ¶ 8, U.N. Doc. CCPR/C/JAM/CO/3 (Nov. 17 2011); Human Rights Comm., *Concluding Observations of the Human Rights Committee: Republic of San Marino*, ¶ 7, U.N. Doc. CCPR/C/SMR/CO/2 (July 31, 2008); Human Rights Comm., *Concluding Observations of the Human Rights Committee: Austria*, ¶ 7, U.N. Doc. CCPR/C/AUT/CO/4 (Oct. 30, 2007).

47. Human Rights Comm., *Concluding Observations of the Human Rights Committee: United States of America*, ¶ 25, U.N. Doc. CCPR/C/USA/CO/3 (Dec. 18, 2006).

48. *See* Comm. on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Montenegro*, ¶ 4(b), U.N. Doc. CEDAW/C/MNE/CO/1 (Nov. 4, 2011); Human Rights Comm., *Concluding Observations of the Human Rights Committee: Sweden*, ¶ 4, U.N. Doc. CCPR/C/SWE/CO/6 (May 7, 2009); Human Rights Comm., *Concluding Observations of the Human Rights Committee: Denmark*, ¶ 4,(e), U.N. Doc. CCPR/C/DNK/CO/5 (Dec. 16, 2008); Human Rights Comm., *Concluding Observations of the Human Rights Committee: Greece*, ¶ 5, U.N. Doc. CCPR/CO /83/GRC (Apr. 25, 2005); Human Rights Comm., *Concluding Observations of the Human Rights Committee: Finland*, ¶ 3, U.N. Doc. CCPR/CO/82/FIN (Dec. 2, 2004); Human Rights Comm., *Concluding Observations of the Human Rights Committee: Slovakia*, ¶ 4, U.N. Doc. CCPR/CO/78/SVK (Aug. 22, 2003).

49. International Covenant on Economic, Social and Cultural Rights arts. 2(2), 3, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR] (emphasis added).

and Cultural Rights (CESCR),⁵⁰ in its General Comment on the principle of nondiscrimination indicated that sexual orientation and gender identity⁵¹ are protected grounds covered under ICESCR Article 2(2)'s "other status" provision.⁵² The Committee noted that states must "adopt measures, including legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds."⁵³ Additionally, in its 2015 concluding observations to Guyana, the CESCR recommended that the State repeal "the criminalization of same-sex relations between consenting adults and cross-gender dressing."⁵⁴

As a State Party to the ICCPR and ICESCR, Guyana is obligated to prevent and redress discrimination by both State and non-state actors related to the rights enshrined therein.⁵⁵ However, during Guyana's first Universal Periodic Review (UPR) in 2010, the Government denied the existence of discrimination against persons based on SOGIE, in light of the absence of cases "involving the harassment of lesbian or gay persons received by the Government through any of its complaints

50. OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, FACT SHEET NO. 16 (REV. 1): THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 17, <http://www.ohchr.org/Documents/Publications/FactSheet16rev.1en.pdf> (last visited Feb. 7, 2018) ("While the Committee's concluding observations, in particular suggestions and recommendations, may not carry legally binding status, they are indicative of the opinion of the only expert body entrusted with and capable of making such pronouncements. Consequently, for States parties to ignore or not act on such views would be to show bad faith in implementing their Covenant-based obligations.")

51. The CESCR used the *Yogyakarta Principles'* definition of sexual orientation and gender identity. See Comm. on Econ., Soc. & Cultural Rights, *General Comment No. 20*, ¶ 32 n.25, U.N. Doc. E/C.12/GC/20 (July 2, 2009).

52. *Id.* ¶ 32 ("[F]or example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.")

53. *Id.* ¶ 11.

54. Comm. on Econ., Soc. & Cultural Rights, *Concluding Observations on the Combined Second to Fourth Periodic Report of Guyana*, ¶¶ 24–25, U.N. Doc. E/C.12/GUY/CO/2-4 (Oct. 28, 2015) ("The Committee is concerned that the same-sex relations between consenting adults and cross-gender dressing are criminalized in the State party under sections 351 to 353 of the Criminal Law Offences Act (art. 2 (2)). The Committee recommends that the State party repeal the criminalization of same-sex relations between consenting adults and cross-gender dressing. It also recommends that the State party provide effective protection for lesbian, gay, bisexual, transgender and intersex persons against any form of discrimination on the ground of their sexual orientation.")

55. INT'L COMM'N OF JURISTS [ICJ], SEXUAL ORIENTATION, GENDER IDENTITY AND INTERNATIONAL HUMAN RIGHTS LAW: PRACTITIONERS GUIDE NO. 4, at 26 (2009), <https://www.icj.org/wp-content/uploads/2009/07/sexual-orientation-international-law-Practitioners-Guide-2009-eng.pdf>.

mechanisms.”⁵⁶ The Government further stated in 2010 that it attempted to include “sexual orientation” in the constitutional provision on anti-discrimination but was faced with “widespread contestation and protests.”⁵⁷ Then, in its 2015 UPR, while Guyana did acknowledge that there are “interpersonal prejudices based on cultural attitudes and religious beliefs,” it rejected any allegations that the State discriminated against persons based on their sexual orientation.⁵⁸ The Government pointed out, in this context, that “every Guyanese is entitled to their right to freedom of expression, employment, housing, medical care, [and] education as provided for in the constitution, laws and policies of Guyana,” thereby presumably including LGBT persons.⁵⁹ It further said, “any aggrieved person is free to approach the courts on a constitutional motion.”⁶⁰ According to the Government, there has only been one case concerning discrimination on the basis of SOGIE.⁶¹ In this instance, the High Court refused to strike down the discriminatory law (prohibiting cross-dressing) that had enabled the police to apprehend the four litigants.⁶²

B. *The Principle of Nondiscrimination in the Inter-American Human Rights System*

Guyana’s duty to adhere to the principle of nondiscrimination is further reinforced by its membership to the Organization of American States (OAS). Both the OAS Charter (1948)⁶³ and the American Declaration on the Rights and Duties of Man (American Declaration,

56. Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, ¶ 17, U.N. Doc. A/HRC/15/14 (Jun. 21, 2010).

57. *Id.*

58. Human Rights Council, Working Group on the Universal Periodic Review, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council 16/21: Guyana*, ¶¶ 53–55, U.N. Doc. A/HRC/WG.6/21/GUY/1 (Jan. 19, 2015) [hereinafter *UPR 2015 National Report Submitted by Guyana*].

59. *Id.* ¶ 53.

60. *Id.* ¶ 54.

61. The Government referred to the case of *McEwan v. Att’y Gen. of Guyana*, 2010 No. 21-M Demerara, 26 (High Ct. of the Sup. Ct. of Judicature 2013), http://ufdcimages.uflib.ufl.edu/AA/00/01/69/00/00001/Guyana_CROSS_DRESSING_CASE_DECISION.pdf. In 2010, a magistrate found four people guilty of cross-dressing, under the Summary Jurisdiction (Offences) Act 1893. The case was later brought to the High Court in 2013, and then appealed to the Court of Appeal, where it resided at the time of the UPR. *See id.*

62. *Id.*

63. Guyana signed and ratified the Charter of the Organization of American States on January 8, 1991. The principle of nondiscrimination is articulated in Articles 3(1) and 45(a). Organization of American States Charter arts. 3(1), 45(a), Apr. 30, 1948, 119 U.N.T.S. 3.

1948)⁶⁴ manifest the principle of nondiscrimination. While not a treaty, the American Declaration's provisions are nevertheless binding on OAS Member States.⁶⁵ Moreover, Guyana has committed under the OAS Charter to "incorporat[e] and increas[e the] participation of the marginal sectors of the population . . . in the economic, social, civic, cultural, and political life of the nation."⁶⁶ This is especially relevant considering LGBT persons are particularly marginalized in Guyana, as evidenced in this report.

Article 2 of the American Declaration states, "All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed, or any other factor."⁶⁷ Here, "any other factor" is understood as encompassing sexual orientation and gender identity or expression.⁶⁸ The IACtHR has made clear that it considers laws that discriminate on the basis of sexual orientation, gender identity, and gender expression to violate the principle of nondiscrimination.⁶⁹ For example, laws criminalizing private consensual sexual relations between adults "have been considered by [the] Court and by various bodies for the protection of international human rights as contrary to international human rights law for violating the rights to equality and nondiscrimination, as well as the right to privacy."⁷⁰

64. Org. of Am. States [OAS] Res. XXX, American Declaration of the Rights and Duties of Man, art. II (May 2, 1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/II.1 Rev. 9 (2003) [hereinafter American Declaration].

65. *See* Lenahan (Gonzales) v. United States of America, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, OEA/Ser.L./V/II.128, doc. 19 ¶ 115 (2011) ("[A]ccording to the well-established and long-standing jurisprudence of the inter-American human rights system, the American Declaration is recognized as constituting a source of legal obligation for OAS member states, including those states that are not parties to the American Convention on Human Rights. These obligations are considered to flow from the human rights obligations of Member States under the OAS Charter.").

66. Organization of American States Charter art. 45(f), Apr. 30, 1948, 119 U.N.T.S. 3.

67. American Declaration, *supra* note 58, art. II.

68. The IACtHR has recognized sexual orientation, gender identity, and gender expression as protected categories within the American Convention on Human Rights' Article 1(1) "any other social condition" clause. It is appropriate to apply the same interpretive approach to the American Declaration's "any other factor" clause. *See* Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 239, ¶¶ 83–93 (Feb. 24, 2010); Gender Identity, and Equality and Non-discrimination with Regard to Same-sex Couples: State Obligations in Relation to Change of Name, Gender Identity, and Rights Deriving from a Relationship Between Same-sex Couples (Interpretation of Arts. 1(1), 3, 7, 11(2), 13, 17, 18, and 14, in relation to Art. 1, American Convention on Human Rights), Advisory Opinion OC-24/17, Inter-Am. Ct. H.R. (ser. A) No. 24 (Nov. 24, 2017) [hereinafter IACtHR Advisory Opinion 24].

69. *See* IACtHR Advisory Opinion 24, *supra* note 62.

70. *Id.* ¶ 39.

Nondiscrimination is also protected under the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará), which Guyana ratified on January 8, 1996.⁷¹ The treaty guarantees women equal protection before the law,⁷² and protects “the free and full exercise of [their] civil, political, economic, social and cultural rights.”⁷³

C. *The Yogyakarta Principles and Nondiscrimination*

In light of the significant but disparate body of literature on the principle of nondiscrimination on the basis of SOGIE, in 2006, human rights experts drafted the *Yogyakarta Principles*, which was supplemented in 2017.⁷⁴ This document provides guidance on how states’ existing international human rights obligations apply to persons with actual or perceived non-normative SOGIE in a single, comprehensive document. The *Yogyakarta Principles* does not create new rights; rather, it articulates existing rights as they apply to persons with real or perceived non-normative SOGIE. It also provides recommendations on laws and policies to implement, among others, the principle of nondiscrimination.⁷⁵ The *Yogyakarta Principles* urges states to “embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in their national constitutions or other appropriate

71. See A-61: *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem do Para,”* ORG. OF AM. STS., <https://www.oas.org/juridico/english/signs/a-61.html> (last visited Mar. 30, 2018).

72. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem do Para” art. 4(f), June 9, 1994, 33 I.L.M. 1534.

73. *Id.* art. 5.

74. On November 10, 2017, the Yogyakarta Principles plus 10 (YP plus 10) was adopted to supplement the Yogyakarta Principles. The principles “emerged from the intersection of the developments in international human rights law with the emerging understanding of violations suffered by persons on grounds of sexual orientation and gender identity and the recognition of the distinct and intersectional grounds of gender expression and sex characteristics.” *The YP+ 10, THE YOGYAKARTA PRINCIPLES*, <http://yogyakartaprinciples.org/principles-en/yp10/> (last visited Mar. 30, 2018). The new additions include: the right to State protection from violence, discrimination and other harm, whether by government officials or by any individual or group (Principle 30), the right to be free from criminalization and sanction (Principle 33), and the right to protection from poverty (Principle 34), among others. *The Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* (Nov. 10, 2017) http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.

75. *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, princ. 2 (Mar. 2007) [hereinafter *Yogyakarta Principles*], http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf.

legislation . . . and ensure the effective realization of these principles.” Of particular applicability to Guyana, the *Yogyakarta Principles* explicitly calls for the repeal of “criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent.”⁷⁶ While states are not bound by the *Yogyakarta Principles* itself, the underlying principles are enshrined in international law standards and norms that *are* binding on states.⁷⁷

III. RIGHT TO DIGNITY

Human dignity is one of the foundations of human rights treaties. The UDHR, ICCPR, ICESCR, U.N. Convention on the Rights of the Child (CRC), U.N. Convention Against Torture (CAT), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and Convention on the Elimination of All Forms of Racial Discrimination (CERD) all refer to “the inherent dignity . . . of all members of the human family [as] the foundation of freedom, justice and peace in the world” in their respective Preambles. UDHR Art. 1 states that “[a]ll human beings are born free and equal in dignity and rights,” and the Preambles of the ICCPR, ICESCR, and CAT all note “the inherent dignity of the human person.” The ICESCR also refers to human dignity embedded in the right to education, underscoring that states “agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.”⁷⁸

Human dignity “goes to the heart of human identity, including the identities of lesbian, gay, bisexual and transgender people.”⁷⁹ An individual’s “self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.”⁸⁰ Thus, laws criminalizing non-normative SOGIE violate this bedrock principle of human rights. Several U.N. organizations recently formulated recommendations to states in that spirit, urging them to “review, repeal and establish a moratorium on

76. *Id.*

77. Such underlying principles include: nondiscrimination, rights to human and personal security, rights to expression, and others that are universally recognized as fundamental human rights. See *Overview*, THE YOGYAKARTA PRINCIPLES, <https://yogyakartaprinciples.org/principles-en/about-the-yogyakarta-principles-2/> (last visited Mar. 30, 2018).

78. ICESCR, *supra* note 43, art. 13(1).

79. *Our Work: Why Human Dignity*, HUMAN DIGNITY TRUST, <http://www.humandignitytrust.org/pages/OUR%20WORK/Why%20Human%20Dignity> (last visited Mar. 30, 2018).

80. *Yogyakarta Principles*, *supra* note 69, princ. 3.

the application of: laws that criminalize same-sex conduct between consenting adults; laws that criminalize transgender people on the basis of their gender expression; [and] other laws used to arrest, punish or discriminate against people on the basis of their [SOGIE].”⁸¹

Guyana retains these kinds of discriminatory laws. For example, its Criminal Law (Offences) Act criminalizes the act of men having sex with other men⁸² as “acts of gross indecency,”⁸³ an “unnatural offence,” and “buggery,”⁸⁴ and is punishable by two years to life imprisonment.⁸⁵ The Summary Jurisdiction (Offences) Act provides another example; it establishes monetary fines for appearing in public in attire not attributable to one’s perceived sex for “any improper purpose.”⁸⁶ This has led to detentions and fines levied against transgender women, as well as documented incidences of police intimidation, detention, and failure to investigate homophobic assaults.⁸⁷ In 2013, the Supreme Court of the Judicature of Guyana provided interpretation on this provision, finding that it is not criminally offensive for a person to wear the attire of the opposite gender “as a matter of preference or to give expression to it to reflect his or her sexual orientation.”⁸⁸ However, the Court held that the clause entrenching “the improper purpose for such conduct to which criminality is directed”⁸⁹ remains valid. It also ruled that the law was not discriminatory on the basis of sex “since the prohibition is established against persons of both genders for doing the same kind of

81. Such laws expose individuals to the risk of “arbitrary arrest, prosecution, and imprisonment.” They can also be used to “harass, detain, discriminate or place restrictions on the freedom of expression, association and peaceful assembly of LGBT persons.” UNAIDS ET AL., ENDING VIOLENCE AND DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE 1 (Sept. 2015), http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF.

82. The Criminal Law (Offences) Act criminalizes same-sex intimacy between men (or “buggery”). Therefore, the law could apply to sex between gay men, bisexual men, transgender women, and cisgender men. Criminal Law (Offences) Act 1893, c. 8:01 (Guy.).

83. There is no clear definition of “acts of gross indecency” within the criminal legislation.

84. Though buggery is nowhere defined in Guyanese law, it is a British-English term which refers to sodomy, whether with another individual or with an animal (bestiality) in both colloquial speech and law.

85. Criminal Law (Offences) Act 1893, c. 8:01, §§ 353–354.

86. Summary Jurisdiction (Offences) Act 1893, c. 8:02, § 153.

87. GUYANA RAINBOW FOUNDATION [GUYBOW] ET AL., HUMAN RIGHTS VIOLATIONS OF LESBIAN, BISEXUAL, AND TRANSGENDER (LBT) PEOPLE IN GUYANA: A SHADOW REPORT 3 (July 10, 2012), <https://www.outrightinternational.org/sites/default/files/573-2.pdf>.

88. *McEwan v. Att’y Gen. of Guyana*, 2010 No. 21-M Demerara, 26 (High Ct. of the Sup. Ct. of Judicature 2013), http://ufdcimages.uflib.ufl.edu/AA/00/01/69/00/00001/Guyana_CROSS_DRESSING_CASE_DECISION.pdf.

89. *Id.*

act,”⁹⁰ thereby avoiding analyzing the legislation under the scope of sexual orientation. The Appeals Court unanimously upheld the Supreme Court decision and declined to define “improper,” affirming that this is for Parliament to decide.⁹¹ Petitioners have subsequently sought leave from the Court of Appeals to file an appeal at the Caribbean Court of Justice, the highest appellate court in the region.⁹² In addition to buggery and cross-dressing laws, anti-vagrancy and loitering codes⁹³ have been arbitrarily enforced against persons whom the police may suspect of being LGBT.⁹⁴

While government officials say these provisions are rarely enforced,⁹⁵ such laws perpetuate stigma and discrimination, as well as hate crimes, police abuse, family and community violence, and negative public health outcomes.⁹⁶

Guyana is also obligated by other international human rights treaties dealing with specific rights, which are discussed in later chapters, including: *Education, Employment, Health, Violence and Safety in Public Spaces*, and *Impunity for Perpetrators and Access to Justice*.

90. *Id.* at 27.

91. Ravin Singh, *Appeal Court Upholds Ruling on Cross-dressing*, GUY. CHRON. (Feb. 28, 2017), <http://guyanachronicle.com/2017/02/28/appeal-court-upholds-ruling-on-cross-dressing>.

92. A decision is currently pending. See *SASOD to Approach CCJ on Cross-dressing Laws*, GUY. CHRON., (Oct. 4, 2017), <http://guyanachronicle.com/2017/10/04/sasod-approach-cj-cross-dressing-laws>.

93. Sections 143 and 144 of the Summary Jurisdiction (Offences) Act impose fines and imprisonment against those persons declared “vagrants or idle and disorderly persons” or “rogues and vagabonds.” Summary Jurisdiction (Offences) Act 1893, c. 8:02, §§ 143–144. Such legislation defines vagrants as a person who “being able, by labor or other lawful means, to maintain himself or herself . . . willfully refuses or neglects to do so” while vagabonds are anyone who “procures or endeavors to procure alms or charitable contributions for himself or any other person, under any false or fraudulent pretense.” *Id.* §§ 143(a), 144(c).

94. See CHRISTOPHER CARRICO, COLLATERAL DAMAGE: THE SOCIAL IMPACT OF LAWS AFFECTING LGBT PERSONS IN GUYANA 9 (Univ. of the West Indies Cave Hill Campus Faculty of Law 2012).

95. Per Guyana’s Chambers of the Director of Public Prosecutions’ Annual Report for 2013, of 204 offences filed under “Carnal Knowledge, Rape, and Buggery” that year, only four were buggery cases. CHAMBERS OF THE DIRECTOR OF PUBLIC PROSECUTIONS, ANNUAL REPORT: 2013, at 37–69 (Sept. 9, 2015). Two of these cases were dismissed before trial, the defendant in one was found unanimously guilty and the last defendant was found unanimously innocent. See *id.* at 23, 33. In 2015, the DPP separated the crime of buggery from the carnal knowledge and rape category. That year, there were two buggery offences filed, with only one reaching the trial stage. CHAMBERS OF THE DIRECTOR OF PUBLIC PROSECUTIONS, ANNUAL REPORT: 2015, at 21–22, 39, 48 (Feb. 3, 2016) [hereinafter “CHAMBERS OF THE DIRECTOR OF PUBLIC PROSECUTIONS”]. In that case, the defendant was found guilty. *Id.* at 21.

96. UNAIDS ET AL., ENDING VIOLENCE AND DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE 1 (Sept. 2015), http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF.

FINDINGS: BACKGROUND

“I feel like my government, my country, is not on my side as a queer person.”
*– Lee, 24-year-old gay man in Georgetown, Guyana*⁹⁷

Although situated at the northeastern tip of mainland South America, Guyana is traditionally considered part of the Caribbean because of its close historical and cultural ties to the region, particularly the other English-speaking, former British colonies.⁹⁸ Initially colonized by the Dutch in the seventeenth century, Guyana became a British colony in 1814 and remained under British rule until it gained independence in 1966.⁹⁹ “Buggery” laws are one vestige of British rule still present in many Caribbean countries. Guyana is one of ten Caribbean countries that maintain these colonial-era laws criminalizing consensual same-sex intimacy.¹⁰⁰ The Guyanese law that criminalizes cross-dressing for “any improper purpose” is also a remnant of British rule.¹⁰¹

The mere existence of these laws reinforces prejudice and contributes to ongoing discrimination and violence against LGBT persons in Guyana.¹⁰² As one interviewee expressed, “I don’t know when we will have gay rights. . . . We need to take [these] British laws and get rid of [them] so people stop using them to intimidate people and gay communities.”¹⁰³ However, as other interviewees pointed out, repealing these archaic laws can only contribute so much to improving the experience of LGBT persons in Guyana. “You can legalize homosexuality all you want. . . . No law will change the ignorance. . . . No law could make anybody like anybody.”¹⁰⁴

97. Interview with Lee, 24, gay man, in Georgetown, Guy. (Feb. 17, 2018).

98. ROSAMOND S. KING, *ISLAND BODIES: TRANSGRESSIVE SEXUALITIES IN THE CARIBBEAN IMAGINATION* 3 (2014); Paul Sutton, *Politics in the Commonwealth Caribbean: The Post-Colonial Experience* 51 *EUR. REV. OF LATIN AM. & CARIBBEAN STUD.* 51, 51 (1991).

99. Michael DaCosta, *Colonial Origins, Institutions and Economic Performance in the Caribbean: Guyana and Barbados* 5–6 (Int’l Monetary Fund Research Dep’t, Working Paper No. 07/43, 2007).

100. See AENGUS CAROLL & LUCAS RAMON MENDOS, *STATE-SPONSORED HOMOPHOBIA: A WORLD SURVEY OF SEXUAL ORIENTATION LAWS* 108–20 (Int’l Lesbian, Gay, Bixexual, Trans and Intersex Ass’n [ILGA] ed., 12th ed. 2017), http://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf.

101. Summary Jurisdiction (Offences) Act 1893, c. 8:02, § 153(1)(xlvii); see Carinya Sharples, *Guyana’s Transgender Activists Fight Archaic Law*, *BBC NEWS* (Mar. 26, 2017), <http://www.bbc.com/news/amp/world-latin-america-3929599>.

102. See e.g., *SOC’Y AGAINST SEXUAL ORIENTATION DISCRIMINATION [SASOD] & SEXUAL RIGHTS INITIATIVE [SRI], ON DEVIL’S ISLAND: A UPR SUBMISSION ON LGBT HUMAN RIGHTS IN GUYANA* 3–5 (2015), http://www.sexualrightsinitiative.com/wp-content/uploads/SASOD_SRI_UPR_Guyana_July2014FINAL.pdf.

103. Interview with Prince, 42, gay man, in Georgetown, Guy. (Feb. 16, 2018).

104. Interview with Love, 23, gay man, in Georgetown, Guy. (Feb. 16, 2018).

“I just want to see the attitude of the people change,” said Shania, a 29-year-old gay man, “[but] I don’t know if that going to change or how it going to change.”¹⁰⁵ The homophobic and transphobic “attitude of the people” in Guyana is fueled by deep-seated sociocultural norms. “[S]ociety imposes certain values on us,” said Hon. Keith Scott, M.P., Minister within the Ministry of Social Protection, “[and when] somebody steps out of that societal demand, they tend to get ostracized and that is normal.”¹⁰⁶ In particular, Guyanese society imposes traditional gender norms for men, as one interviewee noted: “When people here in Guyana see a guy, he is supposed to be mostly of a man figure – you know? They got they own image about what us guys are supposed to look like and act like.”¹⁰⁷ As a result, several interviewees who currently identify as gay men expressed a desire to live openly as women but choose not to because of the heightened threats transgender women face due to their increased visibility.¹⁰⁸

Additionally, religion is heavily influential in Guyanese society and “[m]uch of the intolerance that is generated, be it in school, at home, or on the street . . . is as a direct result of religious values,” explained Anil Persaud, a human rights defender at SASOD.¹⁰⁹ “[P]ersons will directly say this to you like ‘Oh! My pastor said this to me, so that’s why I can’t accept you.’”¹¹⁰ Approximately 63% of the population in Guyana identifies as Christian, 25% as Hindu, and 7% as Muslim, along with some smaller religious affiliations.¹¹¹ An increasing percentage of Christians are right-wing evangelicals, many of whom espouse “fiery anti-LGBT” views.¹¹² LGBT persons from religious families described a particularly strong lack of acceptance at home. For example, when one

105. Interview with Shania, 29, gay man, in Georgetown, Guy. (Feb. 19, 2018).

106. Interview with Hon. Keith Scott, M.P., Minister within the Ministry of Soc. Prot., in Georgetown, Guy. (Feb. 19, 2018).

107. Interview with Adam, *supra* note 18.

108. *E.g.*, Interview with Prince, 42, *supra* note 97; Interview with Shania, *supra* note 99.

109. Interview with Anil Persaud, 21, Homophobia(s) Education Coordinator, SASOD, in Georgetown, Guy. (Feb. 15, 2018).

110. *Id.*

111. Cent. Intelligence Agency, *Guyana: People and Society*, THE WORLD FACTBOOK (citing a 2012 estimate), <https://www.cia.gov/library/publications/the-world-factbook/geos/gy.html> (last updated Mar. 22, 2018).

112. Interview with Valini Leitch, 35, Human Rights Coordinator, SASOD, in Georgetown, Guy. (Feb. 14, 2018); *see also* Interview with Bishop Francis Dean Alleyne, Roman Catholic Diocese of Georgetown, in Georgetown, Guy. (Feb. 18, 2018) (“22% of the population would say they are Pentecostal. Twenty years ago, 7% were Pentecostal and in 20 years they have expanded to 22%. . . . Their approach generally is different. . . . They would say, ‘The Bible says, you know, Sodom and Gomorra’ . . . so that applies on issues as LGBT and that’s their starting point.”).

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young transgender woman initially came out to her family, they responded, “What is the church going to say about this? Being gay is wrong in the sight of god. Being homosexual is not the right thing, you have to have a wife and children.”¹¹³

These prejudicial attitudes and archaic laws create an environment where, “[D]iscrimination when it comes to [the] LGBT population is . . . high everywhere – in church, in the community, in home, in the workplace, in the health sector – it is very, very high.”¹¹⁴ The following sections of the report engage in a deep analysis of the research team’s findings on how such discrimination and violence inhibits the fulfillment of the human rights of LGBT persons in Guyana in the areas of 1) education, 2) employment, 3) health, 4) freedom from violence and safety in public spaces, and 5) access to justice. Each section begins with a review of the State’s obligations under the relevant domestic and international legal frameworks, followed by a discussion of the research team’s findings. See *Recommendations, infra*, for a full list of recommended actions for the Guyanese government and other relevant stakeholders based on these findings.

113. Interview with Devon, 18, transgender woman, in Georgetown, Guy. (Feb. 16, 2018).

114. Interview with Grace, 44, transgender woman, in New Amsterdam, Guy. (Feb. 17, 2018).

FINDINGS: EDUCATION

“[C]hildren in school who identify themselves as LGBT [are] treated very, very badly. That’s one of the reasons there is such a presence [of LGBT persons] on the margin of the society, because they drop out.”

*– Karen de Souza, women’s and children’s rights activist and co-founder of Red Thread, in Georgetown, Guyana*¹¹⁵

I. INTRODUCTION

The majority of LGBT interviewees reported that discrimination at home and/or school negatively impacted their ability to access education and many felt compelled to drop out. Homophobic and transphobic bullying, discriminatory treatment by teachers and administrators, and a lack of financial support from their parents or guardians all prevented interviewees from fully realizing the right to education guaranteed by Guyana’s Constitution and international legal obligations. Without a full education, many LGBT persons in Guyana are unable to find satisfactory employment, which impacts their ability to secure housing and places them at greater risk for violence while working and/or living on the street. From a young age, they are pushed to the margins of society and into a vicious cycle of discrimination.

II. LEGAL FRAMEWORK

A. *Domestic Legal Framework on Education*

1. Right to Education

Under the Guyanese Constitution, all persons have a right to education. Article 27 of the Constitution recognizes “the right to free education from nursery to university as well as at non-formal places where opportunities are provided for education and training.”¹¹⁶ Article 149H specifically entitles every child in Guyana to “free primary and secondary education in schools owned or funded by the State.”¹¹⁷ The

115. Interview with Karen de Souza, 60, co-founder Red Thread, in Georgetown, Guyana (Feb. 17, 2018).

116. GUY. CONST., art. 27(1).

117. *Id.* art. 149H. Guyana’s education system is organized into primary and secondary schools. The primary education program consists of a six-year curriculum (Grades 1–6) for students aged 6 to 11. The secondary education program consists of a five-year curriculum (Grades 7–11 also known as First–Fifth Form) for students aged 12 to 16. See United Nations Educational, Scientific and Cultural Organization–International Bureau of Education [UNESCO–IBE], *World Data on Education: Guyana*, 7–8, IBE/2010/CP/WDE/GY (7th ed. 2010/11), http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Guyana.pdf.

