



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

Distr.  
GENERAL

CAT/C/GUY/1  
14 July 2006

Original: ENGLISH

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Initial reports of States parties due in 1989**

**GUYANA\* \*\***

[16 June 2006]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\* The annexes to the present report may be consulted in the files of the Committee secretariat.

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## **Introduction**

Guyana signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention, the Convention against Torture) on 25 January 1988, and subsequently deposited the instrument of ratification with the Secretary-General on 19 May 1988.

Pursuant to article 19 of the Convention the Government of Guyana was under obligation to submit to the Committee against Torture (the Committee) an initial report due 17 June 1989, a second periodic report due 17 June 1993, a third periodic report due 17 June 1997, a fourth periodic report due 17 June 2001 and a fifth periodic report due 17 June 2005.

Because of socio-economic constraints the Government has not submitted any reports to date. The Government regrets the delay in the submission of the initial and periodic State reports and welcomes this opportunity to review the current state of implementation of the Convention and confirm its commitment in favour of the prohibition against all forms of torture and cruel, inhuman or degrading treatment or punishment.

The present document consolidates the outstanding initial report and all outstanding periodic reports and includes an updated core report.

Statutory provisions are provided throughout the text where applicable. Selected legislations are annexed in their entirety as a separate attachment for the convenience of the Committee.

Information of a general nature relating to the political structure and legal framework of Guyana is provided in the expanded core document.

The present report was drafted by the Legal and Treaties Division of the Ministry for Foreign Affairs in cooperation with the Ministry of Home Affairs. The draft version was reviewed by the Permanent Inter-Agency Standing Committee on Human Rights (PIASCHR) which comprises key government agencies and selected non-governmental organizations (NGOs). The Committee is chaired by the Minister for Foreign Affairs.

The input provided was reviewed by the Legal and Treaties Division and incorporated into the draft if and when appropriate. Upon completion the draft report was discussed by PIASCHR, further amendments made before it is finally referred to Cabinet for approval.

## **I. GENERAL INFORMATION**

### **Country, people and demographic features**

#### **Location, size, climate**

1. Guyana is located on the continent of South America, 1°-8.5° north and 56°-61° west of the equator. It shares borders with Brazil to the south, Venezuela to the west, Suriname on the east and the Atlantic Ocean to the north.

2. This country is 83,000 square miles or 214,000 kilometres in area, and a major part of it is covered by tropical forests. As part of the Amazon Basin, it has one of the few remaining tropical forests which still form the habitat for large quantities of endangered species including flora and fauna.

3. By virtue of the geographical location of Guyana, it enjoys a tropical climate, the temperature of which ranges from 24.3 degrees to 30.1 degrees centigrade. The monthly rainfall is above 2,006 millilitres.

### **Population**

4. Amerindians are indigenous to and were the first people to have settled in Guyana. Archaeologists using radiocarbon data found that the Waraus were the first Amerindian tribe to have settled in Guyana more than 11,000 years ago. The radiocarbon data also shows that the Caribs came and settled in Guyana about 7,000 years ago, while the Arawaks settled approximately 3,500 years ago.

5. Guyana is today a multi-ethnic society comprising six distinct races, from which arises a large group of various mixtures of these races. The most recent census (2002) reveals that Afro-Guyanese accounted for 30.2 per cent; Indo-Guyanese 43.5 per cent; Amerindian 9.2 per cent; Chinese 0.2 per cent; Portuguese 0.2 per cent; Mixed 16.7 per cent; and White 0.1 per cent of the population.

6. The census also reveals that the general size of the population is 751,223 persons.

### **Language and religion**

7. Guyana's official language is English. However, creolese (non-standard English) is spoken by a majority of the population. There are also a number of Amerindian languages.

8. There are three major religious denominations in Guyana: Hinduism, Christianity and Islam. Hindus make up about 28.4 per cent of the population, Christians 57.4 per cent and Muslims 7.2 per cent. Seven per cent of the population either belong to other religions or none at all.

### **Gender, heads of household, literacy rate**

9. The latest statistics reveal that as of 2001 the population comprised 49 per cent male and 51 per cent females.

10. The UNDP Human Development Indicators (2000) reports that the literacy rate for persons 15 years of age and older is 98.5 per cent.

### **The economy**

11. Guyana's economy has shown fluctuating growth from 1991 to 2002. The decade of the 1990s was marked by predominantly robust and sustained annual growth rates, commencing

with a growth rate of 6.1 per cent in 1991, peaking at 8.5 per cent by 1994. Between 1995 and 1999, the economy recorded an average annual growth of 4.1 per cent. For the entire decade, only in the year 1998 was negative growth (-1.8 per cent) recorded.

12. Declines in both the global and domestic economies have resulted in much lower levels of growth since 2000, with the economy declining by -1.4 per cent in 2000, recovering to 1.9 per cent growth in 2001, and a reduced