Education Act, which provides for the implementation of the constitutional right to education,¹¹⁸ makes education compulsory from ages six to fifteen and empowers district attendance officers and other authorized personnel to take action against parents and children found in violation of that requirement.¹¹⁹

2. Conduct in Schools

The Education Act grants the Minister of Education the power to “make regulations generally for establishing and maintaining an efficient system of education throughout Guyana.”¹²⁰ Within this power, the Ministry promulgates and enforces policies regulating the educational environment and the conduct of students and teachers in public schools. Teachers are expected to “know and follow” the Ministry’s written Code of Conduct.¹²¹

Among other things, the Code of Conduct directs teachers to:

- “Assist students to exercise tolerance as they strive for understanding of other’s ideas and beliefs;”
- “[Deal] justly with each student and treat each with courtesy and consideration;”
- “Respect the confidentiality of information about a student or his home . . . unless its release serves a professional purpose, benefits the student, or is required by law;”
- “Make responsible efforts to protect students from conditions harmful to health and safety.”¹²²

The Code of Conduct also contains provisions prohibiting discrimination against colleagues and students on the basis of “ability, race, colour or creed.”¹²³ In recent years, Guyanese CSOs working with LGBT persons have petitioned the Ministry of Education to amend the Code of Conduct to include sexual orientation and gender identity as

118. Education Act 1876, c. 39:01 (“An act to make better provision for the promotion of education in Guyana.”).

119. *Id.* §§ 13–16, 22.

120. *Id.* § 47(1).

121. MINISTRY OF EDUC., *Code of Conduct, in* DISCIPLINE OF TEACHERS app. iii (2013), <http://www.education.gov.gy/web/index.php/policies/discipline-of-teachers>; *see also Code of Conduct, MINISTRY OF EDUC.*, <http://www.education.gov.gy/web/index.php/policies/discipline-of-teachers/item/523-code-of-conduct-for-teachers> (last visited Mar. 11, 2018) (“All teacher [sic] are expected to know and follow the outlined code of conduct for their profession.”).

122. MINISTRY OF EDUC., *supra* note 115, app. iii.

123. *Id.*

protected categories through submissions to regional and international bodies,¹²⁴ and in-person meetings.¹²⁵ However, the Ministry has not yet acted on this recommendation, and the Code of Conduct awaits amendments to better protect LGBT students from discrimination by teachers.

The Constitution creates a Teaching Service Commission (Commission) and vests it with the power to “appoint,” “exercise disciplinary control over,” and “remove” teachers in public schools.¹²⁶ The Commission may delegate any of its powers to district administrators and head teachers.¹²⁷ The Commission and Ministry of Education currently follow a set schedule of offenses and corresponding penalties,¹²⁸ included in the Ministry’s Discipline of Teachers policy.¹²⁹ Head teachers are responsible for enforcing this policy at their schools and escalating certain offenses to the Commission.¹³⁰ Additionally, the Commission may receive complaints against teachers “from any source whatsoever . . . either orally or in writing” via “letters, reports, [or] statements,” or “during visits to schools.”¹³¹

124. See, e.g., GUYANA EQUALITY FORUM, THE HUMAN RIGHTS SITUATION OF YOUNG PERSONS IN GUYANA: A COLLABORATIVE SUBMISSION TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 13 (2017), <http://www.sasod.org.gy/sites/default/files/resources/IACHR%20Submission%20on%20the%20Human%20Rights%20situation%20of%20Young%20Persons%20in%20Guyana.pdf>.

125. Interview with Anil Persaud, *supra* note 103 (“I have met with the Minister of Education. . . . It was done from the GEF, which is the Guyana Equality Forum, which SASOD hosts the secretariat for, and I’m also the coordinator for the Guyana Equality Forum. So, we approached from that perspective with a bunch of different recommendations: to have counselors in all schools, to have the code of conduct amended to have a CSE as an integral part of the curriculum for all the schools . . .”).

126. GUY. CONST. art. 209(1); see also Teaching Service Commission Act 1975, c. 39:07 (1998) (Guy.).

127. Teaching Service Commission Act, § 10(1)(c) (1998) (Guy.).

128. Penalties vary depending on the nature of the offense and/or the number of times it has been committed and include: a warning, suspension without pay, penalty transfer, and dismissal. See MINISTRY OF EDUC., *supra* note 115; *Committees*, TEACHING SERVICE COMM’N, <http://www.teachingservicecommission.gov.gy/committees.htm> (last visited Mar. 19, 2018).

129. MINISTRY OF EDUC., *supra* note 115; see also DISCIPLINING OF TEACHERS: TABLE OF CHARGES, OFFENCES AND PENALTIES, TEACHING SERVICE COMM’N, <http://www.teachingservicecommission.gov.gy/docs/DisiplinaryTable.pdf> (last visited Mar. 19, 2018).

130. See MINISTRY OF EDUC., *Procedures to be Observed*, in DISCIPLINE OF TEACHERS 3–7 (2013) [hereinafter *Procedures to be Observed*], available at <http://www.education.gov.gy/web/index.php/policies/discipline-of-teachers>.

131. See *Committees*, TEACHING SERVICE COMM’N, <http://www.teachingservicecommission.gov.gy/committees.htm> (last visited Mar. 19, 2018).

Student conduct is governed by the Ministry of Education’s Safe School Protocol (Protocol). In the Protocol, the Ministry states that its “ultimate objective is to provide safe and secure school environments” because “[s]afety in schools is of paramount importance and necessary in supporting the all-around development of each child, giving him/her the opportunity to learn and achieve in a nurturing environment.”¹³² The Protocol sets out a zero-tolerance approach to student discipline, which makes sanctions mandatory whenever a student engages in “unacceptable behavior.”¹³³ Unacceptable behaviors include, “making fun of other persons (teasing, name calling),” “bullying,” “using rude, vulgar language,” and “behavior on or off the school premises that is detrimental to the welfare or safety of other learners.”¹³⁴ Every instance of such unacceptable behavior “must be reported and punished since warnings are not part of the zero tolerance concept.”¹³⁵ According to the Ministry, “[a]ll members of staff must *consistently* and *impartially* enforce [these] rules.”¹³⁶

3. Curricula

Under Article 27 of the Constitution, “it is the duty of the State to provide education that [includes] curricula designed to reflect the cultural diversities of Guyana” including disciplines that are “necessary to prepare students to deal with social issues.”¹³⁷ Additionally, except with their consent or the consent of a guardian, “no person attending any place of education shall be required to receive religious instruction . . . if that instruction . . . relates to a religion which is not his own.”¹³⁸

132. MINISTRY OF EDUC., SAFE SCHOOL PROTOCOL 3 (2013), *available at* http://www.education.gov.gy/web/index.php/downloads/doc_details/58-safe-school-protocol.

133. *Id.* at 4. Actions that constitute “unacceptable behavior” warranting disciplinary action are categorized and listed on the Ministry’s website. *Unacceptable Behaviours and Sanctions*, MINISTRY OF EDUC., <http://www.education.gov.gy/web/index.php/policies/maintenance-of-order-discipline-in-schoole/item/534-unacceptable-behaviours-and-sanctions> (last visited Mar. 11, 2018).

134. *Unacceptable Behaviours and Sanctions*, *supra* note 127.

135. MINISTRY OF EDUC., *supra* note 126.

136. *The Right of the School to Maintain Order and Discipline*, MINISTRY OF EDUC., <http://www.education.gov.gy/web/index.php/policies/maintenance-of-order-discipline-in-schoole/item/530-the-right-of-the-school-to-maintain-order-and-discipline> (last visited Mar. 11, 2018) (emphasis added).

137. GUY. CONST. art. 27(2).

138. *Id.* art. 145(3). The first provision of the constitution also declares that Guyana is a secular state. *See id.* art. 1.

B. *Obligations Under International Law*

1. ICESCR

As mentioned above, Article 13(1) of the ICESCR recognizes “the right of everyone to education.”¹³⁹ Under Article 2, Guyana is obligated to “take steps, individually and through international assistance and cooperation . . . to the maximum of its available resources” to progressively achieve the full realization of the right to education.¹⁴⁰ Guyana also has a duty to guarantee that the right to education is “exercised without discrimination of any kind,” including on the basis of sexual orientation or gender identity.¹⁴¹ Additionally, as a party to the ICESCR, Guyana has agreed that “education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.”¹⁴² In a 2015 assessment of Guyana’s implementation of its ICESCR obligations, the Committee on Economic, Social and Cultural Rights specifically recommended, among other things, that Guyana “intensify its efforts to counter the decreasing enrollment rate and the high dropout rates in primary education.”¹⁴³

2. CRC

As a party to the Convention on the Rights of the Child (CRC), Guyana has obligations relating to the provision of education, the inclusion of sexual and reproductive health in school curricula, and the protection of students from physical and mental violence at school. CRC Article 28 recognizes “the right of the child to education,”¹⁴⁴ which states must provide “to each child within their jurisdiction without

139. ICESCR, *supra* note 43, art. 13(1).

140. *Id.* art. 2(1).

141. Art. 2(2) prohibits discrimination in the exercise of Covenant rights on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status.” *Id.* art 2(2). According to the Committee on Economic, Social and Cultural Rights, both sexual orientation and gender identity are protected classes under Article 2(2)’s anti-discrimination provision. *See* Comm. on Econ., Soc. & Cultural Rights, *General Comment 20*, ¶ 32, U.N. Doc. E/C.12/GC/20 (July 2, 2009) (“‘Other status’ [includes] sexual orientation [and] parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights. . . . In addition, gender identity is recognized as among the prohibited grounds of discrimination.”).

142. ICESCR, *supra* note 43, art 13(1).

143. Comm. on Econ., Soc. & Cultural Rights, *Concluding Observations on the Combined Second to Fourth Periodic Reports of Guyana*, ¶ 53, U.N. Doc. E/C.12/GUY/CO/2-4 (Oct. 28, 2015).

144. Convention on the Rights of the Child art. 28(1), Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

discrimination of any kind,” including sexual orientation.¹⁴⁵ In a 2013 review of Guyana’s efforts to meet its obligations under the CRC, the Committee on the Rights of the Child “urge[d]” the State to “ensure that its programmes address the situation of discrimination against . . . children because of their sexual orientation and/or gender identity.”¹⁴⁶ Additionally, to meet its obligation to pursue full implementation of “the right of the child to the enjoyment of the highest attainable standard of health” recognized in CRC Article 24, Guyana must “take appropriate measures” to develop “family planning education and services.”¹⁴⁷

Furthermore, under CRC Article 19, Guyana must “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence.”¹⁴⁸ Mental violence, which is particularly relevant in school settings, includes:

- “All forms of persistent harmful interactions with the child, for example, conveying to children that they are worthless, unloved, unwanted, [or] endangered . . . ;”
- “Denying emotional responsiveness; neglecting mental health, medical and educational needs;”
- “Insults, name-calling, humiliation, belittling, ridiculing and hurting a child’s feelings;” and
- “Psychological bullying and hazing by adults and other children, including via information and communication technologies (ICTs) such as mobile phones and the Internet (known as “cyberbullying”).”¹⁴⁹

The Committee on the Rights of the Child has also stressed that all State parties must “take adequate measures” to protect children “from all forms of violence ‘without discrimination of any kind,’ [including] prejudices . . . based on children’s clothing and behaviour.”¹⁵⁰ The Committee further specified that State parties must “address

145. *Id.* art. 2(1); Comm. on the Rights of the Child, *General Comment 4*, ¶ 6, U.N. Doc. CRC/GC/2003/4 (July 1, 2003) (affirming that Article 2 also protects against discrimination on the basis of sexual orientation).

146. Comm. on the Rights of the Child, *Concluding Observations on the Combined Second to Fourth Periodic Reports of Guyana*, ¶ 25, U.N. Doc. CRC/C/GUY/CO/2-4 (June 18, 2013).

147. CRC, *supra* note 138, art. 24(2) (f).

148. *Id.* art. 19(1).

149. Comm. on the Rights of the Child, *General Comment 13*, ¶ 21, U.N. Doc. CRC/C/GC/13 (Apr. 18, 2011).

150. *Id.* at ¶ 60.

discrimination against vulnerable or marginalized groups of children,” including children who are “lesbian, gay, transgender or transsexual,” and “make proactive efforts to ensure that such children are assured their right to protection on an equal basis with all other children.”¹⁵¹

Many interviewees reported experiencing treatment at school that would constitute violence under CRC Article 19. This and other factors contributed to a large number of interviewees dropping out of school, and prevented them from fully enjoying the right to education that Guyana has promised to promote and protect under its Constitution, ICESCR, and CRC.

III. FINDINGS¹⁵²

A. *Bullying in Schools: A Silent Epidemic*

Joel Simpson, Managing Director, SASOD, highlighted education as the “next major policy area” SASOD plans to focus on in the coming year, specifically combating the continued harassment of LGBT youth by their peers and teachers: “[W]e think of bullying against LGBT students as a silent epidemic.”¹⁵³

Rita, a 49-year-old transgender woman and former teacher who is currently a human rights defender in Region 3, described how bullying leads many LGBT students to drop out of school and become further marginalized: “[W]hen the teacher realizes that that’s a part of you, they start putting you at the back of the class and then you start getting maybe other punishment. They might send you to clean the yard and people talking about you in front of your face, people saying ‘anti-man.’”¹⁵⁴ As a result, Rita explained, many LGBT students start slipping away from the education system: “[T]hey slip. . . . [They] leave home, don’t go to school . . . and they just come off the radar. [The school] don’t even mind if [LGBT students] don’t come back because they just don’t want [them] being there.”¹⁵⁵

Education is one of the areas where interviewees reported the widest range of personal experiences. While many interviewees had negative experiences in the education system, some reported experiencing little

151. *Id.* at ¶¶ 60, 72(g).

152. The research team was unable to interview representatives from the Ministry of Education and, as a result, statements from the Ministry are not included in the findings. The analysis below discusses the educational experiences of LGBT students in Guyana as reported by LGBT persons and human rights defenders.

153. Interview with Joel Simpson, *supra* note 5.

154. Interview with Rita, 49, transgender woman, in Vreed-en-Hoop, Guy. (Feb. 16, 2018).

155. *Id.*

to no bullying or other discrimination in school. For those interviewees who expressed that they had a positive educational experience, a notable, shared factor was a connection with at least one teacher in whom they could confide if they needed someone to stand up for them and/or a group of classmates whom they were close with, oftentimes other LGBT students.¹⁵⁶

B. *Bullying by Other Students*

Bullying of LGBT students is a long-term and ongoing challenge in Guyana. Over half of the interviewees who discussed their educational experiences reported facing bullying in schools, including physical violence and verbal harassment. Older interviewees reported being targets of physical violence at, or on their way to and from, school. “I used to have a lot of challenges in school around my male peers,” explained Prince, a 42-year-old gay man from Georgetown:

They would challenge me. They [would] want to fight with me. . . . They would beat me up and embarrass me in front of the students. I never used to try to fight them and would try to avoid them. They would push me and kick me and all sort[s] of things.¹⁵⁷

Rita recounted:

[I]n primary, I had a lot of beat[ings] . . . a lot of people hit me. I was bullied. . . . We had a bus that used to pick the students up. . . . I wanted to be the last person . . . in the bus, because if I only go down to the bottom, nobody can do anything. It was like this from [age] seven to eleven.¹⁵⁸

Younger LGBT persons reported similar instances of violence and harassment from other students. For example, Toni, a 23-year-old transgender woman, said that she faced a lot of discrimination in school.¹⁵⁹

156. *E.g.*, Interview with Adam, *supra* note 18 (“I was secured by my three teachers, so I didn’t really have much of it [harassment] at school.”); Interview with Aparna, 34, transgender woman, in New Amsterdam, Guy. (Feb. 17, 2018) (Aparna described having a “good” experience in school: “I was this talkative person; I was the jovial one. I used to keep all of them lively, so I had no problem in high school.” Aparna also felt solidarity with “a couple of gay boys in the class.”).

157. Interview with Prince, *supra* note 97.

158. Interview with Rita, *supra* note 148.

159. Interview with Toni, 23, transgender woman, in Georgetown, Guy. (Feb. 16, 2018).

I was an MSM before I [realized I was trans]. I didn't know what LGBT was. . . . People used to call me all kinds of names. . . . Sometimes I'd come [to class] and my chair is not there, or somebody went through my bag and take my money, tear up my book – all kinds of things I used to face in school.¹⁶⁰

Devon, an 18-year-old transgender woman, also shared her recent experiences in secondary school. “Once [other students] find out,” Devon explained, “they treat you like you're a disease. Or like you're this atomic bomb.”¹⁶¹ She experienced frequent verbal harassment: “Students said ‘this is an ‘anti-man’ or this is a ‘batty man.’ ‘He’s not welcome in here in this class. He’s not supposed to be here.’”¹⁶² She also experienced physical violence because of her real or perceived sexual orientation or gender identity: “In secondary [I was] sometimes . . . physically hurt. . . . People would start picking on me for small things. When you're this quiet and not this big bad man, they say ‘He’s very soft as a woman.’ They say I’m like a fly.”¹⁶³

C. Discrimination by Teachers

Teachers and administrators have a lot of power over the experience of students in their classrooms and schools. Discriminatory treatment from a single teacher can have a great impact on students' success in school and the likelihood they stay in the education system. Nearly one-third of interviewees who discussed their educational experience reported being bullied or otherwise discriminated against by a teacher because of their SOGIE, and several detailed the concrete impact it had on their education – such as failing a particular teacher's course. “[My] maths teacher, she didn't support me,” recalled Arun, a 23-year-old gay man in Vreed-en-Hoop.¹⁶⁴ “[S]he sent for my parents and she used to tell my parents . . . that I'm not doing my schoolwork and the boys and me, we are always having an issue, we are always having a problem. . . . [She said that] I am disgusting, I am doing this, I am not doing that.”¹⁶⁵ The harassment reached a level where, “whenever she come in the classroom to teach, I walk out of class. . . . Eventually, I failed maths,” reported Arun.¹⁶⁶

160. *Id.*

161. Interview with Devon, *supra* note 107.

162. *Id.*

163. *Id.*

164. Interview with Arun, 23, gay man, in Vreed-en-Hoop, Guy. (Feb. 16, 2018).

165. *Id.*

166. *Id.*

Several interviewees discussed the role that religion plays in the discriminatory treatment of LGBT students, especially by their teachers. For example, Valini Leitch, a human rights defender at SASOD, recounted the circumstances of one student whom SASOD helped who suffered discrimination from teachers and administrators who overtly invoked their personal religious views.¹⁶⁷ “Because she identifies as lesbian, they wanted to expel her. She was barred from going to classes. She was punished. The head teacher said she needs good beatings and prayers. Somebody wanted to throw holy water at her.”¹⁶⁸ With the support of SASOD and a counselor at her school, that particular young woman was able to complete school and is now a professional photographer but, as Valini pointed out, “There are many stories that don’t have [such a] happy ending.”¹⁶⁹

Apatoa, an elected leader in the indigenous community who also taught in a non-indigenous public school in Region 4 for ten years, witnessed multiple instances of other teachers espousing personal religious beliefs in school, including their views on non-normative SOGIE.¹⁷⁰ “[People in] schools go around with these religious pamphlets,” he said.¹⁷¹

I see teachers doing this . . . in schools in Guyana, and there’s nobody to represent the students. The parents can come in but there’s a limit to what they can do. This is not just in indigenous schools but across the country. Teachers will say, “I’m a religious person. I’m in the right. I do the right thing.” Nobody can challenge them; they are above the law.¹⁷²

Apatoa claims that around 2005 or 2006 one teacher in the school where he was working made male students who appeared to have a non-normative SOGIE “kneel down, [while] being told ‘change your sexuality you must be masculine,’ [and then] asked [them] to march like a soldier [saying] ‘you are male, not female, don’t behave like a female.’”¹⁷³ Apatoa said that based on his experience, that kind of

167. Interview with Valini Leitch, *supra* note 106.

168. *Id.*

169. *Id.*

170. Interview with Apatoa, an elected leader in the indigenous community, in Georgetown, Guy. (Feb. 18, 2018).

171. *Id.*

172. *Id.*

173. *Id.*

behavior by teachers is often tolerated and the students from that particular incident “had no place to go to protest.”¹⁷⁴

Several interviewees highlighted the importance of training educators on the needs and experiences of LGBT students and their right to nondiscriminatory treatment. As Clement, a young gay man, stated: “I want teachers and educators to be sensitized about how to deal with queer students, because a lot of queer students drop out of school because of the bullying they face – not just by their peers, but by teachers who are unabashedly discriminatory.”¹⁷⁵

D. *Additional Findings*

1. Need for Comprehensive Sexuality Education

Several interviewees said that they would like to see the Ministry of Education adopt and implement a comprehensive sexuality education (CSE) program.¹⁷⁶ In Guyanese schools, education on sex and sexuality currently falls under the Ministry of Education’s Health and Family Life Education (HFLE) program.¹⁷⁷ The HFLE curriculum is organized around four themes: 1) self and interpersonal relationships, 2) sexuality and sexual health, 3) appropriate eating and fitness, and 4) managing the environment.¹⁷⁸ Anil Persaud, SASOD’s Homophobia(s) Education Coordinator, explained that the curriculum needs to be updated to incorporate “gender and sexual diversity” to foster inclusivity and meet the needs of LGBT students.¹⁷⁹ Joel Simpson also called for the provision of safe spaces for students to privately discuss their

174. *Id.*

175. Interview with Clement, 21, gay man, in Georgetown, Guy. (Feb 15, 2018).

176. *E.g.*, Interview with Apatoa, *supra* note 164 (“We need human sexuality [in] the curriculum. . . . [The] interest by children, is so fantastic. They want more! When finishing they will say, ‘Teacher, . . . nobody tells me about these things.’ Children need to learn! It’s so relevant!”).

177. *See Life Skills Based Health Education*, MINISTRY OF EDUC., <https://education.gov.gy/web/index.php/policies/policy-on-school-health-nutrition-and-hiv-aids/item/486-life-skills-based-health-education> (last visited Mar. 24, 2018). Guyana’s HFLE program is based off of the HFLE framework developed by the Caribbean Community (CARICOM) in partnership with the University of the West Indies and UNICEF. *See* U.N. CHILDREN’S FUND, EVALUATION REPORT: PILOTING HEALTH AND FAMILY LIFE EDUCATION AS A TIMETABLED SUBJECT IN GUYANA 11–17 (Dec. 2013), https://www.unicef.org/evaldatabase/files/Guyana_Piloting_Health_and_Family_Life_Education_as_a_Timetabled_Subject_Report.pdf.2013).

178. *See* MINISTRY OF EDUC., HEALTH AND FAMILY LIFE EDUCATION: GRADE 1 CURRICULUM GUIDE 1–2 (Sept. 2013), https://education.gov.gy/web/index.php/component/docman/cat_view/8-downloads/88-health-and-family-life-education-hfle?Itemid=642.

179. Interview with Anil Persaud, *supra* note 103.

sexuality and gender identity with qualified counselors to augment any classroom-based education.¹⁸⁰

2. Lack of a Supportive Home Life

Discrimination and abuse suffered by LGBT youth at home can lead to a lack of interest in education, school absenteeism, and dropouts.¹⁸¹ A number of interviewees shared the financial struggles they faced trying to support themselves after being financially cut off and/or kicked out by parents or other guardians. For example, Jordan, a 21-year-old from Buxton, had to drop out of school in Fourth Form (Grade 10) after his mom temporarily evicted him and refused to continue supporting him financially due to his sexual orientation.

She decided that she wouldn't want a gay son. [S]he said, "Okay. If you're going to live this life, I won't have no time with you. If you live a straight up life, I will be the one who support you." So I had to drop out of school for that reason, because I have to pay . . . I have to get textbooks . . . and since I have no one supporting me . . . I said, okay . . . I'm finished with school.¹⁸²

Rose, a 21-year-old transgender woman, described the circumstance she went through to complete secondary education after being forced out of the home she shared with her grandmother around age 14 due to "expressing [her] gender identity, being feminine."¹⁸³

I used to live in the street [for about four years]. I would be sleeping on shops, on pavilions. . . . I used to go around different houses in the day and assist with housework and they would pay me and offer me a meal and at night I would sleep anywhere I could. [A friend] would check up on me, bring me clothes or food, fetch a bucket of water and bring it to me on the street for me to bathe. . . .

180. *Reformed Sex Ed Curriculum Needed in Schools*, GUY. TIMES (Feb. 2, 2018), <https://guyanatimesgy.com/reformed-sex-ed-curriculum-needed-in-schools/>.

181. Press Release, Inter-Am. Comm'n H.R., Annex to the Press Release Issued at the Close of the 149th Session, No. 83A/13 (Nov. 8, 2013).

182. Interview with Jordan, 21, gay man, in Georgetown, Guy. (Feb. 16, 2018).

183. Interview with Rose, 21, transgender woman, in Georgetown, Guy. (Feb. 16, 2018).

I really like[d] school. . . . I still focused on my education, never missed a day of school, even during all that. I would go [have sex] with men for money and would still go to school. . . . [W]hen I was in Fifth Form [Grade 11] I really faced one of the most difficult challenges because my head mistress called me and said to me, “You’re in Fifth Form, about to sit that exam. What are you going to do?” . . . She told me, “I would like you to write the exam but it’s costly.” . . . The exam is [around] 35,000 Guyanese dollars¹⁸⁴ to write nine subjects. It’s the final exam before you finish school to go to university. . . . [During that time] I don’t have anywhere to stay, my family doesn’t accept me as a transgender person and I’d really love to write my exams, so I have to be in the streets because I have to pay for the exam.¹⁸⁵

A man who noticed that Rose was frequently out on the roads late at night asked her why and upon hearing the answer, had a conversation with the headmistress at her school and offered to pay for her exams. “I wrote it and passed six subjects. So, luckily, here I am today,” said Rose, who has been working at a CSO for a year and half. “I’m working, I have a job.”¹⁸⁶

IV. CONCLUSION AND RECOMMENDATIONS

While Guyana’s Constitution recognizes a right to education, no laws or policies exist to safeguard the practical realization of that right for LGBT students. Guyana must do more to meet its international obligations to respect, protect, and fulfill the right to education without discrimination on the basis of sexual orientation or gender identity. Additionally, in order to meet its obligation to take “all appropriate legislative, administrative, social and educational measures to protect [children] from all forms of physical or mental violence,”¹⁸⁷ Guyana should take action to specifically address the “silent epidemic”¹⁸⁸ of the bullying of LGBT students in schools.

184. For reference, a typical bus ride in Georgetown costs 60 to 80 GYD. See Tourism & Hospitality Ass’n of Guyana, *Transportation Guide*, EXPLORE GUYANA, <http://exploreGuyana.org/transportation-guide/> (last visited Mar. 24, 2018). 35,000 GYD is approximately 170 USD.

185. Interview with Rose, *supra* note 177.

186. *Id.*

187. CRC, *supra* note 138, art. 19(1).

188. Interview with Joel Simpson, *supra* note 5.

The education system has a profound influence on the experience of LGBT persons in Guyana. Fulfilling LGBT students' right to education will enable more LGBT persons in Guyana to effectively advocate for the recognition and protection of their rights:¹⁸⁹ "Education is power. . . . When you know your rights . . . , you [can] say that I am entitled to the right like any other person."¹⁹⁰ Also, schools present a unique opportunity to foster knowledge about and acceptance of non-normative SOGIE, which could help combat the discrimination and violence faced by LGBT persons on a systemic level. As one transgender woman explained, "We should go into these schools and have programs for school children *because it starts from there.*"¹⁹¹

Based on these findings, recommended actions for the Guyanese Government, UN, and OAS are included in *Recommendations infra*.

189. See Interview with Rita, *supra* note 148 ("[B]ecause [many LGBT people are not educated], they can't write a report for themselves.").

190. *Id.*

191. Interview with Toni, 23, *supra* note 153 (emphasis added).

FINDINGS: EMPLOYMENT

“We are asking for acceptance where we could get jobs and be comfortable in our own skin and be comfortable the way we dress. It is hard for LGBT to get jobs, and [especially] for transgender [people].”

*–Jamie, 34-year-old lesbian in Georgetown, Guyana*¹⁹²

I. INTRODUCTION

The harassment and bullying faced by LGBT youth in schools carries into adulthood and the workplace in Guyana. Many LGBT adults struggle to find formal-sector employment because they were unable to finish secondary education. As Guyanese law does not explicitly prohibit employment discrimination on the basis of sexual orientation, gender identity, or gender expression, some employers refuse to accept LGBT applicants. Others perpetrate or tolerate harassment against LGBT employees and contribute to bullying and hostile work environments that force LGBT persons to leave. Such conditions make it extremely difficult to find and maintain work and impact other socioeconomic rights, placing LGBT persons at greater risk of poverty, illness, and violence.¹⁹³

II. LEGAL FRAMEWORK

A. *Domestic Legal Framework on Employment Discrimination*

The right of LGBT persons to equal treatment by employers is inadequately protected under Guyanese law. Guyana’s employment discrimination law is codified in the Prevention of Discrimination Act of 1997 (PDA), which prohibits “any distinction, exclusion or preference, the intent or effect of which is to nullify or impair equality of opportunity or treatment in any employment or occupation.”¹⁹⁴ However, the law fails to include sexual orientation, gender identity, or gender expression among the protected statuses.¹⁹⁵ The absence of a specific prohibition on discrimination based on SOGIE permits employers to discriminate against persons with non-normative SOGIE in hiring

192. Interview with Jamie, 34, lesbian, in Georgetown, Guy. (Feb. 17, 2018).

193. Interview with Joel Simpson, *supra* note 5.

194. Prevention of Discrimination Act 1997, c. 99:09, § 4(2) (1997) (Guy.).

195. Discrimination is prohibited based on “any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in any employment or occupation [based on their] race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, economic status, political opinion, disability, family responsibilities, pregnancy, marital status or age. . . .” *See id.* § 4(2) (a).

decisions, treatment during employment, and termination without legal consequence.¹⁹⁶

There is currently support within the government and the public and private sectors to amend this law to explicitly prohibit discrimination on the grounds of sexual orientation, gender identity, and expression.¹⁹⁷ However, no bill amending the legislation has yet been introduced by Parliament.

Additionally, Guyana retains discriminatory laws that criminalize “cross-dressing,” which indirectly impacts LGBT workers, particularly transgender women and men, and prevents them from exercising their right to freedom of expression.¹⁹⁸ The Summary Jurisdiction (Offences) Act establishes monetary fines for appearing in public in clothes or attire not attributable to a person’s perceived sex assigned at birth for “any improper purpose.”¹⁹⁹ In 2013, the Supreme Court of the Judicature of Guyana found that it is not criminally offensive for a person, whether female or male, to wear the attire of the “opposite” gender “as a matter of preference or to give expression to it to reflect his or her sexual orientation,”²⁰⁰ but that “the improper purpose for such conduct to which criminality is directed”²⁰¹ remains valid. The Court of Appeal unanimously upheld the Supreme Court decision.²⁰² Petitioners are challenging this decision and have filed an appeal with the Caribbean Court of Justice to obtain clarity on the meaning of “improper purpose,” as such language could retain discrimination in its application.²⁰³

196. MONICA BRINN ET. AL., STAKEHOLDER REPORT TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS ON THE PROTECTION OF THE RIGHTS OF LGBTI PERSONS IN GUYANA § 5.6 (Soc’y Against Sexual Orientation Discrimination [SASOD] ed., 2015) [hereinafter CESCER STAKEHOLDER REPORT], http://www.sasod.org.gy/sites/default/files/resources/SASOD_CESCERStakeholderReport2015.pdf.

197. See *infra* Section III.b under *Employment*.

198. Summary Jurisdiction (Offences) Act, c. 8:02, § 153(1) (xlvii) (1893) (Guy.).

199. *Id.* § 153.

200. McEwan v. Att’y Gen. of Guyana, 2010 No. 21-M Demerara, 26 (High Ct. of the Sup. Ct. of Judicature 2013), http://ufdcimages.uflib.ufl.edu/AA/00/01/69/00/00001/Guyana_CROSS_DRESSING_CASE_DECISION.pdf.

201. *Id.*

202. Ravin Singh, *Appeal Court Upholds Ruling on Cross-Dressing*, GUY. CHRON. (Feb. 28, 2017), <http://guyanachronicle.com/2017/02/28/appeal-court-upholds-ruling-on-cross-dressing>.

203. A decision is currently pending. See *SASOD to Approach CCJ on Cross-dressing Laws*, GUY. CHRON. (Oct. 4, 2017), <http://guyanachronicle.com/2017/10/04/sasod-approach-ccj-cross-dressing-laws>.

B. *Obligations Under International and Regional Law*

Under the ICESCR, Guyana has an obligation to respect, protect, and fulfill the economic right to work without discriminating on the basis of SOGIE.²⁰⁴ This includes an individual's right to earn a living doing the work he/she chooses²⁰⁵ and the right to the enjoyment of just and favorable conditions of work.²⁰⁶ States must ensure nondiscrimination on the basis of sexual orientation and gender identity or expression as a core and immediate obligation,²⁰⁷ as well as the right of "access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity."²⁰⁸

The *Yogyakarta Principles* expands on these requirements, encouraging states to ensure that no legislation or measure "criminalise[s] the behaviour of, stigmatize[s], or in any other way, exacerbate[s] the disadvantage of those vulnerable to [exploitation],"²⁰⁹ including persons with non-normative SOGIE.²¹⁰ Guyana must remove legal barriers preventing LGBT persons from working by adding "sexual orientation, and gender identity or expression" as protected grounds in its anti-discrimination legislation. States should also establish "legal, educational and social measures, services and programmes to address factors that increase vulnerability to trafficking, sale and all forms of exploitation"²¹¹ on the grounds of actual or perceived SOGIE.²¹² The dependence of marginalized individuals on their employer, and the collateral increased risk of exploitation or trafficking, is heightened in Guyana where everyone has the *obligation* to work, but may not be able to find dignified or safe work.²¹³ The Government of Guyana denied any

204. The ICESCR requires states to "guarantee that the rights enumerated in the present Covenant will be exercised *without discrimination of any kind*" including on the basis of "sex . . . or other status," as well as to "ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant." ICESCR, *supra* note 43, arts. 2(2), 3 (emphasis added).

205. *Id.* art. 6.

206. *Id.* art. 7.

207. Comm. on Econ., Soc., & Cultural Rights, *General Comment No. 18*, ¶ 12, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006).

208. *Id.* ¶ 31.

209. *Yogyakarta Principles*, *supra* note 69, princ. 11.

210. *Id.*

211. For information on suggested programs to address some of these issues, see INT'L LABOUR ORG., ENDING FORCED LABOUR BY 2030: A REVIEW OF POLICIES AND PROGRAMMES (2018), https://www.ilo.org/wcmsp5/groups/public/—ed_norm/—ipec/documents/publication/wcms_653986.pdf.

212. *Yogyakarta Principles*, *supra* note 69, princ. 11.

213. GUY. CONST., art. 22(2) ("Socially useful activity is an honourable duty of every citizen able to work. The right to work implies a corresponding duty to work.").

allegations of discrimination against people on the basis of their SOGIE in the right to work during its UPR in 2015, stating, “complaints were not brought to the attention of the Chief Labour Officer, the Public Service Commission, or to the courts’ attention.”²¹⁴

In the regional context, the American Declaration also protects every individual’s right to work.²¹⁵ In Guyana, the IACHR has found poverty and discrimination against LGBT individuals to be structural in nature, contributing to “the lack of prospects of . . . decent work.”²¹⁶

III. FINDINGS

A. *General Employment in Guyana*

While many Guyanese struggle to find employment and earn a living wage, these challenges are exacerbated for LGBT individuals who encounter a toxic mix of discriminatory laws and prejudice that further hinders their right to work. Unemployment rates in Guyana range from 12% for the general population to 21.6% for youth aged 15 to 24.²¹⁷ Approximately one-third of the population lives below the poverty line.²¹⁸ While there is no data on the unemployment rate of LGBT individuals in Guyana, the absence of legal protections leads to unemployment and discriminatory employment practices against LGBT individuals.²¹⁹ Many LGBT interviewees shared how they and others have faced challenges in finding work and confronting abusive situations in the workplace because of their SOGIE.

B. *Nondiscrimination Policies in the Workplace*

According to interviewees, nondiscrimination policies are rare among Guyanese companies.²²⁰ Such policies are an important way to set expectations in the workplace regarding acceptable behavior toward fellow employees and to address discrimination.

214. *UPR 2015 National Report Submitted by Guyana*, *supra* note 52, ¶ 53.

215. American Declaration, *supra* note 58, art. XIV.

216. Press Release, Inter-Am. Comm’n H.R., IACHR Concludes Working Visit to Guyana, No. 148/16 (Oct. 13, 2016).

217. *Unemployment Rate 12%, New Survey Finds*, STABROEK NEWS (Mar. 16, 2018), <https://www.stabroeknews.com/2018/news/stories/03/16/unemployment-rate-12-new-survey-finds/>.

218. Cent. Intelligence Agency, *Guyana: People and Society*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/gy.html> (last updated Mar. 22, 2018).

219. Telephone Interview with Twinkle Kissoon, 24, Admin. Officer & Paralegal, Guy. Trans United. (Oct. 19, 2017); *see also* ON DEVIL’S ISLAND, *supra* note 96.

220. Interview with Clement, *supra* note 169.

For example, Aparna, who used to work at a local sugar company before it adopted a nondiscrimination policy, described how her manager frequently harassed her: “Every time he saw me in the office, he was calling me names. . . . Because of my gay lifestyle, he said I’m not fit for the job, [that] I’m a disease to the corporation.”²²¹ Aparna reported him to a higher authority in the company, but nothing happened. After Aparna had already left the company, it adopted a nondiscrimination policy. Ricky, a gay man who worked at the same sugar refinery, described how the policy led to a more accepting workplace environment: “I don’t face [insults] anymore. . . . They’d knock you out [fire you]. If they see you insulting gays, they’d report you to the manager and knock you out.”²²² Because the company employs a large number of people in the area, Ricky explained how their anti-discrimination policy helped educate the community and mitigate discriminatory behavior outside of work. “Because of the job situation, [employees] couldn’t do certain things, so when they’re either on the job or off the job, they can’t risk it. I was comfortable being out [at work].”²²³

Since 2013, the Georgetown Chamber of Commerce and Industry (GCCCI) has supported establishing comprehensive workplace policies to prohibit discrimination on the basis of SOGIE, with former President Clinton Urling calling it necessary “to ensure that the fundamental human rights of all Guyanese are protected.”²²⁴ The GCCCI is currently working with the LGBT community to develop a policy on equal opportunity in the workplace to publicly sign and adopt.²²⁵

While nondiscrimination policies are important, they are not sufficient to protect the fundamental right to work for LGBT individuals. To secure this right and prohibit discrimination on the grounds of sexual orientation and gender identity, the government must amend the Prevention of Discrimination Act (PDA). Fortunately, there is support for this endeavor in both the public and private sectors to ensure LGBT individuals do not face discrimination in employment. In 2017, Guyana’s Social Cohesion Minister and Guyana’s Attorney General and Minister of Legal Affairs asked SASOD for support in drafting an amendment to the PDA to extend the law’s protections to sexual

221. Interview with Aparna, *supra* note 150.

222. Interview with Ricky, 48, gay man, in New Amsterdam, Guy. (Feb. 17, 2018).

223. *Id.*

224. *Georgetown Chamber to Launch Comprehensive Anti-Discrimination Workplace Policy*, KAIETEUR NEWS (Nov. 16, 2013), <https://www.kaieteurnews.com/2013/11/16/georgetown-chamber-to-launch-comprehensive-anti-discrimination-workplace-policy/>.

225. Interview with Joel Simpson, *supra* note 5.

orientation, gender identity, and gender expression.²²⁶ SASOD recently completed consultations on the proposed amendment and hopes the government will introduce the amendment for consideration in the National Assembly sometime in 2018.²²⁷ Officials at the Ministry of Labour and Ministry of Social Protection, including Minister within the Ministry of Social Protection Hon. Keith Scott, M.P., and Chief Labour Officer Charles Ogle, stated that they wanted a zero-tolerance approach to such discrimination.²²⁸

C. Challenges Finding Employment

LGBT interviewees reported numerous difficulties in finding formal employment as a result of discriminatory policies and attitudes. This is particularly true for individuals who are openly LGBT, regardless of their skills. Valini Leitch, an employee with SASOD, described how employers turn down gay applicants, sometimes saying, “We don’t employ gay people,’ ‘Gays bring sick[ness],’ ‘Gays are pedophile[s],’ or ‘We don’t want you because we are Christian.’”²²⁹

Some interviewees were discouraged from applying for positions and were told by employers they would not be hired because of their sexual orientation.²³⁰ Adam, a gay man, described interviewing for jobs and being bluntly told, “Your sexuality is not permitted for my workplace.”²³¹ After this happened twice, he no longer felt he could be himself during interviews or at work. “Now whenever I go for an interview, I try . . . to be as masculine as possible just to get the job.”²³² A transgender woman described interviewing and being embarrassed by the harassment she faced: “From them I’ll get ‘What’s this anti-man doing

226. *Id.*; see also Dr. Norton, *SASOD to Lead Anti-discrimination Law Reform*, GUY. TIMES (Feb. 12, 2017), <http://guyanatimesgy.com/dr-norton-sasod-to-lead-anti-discrimination-law-reform/>; *SASOD to Propose Amendment Protecting LGBT Against Work Discrimination*, STABROEK NEWS, (Dec. 14, 2017), <https://www.stabroeknews.com/2017/news/stories/12/14/sasod-to-propose-amendment-protecting-lgbt-against-work-discrimination/>.

227. See *SASOD to Propose Amendment Protecting LGBT Against Work Discrimination*, *supra* note 220. As of March 18, 2019, this amendment has not yet been introduced in the National Assembly. E-mail from Joel Simpson, Managing Dir., SASOD, to authors (March 18, 2019, 2:27 PM) (on file with authors).

228. Interview with Charles Ogle, Chief Labour Officer, Ministry of Soc. Prot., in Georgetown, Guy. (Feb. 19, 2018); Interview with Hon. Keith Scott, M.P., Minister within the Ministry of Soc. Prot., *supra* note 100.

229. Interview with Valini Leitch, *supra* note 106.

230. Interview with Bobbie, 21, transgender woman, in Georgetown, Guy. (Feb. 16, 2018).

231. Interview with Adam, *supra* note 18.

232. *Id.*

here? We don't hire people like y'all.'"²³³ Miglon, a social worker at GTU, recently documented a case where an employee told a transgender person seeking a job, "We don't employ anti-man."²³⁴

Several interviewees were directly asked during job interviews if they were lesbian, gay, bisexual, or transgender. Such questions are inherently discriminatory, as they have no bearing on an individual's capacity and skills to perform a job. Mia, a lesbian woman, was interviewing for a manager position at her company, when twenty minutes into the interview the interviewer asked, "[Are] you gay?" At an interview with the security company working for the U.S. Embassy, she was also asked, "[Are] you a guy?"²³⁵

Aparna described facing similar difficulties in finding a job:

Everywhere we go, because we are gay, they say they cannot employ me. . . . I am planning on making a move over to Trinidad because maybe I can get a job over there. . . . I love Guyana. I would love to stay in my beautiful country, but if I can't find a job I have to migrate.²³⁶

Gender-nonconforming dress can also pose a barrier to securing a job. "Many [transgender women] don't have male clothes, so it's hard for them to go into a company and get a job," said Toni, a transgender woman.²³⁷ Another transgender woman explained, "It's hard to get a job when you're gay and when you're dressing more like a lady. It's hard to get work. You won't get jobs."²³⁸

In smaller towns where a lesbian, bisexual, gay, or transgender person is widely known in the community, finding a job can be even more challenging in the face of widespread discriminatory attitudes. For example, Aparna, a transgender woman who lives in New Amsterdam, tried to change her appearance to conform with gender norms after struggling to find work.²³⁹ She had applied for a job as a gas pump attendant, but the owner thought she was gay after seeing her multicolor hair and refused to give her a job. "After [that], I blackened the hair," Aparna said. Yet, even after attempts to hide her sexual orientation and

233. Interview with Bobbie, *supra* note 224.

234. Interview with Miglon, 52, Social Worker, Guy. Trans United, in Georgetown, Guy. (Feb. 16, 2018).

235. Interview with Mia, 27, lesbian woman, in Georgetown, Guy. (Feb. 19, 2018).

236. Interview with Aparna, *supra* note 150.

237. Interview with Toni, *supra* note 153.

238. Interview with Bobbie, *supra* note 224.

239. Interview with Aparna, *supra* note 150.

gender identity, hiring managers refused to meet with her. “I assume because of my lifestyle, they know me. The entire New Amsterdam knows me.”

Other employers stated they would not hire LGBT persons because of their religion. Jordan applied to work at a Church’s Chicken restaurant in Georgetown but was told by the hiring manager that because she was a Christian, she couldn’t hire someone who was lesbian, bisexual, gay, or transgender.²⁴⁰

Part of the unwillingness to hire LGBT persons stems from the broader discriminatory attitudes in society. “Some persons think, especially when dealing with customers, [that] you put them at risk for not having business,” said Twinkle, a transgender woman.²⁴¹ Many interviewees said they could only find work in situations where they did not have to interact with the general public or in the informal sector, such as call centers,²⁴² domestic work,²⁴³ or sex work.²⁴⁴

D. *Gender Expression in the Workplace*

Most gay and transgender interviewees reported receiving differential treatment in the workplace based on their gender expression, particularly for transgender women or gay men who appeared more feminine.

Miglon, a social worker at Guyana Trans United, described the challenges faced by many of the people she assists. If a transgender woman’s hair, clothes, and presentation do not match the sex and name listed on her identification card, “that is a barrier, because [she] cannot get a job dressed as a trans. And [she] cannot dress as a male. So how is [she] going to get a job?”²⁴⁵

In Guyana, a transgender person’s identity card and passport will list the name and sex assigned at birth, which does not match the individual’s gender identity.²⁴⁶ While anyone may dress however he/she chooses for the photograph used on the identity card, a transgender

240. Interview with Jordan, *supra* note 176.

241. Interview with Twinkle Kisson, 24, Admin. Officer & Paralegal, Guy. Trans United, in Vreed-en-Hoop, Guy. (Feb. 15, 2018).

242. Interview with Bobbie, *supra* note 224.

243. Interview with Grace, *supra* note 108.

244. See *infra* Section III(f) on Sex Work under *Employment*.

245. Interview with Miglon, *supra* note 228.

246. Interview with Toni, *supra* note 153.

woman's identity card would still list her as "male," with the male name she was given at birth.²⁴⁷

Denying someone legal recognition of their identity can create a host of challenges, particularly in the employment context. For example, Miglon explained that this issue "deters persons from actually applying in the government sector," particularly for jobs that require a sex-specific uniform.²⁴⁸ Officials from the Ministry of Social Protection's Labour Department told the researchers that an employer once asked them for guidance on an employee whose sex on their ID card did not match their appearance. "They asked us how to deal with the issues. We couldn't address adequately how to deal with the issue, but what I did, I informed them . . . you should not discriminate against that person based upon their physical appearance or orientation."²⁴⁹ The Chief Labour Officer also explained there is no written policy requiring public servants to dress in a gender-normative way.²⁵⁰ Ogle said this is true "not just in this department, but in the whole country. You can dress whatever you want."²⁵¹

While there is no written public sector dress code mandating gender-normative attire, many LGBT individuals told the research team they thought there was such a policy in place. These perceptions may stem from Guyana's Summary Jurisdiction (Offences) Act, which criminalizes "cross-dressing" for an "improper purpose."²⁵² "Improper purpose" does not include transgender individuals and others who present themselves in a gender-nonconforming way as an expression of their gender identity.²⁵³ However, the mere existence of the "cross-dressing" law can discourage such individuals from applying for government positions.²⁵⁴

247. *Id.*

248. Interview with Miglon, *supra* note 228.

249. Interview with Randy Burkett, Labour Officer, Ministry of Soc. Prot., in Georgetown, Guy. (Feb. 19, 2018).

250. A gender-normative dress code would require males to dress in stereotypical male attire and females to dress in stereotypical female attire. For example, it may require a male to wear short hair and no make-up. When applied to transgender people in particular, such codes prevent them from dressing in attire that reflects their gender identity and limits their gender expression.

251. Interview with Charles Ogle, Chief Labour Officer, *supra* note 222.

252. Summary Jurisdiction (Offences) Act, c. 8:02, § 153(1)(xlvi) (1893) (Guy.). In 2013, the High Court of Guyana ruled that it is not a criminally offensive improper purpose "for a person to wear the attire of the opposite sex as a matter of preference or to give expression to or to reflect his or her sexual orientation." *McEwan v. Att'y Gen. of Guyana*, 2010 No. 21-M Demerara, 26 (High Ct. of the Sup. Ct. of Judicature 2013), *available at* http://ufdcimages.uflib.ufl.edu/AA/00/01/69/00/00001/Guyana_CROSS_DRESSING_CASE_DECISION.pdf.

253. *See supra* Section II(a).

254. Interview with Joel Simpson, *supra* note 5.

For example, one transgender woman shared, “I would have worked as a teacher, but being a transgender person I have always wanted to wear female clothes. Once you’re in any government job, you’re not able to cross-dress. This is one of the main reasons why I didn’t become a teacher.”²⁵⁵

E. Workplace Harassment

LGBT individuals who disclose their SOGIE or who are presumed to have a non-normative SOGIE in the workplace risk being harassed, bullied, and fired.²⁵⁶ LGBT individuals report facing harassment from customers, coworkers, and/or from management. Regardless of the source of harassment, repercussions for the harasser and support for the victim are rare.

Transgender women, in particular, face discrimination in the employment context because of their visibility.²⁵⁷ Twinkle, a transgender woman, said, “[E]mployment options are nonexistent for trans people.”²⁵⁸ Clement, a gay man agreed, “[T]rans women in Guyana have been pushed out of the work force.”²⁵⁹ Even among more tolerant employers, there is a reluctance or outright unwillingness to hire transgender women. Prince, a gay man, works as a security guard but says his company “wouldn’t hire a transgender. They would hire a bisexual or male who looks gay, but if a trans woman should come and they knew it, they wouldn’t hire her. So, there are still more walls to climb.”²⁶⁰

As a result, many LGBT individuals try to hide their true identities from their employer and coworkers in an attempt to avoid the discrimination and harassment they would otherwise face. “I have been quiet about my identity in the workplace,” said Clement. “I don’t tell people about my sexual orientation.”²⁶¹ Another gay man described how he would go into “chameleon mode” and “camouflage” himself to hide his sexual orientation from his coworkers to avoid discrimination.²⁶²

255. Interview with Rose, *supra* note 177.

256. Twinkle Kissoon, an advocate at Guy. Trans United, indicated that individuals with non-normative SOGIE are at risk of being discriminated against at work, either in a public or private sector. Telephone Interview with Twinkle Kissoon, *supra* note 213; *see also* CDESCR STAKEHOLDER REPORT, *supra* note 190, § 5.7; CARRICO, *supra* note 88, at 19.

257. *See* CDESCR STAKEHOLDER REPORT, *supra* note 190, § 5.7.

258. Interview with Twinkle, *supra* note 235.

259. Interview with Clement, *supra* note 169.

260. Interview with Prince, *supra* note 97.

261. Interview with Clement, *supra* note 169.

262. Interview with Adam, *supra* note 18.

1. Harassment and Threats from Customers and the Public

LGBT individuals reported facing discrimination and violence from customers and the general public at their workplace. Most did not feel they could report the issue to their supervisor, or if they did report the situation, that insufficient action was taken. An 18-year-old transgender woman, who works as a pump attendant at a gas station in Georgetown, shared numerous incidents of abuse and violence from customers. “[They] are hollering at you, being disrespectful to you. Sometimes they will get out of the bus and want to hit you. But then they [her supervisors] say customers will always have first preference.”²⁶³ Sometimes she reported the abuse to the office, but said, “I never get justice out of it.” She also shared a violent incident she experienced last year around Christmas at work:

A few guys came off a bus, and they run towards me with a cutlass.²⁶⁴ They was coming to chop me. Someone breaks a bottle. I had to run in the gas station, inside the minimart, and had to have them lock the door from the inside so they can’t enter. . . . They say, “Boy or girl? Boy or girl?” . . . If I hadn’t run, they would have chopped me. . . . So to be honest, in my own country, I don’t feel safe. I don’t feel safe, even at my workplace.²⁶⁵

2. Harassment from Coworkers Creates a Hostile Work Environment

LGBT individuals reported facing verbal harassment from coworkers and other bullying actions intended to create a hostile work environment. For example, Denise, a lesbian woman who was out in her workplace, was bluntly told by her coworkers, “I don’t think you deserve to have any rights.”²⁶⁶ No interviewee reported receiving support from management when reporting bullying. In addition to such explicit discrimination, LGBT individuals also reported facing indirect forms of bullying and discrimination that were nevertheless meant to create a hostile work environment, all but forcing them to leave. For example, Ann in Vreed-en-Hoop described how her employers always found fault in her work for not being fast enough.²⁶⁷ In another example, an

263. Interview with Devon, *supra* note 107.

264. A cutlass is a short, slightly curved sword, similar to a machete.

265. Interview with Devon, *supra* note 107.

266. Interview with Denise, 18, lesbian woman, in Georgetown, Guy. (Feb. 16, 2018).

267. Interview with Ann, 49, in Vreed-en-Hoop, Guy. (Feb. 16, 2018).

interviewee described how his coworkers gossiped about a transgender employee: “I feel that has ostracized him. Every time he walks into the room, people will have something to say. I know he hears it. I know he’s bothered by it. But he doesn’t say anything.”²⁶⁸

Arun, who worked at the Ministry of Indigenous Affairs, would find plastic garbage bags and his coworkers’ trash on his seat.²⁶⁹ The harassment started after a few LGBT friends had visited him at work. His supervisors began to suspect that he was gay too, and they started sending him further away from the office for work, assigning him additional receptionist and handyman tasks. “It’s like they start pressuring me so that I can leave.”²⁷⁰ He tried to report the harassment to the Minister last year, but did not feel that it would get resolved in his favor and left.

Covert discrimination also occurs in public sector work such as with the military or police force. “There are a lot of LGBT persons who would want to . . . serve their country, and they can’t get in. It’s not officially banned, but they have ways to choke you,” said Twinkle.²⁷¹ She explained, for example, if an individual passed the entrance test, they may be sent to an officer who would tell them to complete physical tasks that were impossible for a new recruit.

3. Lack of Support and Harassment from Supervisors and Managers

LGBT individuals reported the reluctance or unwillingness of employers to address harassment, and even instances where their supervisors perpetrated the bullying and abuse.²⁷² As such, they felt they had nowhere to go when they faced abuse and harassment at work. Sometimes these circumstances endangered the very life and well-being of the LGBT employees. Prince, a gay man, described the conditions he encountered shortly after being hired as a security guard at a private company:

One of the areas that I was working in, I had a confrontation with some guys from the area. Someone let them know that I was a gay person working there. Three guys came to the gate,

268. Interview with Clement, *supra* note 169.

269. Interview with Arun, *supra* note 158.

270. *Id.*

271. Interview with Twinkle Kissoon, *supra* note 235.

272. CARRICO, *supra* note 88, at 20 (“A [a gay man] reported that he . . . was the constant victim of sexual harassment and brunt of gay jokes by his supervisors in the company that employed him.”).

although it was locked, and they [made] threats that they would tie me and beat me. I did report that to my boss, but they only said they were checking. I let them know where the people involved lived, because I saw where they were coming out from often. . . . The company . . . never did anything, but the guys kept coming again three or four times. They always came and threatened me. . . . [They] pelt me [with] bricks and bottles. I had to go way down to the back of the yard. . . . I reported to my boss, they did an investigation, and found nothing. . . . The next day they sent me back [to the same place].²⁷³

Others felt scared to talk with their supervisors about the harassment they faced. “My supervisor, I can’t go to them, because they will take my story and make a mockery and a laughing matter out there. I don’t want that to happen. So, I’d rather just keep it all covered to myself,” reported Devon, an 18-year-old transgender woman who works at a gas station in Georgetown.²⁷⁴ She cried after her coworkers at the gas station started falsely spreading rumors that she had AIDS, and saying other “bad stuff about me, because of my sexuality.” She was sure her supervisors were aware of the rumors – which were particularly hurtful given the stigma many still attach to an AIDS diagnosis. “I’m scared of telling them what really I’m facing on an everyday basis at the workplace [because of] my sexuality,” she said.

F. *Sex Work*

Because of the pervasive workplace discrimination and prejudice, many interviewees reported that they were forced into sex work. Some transgender women and gay men described resorting to sex work after their family found out about their sexuality and forced them to leave home²⁷⁵ or after moving to the city and struggling to find a job.²⁷⁶ For younger people in particular, sex work was the only way to earn money when they could not find a job.²⁷⁷ Some interviewees described sex work as very common among transgender persons, as they could find no other employment after coming out.²⁷⁸

273. Interview with Prince, *supra* note 97.

274. Interview with Devon, *supra* note 107.

275. Interview with Rose, *supra* note 177.

276. Interview with Jordan, *supra* note 176.

277. Interview with Twinkle Kissoon, *supra* note 235.

278. Interview with Rose, *supra* note 177.

In an interview with the Ministry of Social Protection's Labour Department, officials said transgender people probably resort to sex work because they do not have the skills for the job they want and that "the reason they are not getting the job [is] not because they are transgender."²⁷⁹

Being forced into sex work places LGBT persons at a greater risk of contracting HIV and other sexually transmitted diseases. One former sex-worker explained, "They [my friends] would die because of HIV."²⁸⁰ Physical violence also translates to additional health risks for sex workers. Many of the transgender interviewees who engage in sex work talked about the violence they face while working, and showed scars from knifings and other attacks. Violence against transgender sex workers is discussed further in *Violence and Safety in Public Spaces, infra*.

G. Role of Government in Addressing Employment Discrimination

Representatives from the Ministry of Social Protection's Labour Department told the research team they were not aware of pervasive discrimination against LGBT individuals in the workplace. "If that exists and we're not doing anything, that would be so wrong," said Chief Labour Officer Charles Ogle.²⁸¹

The Department of Labour has a complaint procedure for reporting unfair and discriminatory labor-related issues. However, Ogle and Assistant to the Chief Labour Officer Karen Vansluytman, acknowledged that while workplace discrimination against LGBT people "has probably happened," the Department has "never received a complaint of that nature."²⁸² One explanation might be that the Department of Labour does not categorize the complaints as gender-related, or related to sexual orientation and gender identity discrimination.²⁸³ If the Department of Labour updated its complaint procedure to ensure that complaints brought on the basis of sexual orientation and gender identity discrimination are documented as such, it would improve data collection.

When asked how a person could bring a complaint, Department officials suggested individuals visit their office or "go to SASOD and . . .

279. Interview with Karen Vansluytman, Assistant to the Chief Labour Officer, Ministry of Soc. Prot., in Georgetown, Guy. (Feb. 19, 2018).

280. Interview with Ricky, *supra* note 216.

281. Interview with Charles Ogle, Chief Labour Officer, *supra* note 222.

282. Interview with Karen Vansluytman, *supra* note 274; Interview with Charles Ogle, Chief Labour Officer, *supra* note 222.

283. Interview with Miglon, *supra* note 228.

report to them what they experience. SASOD certainly would forward them to us here. . . . Or they can go to the Women and Gender Equality Commission.”²⁸⁴ Once a complaint is received at the Department, the officers conduct an investigation and may bring the parties together to mediate the dispute.²⁸⁵

During a national consultation between government agencies and civil society on developing a national gender policy in 2015, the Department heard from key stakeholders from the LGBT community in Guyana about the discrimination they face in employment. “When we looked at [their concerns], it’s not necessarily because of their sexual orientation that they are discriminated against,” said Vansluytman.²⁸⁶ Hon. Scott echoed this sentiment, “We have instances where on more than one occasion these people have fabricated instances of abuse.”²⁸⁷

Stakeholders also raised the issue of amending the Prevention of Discrimination Act during the national consultation to explicitly prohibit discrimination on the grounds of SOGIE; however, the Department did not consider it “a major issue.”²⁸⁸

The Department of Labour explained that the Guyanese Constitution “gives every citizen the right to work. . . . If you are Guyanese, regardless of your sexual orientation, the Constitution of the country gives you the right to work.”²⁸⁹ The Department did not, however, recognize that the Constitution and the Prevention of Discrimination Act are inadequate to fully protect LGBT individuals, both in their text and implementation. The Department of Labour said it holds weekly “synthetization sessions” with employers and employees to discuss the Prevention of Discrimination Act, in which they inform employers “that they are not allowed to discriminate against people based on their sex, sexual orientation, status, [or] family life.”²⁹⁰

Ogle affirmed that the Department of Labour is “open for everyone” and has a “zero-tolerance policy” that prohibits “discriminat[ion] against anyone regardless of your sexual orientation.”²⁹¹ Likewise, Hon. Keith Scott reported, “It [may] come as a surprise that in many

284. Interview with Karen Vansluytman, *supra* note 274.

285. Interview with Charles Ogle, Chief Labour Officer, *supra* note 222.

286. Interview with Karen Vansluytman, *supra* note 274.

287. Interview with Hon. Keith Scott, M.P., Minister within the Ministry of Soc. Prot., *supra* note 100.

288. Interview with Karen Vansluytman, *supra* note 274.

289. *Id.*

290. *Id.*

291. Interview with Charles Ogle, Chief Labour of Officer, *supra* note 222.

government offices, people who express these tendencies are employed. They have not been fired. They have not been chased out.”²⁹²

H. Additional Findings

1. Impact of Discrimination in Transportation on Employment

Accessing transportation is a pressing issue for LGBT people in Guyana that affects their ability to work.²⁹³ For example, Sade, a transgender woman, admitted that it was hard for her to obtain a job. Even when she obtained one, traveling to her workplace was an extreme challenge because she was often kicked off the bus because of her gender identity.²⁹⁴ Several interviewees discussed how the police ignored claims that bus drivers were kicking LGBT people off buses.²⁹⁵ This topic is addressed further in the chapter on *Violence and Safety in Public Spaces infra*.

2. Discrimination Against Human Rights Defenders

Several human rights defenders told the research team about discrimination they have faced in their personal lives, merely because they work with organizations advocating for the rights and equality of LGBT persons, regardless of their own sexual orientation or gender identity. For example, Miglon, a heterosexual female social worker with Guyana Trans United, said, “I have had four friends that stopped talking to me because of where I work.”²⁹⁶ Even her husband would disapprove, saying, “You are working with anti-man. You are just like them.”²⁹⁷ His attitude toward her work was part of her decision to seek a divorce.

292. Interview with Hon. Keith Scott, M.P., Minister within the Ministry of Soc. Prot., *supra* note 100.

293. Telephone interview with Joel Simpson, 35, Managing Dir., SASOD (Oct. 19, 2017); Telephone interview with Twinkle Kissoon, *supra* note 213.

294. Envisioning Global LGBT Human Rights & Soc’y Against Sexual Orientation Discrimination [SASOD], *Sade’s Story*, VIMEO (Sept. 25, 2013), <https://vimeo.com/envisioning/sasodsade>; *see also* SOC’Y AGAINST SEXUAL ORIENTATION DISCRIMINATION [SASOD], SUFFERING IN SILENCE: VIOLENCE AGAINST LBT WOMEN IN GUYANA 4 (2016), <https://www.oas.org/es/mesecvi/docs/Round3-ShadowReport-Guyana.pdf> [hereinafter “SUFFERING IN SILENCE”].

295. Telephone interview with Twinkle Kissoon, *supra* note 213.

296. Interview with Miglon, *supra* note 228.

297. *Id.*

IV. CONCLUSION AND RECOMMENDATIONS

Public attitudes combined with a permissive legal framework have allowed employment discrimination to impact LGBT persons' ability to find and maintain work in Guyana. The research team's findings and reports from CSOs demonstrate that, "LGBT persons who choose to disclose their identities, or whose identities are involuntarily disclosed at work by others, risk facing harassment, bullying, victimization, and termination from their employment."²⁹⁸ The absence of a specific anti-discrimination provision including sexual orientation and gender identity within the Prevention of Discrimination Act allows employers to refuse to hire someone who identifies as lesbian, gay, bisexual, or transgender; to harass or discriminate against them during recruitment and/or employment; or to terminate their employment on these grounds with complete impunity.²⁹⁹ Under its international human rights obligations, Guyana must take action to ensure the right to work for LGBT persons.

Based on these findings, recommended actions for the Guyanese Government, U.N., OAS, U.S. Government, and private sector employers are included in *Recommendations infra*.

298. CЕСSR STAKEHOLDER REPORT, *supra* note 190, § 5.10.

299. *Id.* § 5.6.

FINDINGS: HEALTH

“Certain times when you go to the hospital, . . . when you reach certain doctors, you get good treatment. But when you reach the local doctors, the Guyanese people at the hospital, those are the ones that are discriminating. We here in Guyana we have a lot of [foreign] doctors. When you go to them, they treat you real nice but when you end up with Guyanese, those are the ones who are discriminating, . . . I just want the government of Guyana to know that we are all citizens of this beautiful country and we must get equal rights . . . because their job is to give the best medical [service to] people of this country.”

–Aparna, 34, transgender woman, in *New Amsterdam, Guyana*³⁰⁰

I. INTRODUCTION

Most of the LGBT interviewees have encountered significant barriers in accessing public healthcare – even though public healthcare is free in Guyana.³⁰¹ A significant proportion of interviewees were strongly deterred from attempting to seek public healthcare because of the tremendous amount of stigma and discrimination experienced in these health facilities. LGBT persons reported discrimination on the basis of their actual or perceived sexual orientation, gender identity or expression, and/or HIV status. The interviews also revealed breaches of confidentiality in some public health facilities regarding HIV status.

II. LEGAL FRAMEWORK

A. *Guyana’s Domestic Laws*

Under Guyanese law, health professionals must abide by the principle of nondiscrimination, embedded in the Medical Practitioners (Code of Conduct and Standards of Practice) Regulations.³⁰² This principle applies both to the delivery of care to patients³⁰³ and to

300. Interview with Aparna, *supra* note 150.

301. See HEDWIG GOEDE, INSTITUTO SURAMERICANO DE GOBIERNO EN SALUD [ISAGS], MAPPING AND ANALYSIS OF PRIMARY HEALTH CARE MODELS IN SOUTH AMERICAN COUNTRIES: MAPPING OF PHC IN GUYANA 10, 13 (June 2014), <http://www.isags-unasul.org/uploads/biblioteca/7/bb%5B168%5Dling%5B3%5Danx%5B549%5D.pdf>.

302. Medical Practitioners (Code of Conduct and Standards of Practice) Regulations 2008, Reg. 22/2008, reg. 7(4)(h). These regulations were made by the Minister of Health pursuant to the Medical Practitioners Act. Medical Practitioners Act 1991, c. 32:02, § 23.

303. Medical Practitioners (Code of Conduct and Standards of Practice) Regulations, reg. 7(4)(h) (providing that medical practitioners have a “responsibility to render medical service to any person regardless of race, colour, religious, sexual orientation, and age, place of birth or political beliefs or perceived socioeconomic status.”).

relationships between co-workers,³⁰⁴ and is further reiterated in the Joint Code of Ethics for Health Professionals (Code of Ethics).³⁰⁵ The Health Facilities Licensing Regulations impose an obligation on health-care facilities to ensure all patients are treated equally, regardless of age, place of birth, race, creed, nationality, gender, or *sexual orientation*,³⁰⁶ and to provide patients with respectful care, with due regard to their personal dignity.³⁰⁷ These Regulations are applicable to blood banks, health centers, hospitals, and nursing homes. While the Code of Ethics underscores the promotion of health and well-being for “everyone,”³⁰⁸ it does not name sexual orientation, gender identity, or gender expression as protected grounds. The Health Facilities Licensing Regulations and the Medical Practitioners Regulations do not include gender identity or expression as protected grounds.

Beyond barriers to accessing healthcare, a significant number of LGBT interviewees experienced verbal abuse from medical practitioners, despite the practitioners’ obligation to “[treat] patients politely and with respect to their dignity and rights as individuals.”³⁰⁹ Some interviewees also encountered breaches of confidentiality, in violation of the Medical Practitioners Regulations,³¹⁰ the Code of Ethics,³¹¹ and the Health Facilities Licensing Regulations.³¹² Under Guyanese law,

304. *Id.* reg. 25(13) (“A medical practitioner shall not discriminate against colleagues because of personal views about their lifestyle, culture, beliefs, race, colour, sex, sexual preferences or age, and should not make unnecessary or unsubstantiated comments about them.”).

305. Joint Code of Ethics for Health Professionals 2008, art. 7(c), *in* Medical Practitioners (Code of Conduct and Standards of Practice) Regulations 2008, Reg. 22/2008, Annexure III (providing that medical practitioners must “observe the principle of respecting the dignity, rights and choices of . . . patients” by delivering care “without discrimination on the ground of sex, age, race, ethnic origin, culture, spiritual or religious beliefs, lifestyle or any other irrelevant considerations.”).

306. Health Facilities Licensing Regulations 2008, reg. 13. These regulations were made by the Minister of Health pursuant to the Health Facilities Licensing Act. Health Facilities Licensing Act 2007, c. 33:03, § 29. (emphasis added).

307. *Id.* reg. 16(1).

308. Joint Code of Ethics for Health Professionals, art. 3(b).

309. *Id.* art. 7(b).

310. Medical Practitioners (Code of Conduct and Standards of Practice) Regulations 2008, Reg. 22/2008, reg. 10(1) (“Unless otherwise required by law or by the need to protect the welfare of the individual or the public interest, a medical practitioner shall not divulge confidential information in respect of a patient.”).

311. Joint Code of Ethics for Health Professionals, art. 8(a) (“Every health professional shall observe the principle of protecting the confidentiality of information received by him by . . . treating all information given by the patients as confidential and using them only for the purpose for which it was given.”).

312. Health Facilities Licensing Regulations, reg. 16(2).

persons may lodge a complaint with the Medical Council if a practitioner breaches his/her obligations.³¹³ However, almost none of the LGBT individuals interviewed were aware of this process.

The lack of access to public healthcare for LGBT persons in Guyana is particularly worrying as numerous reports have found that countries that retain laws punishing same-sex intimacy have much higher rates of HIV among key populations – such as MSM and transgender women.³¹⁴ While Guyana’s overall prevalence rate remains low, HIV prevalence in the country is already notably higher among transgender persons and MSM,³¹⁵ and impeding or deterring HIV-positive LGBT individuals from seeking treatment in public hospitals is a serious national health concern.

In 2014, CSOs, including SASOD, recommended that the Government of Guyana ensure the adoption of policies by all healthcare facilities to “unequivocally prohibit discrimination in accessing healthcare.”³¹⁶ Addressing these recommendations, the Government denied any allegations of discrimination and stated that, “every Guyanese is entitled to their right to . . . medical care . . . as provided for in the constitution, laws and policies of Guyana.”³¹⁷

As they stand today, Guyana’s current laws regarding healthcare fail to meet international human rights standards, as they do not ensure LGBT persons’ right to access healthcare by addressing discrimination in public healthcare facilities.

B. *Obligations Under International Law*

Everyone has the right to the highest attainable standard of both physical and mental health, as delineated in the ICESCR³¹⁸ and the

313. Medical Practitioners (Code of Conduct and Standards of Practice) Regulations, regs. 48–51.

314. GLOBAL COMM’N ON HIV & THE LAW, RISKS, RIGHTS & HEALTH 11, 44 (2012), <https://hivlawcommission.org/wp-content/uploads/2017/06/FinalReport-RisksRightsHealth-EN.pdf>.

315. See UNAIDS, *Guyana: Data*, <http://www.unaids.org/en/regionscountries/countries/guyana> (last visited Mar. 29, 2018) (1.6% prevalence rate among adults aged 15-49); NATIONAL AIDS PROGRAMME SECRETARIAT & MEASURE EVALUATION, GUYANA BIOBEHAVIORAL SURVEILLANCE SURVEY (BBSS) 89 (2014) (7.8% prevalence rate among transgender adults and 4.6% prevalence rate among adult men who have sex with men).

316. Human Rights Council, Working Group on the Universal Periodic Review, *Summary Prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21: Guyana*, ¶ 39, U.N. Doc. A/HRC/WG.6/21/GUY/3 (Oct. 24, 2014) [hereinafter *UPR 2015 Stakeholder Summary Prepared by the OHCHR*].

317. *UPR 2015 National Report Submitted by Guyana*, *supra* note 52, ¶ 53.

318. ICESCR, *supra* note 43, art. 12(1).

American Declaration.³¹⁹ This right encompasses the underlying determinants of health, such as access to safe and potable water and adequate sanitation, adequate supply of safe food, nutrition, and housing, healthy occupational and environmental conditions, and access to health-related education and information – including on sexual and reproductive health.³²⁰

Under ICESCR Article 12.2 (d), states must create “conditions which would assure to all medical service and medical attention in the event of sickness, both physical and mental,” which includes the provision of appropriate mental health treatment and care.³²¹ A State’s failure to act (i.e. an act of omission)³²² also constitutes a violation of its core obligations under the ICESCR, such as the principle of nondiscrimination.

In particular, under the obligation to prevent, treat, and control disease, states must establish prevention and education programs for behavior-related health concerns such as sexually transmitted infections, in particular HIV/AIDS.³²³ Moreover, essential medicines should also be available, including “medicines for the prevention and treatment of sexually transmitted infections and HIV.”³²⁴ This can be achieved by states individually or through international assistance and cooperation.³²⁵

The right to health, which includes sexual and reproductive health,³²⁶ must be read in conjunction with the ICESCR’s nondiscrimination provisions. Meaning access to healthcare and the underlying determinants of health, as well as to means and entitlements for their procurement, must be ensured without discrimination on the basis of sexual orientation, gender identity or expression, or health status (including HIV/AIDS status).³²⁷ Moreover, “all individuals and groups, including adolescents and youth, have the right to evidence-based information on all aspects of sexual and reproductive health, including . . . contraceptives . . . , sexually transmitted infections,

319. American Declaration, *supra* note 58, art. XI.

320. Comm. on Econ., Soc., & Cultural Rights, *General Comment No. 14*, ¶ 11, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter *CESCR General Comment No. 14*].

321. *Id.* ¶ 17.

322. *Id.* ¶ 49.

323. *Id.* ¶ 16 (citing ICESCR, *supra* note 43, art. 12.2(c)).

324. Comm. on Econ., Soc., & Cultural Rights, *General Comment No. 22*, ¶ 13, U.N. Doc. E/C.12/GC/22 (May 2, 2016) [hereinafter *CESCR General Comment No. 22*].

325. ICESCR, *supra* note 43, art. 2(1).

326. *Yogyakarta Principles*, *supra* note 69, princ. 17.

327. *CESCR General Comment No. 14*, *supra* note 315, ¶ 18181812.

[and] HIV prevention.”³²⁸ Nondiscrimination, in the context of the right to sexual and reproductive health, also encompasses the “right of . . . LGBT persons to be fully respected for their sexual orientation [and] gender identity,”³²⁹ without “fear of persecution, denial of liberty, or social interference.”³³⁰ As discrimination based on prejudice fuels violence, and in particular the violation of the right to sexual and reproductive health, states must also “combat homophobia and transphobia.”³³¹ This includes eliminating laws, discussed above,³³² that criminalize an LGBT person’s sexual orientation, gender identity, or gender expression.³³³

The Guyanese Government is not in compliance with its obligation to respect, protect, and fulfill the right to health for LGBT persons under the ICESCR.³³⁴ The interviews conducted in Guyana uncovered systematic violations of the principle of nondiscrimination, particularly regarding access to public healthcare. This discrimination has driven a significant number of LGBT persons to stop or rarely seek public healthcare, or seek private – but costly – care instead.

III. FINDINGS

A. *Discrimination on the Basis of Sexual Orientation, Gender Identity, and Gender Expression in Accessing Healthcare*

1. Discrimination at Every Stage of Healthcare

Hon. Dr. Karen Cummings, M.P., Minister within the Ministry of Public Health, emphasized that the Ministry has “policies . . . not to discriminate against anyone, [and] zero tolerance for stigma and discrimination.”³³⁵ She used the Georgetown Public Hospital as an example: “They should have zero tolerance because [at the] Ministry of Health,

328. *CESCR General Comment No. 22*, *supra* note 319, ¶ 18.

329. *Id.* ¶ 23.

330. Comm’n on Human Rights, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, ¶ 54, U.N. Doc. E/CN.4/2004/49 (Feb. 16, 2004).

331. *CESCR General Comment No. 22*, *supra* note 318, ¶ 23.

332. See discussion *supra* Section III in *Nondiscrimination and the Right to Dignity in International Law*.

333. Guyana recently voluntarily committed to consult on 28 of the 55 UPR recommendations considered controversial, 7 of which relate to decriminalizing consensual same-sex sexual relations between adults. See *UPR 2015 National Report Submitted by Guyana*, *supra* note 311, ¶ 3.

334. See *UPR 2015 Stakeholder Summary Prepared by the OHCHR*, *supra* note 311.

335. Interview with Hon. Dr. Karen Cummings, M.P., Minister within the Ministry of Public Health, Ministry of Health, in Georgetown, Guy. (Feb. 19, 2018).

that's not a part of our policy."³³⁶ Hon. Dr. Cummings affirmed "as a country, as a whole, we don't discriminate. . . . We [are] all one family here."³³⁷ At the same time, she also acknowledged changing attitudes on non-normative SOGIE, saying: "We have changed because initially . . . we were a British system and so . . . those things were taboo. Now it's evolving, and times have changed so we're changing with the times. And behavioral change is a process."³³⁸ She also alluded that the Ministry of Public Health was trying to establish "friendly spaces" for LGBT persons seeking healthcare.³³⁹ When asked what she would want the LGBT population of Guyana to know, she said: "We have universal access to care. We do not discriminate and we would want you to access our services free of costs. And if there is any person who has been snobbish and you haven't received that kind of quality of care, just report it."³⁴⁰ Hon. Dr. Cummings emphasized: "Anybody who has [discriminated] . . . should be reported too and we will address that." She mentioned a complaint mechanism to report health practitioners in the public sector: "You can do it in all of our departments . . . if you have any problem, you can go to lodge a complaint."³⁴¹

Regardless of the proffered zero-tolerance policy that Hon. Dr. Cummings described, LGBT interviewees consistently reported facing discrimination when seeking healthcare or when undergoing treatment. Some were outwardly refused access to the public hospital facilities in violation of the practitioners' obligation to treat everyone.³⁴² Aparna, a transgender woman, recalled going to the New Amsterdam Public Hospital with the flu, and the doctors telling her they could not take care of her and had no drugs to give her. "Just like that. They did not see me or anything . . . and I had to go home. And they discriminated. They did not give me the service. And it is a service for the general public because it is free. But they did not give it to me."³⁴³

LGBT interviewees also shared examples of medical practitioners treating them disrespectfully, in violation of their obligation to "treat patients politely and with respect to their dignity."³⁴⁴ Recalling negative

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*

340. *Id.*

341. *Id.*

342. Joint Code of Ethics for Health Professionals 2008, art. 3(b), *in* Medical Practitioners (Code of Conduct and Standards of Practice) Regulations 2008, Reg. 22/2008, Annexure III.

343. Interview with Aparna, *supra* note 150.

344. Joint Code of Ethics for Health Professionals, art. 7(b).

experiences at the Georgetown Public Hospital, a transgender woman said, “They don’t treat you with respect, and they don’t treat you nice.”³⁴⁵ Adam, a gay man, also suffered from discrimination at the Georgetown Public Hospital when seeking treatment for a serious head injury. He was with a group of gay friends, and waited for help for several hours while patients who arrived later in time were cared for, despite the nature of his medical emergency. “My face was drenched with blood and I was in pain and I wasn’t getting any help and they told me that I needed to wait another thirty minutes. I said ‘Nobody is assisting me, is him coughing more of an emergency than me bleeding?’”³⁴⁶ Many interviewees echoed Adam’s experience of being ignored at the hospital, long waiting times, and health practitioners generally not caring because “there’s a lot of bias.”³⁴⁷ For instance, Love, a gay man, had to bring his partner to the hospital and was ignored while persons arriving after them received care first. Exasperated by not receiving treatment, he reluctantly “got verbal, and threw down some chairs.” Although the practitioners ended up attending to his partner, Love was upset he had to go to such extreme levels to get help. “It reflects negatively on you, it shows that gay persons can only be hostile. . . . [I] don’t want to be hostile just to get what [I] want all the time; [then it] starts damaging your credibility.”³⁴⁸

More regular trainings for health professionals on LGBT persons and their rights, and the medical profession’s obligations to them, are needed. One individual working for an organization conducting trainings in public hospitals on LGBT rights recalled:

One time, we had this session in a hospital about stigma and discrimination. We invited LGBT persons and HIV-positive persons to attend, without letting the hospital staff know who these persons were. And [before the hospital staff found out] you would hear the negative comments from the health workers. [They would say] negative, nasty things. One said there should be an island created so that they put all those people [there] – the anti-mans, the lesbians. They didn’t say “transgender,” because they put everybody in one category. Everybody is anti-man [to] them. “Put them on an island and let them live

345. Interview with Bobbie, *supra* note 224.

346. Interview with Adam, *supra* note 18.

347. Interview with Colleen McEwan, 50, Executive Dir., GuyBow, in Georgetown, Guy. (Feb. 15, 2018).

348. Interview with Love, *supra* note 98.

[there].” At the end, the [LGBT] persons [were] able to identify themselves and share their opinion and thoughts, and it was a different mood . . . [hospital staff began apologizing,] “We didn’t know,” “We are sorry.”³⁴⁹

While Hon. Dr. Cummings alluded to some training delivered as part of the curriculum in medical schools, it seemed to be mostly “on HIV and so on.”³⁵⁰ The Minister did mention that “stigma and discrimination, [was] all part of the curriculum. It’s here throughout.”³⁵¹ However, she did not provide further details on the content of the training, or whether it concerned stigma and discrimination against LGBT persons specifically. This lack of training and education contributes to an environment of discrimination, which limits LGBT persons’ access to quality healthcare.

2. Discrimination Against Transgender Persons

Transgender persons particularly struggle with accessing public healthcare, which is exceptionally alarming considering the high HIV-prevalence rate among transgender women, a significant portion of whom engage in sex work to survive.³⁵² For this portion of the population, inability to access healthcare is life threatening if HIV treatment is required.

Because of the strong bias against transgender persons, interviewees reported that practitioners in public hospitals often disrespect them. For example, Prince, a gay man, explained that the situation has improved for gay, lesbian, and bisexual persons within the past decade. However, discrimination against transgender persons is still very much present:

It is difficult . . . for Guyanese in general, to process a male in a dress coming to access services. . . . In public [healthcare facilities] . . . it is terrible for transgender women. They leave you

349. Interview with Grace, *supra* note 108.

350. Interview with Hon. Dr. Karen Cummings, M.P., Minister within the Ministry of Public Health, *supra* note 330.

351. *Id.*

352. The HIV prevalence rate for transgender persons is estimated to be 8.4%. The HIV prevalence rate for sex workers is estimated to be 6.1%. UNAIDS, *Guyana: Overview* (citing 2016 estimates), <http://www.unaids.org/en/regionscountries/countries/guyana> (last visited Mar. 29, 2018).

there. They don't want to talk to you. They don't want to take you.³⁵³

Twinkle, a transgender woman, explained she has had issues with male practitioners especially. "From them you get that 'don't come around me' from their body language. . . . But then if they really have to look [at] you, they will look [at] you, but . . . you will feel the prejudice in them."³⁵⁴ She said that such prejudice is usually not overt derogatory language or physical violence, as the health practitioners might otherwise be subject to disciplinary action.

However, several interviewees did report instances of verbal discrimination in public hospitals. Arun visited a public hospital in female attire and was asked about his sexual orientation.³⁵⁵ When answering he was a gay man, the health practitioner "[told me that] I don't have to be so, and then he left, and then I started to think, what did he actually mean? Am I here for you to tell me who am I? . . . You are here to give me healthcare service."³⁵⁶ Verbal abuse towards transgender persons can also take the form of calling them by the wrong pronouns and refusing to acknowledge their gender identity. For example, even after requesting that nurses and doctors refer to her as "she," Twinkle was repeatedly called "he" and told it was "because of [her] birth certificate."³⁵⁷

Some interviewees also experienced physical mistreatment from doctors in public hospitals. After waiting for two hours in the emergency room, Adam, who was not in female attire but was accompanied by transgender friends, finally managed to have a doctor examine his motorcycle accident wounds. "He didn't stitch my knee properly. I told him he didn't inject me with enough [anesthetic] and he said, 'shut your mouth, shut your mouth.'"³⁵⁸

Because of the many barriers transgender persons encounter when seeking healthcare, CSO employees will sometimes accompany them on visits. GTU, one of the organizations that provides this service, has several "case navigators" who accompany clients to prevent discrimination and ensure they receive care.³⁵⁹ Another organization, Comforting Hearts, supports closeted LGBT persons facing discrimination by

353. Interview with Prince, *supra* note 97.

354. Interview with Twinkle Kissoon, *supra* note 235.

355. Interview with Arun, *supra* note 158.

356. *Id.*

357. Interview with Twinkle Kissoon, *supra* note 235.

358. Interview with Adam, *supra* note 18.

359. Interview with Miglon, *supra* note 228.

“quietly send[ing] one or two representatives – a social worker and an advocate – for [an] issue to be hashed out behind closed doors. And that mainly has to do with the sensitivity of the issue.”³⁶⁰

The magnitude and repetitiveness of the discrimination they encounter has forced some LGBT persons to seek private rather than public healthcare. One transgender woman said she stopped going to the Georgetown Public Hospital because of discrimination.³⁶¹ Jamie, a lesbian, said doctors at public healthcare facilities “are very arrogant, very rude, and I don’t need that. I feel as though because I pay my money [at private facilities] they will show me more respect and look beyond the way I dress.”³⁶² Some interviewees have nonetheless encountered discrimination in the private sector, though to a lesser degree “because it would affect their business.”³⁶³ However, going to private facilities is not an option for all LGBT persons; “some people can’t afford to go private.”³⁶⁴

3. Discrimination When Giving Blood

Several LGBT individuals reported instances of discrimination specifically when donating blood in public healthcare facilities and alleged there existed an official policy prohibiting donations from individuals who engage in same-sex intimacy. Hon. Dr. Cummings denied any allegations of such discrimination in that setting. She said sometimes persons come to donate blood and directly say “I am lesbian/gay/bisexual/transgender,” but “generally if you walk in we won’t know [you are LGBT] unless you tell us.”³⁶⁵

360. Interview with Anonymous, 34, employee at Comforting Hearts, in New Amsterdam, Guy. (Feb. 17, 2018).

361. Interview with Bobbie, *supra* note 224.

362. Interview with Jamie, *supra* note 186.

363. Interview with Prince, *supra* note 97.

364. Interview with Aparna, *supra* note 150.

365. Interview with Hon. Dr. Karen Cummings, M.P., Minister within the Ministry of Public Health, *supra* note 330. Regarding sexual activity, the blood donation process outlined on the Ministry of Public Health’s website states that potential donors will be “interviewed to further determine if [their] health status and sexual activities permit [them] to be a donor.” *The Blood Donation Process*, MINISTRY OF PUBLIC HEALTH, <http://www.health.gov.gy/index.php/the-blood-donation-process> (last visited May 7, 2018). Representatives from SASOD believe this step of the donation process still includes an official policy of asking potential donors “if they engage in same-sex relations” and prohibits donations from individuals solely based on their sexual orientation. See Ravin Singh, *Navigating Discrimination: LGBT Community Urges Stronger State Support*, GUY. CHRON. (Feb. 26, 2017), <http://www.guyanachronicle.com/2017/02/26/navigating-discrimination-lgbt-community-urges-stronger-state-support>; E-mail from Joel Simpson, Managing Dir., SASOD, to authors (May 5, 2018, 11:03 PM).

However, several testimonies from LGBT interviewees contradict this statement. For instance, Jan, a lesbian woman, shared her experience donating blood: A nurse asked her if she was straight, and when Jan came out as a lesbian, “she then turned and told me ‘I am sorry. Our policy prevents us from accepting blood from persons who live ‘risky’ lifestyles.’”³⁶⁶ Star, a bisexual woman, argued that the hospital screens blood samples before using them, “So there’s really no need to have these discriminatory questions and practices just for you to give blood . . . You should not [refuse] to take someone’s blood because they are LGBT.”³⁶⁷

Such practices go against the principle of nondiscrimination embedded in all international human rights instruments that Guyana has ratified and contravene World Health Organization standards which prohibit discrimination “of any kind” in the selection of blood donors.³⁶⁸

B. *Discrimination on the Basis of HIV Status*³⁶⁹

As mentioned earlier,³⁷⁰ HIV prevalence rates among MSM and transgender persons are particularly high.³⁷¹ Impeding or deterring LGBT persons who are HIV-positive from seeking treatment in public hospitals is a serious national health concern. Confidentiality breaches by medical personnel regarding a patient’s HIV status is one of the leading factors causing LGBT persons to refuse seeking treatment. On the subject of confidentiality, Hon. Dr. Cummings said, “We [the Ministry of Health] are very strict on confidential information.”³⁷² She mentioned the existence of a public relations department in each hospital, where an individual can file a complaint, and that there had recently been an incident of breach of confidentiality in Region 5.

366. Interview with Jan, 20, lesbian woman, in Georgetown, Guy. (Feb. 14, 2018). The World Health Organization does not consider females having sex with females a high-risk sexual behavior that may be a criterion for blood donation deferral. *Blood Donor Selection: Guidelines on Assessing Donor Suitability for Blood Donation*, WORLD HEALTH ORG. [WHO], 87–88 (2012), http://www.who.int/bloodsafety/publications/guide_selection_assessing_suitability.pdf.

367. Interview with Star, 19, bisexual woman, in Georgetown, Guy. (Feb. 18, 2018).

368. WORLD HEALTH ORG. [WHO], *supra* note 361 at 30, 87–88.

369. This section is based on interviews with LGBT persons who are also HIV-positive. However, the findings may also apply to HIV-positive persons more generally, as the discrimination reported was also based on the person’s HIV status.

370. *See supra* Section II(a) in *Health*.

371. GLOBAL COMM’N ON HIV & THE LAW, *supra* note 309, at 44.

372. Interview with Hon. Dr. Karen Cummings, M.P., Minister within the Ministry of Public Health, *supra* note 330.

While not related to HIV status or LGBT persons, she affirmed the health practitioner was sanctioned for the breach.³⁷³

However, LGBT interviewees shared that breaches of confidentiality strongly deter HIV-positive persons from going to certain health facilities, especially in smaller cities and villages that are close-knit. Jamie, a lesbian, said people get nervous or scared to seek medical treatment for HIV because “people talk – ‘I saw this person at the clinic.’ . . . A few nurses would share with family members and friends [about someone’s HIV status]. People [are] scared to be tested because their status [will] be put out there by nurses and doctors you [are] supposed to trust.”³⁷⁴ Rose, a transgender woman, said she has worked with persons encountering such issues: “These are some of the barriers that would cause them not to access the services needed.”³⁷⁵

Discrimination, and lack of acceptance, is another deterrent to accessing care for LGBT persons who are HIV-positive. Love, a gay man, shared that one health practitioner kept telling him that he was “sick” when he went to get his HIV medication. Love found this irritating and asked the nurse to stop numerous times, but she went on. He ended up changing health facilities because of this incident. “The thing is when you keep emphasizing that it is the end of the world for me, you know you are actually making me feel as though this is the end of the world.”³⁷⁶ Love also mentioned he often picks up one of his friend’s HIV medication because incidents like these have made him too scared to go to health facilities. “If there wasn’t discrimination, and if there was freedom to access the [medication, then everyone would have access to healthcare] . . . I mean [healthcare, HIV medication] is free, but the discrimination keeps many persons from going to the hospital.”³⁷⁷

The majority of LGBT interviewees mentioned another discriminatory practice: until recently, public hospitals had a bench or area specifically dedicated to HIV-positive persons. Adam, a gay man who is not HIV-positive but has accompanied several of his HIV-positive friends on doctor visits, explained:

How they used to do it, so, they would bring out your chart and . . . when they come into the room they have to call your name

373. *Id.*

374. Interview with Jamie, *supra* note 186.

375. Interview with Rose, *supra* note 177

376. Interview with Love, *supra* note 98.

377. *Id.*

so if you are the HIV-person, you [try to] hide with everybody else [who is not HIV-positive] inside this hallway [instead of in the designated HIV-area]. . . . So they [doctors] come out, “[Adam].” “Yes?” “What are you doing there? That’s not your bench. You have to sit there [indicating the bench for HIV-positive patients].” Now whenever you highlight that, then you got all the people in the hospital wanting to know why the persons are on the bench there alone. Somebody must know somebody who must know somebody that is gonna tell, and then, when they find out that this is the “sick” bench, they are going to start spreading that and everybody is going to know.³⁷⁸

Grace, a transgender woman also experienced similar incidents. She was at the hospital and was standing near the HIV area when a security guard asked her, “Why are you standing here? . . . Go to the AIDS bench.”³⁷⁹ In this instance, however, Grace managed to obtain justice. A nurse helped her refer the security guard, who was eventually transferred.

While the practice of keeping separate areas for HIV patients has been discontinued at the Georgetown Public Hospital, some interviewees mentioned this practice still occurs in other places. “We have some good people, not everybody is discriminative. There are people who want to make a difference, but they are very small. Guyana has a long way to go. And I hope that the government [e]specially can take the lead.”³⁸⁰

C. Impact of USAID Funding Cuts

Recent, dramatic cuts in USAID funding in Guyana, specifically for HIV/AIDS, have had a detrimental impact on the capacity of CSOs to continue efforts to prevent and treat the disease.³⁸¹ Ricky, a gay man and beneficiary of Family Awareness Consciousness Together (FACT), a Guyanese organization benefitting from USAID funding, recalled that beneficiaries could pick up hygiene products, monthly maintenance, and food packages when FACT was receiving funding. FACT

378. Interview with Adam, *supra* note 18.

379. Interview with Grace, *supra* note 108.

380. *Id.*

381. USAID funding for HIV/AIDS in Guyana has been dramatically reduced in recent years, from \$10 million in 2009 to just \$1.1 million in 2016. USAID: FOREIGN AID EXPLORER, *U.S. Foreign Aid by Country: Guyana*, https://explorer.usaid.gov/cd/GUY?fiscal_year=2016&implementing_agency_id=1&measure=Disbursements (last visited Mar. 29, 2018).

also provided training, education, flyers, and condoms, while their activities were mostly focused on HIV education.³⁸² Organizations like Comforting Hearts were also engaged in “general population prevention,”³⁸³ before being forced to refocus education efforts to “key affected populations . . . as funding became more limited.”³⁸⁴ An employee at Comforting Hearts said people are now more informed about HIV/AIDS, thanks to education programs made possible by USAID funding. For example, the National AIDS Program Secretariat (NAPS) conducted a nation-wide campaign to educate Guyanese people about access to HIV treatment in a timely manner. “[As a result,] people [today] are more informed; they’re more aware. Persons . . . will now try to get tested. . . . Persons are more inclined to seek treatment if they are positive.”³⁸⁵ Because of this campaign, funded by USAID, the Global Fund, and other donors, “Guyanese . . . are more informed.”³⁸⁶

The recent USAID funding cut is very problematic according to Ricky, a former beneficiary of FACT. “The younger people now are not getting counseling about wearing condoms and these kinds of things. . . . HIV cases are coming up. There hasn’t been anything [in New Amsterdam] for the past two or three years.”³⁸⁷ This cut has also impacted Comforting Hearts’ work; the organization is unable to offer the same quality or quantity of services it provided prior to the cuts.³⁸⁸ The USAID funding cut also impacted Comforting Hearts’ prevention work directed at LGBT persons: “We’re no longer able to go in [public] schools and offer prevention education. We used to be in bars and hotels doing testing and counseling – all of those things are no longer available because of the lack of financial resources.”³⁸⁹ The employee at Comforting Hearts went on to say,

You pull the funding, the same issues they may not crop up tomorrow, but 10, 20 years from now you’re going to find that HIV prevalence will be on the rise again. We’re at 1-point-something percent general prevalence. Pull the support and pull the funding and persons do not get the education they need, they do not get the support, they need to access ARV

382. Interview with Ricky, *supra* note 216.

383. Interview with Anonymous, *supra* note 355.

384. *Id.*

385. *Id.*

386. *Id.*

387. Interview with Ricky, *supra* note 216.

388. Interview with Anonymous, *supra* note 355.

389. *Id.*

[antiretroviral drugs]. Eventually . . . the prevalence rate is going to increase again.³⁹⁰

Twinkle Kissoon, an employee at GTU, spoke about the unpreparedness of the government in the face of such massive health-related funding cuts: “The Global Fund is leaving soon, and . . . once the Global Fund is gone, the government has to buy the medication . . . So we may be going back to a time when we will have AIDS-related deaths.”³⁹¹ She noted, “For a year now, the health center where I’ve been going – they don’t even have multi-vitamins!”³⁹² When asked about this, Hon. Dr. Cummings affirmed, “We take up the slack as we try to build capacity and fill in the void.”³⁹³

D. *Lack of Mental Healthcare*

The lack of access to mental healthcare is another worrying trend regarding LGBT persons’ health. Dr. Cummings recognized the urgent need to address this issue and said the Ministry is “working very passionately on this.”³⁹⁴ LGBT interviewees suffering from mental health issues highlighted the problems they face: “There’s not much of a mental healthcare industry in this country,”³⁹⁵ said Clement. In fact, several interviewees reported suffering from severe depression, some of whom even attempted to commit suicide several times.³⁹⁶ This is yet another area where Guyanese CSOs have filled the healthcare gap. Colleen McEwan, the Executive Director of GuyBow, explained that her organization has engaged the services of a psychologist and also offers peer counseling. However, “for those who need a higher level of support, we tend to refer them.”³⁹⁷ Colleen mentioned that some people were so depressed because of the stigma and discrimination they faced being openly gay that they emigrated from Guyana if they could afford it.³⁹⁸

390. *Id.*

391. Interview with Twinkle Kissoon, *supra* note 235.

392. *Id.*

393. Interview with Hon. Dr. Karen Cummings, M.P., Minister within the Ministry of Public Health, *supra* note 330.

394. *Id.*

395. Interview with Clement, *supra* note 169.

396. Interview with Devon, *supra* note 107.

397. Interview with Colleen McEwan, *supra* note 342.

398. *Id.*

E. *Additional Findings*

1. Hormone Therapy and Gender-Affirming Surgery

A few transgender persons mentioned hormone therapy and gender-affirming surgery in their interviews. Toni, a transgender woman, explained that most people who order hormone therapy have it sent to Suriname, or travel to Suriname to pick it up. She emphasized: “You cannot get this in a public hospital. You have to buy it from the pharmacy and carry it to public hospital to have a nurse inject it.”³⁹⁹ Twinkle shared that, as part of her work for GTU, she met Chief Medical Officer Dr. Shamdeo Persaud who told her that hormones are available, but only for menopausal women. She explained that, due to the lack of education and information on the subject, some transgender persons engage in risky self-medication behaviors: “If you want hormones here [in Guyana] you will have to buy them over the counter and self-medicate which is very dangerous. You don’t have a doctor’s supervision.” She said that she used to self-medicate before fully realizing the risks involved.⁴⁰⁰

Hon. Dr. Cummings was unaware of the current practices and standards related to hormone therapy and gender-affirming surgery services in public healthcare facilities in Guyana.⁴⁰¹

IV. CONCLUSION AND RECOMMENDATIONS

Discrimination on the basis of actual or perceived non-normative SOGIE or HIV status in public healthcare facilities directly violates LGBT persons’ right to health and constitutes a breach of the State’s obligations under the ICESCR. Discrimination can take the form of preventing LGBT persons from accessing healthcare facilities, verbal or physical abuse within these facilities, or breaches of confidentiality. Because of such discrimination, a significant proportion of LGBT persons either seek healthcare rarely or not at all. This is particularly alarming for transgender persons or MSM, among whom the HIV-prevalence rate is much higher than other segments of society, as it impedes their access to HIV treatment and poses a threat to their lives. The withdrawal of HIV-related foreign funding will also contribute to deteriorating care for these key populations.

Based on these findings, recommended actions for the Guyanese Government, U.N., OAS, and U.S. Government are included in *Recommendations infra*.

399. Interview with Toni, *supra* note 153.

400. Interview with Twinkle Kissoon, *supra* note 235.

401. Interview with Hon. Dr. Karen Cummings, M.P., Minister within the Ministry of Public Health, *supra* note 330.

FINDINGS: VIOLENCE AND SAFETY IN PUBLIC SPACES

“I lost one of my best friends. He was a transgender, and he was burned to death in a house. . . . They burned him to death. They tied him up and then burned the house. . . . [The police failed to properly investigate.] So I just said, ‘May your soul rest in peace.’ I collected a black plastic bag with the remains, and we gave him a burial. . . . How bad is it going to get before good comes?”
– Grace, 44, transgender woman, in New Amsterdam, Guyana⁴⁰²

I. INTRODUCTION

Threats, intimidation, harassment, and violence touch the lives of LGBT persons every day in Guyana. For LGBT persons, typically mundane decisions about where to go, how to get there, what to wear, who to meet, and what to say in any given situation often carry life-or-death significance.

This reality was underscored by incidents that occurred during the fact-finding mission that team members personally witnessed or spoke with interviewees about. At a J’Ouvert festival celebration in Georgetown on February 17, 2018,⁴⁰³ team members witnessed singer Orlando Octave shouting, “We don’t want no anti-man!” several times during his set to cheers from the large crowd.⁴⁰⁴ Across town, a 28-year-old transgender woman named Trishell was killed later that night after allegedly being hit by a car in nearby Vreed-en-Hoop; her death was reported as an accident, despite witnesses describing wounds to her head and face that are inconsistent with a vehicle accident.⁴⁰⁵ The next day, after a meeting with one of Trishell’s friends (who is also a transgender woman), team members saw two men eyeing and circling her as she waited to cross the street to her motorbike; the team quickly

402. Interview with Grace, *supra* note 108.

403. J’Ouvert is celebrated in many Caribbean countries to mark the opening of Carnival. The event was the Soak Street Festival held at the 704 Car Park in Georgetown on February 17, 2018.

404. Two days later, when asked for his thoughts on this incident, Minister Scott of the Ministry of Soc. Prot. said such statements are not necessarily discriminatory: “You have a choice. Look, you can say yes, you want anti-man, or you don’t want him. And what the deejay did was allow them to have a voice about what they feel inwardly. Because you’re at a fête, right? The majority of the people are of the position that they don’t want no anti-man. So they just give the expression to that. But that doesn’t necessarily mean that they will be discriminating against one.” Interview with Hon. Keith Scott, M.P., Minister within the Ministry of Soc. Prot., *supra* note 100.

405. Interview with Twinkle, transgender woman, in Georgetown, Guy. (Feb. 19, 2018); *see also* Kizzy Coleman, *Cross-dresser Killed in Vreed-en-Hoop Accident*, GUY. TIMES, Feb. 19, 2018, <https://guyanatimesgy.com/cross-dresser-killed-in-vreed-en-hoop-accident/>; *Cross-dresser Died from Injuries Consistent with Vehicular Accident – PME*, INEWS GUY., Feb. 19, 2018, <http://www.inewsguyana.com/cross-dresser-died-from-injuries-consistent-with-vehicular-accident-pme/>.

documented the men's cars and license plate numbers, and the woman was able to leave without being followed. These incidents all occurred within one 24-hour period – a glimpse of life in Guyana for LGBT individuals.

For many LGBT persons, there is no safety in public spaces, no moment in which they can simply be themselves without risking harassment, violence, or death. This chapter details the experiences of interviewees and how homophobia and transphobia in Guyana impact LGBT persons' fundamental rights to life, safety, and security.

II. LEGAL FRAMEWORK

A. *Domestic Legal Framework*

In Guyanese law, there is currently no legal prohibition against discrimination based on an individual's sexual orientation or gender identity.⁴⁰⁶ However, violence and harassment impede the full enjoyment by LGBT people of the rights to life, security, and freedom of expression.

1. Rights to Life and Security

The rights to "life, liberty, security of the person and the protection of the law" are recognized under the Guyanese Constitution and cannot be denied on the basis of "sex."⁴⁰⁷ The Guyanese Constitution also recognizes the "joint duty of the State, the society and every citizen to combat and prevent crime and other violations of the law."⁴⁰⁸ Such crimes are outlined in the country's Criminal Law (Offences) Act, which defines many of the felonies described below, including assault, causing bodily injury, murder, etc.⁴⁰⁹

2. Right to Freedom of Expression

Although the Guyanese Constitution provides for freedom of expression, regardless of "sex,"⁴¹⁰ people with non-normative SOGIE often feel they must conceal their sexual orientation and/or gender identity to avoid physical threats and discrimination.⁴¹¹ Until recently, the Summary Jurisdiction (Offences) Act barred any person from wearing

406. *See* GUY. CONST., art. 149.

407. GUY. CONST. art. 40(a).

408. *Id.* art. 32.

409. Criminal Law (Offences) Act 1893, c. 8:01 (Guy.).

410. GUY. CONST. arts. 40(1), 146.

411. SOC'Y AGAINST SEXUAL ORIENTATION DISCRIMINATION [SASOD] & SEXUAL RIGHTS INITIATIVE [SRI], ON DEVIL'S ISLAND, *supra* note 96, ¶ 18.

clothes or attire in public other than those traditionally associated with their perceived sex assigned at birth for an “improper purpose,” thereby restricting non-normative gender expression.⁴¹² In a 2013 challenge to this law, the Supreme Court of the Judicature of Guyana found that a person may wear the attire of the opposite gender “as a matter of preference or to give expression to . . . his or her sexual orientation;”⁴¹³ however, it upheld the clause barring such attire for an “improper purpose,” which it refused to define.⁴¹⁴ The unsettled status of the law leaves LGBT people at risk of being targeted because of their gender expression.

Under freedom of expression, the Constitution does not protect hate speech or other expressions “capable of exciting hostility or ill-will against any person or class of persons.”⁴¹⁵ Likewise, the Summary Jurisdiction (Offences) Act forbids the “use of any abusive, insulting, obscene, or profane language, or say[ing] or sing[ing] any insulting or offensive song or ballad, to the annoyance of any person in public place,” but it is unclear whether that law has been successfully used against those who verbally harass LGBT persons.⁴¹⁶

B. *International and Regional Legal Framework*

1. Right to Life

The right to life is one of the few undisputed, universal human rights, which every State has agreed to uphold. It is enshrined in the UDHR Article 3, and is also protected under the ICCPR Article 6(1), which reads: “[E]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”⁴¹⁷ The U.N. Human Rights Committee, in its General Comments, has confirmed the supreme character of this right, which is “basic to all human rights,”⁴¹⁸ and from which no derogation is permitted even during public emergencies.⁴¹⁹ As such, states should take measures not

412. Summary Jurisdiction (Offences) Act, c. 8:02, § 153(1) (xlvii) (1893) (Guy.).

413. *McEwan v. Att’y Gen. of Guyana*, 2010 No. 21-M Demerara, 26 (High Ct. of the Sup. Ct. of Judicature 2013), available at http://ufdcimages.uflib.ufl.edu/AA/00/01/69/00/00001/Guyana_CROSS_DRESSING_CASE_DECISION.pdf.

414. *Id.*

415. GUY. CONST. art. 146(3).

416. Summary Jurisdiction (Offences) Act § 141(b) (1893) (Guy.).

417. ICCPR, *supra note* 28, art. 6(1).

418. Human Rights Comm., *General Comment No. 14*, ¶ 1 (Jan. 1, 1985) [hereinafter *General Comment No. 14*].

419. *Id.*; Human Rights Comm., *General Comment No. 6*, ¶ 3 (Apr. 30, 1982) [hereinafter *General Comment No. 6*].

only to “prevent and punish deprivation of life by criminal acts [by private individuals],” but also to “prevent arbitrary killing by their own security forces.”⁴²⁰ The U.N. Human Rights Committee considers violations of the right to life by state actors as “matters of the utmost gravity.”⁴²¹

Twelve U.N. organizations recently joined in a statement calling on states to incorporate homophobia and transphobia as aggravating factors in hate crime laws.⁴²² These organizations recognized that the response to violations of the right to life of LGBT persons is inadequate and that murders are “underreported and often not properly investigated and prosecuted, leading to widespread impunity and lack of justice, remedies and support for victims.”⁴²³ The twelve U.N. organizations strongly reaffirmed the universality of human rights in their statement: “Cultural, religious and moral practices and beliefs and social attitudes cannot be invoked to justify human rights violations against any group, including LGBT persons.”⁴²⁴

2. Right to Security

The ICCPR guarantees the right to security of person.⁴²⁵ The right to security concerns freedom from injury to the body and the mind, regardless of whether the victim is detained or non-detained.⁴²⁶ This right applies to “everyone,” including “lesbian, gay, bisexual, and transgender persons.”⁴²⁷ Under the ICCPR, states have the obligation to take measures to prevent violations of the right to security of person, as well as respond to past violations.⁴²⁸ The Human Rights Committee underscores the enforcement of criminal laws as an appropriate response to “patterns of violence against categories of victims such as

420. *General Comment No. 6*, *supra* note 413, ¶ 3.

421. *Id.*

422. The 12 UN organizations include: ILO, OHCHR, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP, WHO, and UNAIDS. See UNAIDS ET AL., ENDING VIOLENCE AND DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE 1 (Sept. 2015), http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF.

423. *Id.*

424. *Id.*

425. ICCPR, *supra* note 28, art. 9.

426. Human Rights Comm., *General Comment No. 35*, ¶ 9, U.N. Doc. CCPR/C/GC/35 (Dec. 15, 2014). [hereinafter *General Comment No. 35*].

427. *Id.* ¶ 3.

428. *Id.* ¶ 9.

intimidation of human rights defenders and . . . violence against persons on the basis of their sexual orientation or gender identity.”⁴²⁹

The right to personal security is also protected under Guyana’s obligations within the Inter-American System, under Article 1 of the American Declaration.⁴³⁰ The right to personal security for women is further protected in the Convention of Belém do Pará,⁴³¹ a treaty Guyana has ratified and which applies to lesbian, bisexual, and transgender women.⁴³² It defines “violence against women” as including “physical, sexual and psychological violence” perpetrated by a either a family member, interpersonal partner, or any person in the community, or “that is perpetrated or *condoned* by the state or its agents.”⁴³³ It asserts every woman has the right to be free from such violence,⁴³⁴ including the right “to be free from all forms of discrimination.”⁴³⁵ This Convention also outlines the duties of states to refrain from engaging in acts or practices of violence against women; to prevent, investigate, and impose penalties for violence against women; to ensure women’s access to justice after experiencing violence; and to modify and adopt such laws as may be necessary to prevent violence against women and provide just remedies.⁴³⁶ In ratifying this treaty, Guyana has agreed to undertake certain progressive measures, including implementing programs “to modify social and cultural patterns of conduct of men and women . . . to counteract prejudices . . . which legitimize or exacerbate violence against women.”⁴³⁷

3. Right to Freedom of Expression

Both the UDHR and the ICCPR protect freedom of expression,⁴³⁸ which includes the “freedom to . . . impart information and ideas of *all* kinds, regardless of frontiers, . . . either orally, in writing or in print, in

429. *Id.*

430. American Declaration, *supra* note 58, art. I.

431. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women “Convention of Belém do Pará” art. 4(c), June 9, 1994, 33 I.L.M. 1534 [hereinafter Convention of Belém do Pará].

432. Inter-Am. Comm’n H.R., *Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, ¶ 282, OAS/Ser.L/V/II.Rev.1 Doc. 36 (Nov. 12, 2015), <http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf>.

433. Convention of Belém do Pará, *supra* note 426, art. 2(c) (emphasis added).

434. *Id.* art. 3.

435. *Id.* art. 6(a).

436. *Id.* art. 7.

437. *Id.* art 8(b).

438. *See* UDHR, *supra* note 36, art. 19; ICCPR, *supra* note 28, art. 19.

the form of art, or *through any other media*.”⁴³⁹ The U.N. Human Rights Committee has explained that freedom of expression protects the right to publicly “giv[e] expression to [an individual’s] sexual identity and seek . . . understanding for it.”⁴⁴⁰ The expression of one’s gender and identity as lesbian, gay, bisexual, or transgender through attire is thus protected under freedom of expression.⁴⁴¹

III. FINDINGS

Although a majority of Guyanese people currently identify as “tolerant” or “accepting” of homosexuality,⁴⁴² homophobic and transphobic sociocultural norms remain widespread and are further reinforced by the country’s discriminatory laws.⁴⁴³ The discrimination and violence LGBT persons (or those perceived to be LGBT) face in Guyana limits their ability to fully enjoy their human rights.

A. *Lack of Safety in Public Spaces*

“You can’t really afford to assume that you are safe all the time.”⁴⁴⁴ This fear echoed across all the stories shared by LGBT persons about the risks they encounter daily. Verbal threats and harassment impact LGBT individuals’ actual and perceived safety and security in public spaces.

1. Verbal Harassment and Threats

For some, intimidating verbal harassment is a daily experience in public spaces. Mel shared, “You try and ignore it, but inside you feel bad that you’re in public and that person [yells] at you, ‘Anti-man!’”⁴⁴⁵

439. ICCPR, *supra* note 28, art. 19 (emphasis added).

440. Fedotova v. Russian Federation, Human Rights Comm., Communication No. 1932/2010, ¶ 10.7, U.N. Doc. CCPR/C/106/D/1932/2010 (Nov. 30, 2012).

441. *See* INT’L GAY & LESBIAN HUMAN RIGHTS COMM’N, VIOLATIONS OF THE RIGHTS TO FREEDOM OF EXPRESSION, ASSEMBLY, AND ASSOCIATION RELATED TO SEXUAL ORIENTATION, GENDER IDENTITY, AND GENDER EXPRESSION (Oct. 30, 2007), <http://www.iglhrc.org/sites/default/files/155-1.pdf>.

442. *See* CARIBBEAN DEV. RESEARCH SERVICES INC., ATTITUDES TOWARD HOMOSEXUALS IN GUYANA 16 (2013), http://ufdcimages.uflib.ufl.edu/AA/00/01/61/51/00001/Attitudes_Toward_Homosexuals_in_Guyana.pdf (58% of respondents identified as “tolerant” or “accepting” of homosexuals).

443. *See* AMNESTY INT’L, GUYANA: INSUFFICIENT ACTION ON LONG-STANDING HUMAN RIGHTS CONCERNS, AI Index AMR 35/001/2014, at 4 (June 2014), *available at* <https://www.amnesty.org/en/documents/amr35/001/2014/en/>; ON DEVIL’S ISLAND, *supra* note 96, at 4.

444. Interview with Colleen McEwan, *supra* note 342.

445. Interview with Mel, 21, in Vreed-en-Hoop, Guy. (Feb. 16, 2018).

Simply walking down the street places LGBT persons – or those perceived to be LGBT – at risk: “You can’t walk down the road. I have a lot of friends – gay, trans – everybody [is] scared . . . to walk.”⁴⁴⁶ Jamie, a lesbian, described the harassment she has faced: “You’s a man or woman? . . . I would like to eff you, change you, and turn you back into a woman.”⁴⁴⁷ Ann recalled passing a group of four boys, who said, “This is not a woman. That is a fucking anti-man.”⁴⁴⁸ Another transgender woman described how she often hears groups of boys shouting derogatory slurs and threats at her and her friends, including “Kill them!”⁴⁴⁹

Harassment limits LGBT persons from freely living their lives. For example, Love shared how even in a unisex clothing store he was told by an employee, “Anti-man don’t shop here.”⁴⁵⁰ Many transgender women talked about having to dress differently, always travel with others, and avoid areas that were known to be more homophobic.⁴⁵¹ Aparna described being out at a pool hall in Berbice with some friends when the staff told them the hall was closing and they would have to leave; later in the evening when they passed by again, it was still open.⁴⁵²

Other interviewees shared repeated harassment from specific individuals. For example, despite a police warning given to his harasser, Shania said he continued to face verbal abuse from the individual: “So I can’t really *be*. . . . One time, I didn’t realize he was in the front seat of the bus and . . . he said, ‘No, don’t want the batty boy to come in front.’”⁴⁵³

For LGBT people, such dehumanizing harassment comes with the implicit – and often real – threat of violence. Clement, a gay man, was walking home from a Diwali celebration when he realized someone was following him. The man began to harass Clement: “I knew that he was mocking me. He might have looked at my clothes and assumed that I’m gay . . . and he didn’t like that.”⁴⁵⁴ The man left Clement, before reappearing several minutes later, this time with a group of men. They attacked him, punching and kicking him while calling him homophobic slurs and threatening to kill him.⁴⁵⁵

446. *Id.*

447. Interview with Jamie, *supra* note 186.

448. Interview with Ann, *supra* note 262.

449. Interview with Toni, *supra* note 153.

450. Interview with Love, *supra* note 98.

451. Interview with Grace, *supra* note 108.

452. Interview with Aparna, *supra* note 150.

453. Interview with Shania, *supra* note 99 (emphasis added).

454. Interview with Clement, *supra* note 169.

455. *Id.*

In indigenous communities, LGBT individuals faced severe harassment and violence, especially transgender persons. A leader of one such community said, “They’re not likely to survive in the villages, because they’re going to be taken for clowns. . . . That concept, transgender, is very much unknown.”⁴⁵⁶ When LGBT persons come out in an indigenous community, “[t]hey will face verbal insults . . . like ‘You gotta get a man to make sure you’re a real woman.’”⁴⁵⁷

2. Online Harassment

Many people discussed the verbal threats and harassment they have received on social media. Honey, a gay man, described Facebook messages that ultimately caused him to shut down his Facebook page: “They say ‘batty man,’ ‘batty boy for dead.’ They said they would kill me.”⁴⁵⁸

Many LGBT interviewees also described how certain religious leaders spread hate speech against the LGBT community, particularly on social media sites. In addition to creating anti-LGBT ads and content,⁴⁵⁹ certain Christian groups have personally targeted and attacked LGBT individuals and allies online. Valini from SASOD described how Nigel London, a well-known Christian pastor, attacks them on his Facebook page,⁴⁶⁰ using their photos with derogatory language and sharing the images widely.⁴⁶¹ Valini also noted, “he is calling for parents to abandon their LGBT children. . . . Now he says we should jail LGBT persons.”⁴⁶² She said the targeted nature of the attacks against individuals makes her worry about the possible ramifications and potential for online abuse to become physical violence: “[It] is making us

456. Interview with Apatoa, *supra* note 164.

457. *Id.*

458. Interview with Honey, 20, gay man, in New Amsterdam, Guy. (Feb. 17, 2018).

459. Interview with Kevin, 19, gay man, in Georgetown, Guyana (Feb. 19, 2018)

460. On his Facebook page, Nigel London regularly posts homophobic messages and videos, such as: “Yahweh HATES the Wicked #SodomitesRepent . . . #GuyanaResist,” Nigel London, FACEBOOK (Mar. 2, 2018, 9:25 PM), <https://www.facebook.com/nigel.london.16/videos/1790874857610669/16>, and “If a woman ‘identifies’ HERSELF as a ‘man’ then she needs to STAND and urinate (pee). We have common sense at home; while the sodomites have the need to slither in their perverted dribble[.]” Nigel London, FACEBOOK (Feb. 22, 2018, 10:35 AM), <https://www.facebook.com/photo.php?fbid=1781447298553425&set=a.570089646355869.1073741826.100000645155007&type=3>. He also referred to SASOD as “sick, abominable jokers,” Nigel London, FACEBOOK (Feb. 21, 2018, 9:24 AM), <https://www.facebook.com/nigel.london.16/posts/1780114228686732>, and called pedophilia a kind of sexual orientation, Nigel London, FACEBOOK (Feb. 14, 2018, 9:01 AM), <https://www.facebook.com/nigel.london.16/posts/1771915829506572>.

461. Interview with Valini Leitch, *supra* note 106.

462. *Id.*

uncomfortable.”⁴⁶³ Another employee at SASOD said the pastor has referred to LGBT persons as “dogs and pedophiles.”⁴⁶⁴

3. Threats and Violence Against Human Rights Defenders

Many of the human rights defenders working with LGBT organizations in Guyana have experienced threats and harassment in public for their work, and reported that this work-related harassment has affected their sense of security.⁴⁶⁵ Several organizations cannot advertise their office locations for fear of being targeted. Some staff were deeply concerned for their personal safety. Many SASOD employees have been targeted on social media; Valini described the messages she receives: “I was called Satan. I was told [that I am] not fit as a mother . . . and that a gay person should rape my child.”⁴⁶⁶ Twinkle, a transgender woman who has become publicly known for bringing a legal challenge to the country’s cross-dressing law, said:

I always get a feeling like maybe . . . because of the way I push in advocacy that maybe I can be killed. . . . I’m not feeling safe these days here. . . . I’m trying my best to be as strong as possible but maybe they would do that to me. Because I’m not afraid to speak out to any person, anybody, any minister, any police, and because of that sometimes when you walk, people see you as . . . a bad person.⁴⁶⁷

Valini recalled an incident where a transgender woman was doing sensitization work at a local bar, when some men made a pass at her. She laughed, and after leaving the bar, “One of them broke a bottle and slashed her from ear to mouth. Police officers were close by and they left her on the road to bleed. [The police] knew about this situation.”⁴⁶⁸ Another activist in New Amsterdam said, “We have been pelted, we have been taunted, and cutlass has been used.”⁴⁶⁹

463. *Id.*

464. Interview with Anil Persaud, *supra* note 103.

465. Interview with Miglon, *supra* note 228.

466. Interview with Valini Leitch, *supra* note 106.

467. Interview with Twinkle Kissoon, *supra* note 235.

468. Interview with Valini Leitch, *supra* note 106.

469. Interview with Grace, *supra* note 108. A cutlass is a short, slightly curved sword, similar to a machete.

B. *Threats and Harassment from Guyanese Police Officers*

Despite efforts by the Guyanese police force in recent years to prevent mistreatment and abuse of LGBT persons, most LGBT interviewees reported having negative interactions with members of the Guyana Police Force or had LGBT friends who had shared such experiences with them. One individual summed up a common sentiment among LGBT people about law enforcement: “They use the job, instead of to protect and serve, they use it as a power over citizens.”⁴⁷⁰ This section details harassment and violence perpetrated by law enforcement outside of police custody. Relatedly, the chapter on *Impunity for Perpetrators and Access to Justice*, *infra*, documents harassment, mistreatment, and violence occurring in police custody and inside police stations to underscore how those rights abuses directly impact LGBT individuals’ ability to access justice.

1. General Anti-LGBT Harassment from Guyanese Police

LGBT individuals commonly described being mocked by law enforcement in public because of their SOGIE. Arun, a gay man, recalled walking on the road with some transgender friends who had “cross-dressed”: “The police said, ‘Show me your ID. What is your name?’”⁴⁷¹ Because their identity card did not match their appearance, Arun said, “the police started to laugh loudly at them.” Others described experiences of walking down the road and police acting like they would hit them with their car, forcing them to jump out of the way.⁴⁷²

Additionally, while most LGBT persons said the laws against “cross-dressing” and sodomy were not actively enforced, their existence enables police to threaten and harass LGBT persons into paying bribes. Prince, a gay man, described how the laws were more actively enforced years ago, but now some police use them to “try to extort money from you.”⁴⁷³

470. Interview with Twinkle Kissoon, *supra* note 235. Other interviewees stated, “Police love to get in the way of transgender people and gay people. For what reason, I don’t know. Beside the general public, they face a lot of discrimination from law enforcement.” Interview with Charlie, 37, transgender woman, in Georgetown, Guy. (Feb. 16, 2018).

471. Interview with Arun, *supra* note 158.

472. Interview with Aparna, *supra* note 150.

473. Interview with Prince, *supra* note 97.

2. Sexual Harassment from Guyanese Police

Some LGBT individuals also reported sexual harassment and threats from law enforcement officers. Denise, a lesbian woman, described an encounter with law enforcement that she and a former girlfriend had at Georgetown's sea wall:

We were under the sea wall and she kissed me. A few officers passed and apparently one of them saw and he came back with a few of his buddies. They [asked], "Can you kiss in front of us?" I looked at him and I said, "Dude if you know what's good for yourself I think you should leave us alone because that right there is harassment. I don't expect that from a police officer of all people." . . . And he said, "I could arrest you." I said, "Arrest me for what? For refusing to kiss in front of you?" And he looked at me and said, "I will throw you in the lock up." I said, "By all means go ahead, because I am not smoking pot, I do not have any illegal drugs, I did not harass you, so please arrest me if you're going to do so." He walked up to me, and his buddies were looking at him, and [he] just looked at them and said, "Let us go." So they walked away. My girlfriend was so scared.⁴⁷⁴

In another incident, a transgender woman recalled being sexually harassed by a police officer, who knew she was a sex worker:

[The police officer was] disrespecting me now because [he] know[s] I do this on the road, and [thinks] I should do it to [him]. . . . They were even telling me that if I don't do it, I'll got to jail. . . . I'm frightened of the police and I don't want to go to jail. . . . They will be very, very aggressive toward me.⁴⁷⁵

Police rape and violence against transgender sex workers in Guyana has also been previously reported to the U.N. in Guyana's 2010 UPR.⁴⁷⁶

C. *Discrimination and Harassment by Transportation Providers*

LGBT people also frequently face discrimination from transportation providers, including bus and boat operators, which effectively denies them access. The discrimination comes from both customers

474. Interview with Denise, *supra* note 261.

475. Interview with Bobbie, *supra* note 224.

476. See, e.g., UPR 2015 Stakeholder Summary Prepared by the OHCHR, *supra* note 311, ¶ 8.

and drivers, and not only inconveniences LGBT persons but deprives them of secure transport.

Miglon, a social worker with Guyana Trans United, described how other bus riders will comment, “I don’t want no anti-man sitting here.”⁴⁷⁷ Even the appearance of being gay can trigger harassment, as Kevin, a gay man, described, “If you’re catching public transportation, . . . two men can’t sit together because it’s a big deal for some reason. . . . Even for straight men, they are disrespected.”⁴⁷⁸ A transgender woman said, “They call you names, they say all kind of ill things. Some people follow behind you talking, you know? It’s heavy.”⁴⁷⁹

LGBT persons have even faced physical violence on buses from passengers. Rose described one incident she had on a bus in September 2017: “A loaded bus was about to drive off and a guy was in the back seat, and when he realized I was transgender – he was drinking a Guinness – he pelted me with the bottle. That [has filled me with] fear.”⁴⁸⁰

Some bus drivers have also been known to stop the bus and force LGBT riders to get off, regardless of where the bus is on its route.⁴⁸¹ One transgender woman recalled a bus driver telling her, “If you do not get out now, you know what [will] happen.”⁴⁸² She noted, “I paid [for the bus]. Why did I get kicked out?”⁴⁸³ Another interviewee reported, “The bus don’t want you when they learn you’re gay. [The drivers] chase you out. . . . It happened to me several times in Georgetown. The last time was last Thursday, on a public bus from the city.”⁴⁸⁴ Aparna described a bus ride into Georgetown: “I went to take the bus over the next side of the [Berbice] river, and they put me out. They said I am gay, I cannot travel with them. . . . They just put [me] off and left [me] stranded there.”⁴⁸⁵

Other interviewees described how, depending on their attire, bus drivers may “just pass you on the road; they don’t stop for you.”⁴⁸⁶ One

477. Interview with Miglon, *supra* note 228.

478. Interview with Kevin, *supra* note 454. Interviewees often referred to buses as “public transportation” or “public buses,” but these services are not provided by the Government of Guyana. E-mail from Anil Persaud, Homophobia(s) Education Coordinator, SASOD, to authors (Apr. 27, 2018, 8:49 AM) (on file with authors).

479. Interview with Twinkle Kissoon, *supra* note 235.

480. Interview with Rose, *supra* note 177.

481. Interview with Miglon, *supra* note 228.

482. Interview with Milton, 61, transgender woman, in Georgetown, Guyana (Feb. 16, 2018).

483. *Id.*

484. Interview with Kiven, 21, gay man, in Georgetown, Guy. (Feb. 16, 2018).

485. Interview with Aparna, *supra* note 150.

486. Interview with Ann, *supra* note 262.

transgender woman said, “Sometimes you might be standing in the road and a bus will pass. They would say, ‘No, no, no, don’t pick up the anti-man.’ Or they will stop for you, open the door when you want to go in, and then shut back the door and drive off.”⁴⁸⁷ One interviewee estimated that eight out of ten buses would pass a transgender woman, refusing to drive her.⁴⁸⁸ A gay man described waiting with some LGBT friends for a bus, and when the driver approached he slowed down, spat in his friend’s face, and drove away.⁴⁸⁹ Jordan recalled how one driver told him, “Batty man, we don’t want no batty man on this bus,” before speeding away.⁴⁹⁰ Incidents of bus driver discrimination have been reported to the police, who do little to respond.⁴⁹¹

Because of the discrimination, many LGBT individuals, particularly transgender women, are forced to take private taxis, which are generally safer. However, private taxis are much more expensive than buses. For example, a trip that costs 160 Guyanese dollars (GYD) on a bus may cost 500 GYD in a taxi.⁴⁹² Given the challenges LGBT persons face in finding employment, not everyone can afford private taxis: “Because of limited resources, I still have to take public transportation.”⁴⁹³

Yet even private taxis do not guarantee LGBT persons or allies a safe ride. One heterosexual SASOD staff member described, “One morning coming to work, the taxi driver who brought me here started [to] realize he’s bringing me here [to SASOD’s office]. He started to curse me. He called me ‘dyke,’ he said he’s going to come and burn the place down, [that] we should burn in hell.”⁴⁹⁴

D. Violence Committed by Private Actors

Accounts from LGBT interviewees reveal that violence is a common, even daily, experience for them. This section details reports of violence committed by non-state actors against LGBT people in public spaces, within LGBT people’s homes, and against LGBT sex workers.

487. Interview with Toni, *supra* note 153.

488. Interview with Charlie, *supra* note 465.

489. Interview with Arun, *supra* note 158.

490. Interview with Jordan, *supra* note 176.

491. Interview with Valini Leitch, *supra* note 106. These are addressed in the chapter on *Impunity for Perpetrators and Access to Justice, infra*.

492. Interview with Bobbie, *supra* note 224. A fare of 160 GYD is approximately \$0.77 USD. A fare of 500 GYD is approximately \$2.42 USD.

493. Interview with Twinkle Kissoon, *supra* note 235.

494. Interview with Valini Leitch, *supra* note 106.

In each of these contexts, interviewees said that while “no group is safer than the other,”⁴⁹⁵ most agreed that those whose dress and appearance were more visibly gender nonconforming faced the greatest risks.⁴⁹⁶ For example, Prince, a gay man, described a recent incident he and a transgender friend experienced:

There was this group of [four] young boys, around 18 to 20, . . . sitting outside of this coffee shop. They were trying to get [my friend], calling her ‘anti-man.’ When she came out [of the shop], they started to pretend to be more polite now. She did not know they had a plan. . . . We walked off, and they started walking behind us. I saw them coming behind us, but I didn’t see they had bottles. . . . I thought they were [just going in] the same direction. She was a little bit in front of me, and I assume because [of how] she was dressed . . . they know it is not an anti-man but a trans woman. So they came with this bottle and they pelted her, but they did not pelt me, because they passed me. They pelted her in her face.⁴⁹⁷

1. Violence Occurring in Public Spaces

Pervasive levels of violence confront LGBT persons in Guyana and limit their ability to exist freely in public spaces.

In October 2017, Twinkle, a transgender woman, was threatened with firecrackers while passing Parliament at night. After a parliamentary guard made disrespectful comments to her and she responded, the guard called on passersby carrying firecrackers to throw them at her. The boy set off several fireworks as Twinkle got away.⁴⁹⁸

In July 2017, Shania was attacked by a young man after exiting a bus in Sophia. “He came towards me and then he pulled out a knife . . . and gave me one punch to my mouth here, plus on my eye. He said he was going to stab me up because, ‘No anti-man should be living in Sophia,’ and that he gonna kill me.”⁴⁹⁹ Luckily, a bystander intervened and Shania was able to run home. After that, he no longer felt safe in Sophia and moved across the river to Region 3. However, even there, Shania said, “Certain parts of Region 3 are not safe. Last weekend, one of my dear friends got beat up at a bar, which is gay friendly, and one of

495. Interview with Colleen McEwan, *supra* note 342.

496. *Id.*

497. Interview with Prince, *supra* note 97.

498. Telephone interview with Twinkle Kissoon, *supra* note 213.

499. Interview with Shania, *supra* note 99.

our female transgender [friends] got killed Sunday morning. . . . You at all times have to be careful.”⁵⁰⁰

Violent attacks often include death threats and attempted homicide. A transgender woman described how she was attacked on the sea wall by a group of men: “[T]hey started throwing bottles and saying they will kill me. The word[s] they used exactly was, ‘Kill the anti-man.’ . . . This guy with a bottle just kept lashing me.”⁵⁰¹ Mel, a gay man, described how he used to work on the road, and a group of cane cutters would throw things at him each day: “Every day, they used to interfere with me. . . . They say they were going to kill me and kill the anti-man. . . . You can’t do nothing about it though.”⁵⁰² Devon, an 18-year-old transgender woman, described being attacked by a group of men while walking with a friend one evening: “We didn’t trouble anybody. A guy came up and said, ‘Girls with balls.’ . . . And I said yes. They came with a cutlass, knife, [and] hammer, [and] they hit us.”⁵⁰³ This attack and others have left her “very shaken . . . and afraid.”⁵⁰⁴ Wonder, a gay man, described an incident with a man he knew, saying, “Last night, I was passing on the road and a man tried to hit me with a bicycle. . . . He hit me here on the shoulder.”⁵⁰⁵

Dating also places LGBT people at risk of violence. For example, some were scared to meet up with someone they had met online:

If this person is not who they claim they are, you could lose your life. . . . Some of these guys, . . . you meet them at [their] house and they have a whole set of guys in the house waiting for you, to do what? To beat you, to kill you, then they dump your body. . . . A friend of mine, . . . they started throwing things at him and he’s running for his life.⁵⁰⁶

Women reported facing violence when they turned down a man and revealed their sexual orientation. Valini Leitch of SASOD recalled the case of a lesbian woman who was struck after a man made a pass at her and she said, “No, I’m not into guys.”⁵⁰⁷ The man, who

500. *Id.*

501. Interview with Bobbie, *supra* note 224.

502. Interview with Mel, *supra* note 440.

503. Interview with Devon, *supra* note 107.

504. *Id.*

505. Interview with Wonder, 24, gay man, in New Amsterdam, Guy. (Feb. 17, 2018).

506. Interview with Devon, *supra* note 107.

507. Interview with Valini Leitch, *supra* note 106.

was an army officer, came out of his vehicle with a beer bottle and hit her on the head.

Certain government officials were dismissive about the threat of violence faced by LGBT persons because of their sexual orientation or gender identity. Minister within the Ministry of Social Protection Hon. Keith Scott, M.P., said: “If there were two men who were kissing, there would be inward disgust at what they are seeing, but at the same time nobody [is] going to attack them.”⁵⁰⁸

2. Threats and Violence Occurring in LGBT Persons’ Homes

Even in their homes, LGBT persons are targets of violence. In 2013, a transgender man was tied up and burned to death in his house.⁵⁰⁹ Before the attack, the man had confided his fears in a friend, who was trying to help him escape the area.

Others described how when they are home, passersby will throw things at their houses. A transgender woman who is well-known in her community said people frequently pelt her home with beer bottles: “They know I am living there. They are not pelting the people downstairs.”⁵¹⁰ Shania, a gay man, said sometimes at night, “You would hear a brick pelting on the roof. . . . They will pass and say, ‘Anti-man living here.’”⁵¹¹ Before eventually moving, he was afraid to be outside of his home on the porch or in his yard, as it made him a target of harassment: “They would say, ‘anti-man, look at anti-man.’ They would make songs with it at one point, . . . [saying] ‘No anti-man wants to be in Sophia. Fire upon batty boys. Shoot them.’”⁵¹² Another interviewee described how a neighbor broke his windows, and a week later broke into his home: “The idea of him breaking into my apartment, that was scary.”⁵¹³

3. Violence Against LGBT Sex Workers

Many gay and transgender interviewees who engaged in sex work described being targets of violence on a regular basis from customers, intimate partners, and the public. Love, a 23-year-old gay man described how three of his friends who are sex workers had been

508. Interview with Hon. Keith Scott, M.P., Minister within the Ministry of Soc. Prot., *supra* note 100.

509. Interview with Grace, *supra* note 108.

510. *Id.*

511. Interview with Shania, *supra* note 99.

512. *Id.*

513. Interview with Adam, *supra* note 18.

stabbed.⁵¹⁴ Miglon, a social worker, has seen cases of transgender women being beaten and hospitalized after a male client realizes her sex; some have been beaten unconscious.⁵¹⁵ LGBT sex workers sometimes confront sadistic violence from clients, including beatings, knifings, and other forms of abuse.⁵¹⁶

Violence can happen at any time. One transgender woman who is a sex worker in Georgetown said, “Last night, I got in a big fight with one of my clients because he didn’t want to pay me. I didn’t have any money to get back home. . . . He was trying to fight me. . . . He pulled out a long knife.”⁵¹⁷ She did not press the matter, fearing he would kill her. Another transgender woman recalled an incident several years ago when a transgender sex worker and her client were exiting a car, when a group of boys passed by and saw them: “She had to run for her life. She ran and jumped some fences just to save her life. . . . She went in a phone bank to hide, and these people were lighting tires with fire and looking for her to kill her.”⁵¹⁸

Some transgender sex workers form groups to try to protect each other. An individual who worked in one group said, “If I hadn’t had that group, I wouldn’t be here today because dozens have gone like that. Five days ago this happened – a guy was murdered in his home by someone who came to have sex with him.”⁵¹⁹

Many transgender sex workers also described facing violence from their intimate partners but felt like the justice system would not take their case seriously⁵²⁰ and expressed hopelessness about their situation. Some interviewees showed the research team their scars from being beaten.⁵²¹ In a case that gained national attention in 2014, a transgender woman’s abusive ex-boyfriend stabbed and killed two of her close friends – who were transgender sex workers – before setting himself on fire.⁵²²

In an interview, Hon. Keith Scott, M.P., downplayed the threat facing LGBT sex workers, saying:

514. Interview with Love, *supra* note 98.

515. Interview with Miglon, *supra* note 228.

516. Interview with Jordan, *supra* note 176.

517. Interview with Bobbie, *supra* note 224.

518. Interview with Toni, *supra* note 153.

519. Interview with Ricky, *supra* note 216.

520. Interview with Rose, *supra* note 177.

521. Interview with Bobbie, *supra* note 224.

522. See *Jilted Man Murders Two, Kills Himself*, STABROEK NEWS (July 21, 2014), <https://www.stabroeknews.com/2014/news/stories/07/21/jilted-man-murders-two-kills/>.

I can give you examples about where the tolerance level is [high]. Tonight . . . go down by the Cathedral, by St. George's, . . . and you will see a million anti-man are allowed to ply right there. Ply their trade right there. If you go the entire length of King's Street you will see the same thing, nobody is beating them. . . . The laws protects them as citizens of Guyana equally as they protect anybody else.⁵²³

E. *Harassment and Violence Impacts Rights to Life, Security, and Freedom of Expression*

Together, the effect of such widespread harassment and violence has a profound impact on LGBT persons' ability to live safely and freely in their own country. Many of the incidents above occurred in cities including Georgetown and other areas that the interviewees had considered safer than villages or towns in rural areas, where there is greater hostility toward LGBT persons. As a result of the pervasive harassment and threat of violence, many interviewees struggled with depression, suicide, and other mental health challenges stemming from the overwhelming fear and anxiety they face. One transgender woman who wished to seek asylum in the U.S. or U.K. said, "To be honest, in my own country, I don't feel safe. . . . [In public], people be smiling at you, but you don't know what they have in the back of their mind to come do to you."⁵²⁴

Direct experience with harassment and violence caused many interviewees to feel they could not express themselves publicly without facing dangerous repercussions, especially gay men and transgender women who would prefer to dress more feminine. Ricky, a gay man, shared, "In my community, you don't have MSM dressed as female. . . . They fear they're going to be targeted."⁵²⁵ Simply put: there is no place safe enough for LGBT persons to live a full, dignified life in Guyana.

IV. CONCLUSION AND RECOMMENDATIONS

Violence and harassment against LGBT people are endemic in Guyanese society and jeopardize their security and ability to freely express their identity. The state has a positive obligation under international law to protect and promote the rights to life, security, and free

523. Interview with Hon. Keith Scott, M.P., Minister within the Ministry of Soc. Prot., *supra* note 100.

524. Interview with Devon, *supra* note 107.

525. Interview with Ricky, *supra* note 216.

VIOLENCE AND DISCRIMINATION AGAINST LGBT PERSONS IN GUYANA

expression, yet discriminatory laws and anti-LGBT prejudice create an enabling environment where such crimes against LGBT persons are rampant.

Based on these findings, recommended actions for the Guyanese Government, UN, and OAS are included in *Recommendations infra*.

The following chapter – *Impunity for Perpetrators and Access to Justice* – underscores the serious shortcomings of the State in providing actionable remedies for this violence. The lack of remedy only further perpetuates the cycle of violence.

FINDINGS: IMPUNITY FOR PERPETRATORS AND ACCESS TO JUSTICE

“[The police harassed me at the station], that is normal in Guyana. It is wrong. . . . I should be treated as any other individual who comes to make a serious report. . . . But as a gay [or transgender] person, you totally receive other treatment. . . . This is the normal routine. When you decide that you want to go back again, you know what the procedure is. . . . They would say, ‘that’s because you’re gay [or transgender] and were walking on the road.’ ‘Whatever happened to you, you looked for it, because of your sexuality.’ ‘If you were on the road, you were acting promiscuously and you looked for it.’ And ‘we busy, we really don’t have [time] for you.’ They would also say that they don’t have enough police or cars.”

– Prince, 42, in *Georgetown, Guyana*⁵²⁶

Most of the LGBT persons interviewed encountered significant barriers in accessing justice, particularly at police stations. LGBT persons sometimes face discrimination or outright refusals from police officers to take their reports. Many interviewees indicated that they were strongly deterred from reaching out to the police because of the amount of violence and discrimination suffered at the hands of law enforcement, which they felt unable to report as well. Consequently, LGBT persons also indicated great difficulty accessing courtrooms.

I. LEGAL FRAMEWORK

A. *Domestic Legal Framework*

1. Discriminatory Laws Hinder Access to Justice

Guyanese domestic legislation hinders the right of access to justice for persons with non-normative SOGIE in two ways. First, gaps, deficiencies, and the presence of discriminatory provisions in Guyana’s laws disadvantage persons with non-normative SOGIE. As explained in the *Nondiscrimination and the Right to Dignity in International Law* chapter, *supra*, the Criminal Law (Offences) Act criminalizes the act of men consensually having sex with other men in private,⁵²⁷ which carries sentences ranging from two years to life imprisonment.⁵²⁸ Cross-dressing is also criminalized under the Summary Jurisdiction (Offences) Act, which establishes monetary fines for publicly

526. Interview with Prince, *supra* note 97.

527. The Criminal Law (Offences) Act criminalizes same-sex intimacy between men (or “buggery”). Therefore, the law could apply to sex between gay men, bisexual men, transgender women, and cisgender men. Criminal Law (Offences) Act 1893, c. 8:01 (Guy.).

528. *Id.* §§ 353–354.

appearing in clothes or attire traditionally associated with a different sex than that assigned at birth for “any improper purpose.”⁵²⁹ These discriminatory laws contribute to an environment of injustice and impunity for homophobic or transphobic crimes.⁵³⁰ CSOs have repeatedly requested – including during Guyana’s UPR⁵³¹ – that the criminalization of cross-dressing be repealed as it facilitates arbitrary arrests, police harassment, and abuse, and that all allegations of hate crimes based on SOGIE be properly investigated.⁵³²

2. Lack of Remedy for Violations against LGBT Persons

Guyanese legislation contains a series of legal provisions that satisfy, at least on the surface, the State’s obligation to provide adequate judicial remedies. However, these remedies are inefficient and, given a number of additional obstacles, ultimately do not guarantee LGBT persons’ right of access to justice.

a. Non-existence of the Human Rights Commission

Guyana’s Constitution establishes a series of commissions intended to strengthen social justice and the rule of law in Guyana.⁵³³ These include commissions on Human Rights, Women and Gender Equality, Indigenous People, and Rights of the Child. The Human Rights Commission’s mandate is to monitor Guyana’s compliance with international human rights treaties.⁵³⁴ The Constitution also provides a complaint mechanism by which persons whose rights have been violated under these international commitments can file a grievance with the Human Rights Commission.⁵³⁵ However, the Human Rights Commission exists only on paper.⁵³⁶

529. Summary Jurisdiction (Offences) Act 1893, c. 8:02, § 153(1)(xlvii) (Guy.). Individuals can also be imprisoned if they are unable to pay the imposed monetary fine. Summary Jurisdiction (Procedure) Act 1893 c. 10:02, §§ 36, 38 (Guy.).

530. See UPR 2015 Stakeholder Summary Prepared by the OHCHR, *supra* note 311, ¶ 8.

531. See Summary Prepared by the Office of the High Commissioner for Human Rights, *supra* note 311, ¶ 3.

532. See UPR 2015 Stakeholder Summary Prepared by the OHCHR, *supra* note 311, ¶ 10.

533. GUY. CONST., *supra* note 25, c. 1:01, sch., art. 212.

534. These include international instruments that the Government accedes to, and those already acceded to and specified in the Constitution’s Fourth Schedule. See *Human Rights Commission to Come on Stream*, GUY. CHRON. (Jan. 10, 2016), <http://guyanachronicle.com/2016/01/10/human-rights-commission-to-come-on-stream>.

535. GUY. CONST. art. 154A(4).

536. Interview with Joel Simpson, *supra* note 5.

b. Lack of Recourse for Grievances against the Guyana Police Force

In Guyana, all persons have the right to press charges if a crime is committed against them. There is also a special complaint system to allege misconduct by the Guyanese Police Force.⁵³⁷ However, CSOs have repeatedly expressed concern regarding reports of the police refusing to take complaints from LGBT persons and verbally abusing them.⁵³⁸ Others reported that police discrimination included a lack of timely investigations and cases left unsolved. For example, two transgender persons were injured in a drive-by shooting, for which the police took over a month after the complaint was filed to charge the perpetrators.⁵³⁹ Instances of complete failure to investigate were also reported: Between 2014 and 2015, SASOD documented five cases where the police did not investigate homophobic crimes when reported by a lesbian, a bisexual woman, and a transgender woman – one officer told the complainant to “change [her] lifestyle.”⁵⁴⁰ In one case, police officers even “attempted to intimidate [the victim] and solicit bribes and sexual favors.”⁵⁴¹

As described earlier, Guyana must respect, protect, and fulfill the rights enumerated in international and regional instruments and provide redress for human rights violations without discrimination on the basis of sexual orientation, gender identity, or expression. Some of Guyana’s domestic laws contravene these international and regional obligations and seriously impede the ability of LGBT persons to live free from the threat of violence and discrimination.

B. Guyana’s International and Regional Obligations

1. The Right to Liberty

The ICCPR guarantees the right to liberty, which concerns freedom from confinement, such as the right not to be subjected to arbitrary detention;⁵⁴² procedural rights upon arrest;⁵⁴³ the right to a trial within a reasonable time;⁵⁴⁴ and the right to compensation for unlawful arrest

537. CHAMBERS OF THE DIRECTOR OF PUBLIC PROSECUTIONS, at 4–6, *supra* note 89,

538. *See UPR 2015 Stakeholder Summary Prepared by the OHCHR*, *supra* note 311, ¶ 7 (statement by Amnesty International).

539. ON DEVIL’S ISLAND, *supra* note 96, ¶¶ 18–19.

540. SUFFERING IN SILENCE, *supra* note 289, at 5.

541. *Id.*

542. ICCPR, *supra* note 28, art. 9(1).

543. *Id.* art. 9(2).

544. *Id.* art. 9(3).

or detention.⁵⁴⁵ States must refrain from arresting or detaining persons on discriminatory grounds, “including sexual orientation or gender identity.”⁵⁴⁶ When individuals are legally detained, states must ensure humane treatment and “respect for the inherent dignity of the human person.”⁵⁴⁷ These rights apply to “everyone,” which includes “lesbian, gay, bisexual, and transgender persons.”⁵⁴⁸

The right to liberty is also protected through Guyana’s obligations within the Inter-American System, under Article 1 of the American Declaration.⁵⁴⁹

2. Access to Justice

Access to justice, both *de jure* and *de facto*, is essential to the realization of rights.⁵⁵⁰ The ICCPR,⁵⁵¹ CERD,⁵⁵² CAT,⁵⁵³ American Declaration,⁵⁵⁴ and Convention of Belém do Pará⁵⁵⁵ all guarantee the right to an effective remedy. Furthermore, states have an obligation to prevent, investigate, punish, and redress human rights violations, under the *due diligence* standard.⁵⁵⁶ This standard requires law enforcement to consider discriminatory motives – ensuring that crimes committed based on sexual orientation or gender identity are diligently investigated by collecting data on these crimes, protecting victims against reprisals, and publicly condemning such acts of violence.⁵⁵⁷

545. *Id.* art. 9(5).

546. *OHCHR Report on Discrimination and Violence*, *supra* note 27, ¶ 15.

547. ICCPR, *supra* note 28, art. 10.

548. *General Comment No. 35*, *supra* note 420, ¶ 3.

549. American Declaration, *supra* note 58, art. I.

550. United Nations and the Rule of Law, <https://www.un.org/ruleoflaw/themat-ic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> (last visited Mar. 5, 2019); *see also Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, ¶ 458, *supra* note 19.

551. ICCPR, *supra* note 28, arts. 2(3), 14.

552. International Convention on the Elimination of All Forms of Racial Discrimination, art. 6, Dec. 21, 1965, 660 U.N.T.S. 195.

553. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 13–14, Dec. 10, 1948, 1465 U.N.T.S. 85.

554. American Declaration, *supra* note 58, arts. XVII and XVIII.

555. Convention of Belém do Pará, *supra* note 426, art. 4(c).

556. *OHCHR Report on Discrimination and Violence*, *supra* note 27, ¶ 11. For examples of cases applying the due diligence standard, see *Maria da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. Comm’n H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. ¶¶ 43–44, 55–57 (2001); *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) no. 205, ¶ 252 (Nov. 16, 2009).

557. *OHCHR Report on Discrimination and Violence*, *supra* note 27, ¶ 11.

“Much of the violence against LGBT persons [is] fueled by socio-cultural norms, and discriminatory laws reinforce these homophobic and transphobic prejudices.”⁵⁵⁸ Those discriminatory laws, including the criminalization of cross-dressing and same-sex intimacy between consenting adults, fuel further violence by impeding access to justice. Enforcing those laws can also lead to police corruption,⁵⁵⁹ and prevent victims of human rights violations from reporting crimes motivated by their actual or perceived SOGIE for fear of being criminalized in return. The social stigma against homosexuality furthered by those laws makes victims reluctant to test existing redress mechanisms, like the Police Complaints Authority and the Police Service Commission.⁵⁶⁰ The U.N. Human Rights Committee, in its 2000 concluding observations to Guyana, particularly focused on the Police Complaints Authority and recommended Guyana include detailed information about its role and functions, as well as “measures taken to ensure its independence and impartiality, its relationship with other police investigative mechanisms and the implementation and effectiveness of its decisions and recommendations.”⁵⁶¹

Access to justice is crucially important for marginalized groups,⁵⁶² as exclusion is both a “cause, and a consequence of a range of mutually reinforcing human rights violations.”⁵⁶³ In this way, the lack of accessible justice remedies increases these communities’ vulnerability to poverty and exclusion, thereby furthering violations of their rights in a vicious circle. Accessing justice can help protect their enjoyment of the whole spectrum of human rights. However, most LGBT interviewees had lost trust in the police due to police harassment both *inside* and *outside* the police station, especially after further struggling to report such incidents to the Police Complaints Authority. The interviewees described multiple systematic barriers that LGBT persons face in accessing justice – from discriminatory laws creating an intimidating environment to police negligence during the reporting process. LGBT

558. See *UPR 2015 Stakeholder Summary Prepared by the OHCHR*, *supra* note 311, ¶ 6.

559. ON DEVIL’S ISLAND, *supra* note 96, ¶¶ 13–14 (discussing officers demanding bribes from men found in compromising positions in exchange for not pressing charges against them).

560. SOC’Y AGAINST SEXUAL ORIENTATION DISCRIMINATION [SASOD] ET AL., DISCRIMINATION IN THE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN GUYANA: A JOINT SUBMISSION TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 10 (2015).

561. Human Rights Comm., *Concluding Observations of the Human Rights Committee: Guyana*, ¶ 11, U.N. Doc. CCPR/C/79/Add.121 (Apr., 25, 2000).

562. Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, ¶ 5, U.N. Doc. A/67/278 (Aug. 9, 2012).

563. *Id.* ¶ 4.

persons who attempt to report crimes encounter issues when filing complaints at the police station, lack of investigation, and issues accessing courts of justice.

These factors contribute to an overall environment of impunity for perpetrators of crimes against LGBT individuals, further fueling mistrust in the police and justice system.

II. FINDINGS

A. *Discriminatory Laws and Police Abuse: A Detering Environment*

1. Intimidation Through Discriminatory Laws

Enforcing discriminatory laws against LGBT persons contributes to an environment of injustice and impunity for homophobic or transphobic crimes.⁵⁶⁴ It facilitates arbitrary arrests, police harassment, and abuse.⁵⁶⁵ It therefore deters LGBT persons from reporting crimes to the police, fearing further victimization and criminalization. The U.N. has advised countries with such laws to impose a moratorium on them, as they impede LGBT persons' access to justice.⁵⁶⁶

For example, Guyana's anti-vagrancy and loitering laws are used to disproportionately target or threaten LGBT persons in the streets.⁵⁶⁷ Paul Williams, Crime Chief of Guyana, confirmed these laws are still enforced: "If a person is found in a public place and cannot give a proper reason for that from 8 p.m. to 8 a.m., they can be charged with loitering."⁵⁶⁸ However, Williams denied these laws are used to target LGBT persons: "Most times, police pass them by car and do nothing!"⁵⁶⁹ He also said no one had been charged for sex work in the last five years.⁵⁷⁰

The law criminalizing "cross-dressing" for "any improper purpose"⁵⁷¹ is also used to disproportionately target or threaten transgender persons.⁵⁷² Williams confirmed this is still an offence in Guyana: "They can [cross-dress], but in hiding. Women can be allowed to wear men[']s attire, but when it comes to men wearing women attire, that's

564. *UPR 2015 Stakeholder Summary Prepared by the OHCHR, supra* note 311, ¶ 8.

565. *Id.* ¶ 10.

566. UNAIDS, *supra* note 417, at 1.

567. CARRICO, *supra* note 88, at 9.

568. Interview with Paul Williams, Crime Chief, Guyana Police Force, in Georgetown, Guy. (Feb. 16, 2018).

569. *Id.*

570. *Id.*

571. Summary Jurisdiction (Offences) Act 1893, c. 8:02, § 153(1) (xlvii).

572. CARRICO, *supra* note 88, at 9.

problematic because you can highly distinguish that this is a man. It's an offence of course."⁵⁷³ However, the text of the statute applies equally to men "appear[ing] in female attire" and to women "appear[ing] in male attire."⁵⁷⁴ According to Williams, these laws are not "really" enforced until "it is a problem."⁵⁷⁵ Williams continued, "We understand to respect them [cross-dressers]."⁵⁷⁶ According to him, police officers are trained to issue a warning when encountering someone who is "cross-dressing" – "you know there's a law, get out and don't let me see you back there again in that attire."⁵⁷⁷ However, police officers must prosecute "cross-dressing" "because [they] swear to uphold the law [criminalizing cross-dressing] and one of the objectives of the [police] force is to prosecute offenders."⁵⁷⁸

The law criminalizing same-sex consensual sexual relationships is discussed in *Difficulties in Reporting Same-Sex Violence infra*.

2. Police Abuse in Custody Fuels Mistrust

LGBT persons' mistrust in the police is also rooted in mistreatment suffered while in custody, a constant threat given the criminalization of their existence in Guyana.

Rita, a transgender woman who works at GTU in Vreed-en-Hoop, said, "It's more harsh upon LGBT people if you are . . . in the lock-up."⁵⁷⁹ She mentioned police officers do not give transgender persons water or food, for fear of seeming too LGBT-friendly or "look[ing] like they are promoting you, they are supporting you."⁵⁸⁰ A transgender woman also mentioned she was subjected to verbal abuse once in custody: "Once they pick you up and realize you're [transgender] or a sex worker, they be like 'put this thing down there, put this thing on the bench.' They don't say 'this person' or 'this guy.' They just be like 'this thing' like I'm nothing."⁵⁸¹

On top of police mistreatment in custody, LGBT persons are also denied their procedural rights. Rose, a transgender woman, explained: "When the Guyanese police approaches you they don't approach you

573. Interview with Paul Williams, Crime Chief, *supra* note 562.

574. Summary Jurisdiction (Offences) Act § 153(1)(xlvii) (Guy.).

575. Interview with Paul Williams, Crime Chief, *supra* note 562.

576. *Id.*

577. *Id.*

578. Interview with Seelall Persaud, Former Commissioner of Police of Guyana, Guyana Police Force, in Georgetown, Guy. (Feb. 19, 2018).

579. Interview with Rita, *supra* note 148.

580. *Id.*

581. Interview with Bobbie, *supra* note 224.

in a professional manner. On TV, when the police in the U.S. comes [to arrest you], they say their name, they show their badge, but the Guyanese police behaves arrogant, they come, hold you, pull you, insult you.”⁵⁸² Adam, a gay man, recalled one time in 2007 where he was held in custody for “disrespecting an officer,” and was not told about his rights to see a lawyer or a doctor. He said, “We Guyanese, we don’t really know the laws as well, so the police is getting off sometimes. Back then I wasn’t fully educated on the law . . . I didn’t know [my rights].”⁵⁸³

These incidents of violence and discrimination at the hands of law enforcement deter LGBT persons from reporting crimes – and those who attempt to do so face tremendous difficulties.

B. *Difficulties Reporting Crime*

The most important and consistent trend LGBT interviewees shared was the extreme difficulty they faced in accessing justice. The first obstacle is at the police station, when attempting to file a report.

The research team interviewed Seelall Persaud, former Commissioner of Police of Guyana,⁵⁸⁴ and the eight members of his Executive Leadership Team, as well as Paul Williams, Crime Chief, who all denied any challenges facing LGBT persons who wish to make reports. According to Williams, LGBT persons are now much more comfortable with reaching out to the police in Guyana, “because they see there’s a cooperation compared to before.”⁵⁸⁵ To him, this is due to greater increased sensitization, education, and training, including in the police academy. As a result, police officers in Guyana today are “aware, and get an understanding and appreciation of issues faced by LGBT people.”⁵⁸⁶ However, he acknowledged there were a number of rules regarding police conduct, both on- and off-duty, that “some [officers] are [still] totally ignorant [of], [they are] very lawless and disrespectful, . . . [but] education [has] helped.”⁵⁸⁷

Williams acknowledged that reports might not be taken at a police station because of officers’ personal bias: “There are cases where indeed the police themselves operate on personality, they don’t show

582. Interview with Rose, *supra* note 177.

583. Interview with Adam, *supra* note 18.

584. Seelall Persaud was Commissioner of Police of Guyana at the time of his interview with the research team on February 19, 2018. He retired on March 5, 2018. Throughout this report, he is referred to as former Commissioner of Police.

585. Interview with Paul Williams, Crime Chief, *supra* note 562.

586. *Id.*

587. *Id.*

respect for transgender persons. Because of the culture, religious beliefs, they don't show respect."⁵⁸⁸ He also said LGBT persons sometimes do not "properly engage with the police."⁵⁸⁹ Williams noted, "The most common [form of police misconduct] is neglect of duty; for instance taking reports and saying 'Come back tomorrow to follow up,' fully knowing the police officer wouldn't be there tomorrow."⁵⁹⁰ However, he said that he has never personally witnessed a coworker mistreat or discriminate against anyone, as he formerly designed and delivered trainings, and because most of the Police Force would not behave this way in front of him since they "know . . . what I expect."⁵⁹¹ Despite receiving training on respecting every person who enters a police station, many police officers blatantly disregard these rules, as highlighted by LGBT interviewees' testimonies.

1. Barriers to Reporting Crimes

One significant factor that deters LGBT persons from reporting crimes is that police discrimination *outside* of the police station is common. Clement, a gay man, said, "Police harass us so we don't feel like they care about us."⁵⁹² He recalled that one of his gay friends was with his partner in his car by the sea wall when a police officer threatened to charge them "because male to male penetrative sex is a crime here!"⁵⁹³ The couple was brought to the station where they were held for six hours until one of their fathers came and intervened. Clement also said his stepfather, who is a police officer, told him how he "found two guys making out and they threatened [the two men] to have them charged [with buggery]."⁵⁹⁴

When LGBT persons do attempt to report crimes, they face additional hurdles. The first is physical: some LGBT persons reported not being allowed to enter the police station because of their actual or perceived SOGIE. For example, Rose, a transgender woman, once went to report that her phone was stolen, and the police "[did not] even let [her] pass the door. They said they are 'fed up with transgender people always making allegations.' Often, they don't take your report, [and] chase you out of the station."⁵⁹⁵ She was finally able to report the

588. *Id.*

589. *Id.*

590. *Id.*

591. *Id.*

592. Interview with Clement, *supra* note 169.

593. *Id.*

594. *Id.*

595. Interview with Rose, *supra* note 177.

robbery when accompanied by GTU staff. Twinkle, a transgender woman who works at GTU, explained that when she goes to the station to help LGBT persons file reports, the minute the police see her they will say, “Don’t come in here! Don’t let them people come in here!”⁵⁹⁶ Grace, another transgender woman, waited two to three hours outside the police station, after being told, “Wait, we have better things to do,”⁵⁹⁷ while the officers let in other, non-LGBT persons.

When LGBT persons do manage to enter the police facilities, they reported facing verbal abuse by police officers. When Adam, a gay man, tried to report an incident of harassment and violence in a public park, the police officers were only concerned with his sexual orientation: “They [ask] me ‘Why am I being an anti-man?’ They tell me I am a boy, I should be a boy, I should go chase girls instead of boys.”⁵⁹⁸ After experiencing several reactions like this, Adam gave up on the police: “Reporting . . . would make no sense. . . . We [gay men] know that we don’t get no justice. . . . We report and report and report and never reach [results].”⁵⁹⁹ Aparna, a transgender woman, encountered the same issue when trying to report a physical attack outside of a friend’s wedding; the police officer asked her: “You are gay, why? You should be at your house in some dark hole. Why you got to go out in society?”⁶⁰⁰ While some officers are supportive, Aparna said most mock LGBT persons trying to make a report: “They say things like ‘You should be a man,’ and things like that.”⁶⁰¹ Toni, a transgender woman, also described degrading and discriminatory treatment from police officers whom she approached for help: “They will start laughing, they will start sucking their teeth [making offensive noises].”⁶⁰²

Shania, a gay man, shared that when friends attempted to report a robbery, the police twisted the story to blame them: “[Once they] know that I am gay, then [they] say I robbed the man and now I am coming to say that the man robbed me.”⁶⁰³ Another time, the police brushed off a report saying that “th[ese] boys are in a relationship . . . so it is like he is right for what he has done to me.”⁶⁰⁴ Because of instances like these, LGBT persons are afraid to report crimes to the police, fearing

596. Interview with Twinkle Kissoon, *supra* note 235.

597. Interview with Grace, *supra* note 108.

598. Interview with Adam, *supra* note 18.

599. *Id.*

600. Interview with Aparna, *supra* note 150.

601. Interview with Grace, *supra* note 108.

602. Interview with Toni, *supra* note 153.

603. Interview with Shania, *supra* note 99.

604. *Id.*

further victimization because they are not confident their rights will be respected, explained Karen de Souza of Red Thread.⁶⁰⁵

In 2013, the New Amsterdam police humiliated Aparna, a transgender woman, when she tried making a report against boys who assaulted her on the road while she was dressed in female attire:

That night we went to the station . . . to make a report. There were four . . . policemen at the station and they make [a] mockery out of me. They told me to stand on the table, they had a long table, and they told me to stand on the table and they were beating the table into a rhythm and [while] they were beating the table we had to strip. We had to strip the woman's clothes that we had on. And they left me naked and sent me home. Naked, naked, naked. . . . The police told me we had to . . . go home naked, naked as we [were] born. . . . I was [so full of] shame, shame, shame, shame.⁶⁰⁶

Shania, a gay man, gave up on reporting following a humiliating experience reporting a physical attack in Sophia, in 2013.⁶⁰⁷ When Shania was again brutally assaulted in Sophia in 2017, he did not reach out to the police: "What sense that will make? . . . Why deal [with] the whole embarrassment?"⁶⁰⁸ Because Shania felt the police could not protect him in Sophia, he moved to Georgetown, where he said at least nobody knew him.⁶⁰⁹

Interviewees said police officers have outright refused to take reports from LGBT persons, or at least have given them a hard time before agreeing to take a report. Anil Persaud, a gay man who works at SASOD, explained: "Often times the reports aren't even taken, just laughed off. It's funny for some police officers for an LGBT person to walk into a police station to make a report."⁶¹⁰ A transgender woman described attempting to report violence and harassment to the police in Georgetown "like digging a hole to fill a hole. . . . You're being discriminated against there and when you go and seek refuge [at the police station], it's the same thing."⁶¹¹ She said police officers are disrespectful towards LGBT persons, make them wait for hours, and sometimes

605. Interview with Karen de Souza, *supra* note 109.

606. Interview with Aparna, *supra* note 150.

607. Interview with Shania, *supra* note 99.

608. *Id.*

609. *Id.*

610. Interview with Anil Persaud, *supra* note 103.

611. Interview with Charlie, *supra* note 465.

chase them out of the station. “It becomes null and void . . . if you go to file a complaint, they won’t end up charging anyone.”⁶¹²

Aparna, a transgender woman, had similar experiences reporting to the police in New Amsterdam: “[The police] don’t take no statement, they just hear it through this ear and it passes through the next ear.”⁶¹³ Jordan, a gay man, tried to make a report to the police in Georgetown after being beaten outside of a bar, and was told to “come back the next day, and the next day to come back, and the next day, and eventually the matter was just squashed.”⁶¹⁴ Jordan gave up on reporting to the police: “I wouldn’t get no justice. If I go and say ‘Officer’ they will [suck their] teeth and [not] say anything. . . . They don’t take us [gay people] serious[ly].”⁶¹⁵ Ann, a transgender woman, also said the police in Vreed-en-Hoop would not take her reports and refused to protect LGBT persons. Her partner had threatened her several times with a knife, and the police “always say they’re coming to arrest him and they never turn up. And I keep waiting, calling, calling, and they never turn up.”⁶¹⁶

Twinkle explained that when LGBT persons make reports to the police “until you . . . protest and make them [do something], they will not really hear your voice.”⁶¹⁷ She said she would like to see higher-ranked officers encourage their fellow agents to behave properly: “The lower ones, they’re very disrespectful.”⁶¹⁸ Echoing Twinkle’s statement, Arun, a gay man, said LGBT persons have to put up a fight and protest before the police will acknowledge their rights at the police station in Vreed-en-Hoop: “It is not so peaceful. . . . There is corruption, and a war, before we can actually have our rights.”⁶¹⁹ Arun also mentioned that LGBT persons need someone accompanying them to the police station to be taken seriously: “If . . . you go by yourself, the police doesn’t help you because you are LGBT.”⁶²⁰ Shania also mentioned that being accompanied by a SASOD employee helped when he reported harassment and death threats in 2013 at the Sophia police station: “When I [initially] made the report [by myself], . . .

612. *Id.*

613. Interview with Aparna, *supra* note 150.

614. Interview with Jordan, *supra* note 176.

615. *Id.*

616. Interview with Ann, *supra* note 262.

617. Interview with Twinkle Kissoon, *supra* note 235.

618. *Id.*

619. Interview with Arun, *supra* note 158.

620. *Id.*

nothing happened,” but with SASOD present, the officers will “take it serious[ly].”⁶²¹

LGBT interviewees reported officers would often be dismissive, saying that they are busy or do not have the physical means to help (usually, a vehicle). A transgender woman, who was assaulted by several men and hit in the face with a bottle (resulting in a wound for which she had to get seven stitches), went to the police station immediately after the incident. Officers had told her on a previous occasion that she must make a report at the police station before going to the hospital, otherwise her report could not be taken. However, this time she was told that she had to first go to the hospital before being allowed to make a report. She went to the police station the following morning and recalled, “[Senior police officers] asked questions, nothing concerning the incident, [such as] ‘She is a woman?’”⁶²² Prince, a gay man who was accompanying her, told the officers they were not providing professional service. “The senior officer, when she realized that what I am saying is true, she get up and started to take the report. She gave her word and promised that they are going to try to get a vehicle to go in the area and do a random check.”⁶²³ Prince and his friend were told to come back by 12 p.m. that day, but when they did, they were told it was a busy time.⁶²⁴

Shania, a gay man, shared an incident from 2013 where no officers were available to take his report when he first went to the station. The second time he tried, the officers told him they did not have a car and he would need to bring one if he wanted them to confront his attackers – although there was a police vehicle visibly parked in the compound.⁶²⁵ The staff person from SASOD who accompanied Shania took the officer’s badge number and asked to see the commander of the station. Only then did the police officers finally take the matter seriously.⁶²⁶ A similar situation occurred in November 2017, when Grace’s colleague was verbally and physically abused by his neighbor because of his sexual orientation. When the neighbor tried to burn her colleague’s house down, Grace, who is a transgender woman, went to the police station to report the matter. The police officer told her he did not have a car, but “if we could get a taxi, he would

621. Interview with Shania, *supra* note 99.

622. Interview with Prince, *supra* note 97.

623. *Id.*

624. *Id.*

625. Interview with Shania, *supra* note 99.

626. *Id.*

send two police.”⁶²⁷ She had to take the matter into her own hands and find a taxi to get police action.

Many LGBT interviewees stated they have given up reporting to the police; unless they knew someone or could bribe police officers, they asserted that reporting was futile.

2. Difficulties in Reporting Same-sex Violence

Laws criminalizing same-sex consensual relations between adults are extremely discriminatory and dangerous. They deter men who have sex with men (MSM) from reporting same-sex violence for fear of being charged with “buggery,” thereby fueling an environment of impunity. Paul Williams, Crime Chief, said that although that law is still on the books, “We’re finding that the new Sexual Offences Act of 2010 is [more] preferable than using the Buggery Act [criminalizing same-sex consensual sexual relations in private] to deal with persons [who have been] sexually violated.”⁶²⁸ He explained the move was also motivated by the fact that “most times a person who was raped didn’t complain because of fear of being charged [with] the buggery offence. Now with the Sexual Offences Act, they can [lodge a complaint],”⁶²⁹ because rape in the criminal code covers same-sex rape. Seelall Persaud, former Commissioner of Police of Guyana, said prosecuting MSM under the law criminalizing same-sex consensual sexual relations in private has always been rare.⁶³⁰ However, there is no internal policy against prosecuting on the basis of this law.

Williams also explained that the Domestic Violence Act does not differentiate between same-sex and heterosexual violence: “If there’s a relationship established, this is domestic violence. There is no discrimination. . . . This is even [true] for transgender persons. We respect each and every relationship in that regard.”⁶³¹

However, LGBT interviewees provided accounts where they were not taken seriously when trying to report same-sex intimate partner violence. Jamie, a lesbian, explained why she does not want to report anymore: “I’m not afraid, I just don’t want to deal with the discrimination. They say, ‘You shouldn’t be coming here to talk about you and a female.’”⁶³² She said the police would not help and would express

627. Interview with Grace, *supra* note 108.

628. Interview with Paul Williams, Crime Chief, *supra* note 562.

629. *Id.*

630. Interview with Seelall Persaud, Former Commissioner of Police of Guyana, *supra* note 572.

631. Interview with Paul Williams, Crime Chief, *supra* note 562.

632. Interview with Jamie, *supra* note 186.

satisfaction that LGBT persons are experiencing violence: “[The police] think the LGBT community is a joke. . . . They don’t take it serious[ly]. If anything wrong happen[s] between people of the same sex [they’re happy] because [it’s good it happened to them] because they’re living in sin.”⁶³³ When Jamie was dating a girl, she filed a restraining order against her. When she went to court, a policeman asked her, “Are you a boy or a girl?” Frustrated, Jamie responded: “I am here dealing with a matter and I think you should deal with that and not my sexuality.”⁶³⁴

An employee at Comforting Hearts also shared interactions with LGBT survivors of violence. A gay man seeking to make a complaint against another man will be afraid to report such violence, thinking the police will dismiss his case: “The perception among MSM is that they can’t go to the police station and report abuse because of their sexual orientation. They’re just going to be chased out.”⁶³⁵ Comforting Hearts has tried to raise the issue with police officers in New Amsterdam where the organization is based, and “some of them tacitly or subtly acknowledge that yes, they probably could be guilty of such behavior.”⁶³⁶ However, the employee mentioned that Comforting Hearts worked with two lesbians in 2017, for whom there was quick police action. He said this is mostly because being a lesbian is “generally more socially acceptable, [than being MSM]. That’s the perception among police. When we worked with them, I think they understood the importance of treating everybody equally and they pledged to do that.”⁶³⁷

3. Using Contacts or Bribes to Facilitate Making Reports

The pervasive obstacles LGBT persons face when reporting mean that they need, and often are made to feel indebted towards, police officers who are willing to help them. Many felt the only way to successfully report matters to the police is by knowing an officer on duty – “if not, you’re doomed.”⁶³⁸ In fact, most of the positive experiences reported with police occurred because of such personal relationships. For example, Love, a gay man, reported his violent partner to the police in Georgetown: “Before they knew who I was, they were like ‘Why is this anti-man coming to the station?’ . . . A few persons were laughing.”

633. *Id.*

634. *Id.*

635. Interview with Anonymous, *supra* note 355.

636. *Id.*

637. *Id.*

638. Interview with Adam, *supra* note 18.

When the police officer found out Love's cousin, who outranked him, worked at their station, "he started to take statements and . . . [went to] arrest [my partner]."⁶³⁹ Love said his cousin may be understanding because "he is [also] gay, not openly gay, but he is . . . so when I call him, he comes to my rescue. . . . He knows the struggle that we face."⁶⁴⁰ Adam, a gay man, received help from an officer he knew and who organized a patrol to apprehend one of his attackers, who spent 72 hours in jail as a result; "I think at least justice was served."⁶⁴¹ Aparna, a transgender woman, also had positive experiences with the police as she is friends with three officers in New Amsterdam. "If I have any problem, I just pick my phone up and call them. And every time . . . you better believe me they going to be there and they going to handle my problem."⁶⁴²

Guyanese CSOs such as GTU have tried to engage police officers, such as the commander of the Brickdam Police Station, on the issues LGBT persons face in accessing justice, hoping increased understanding would make them more willing to help. CSOs sometimes serve as an intermediary between certain LGBT-friendly police officers and LGBT persons seeking to report matters. Ann, a transgender woman, explained that every time she needs to report a matter to the police she will reach out to a particular person at GTU who has a good relationship with some officers, and "he call the station and he will be there, and the police they just say [they] can take care of it."⁶⁴³

Those who do not have contacts within the police station are left with two options: attempting to report without any support, or bribing police officers. Bobbie, a transgender woman, spoke about the police in Georgetown, saying, "If you don't have a little money to leave them as bribe, nothing gonna happen."⁶⁴⁴ Anil Persaud from SASOD explained, "Police officers serve as the inception of the entire process. If they are discriminatory, then nothing can be taken [to court]."⁶⁴⁵

639. Interview with Love, *supra* note 98.

640. *Id.*

641. Interview with Adam, *supra* note 18.

642. Interview with Aparna, *supra* note 150.

643. Interview with Ann, *supra* note 262.

644. Interview with Bobbie, *supra* note 224.

645. Interview with Anil Persaud, *supra* note 103.

C. *Lack of Law Enforcement Investigation*

1. Investigation Process Followed by Guyanese Police

As previously discussed,⁶⁴⁶ Guyana must abide by the due diligence standard,⁶⁴⁷ which includes taking into account discriminatory motives, ensuring that crimes based on SOGIE are diligently investigated, collecting data on such crimes, protecting victims against reprisals, and publicly condemning acts of violence.⁶⁴⁸ When asked if the Guyana Police Force had any knowledge of international standards on their duty to investigate, Williams, Crime Chief Police Officer, said: “Our system of training is similar to international and regional standards. We know exactly what we have to do but if there is a violation it’s because [officers] personally choose to [violate the standards].”⁶⁴⁹ Persaud, former Commissioner of Police, said that whether investigators consider prejudices as an aggravating or mitigating factor “depends on the particular investigators and their experience. Persons without that kind of experience will very well miss it.”⁶⁵⁰ He acknowledged some countries “applied” the State obligation to first investigate a killing of a transgender person as motivated by prejudice, but explained that Guyanese investigators “will look generally” and focus on apparent patterns.⁶⁵¹ He said when a transgender individual is killed, for example, their gender identity can be a “starting point.”⁶⁵²

2. Mishandling Investigations Leads to Impunity for Perpetrators

The Guyana Police Force must act to abide by international standards of investigation, beginning with investigating whether the crime was motivated by prejudice – including homophobia or transphobia. Perpetrators of even the most horrendous crimes against LGBT persons too often enjoy impunity.

For example, on the night of February 18, 2018, a transgender woman named Trishell was killed in Vreed-en-Hoop while on her way home from a party. The police first apprehended a driver who was

646. *Supra* chapter on *Nondiscrimination and the Right to Dignity in International Law*.

647. See *OHCHR Report on Discrimination and Violence*, *supra* note 27, ¶ 11 (explaining that states have an obligation to investigate and prosecute all allegations of violence directed at LGBT persons).

648. *Id.*

649. Interview with Paul Williams, Crime Chief, *supra* note 562.

650. Interview with Seelall Persaud, Former Commissioner of Police of Guyana, *supra* note 572.

651. *Id.*

652. *Id.*

thought to have run over Trishell, causing her death. The driver was held in custody and alleged it was an accident, saying Trishell threw herself under the wheels of his car. The mortician gave a vague description of the injuries and said the car accident was the cause of her death. However, Twinkle, an employee at GTU who was present during the post-mortem analysis, said Trishell *only* had injuries to her head and face, which is not typical for car accident victims.⁶⁵³ Because Trishell was also found with no bottoms on, both Twinkle and Trishell's family feel very strongly there was foul play involved and pointed this out to the police officers in charge of the investigation. Yet, even in the face of this evidence, the police chose to close the investigation after ruling the killing was an accident. The driver walked free. Never once during the investigation did the police take into consideration Trishell's gender identity and expression, and they only referred to her as "Donneikel" – the male name on her birth certificate – throughout the investigation.⁶⁵⁴

3. Lack of Communication with Victims During Investigation

Commissioner Persaud noted that police policy is to "keep [victims] informed"⁶⁵⁵ during a police investigation, while also recognizing that "there is a huge gap [in policy versus action], far from where we want to be."⁶⁵⁶ He also mentioned this is a topic the Office of Professional Responsibility receives a lot of complaints about, before saying, "It's not that the investigation is not ongoing, but simply they're not informed."⁶⁵⁷

When LGBT interviewees managed to report matters to the police, they reported that there was almost never any follow-up with them and serious reasons to believe the matter was simply not investigated. Adam, a gay man, explained accessing justice is impossible because the lack of investigation is systematic, whether or not the report is taken: "Sometimes they take the statement and don't follow it up; sometimes they pretend to take the statement and never follow it up. So whether they take the statement or not, the following up . . . is never being done. Never."⁶⁵⁸ He sees reporting as a waste of time since he never

653. Interview with Twinkle Kissoon, *supra* note 235.

654. Kizzy Coleman, *Cross-dresser Killed in Vreed-en-Hoop Accident*, GUY. TIMES (Feb. 19, 2018), <https://guyanatimesgy.com/cross-dresser-killed-in-vreed-en-hoop-accident/>.

655. Interview with Seelall Persaud, Former Commissioner of Police of Guyana, *supra* note 572.

656. *Id.*

657. *Id.*

658. Interview with Adam, *supra* note 18.

witnessed any investigations carried out.⁶⁵⁹ “I hate the police. I literally don’t go to the station. . . . If I go and make a report, I ain’t getting no justice.”⁶⁶⁰

While some interviewees did uncover whether their case was being investigated, they only managed to do so by being “pushy.”⁶⁶¹ However, insisting too much can backfire. This happened to Adam, a gay man, upon trying to report a home break-in to the Georgetown police. After filing a report, the police did not come to investigate the matter. Once he learned the perpetrator was his neighbor, Adam went back to the station to make another report, and “the officer started carrying on with nonsense, so I gave him it back.”⁶⁶² The officer then held Adam in custody for 48 hours.

Similar to the challenges faced when making a police report, if LGBT persons wish to obtain any follow-up action from law enforcement, they need to know officers. Toni, a transgender woman, explained: “Even if they take the report and they say they’ll look into the matter, they don’t . . . They do nothing. . . . You have to know people who reach to the top for that matter to be [investigated].”⁶⁶³ Sometimes, Guyanese CSOs like SASOD can help move the investigation process along. Anil Persaud, a SASOD employee, described how a transgender woman had reported being the victim of discrimination on a public bus in September 2017 and did not receive any follow-up from the police station. Only when a SASOD employee went to the police station with her in early 2018 did the police start doing something, saying they had previously misplaced the report.⁶⁶⁴ However, even human rights defenders whose organizations are respected by police officers can suffer the consequences of being too insistent. In November 2017, Twinkle, a transgender woman who works at GTU, was told that the investigation of a matter she had reported would take one month. Having not heard anything from the police after a month, she went back to the station and threatened to bring a copy of the report she had made to the Police Complaints Authority. “If they [had not] realized that I [was] coming from an organization, . . . they would have [charged me with] disorderly behavior, [and] cross-dressing, and maybe about six charges they could have placed on me at the same

659. *Id.*

660. *Id.*

661. Interview with Prince, *supra* note 97.

662. Interview with Adam, *supra* note 18.

663. Interview with Toni, *supra* note 153.

664. Interview with Anil Persaud, *supra* note 103.

time.”⁶⁶⁵ Twinkle said that the police have nicknamed her the “troublemaker,” to which she responds: “If they do the right thing, I have no need to raise my voice. The minute they disrespect somebody it sends the anger in me.”⁶⁶⁶

D. *Lack of Effective Means to Remedy Police Abuse*

1. Ineffectiveness of the Current Police Complaints Authority

In light of testimonies heard by the research team, having a complaint mechanism to report police misconduct is crucial. Paul Williams, Crime Chief, said that all complaints are brought to his attention, and anyone “can come to my office to seek justice.”⁶⁶⁷ He flagged the existence of the Police Complaints Authority, an external body, comprised of servant members and retired members of the police, and headed by a retired judge. Whenever a complaint is brought against an officer, if it is recognized that the officer acted unprofessionally, the sanction will be decided on the basis of the Police Force Disciplinary Code⁶⁶⁸ – ranging from fines, demotion or reduction in rank, and dismissal. Seelall Persaud, former Commissioner of Police, said however, “In current times I’m not seeing a lot of complaints.”⁶⁶⁹

Many LGBT persons were unaware of the existence of the Police Complaints Authority. For those who were familiar, most thought that it is not efficient to address police misconduct. Java, a lawyer, explained: “The[re] are not sufficient [avenues] of redress to address police discrimination. So, if the police discriminate against you and you report it to the police, there’s no mechanism.”⁶⁷⁰ Adam, a gay man who tried to engage with the Police Complaints process, did not have a positive experience with it:

[Y]ou gotta write a letter and then you gotta wait and see if the [Police Complaints Authority] will follow up. . . . I wrote three letters and I don’t think it has ever been followed up. . . . If they did, I haven’t seen any progress. Nothing ever happens.⁶⁷¹

665. Interview with Twinkle Kissoon, *supra* note 235.

666. *Id.*

667. Interview with Paul Williams, Crime Chief, *supra* note 562.

668. Police (Discipline) Act 1975, c. 17:01, § 4 (Guy.).

669. Interview with Seelall Persaud, Former Commissioner of Police of Guyana, *supra* note 572.

670. Interview with Java, 44, heterosexual man, in Georgetown, Guy. (Feb., 17, 2018).

671. Interview with Adam, *supra* note 18.

Twinkle, a transgender woman, remains skeptical about the Police Complaints Authority and thinks sanctions are not enforced or not as severe as they should be: “Today, if a police [officer] hit you, they should be charged for hitting you. And you know they won’t charge a police [officer], they will [do] things like transfer them [if anything].” After unsuccessfully trying to make a complaint to the Sergeant in charge of a police station, Twinkle lodged a complaint with the Police Complaints Authority, which was dismissed again and again. When both reporting police misconduct to supervisors and the Police Complaints Authority do not work, it is not surprising that “it’s hardly [happened] that the police is getting charged for abusing persons.”⁶⁷²

2. Inadequate Recruitment and Training Policies

The root of police misconduct lies in inadequate recruitment and training. Guyana has no minimum education requirement to join police ranks,⁶⁷³ and between 2002 and 2008, the Guyana Police Force had a significant human resources problem, and therefore restricted the training of new recruits to four months instead of six.⁶⁷⁴ Moreover, the Guyana Police Force does not actively recruit members of vulnerable populations such as LGBT persons.⁶⁷⁵ Therefore, recruits “are drawn from the society so the biases they have are society biases.”⁶⁷⁶ Although training can reform these biases, it is not efficient across the board.⁶⁷⁷

However, in recent years, the Guyana Police Force has begun to engage more with CSOs that conduct trainings on international standards that must be respected, according to Seelall Persaud, former Commissioner of Police: “We want to meet those international standards, and . . . our laws are far slower than our behavior.”⁶⁷⁸ Crime Chief Police Officer Williams claimed that SASOD delivered specific trainings two or three times every year to different batches of the police on topics such as “respecting [and] recognizing LGBT [persons] as human beings;” however, representatives from SASOD stated that they had not

672. Interview with Twinkle Kissoon, *supra* note 235.

673. Interview with Seelall Persaud, Former Commissioner of Police of Guyana, *supra* note 572.

674. *Id.*

675. *Id.*

676. *Id.*

677. *Id.*

678. *Id.*

delivered these trainings more than three times in the past fifteen years.⁶⁷⁹

While Williams acknowledged that there was room for improvement on both sides – “it’s a two-way street,”⁶⁸⁰ – he said, “things evolved. . . . [CSOs] also taught their [LGBT] people in the street to conduct themselves in a certain way. Before, they were very unruly. Now they show more respect.”⁶⁸¹ However, biases remain within the Police Force, as the Crime Chief of Guyana underscored that LGBT persons should understand their place in society: “Don’t fool yourself, you’re a minority in a large group, you have to cooperate. . . . Conduct yourself in an appropriate manner.”⁶⁸² This, along with testimonies of interactions between the police and LGBT persons, emphasizes that further education on LGBT persons’ rights is needed within the Guyana Police Force for all officers and supervisors.

Because of difficulties in making reports, obtaining a police investigation, sanctioning police abuse, and the State’s inaction in addressing root causes of these problems, few LGBT persons are able to reach the courts. However, even those who do manage to bring their case to court still face discrimination within the judicial system.

E. *Lack of Access to Courts*

As explained above,⁶⁸³ states must ensure that allegations of violence on the grounds of a person’s perceived or actual SOGIE are adequately investigated and prosecuted.⁶⁸⁴ Furthermore, victims are entitled to effective remedy, legal aid, and other support services.⁶⁸⁵

In Guyana, LGBT persons struggle to access the legal system to challenge discriminatory laws and behaviors. Java, a lawyer working on these issues, noted: “A lot of work has been done in the aspect of advocacy as opposed to using the court, or access to justice, as means to redress or actions against the [LGBT] community.”⁶⁸⁶ This is due to the multiple

679. Interview with Paul Williams, Crime Chief, *supra* note 562; E-mail from Joel Simpson, Managing Dir., SASOD, to authors (May 4, 2018, 6:20 AM) (on file with authors).

680. *Id.*

681. *Id.*

682. *Id.*

683. *Supra* chapter on *Nondiscrimination and the Right to Dignity in International Law*.

684. See *OHCHR Report on Discrimination and Violence*, *supra* note 27, ¶ 11.

685. See OFFICE OF THE UNITED NATIONS HIGH COMM’R FOR HUMAN RIGHTS, *LIVING FREE AND EQUAL: WHAT STATES ARE DOING TO TACKLE VIOLENCE AND DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE* 126 (2016), <http://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>.

686. Interview with Java, *supra* note 665.

barriers at the police stations, serving as a chokehold where a lack of investigation causes the majority of cases to fail before reaching the courts. As a result, few lawyers in Guyana have been able to take cases challenging discriminatory laws and behaviors. To Java, this is even more worrying as police reports are not publicized. Therefore, the population “wouldn’t know [about these instances of violence and discrimination that never make it to court] unless someone in the community speaks out against [them].”⁶⁸⁷

However, when LGBT persons do manage to access courts, they are sometimes discriminated against in the courtroom by employees of the judicial system because of how they dress. Miglon, a social worker at GTU, explained: “We don’t have transgender [persons who can meaningfully] access [the] justice system – their cases are dismissed when they face discrimination because of who they are.”⁶⁸⁸ A well-known example comes from Twinkle’s experience in court. Twinkle was assaulted, reported the matter, and appeared before a Magistrate court. She was denied access to the courtroom three times because of her attire; as a transgender woman, she wore female clothes. She was also not permitted to give her female name. Magistrate Dylon Bess justified this decision by affirming that only two genders exist. Because Twinkle refused to change clothes and was denied entry to the courtroom, the Magistrate dismissed the case.⁶⁸⁹ The Chief Magistrate sanctioned the Magistrate Bess for this misconduct, but “he was [simply] reprimanded for it, he was not laid off or anything,”⁶⁹⁰ and Twinkle “got absolutely no justice.”⁶⁹¹ Rose, a transgender woman, shared a similar story about her friend Petronella, another transgender woman who encountered Magistrate Bess. Petronella reported a man for physical abuse and appeared in court where Magistrate Bess told her: “Next time when you come back to court, dress like a man,”⁶⁹² and “the dressing is improper.”⁶⁹³ Recalling what happened, Rose became frustrated, asking: “What is improper dressing?! It’s not like she dressed scandalous! I think that Magistrate has a problem with transgender persons.”⁶⁹⁴ The second time Petronella appeared before court, she refused to change

687. *Id.*

688. Interview with Miglon, *supra* note 228.

689. *Id.*

690. Interview with Anil Persaud, *supra* note 103.

691. Interview with Miglon, *supra* note 228.

692. Interview with Rose, *supra* note 177.

693. *Id.*

694. *Id.*

her clothes and was not allowed in the courtroom.⁶⁹⁵ The Magistrate dismissed her case.⁶⁹⁶

Local and regional CSOs hope that engagement with judicial officers, like the training on gender responsive adjudication held in Georgetown in March 2018, will lead to increased access to the legal system for LGBT persons in Guyana.⁶⁹⁷

III. CONCLUSION AND RECOMMENDATIONS

The enforcement of discriminatory laws criminalizing the very existence of LGBT persons in Guyana and police abuse, both outside and inside police stations, strongly deter LGBT persons from reaching out to the police for help. When they do, LGBT persons encounter tremendous difficulties in reporting incidents, securing investigations, and accessing courts. The serious shortcomings of the State in addressing the root causes of such difficulties, and in providing actionable remedies for violence and harassment against LGBT persons in Guyana, further perpetuate the cycle of violence.

Based on these findings, recommended actions for the Guyanese Government, UN, and OAS are included in *Recommendations infra*.

695. *Id.*

696. Derwayne Wills, *Transgender Assault Victim Barred from Entering Court as Magistrate Dismisses Case*, DEMERARA WAVES (Mar. 2, 2017), <http://demerarawaves.com/2017/03/02/transgender-assault-victim-barred-from-entering-court-as-magistrate-dismisses-case/>.

697. *Part 3 of Gender Responsive Training to be Held in Guyana*, JURIST PROJECT (Mar. 21, 2018), <http://www.juristproject.org/news-media/media-releases/281-part-3-of-gender-responsive-training-to-be-held-in-guyana>; E-mail from Joel Simpson, Managing Dir., SASOD, to authors (May 4, 2018, 6:20 AM) (on file with authors).

RECOMMENDATIONS:

Based on the findings of pervasive discrimination and violence against LGBT persons in Guyana detailed in this report, the research team makes the following recommendations.

I. TO THE GOVERNMENT OF GUYANA

General Recommendations:

1. Work with LGBT CSOs to raise awareness and/or institute regular training on ending SOGIE-based discrimination and violence for: teachers and school administrators, private sector employers, healthcare professionals, transportation providers, the Guyana Police Force, and other public sector employees.
2. Work with LGBT CSOs to improve data collection across government ministries and law enforcement on: SOGIE-based discrimination and violence in schools; issues impacting LGBT individuals' employment discrimination complaints; access to healthcare services, particularly for HIV prevention and treatment; the causes, consequences, and frequency of non-state actor violence and harassment against LGBT persons, including hate crimes; the number and types of complaints of police misconduct towards LGBT persons; and crimes motivated by prejudice, including on the grounds of SOGIE.
3. Work with LGBT CSOs to develop a national communications campaign to promote empathy and acceptance toward LGBT individuals by all persons in Guyana.
4. Repeal, or at least impose moratoriums on, the following laws that discriminate against LGBT persons in their language and/ or application:
 - Sections 353 and 354 of Chapter 8:01 of the Criminal Law (Offences) Act criminalizing same-sex sexual relations between consenting adults.
 - Sections 143, 144, and 153(1)(xlvii) of Chapter 8:02 of the Summary Jurisdiction (Offences) Act, which respectively criminalize vagrancy, loitering, and "cross-dressing."
5. Comply with commitments made under previous U.N. Universal Periodic Reviews in 2010 and 2015. During the 2020 UPR, provide information on compliance with the

recommendations issued during the previous UPR cycles.

Protect the Right to Education for LGBT Youth:

1. Expand the Education Act's complaint mechanism to allow complaints against teachers, administrators, and other staff; specify that SOGIE-based discrimination constitutes "cruel or improper treatment" for which a charge may be brought.
2. Implement a complaints mechanism for persons with non-normative SOGIE to report incidents of bullying in schools and access legal, as well as non-legal, remedies.
3. Amend the nondiscrimination provisions in the Ministry of Education's Code of Conduct for teachers to prohibit SOGIE-based discrimination.
4. Train teachers and administrators on the secular nature of public education in Guyana and establish a policy to prohibit teaching personal religious views as part of the curriculum for secular subjects.
5. Work with representatives from the LGBT community to review the Health and Family Life Education curriculum and include modules on non-normative SOGIE, in particular adopting a comprehensive sex and sexuality education program that is inclusive of non-normative SOGIE.

Address Widespread Employment Discrimination against LGBT Persons:

1. Work with LGBT CSOs to amend the Prevention of Discrimination Act to explicitly prohibit SOGIE-based employment discrimination.
2. Develop standardized equal employment opportunity and workplace harassment policies that include SOGIE among protected categories.
3. Consider measures to encourage hiring of LGBT individuals in public and private sector jobs.
4. Conduct workshops and seminars to raise awareness among LGBT persons and other vulnerable groups of the Labour Department's complaint mechanism.

Address Challenges Facing LGBT Persons in Accessing Healthcare:

1. Include SOGIE as expressly protected grounds under the Joint Code of Ethics, the Medical Practitioners (Code of Conduct and Standards of Practice) Regulations, and the Allied Health Professionals Act, 2010.
2. Establish a national policy on nondiscrimination in the healthcare sector that prohibits SOGIE-based discrimination, or require each health facility to develop such a policy in order to be eligible for a license under Section 11 of the Health Facilities Licensing Regulations, 2008.
3. Ensure all individuals, including LGBT persons, can easily report discrimination by health practitioners, and that such complaints are independently investigated.
4. Enact regulations to require that health practitioners ensure vulnerable groups, including LGBT persons, are specifically made aware of their rights as patients.
5. Ensure that medical practitioners who breach confidentiality are disciplined.
6. Work with LGBT CSOs to conduct awareness-raising trainings and campaigns on HIV prevention and treatment, and other sexual health topics.
7. Train medical professionals on hormone therapy and gender-affirming surgery.
8. Make hormone therapy available to transgender persons in Guyana, or consider allocating funding to enable LGBT persons to access this treatment, in a manner that respects their privacy and dignity.

Address Widespread Violence and Harassment Facing LGBT Persons:

1. Work with LGBT CSOs to enact hate crime legislation that includes SOGIE among protected categories, or modify the criminal code to enhance penalties for crimes motivated by LGBT-based prejudice.
2. Improve access to transportation for LGBT persons by strengthening and enforcing nondiscrimination policies with bus drivers and employees providing such services.
3. Establish LGBT-friendly shelters for people seeking to escape domestic violence and ensure current support

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services have nondiscrimination policies inclusive of non-normative SOGIE.

Address Widespread Impunity for Crimes against LGBT Persons and other Challenges in Accessing Justice:

1. Ensure all persons, including LGBT individuals, are aware of the Police Complaints Authority and can easily report police misconduct. Ensure such reports are independently investigated.
2. Comply with the U.N. Human Rights Committee 2000 concluding observations to Guyana – which recommended that Guyana include detailed information about the Police Complaints Authority’s role and functions, as well as measures taken to ensure its independence and impartiality, its relationship with other police investigative mechanisms and the implementation and effectiveness of its decisions and recommendations – in its next report to the Committee.
3. Ensure that severe disciplinary actions are taken against police officers who abuse or discriminate against persons based on their actual or perceived non-normative SOGIE.
4. Enact regulations requiring the Guyana Police Force to consider whether prejudice motivated crimes against LGBT persons during investigations.
5. Improve treatment of LGBT persons in custody and enforce appropriate and effective sanctions for officers who violate these guidelines.

II. TO THE UNITED NATIONS, PARTICULARLY TO THE HUMAN RIGHTS COMMITTEE; COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS; COMMITTEE ON THE RIGHTS OF THE CHILD; OHCHR; SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH, AND SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. Conduct a visit to Guyana to examine the human rights violations committed based on non-normative SOGIE.
2. Issue statements on the discrimination and violence facing LGBT persons in schools, employment, healthcare, public spaces, and in accessing justice. Encourage the Government of Guyana to

comply with its obligations under the ICCPR, ICESCR, CRC, CAT, and other applicable international human rights treaties.

III. TO THE IACHR, PARTICULARLY THE RAPPOREUR ON THE RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANS, AND INTERSEX PERSONS; THE RAPPOREUR ON THE RIGHTS OF THE CHILD; THE RAPPOREUR ON THE RIGHTS OF WOMEN; THE SPECIAL RAPPOREUR FOR FREEDOM OF EXPRESSION; AND THE SPECIAL RAPPOREUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS

1. Conduct a visit to Guyana to examine the human rights violations committed based on non-normative SOGIE.
2. Issue statements on the discrimination and violence facing LGBT persons in schools, employment, healthcare, public spaces, and in accessing justice. Encourage the Government of Guyana to comply with its obligations under the American Declaration of the Rights and Duties of Man, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, and other applicable regional human rights treaties.

IV. TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Address Widespread Employment Discrimination against LGBT Persons:

1. Ensure that all federal contractors and subcontractors operating in Guyana, and all contractors with the U.S. Embassy or other U.S. government entities in Guyana, comply with Executive Order 13672 and federal regulations promulgated by the Department of Labor by implementing nondiscrimination policies covering sexual orientation and gender identity.⁶⁹⁸

698. Exec. Order No. 13,672, 79 Fed. Reg. 42,971 (July 23, 2014); U.S. DEP'T OF LABOR, OFFICE OF FED. CONTRACT COMPLIANCE PROGRAMS, IMPLEMENTATION OF EXECUTIVE ORDER 13672 PROHIBITING DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY BY CONTRACTORS AND SUBCONTRACTORS, https://www.dol.gov/ofccp/LGBT/OFCCP_LGBT_Rule%20Final_12114_JRF_QA_508c.pdf.

Support Guyana's Ongoing Efforts to Prevent and Treat HIV and AIDS:

1. Restore USAID funding or provide alternative assistance to Guyana's Ministry of Public Health and local NGOs to support HIV services.
2. Encourage private, philanthropic U.S. organizations to fund HIV-related initiatives in Guyana.

Encourage Respect for the Rights of LGBT Persons:

1. Include and enforce respect for LGBT persons' rights in Guyana when deciding whether Guyana is to remain a beneficiary under the American Generalized System of Preferences.⁶⁹⁹

V. TO THE PRIVATE SECTOR

To the Private Sector Commission and Private Sector Companies in Guyana:

1. Establish a private sector pledge to adopt and enforce policies on equal employment opportunity and workplace harassment that explicitly list sexual orientation, gender identity, and gender expression among protected categories, and adopt those policies.
2. Publicly support amendments to the Prevention of Discrimination Act that will prohibit SOGIE-based employment discrimination.

699. The Generalized System of Preference (GSP) promotes economic development of the world's developing countries by eliminating import duties on thousands of products for beneficiary countries. Certain conditions are tied to a country becoming a beneficiary. As GSPs are being reviewed this year (2018), the U.S. Congress has an opportunity to tie GSP beneficiary status to respect for LGBT persons' rights. Generalized System of Preferences (GSP), OFFICE OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preference-gsp> (last visited Mar. 30, 2018). This could be extended to renegotiating the Caribbean Basin Initiative, launched in 1984 and scheduled to expire on September 30, 2020. See *Caribbean Basin Initiative (CBI)*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/issue-areas/trade-development/preference-programs/caribbean-basin-initiative-cbi> (last visited Mar. 30, 2018).

3. Develop and provide training to employees, particularly managerial employees, on the rights of LGBT workers and how to foster an inclusive and supportive work environment.

To Foreign Corporations and Investors in Guyana:

1. Extend, promote, and enforce equal employment opportunity and workplace harassment policies that explicitly prohibit discrimination on the grounds of SOGIE, and require the same of all affiliates, contractors, subcontractors, and vendors, as part of the company's commitment to corporate social responsibility.
2. Engage with Guyana's business, education, civil society, and government sectors to encourage adoption of laws and policies on equal employment opportunity and workplace harassment that include SOGIE as protected statuses.

CONCLUSION

“I just want the government of Guyana to know that we are all citizens of this beautiful country and we must get equal rights.”

*– Aparna, 34-year-old transgender woman in New Amsterdam, Guyana*⁷⁰⁰

Through its international and regional treaty obligations, Guyana has nominally agreed to uphold nondiscrimination and respect for human dignity in its laws and policies. The State has signed on to numerous treaties guaranteeing human rights for all Guyanese, including those individuals who identify as LGBT. Over the last two decades, despite a lack of specific protections for the LGBT community, civil society advocacy has flourished. Guyana’s civil society presence at international mechanisms for human rights has been robust, and the voice of the LGBT community has been loud, persistent, and proud.

Yet the findings of this report indicate a disconnect between the State’s obligations and its practices on every level of institutional protection and provision of State services (such as education, health, and other sectors discussed in this report). While many laws and government policies are facially neutral, the discretionary implementation by individual state actors has serious discriminatory effects. Moreover, the presence of laws specifically targeting the LGBT community normalize discrimination and stigmatization in society at large, casting negative and reverberating lasting effects on LGBT individuals throughout their lives.

Violations by private actors are rampant as well, indicating the State is failing in its positive obligations to *prevent* rights violations by private actors. The failure to properly note complaints and to investigate and prosecute private actors *is* attributable to the State. Even if the complete prevention of incidents spurred by discrimination is impossible, due diligence in reporting, investigation, and prosecution is mandated by the human rights instruments Guyana has ratified.

The bridge to overcoming the large chasm between State obligations and efforts with the actual lived experiences of the LGBT community in Guyana is in the government’s power. While this report has made several recommendations to various institutions within and outside of the Guyanese government, they can set a powerful example of acceptance for LGBT persons among the citizens of Guyana. As one human rights defender noted, “[A]wareness comes from schools, from the government, [yet] you sit there as the highest decision-making body for

700. Interview with Aparna, *supra* note 150.

the country and you spread hate and homophobic messages . . . [but] these people have the same rights as everyone.”⁷⁰¹

The LGBT community is looking to the Government to fulfill their rights and provide explicit protection and policies fostering their inclusion. Concerted efforts by the government can begin to build tolerance and, one day, lead to acceptance of LGBT individuals in their schools, workplaces, and communities. Just as discrimination in laws and their implementation have negative reverberating effects, new protections and guarantees of rights can have positive reverberating effects, enabling persons with non-normative SOGIE to enjoy the full spectrum of human rights and live with dignity.

701. Interview with Rita, *supra* note 148.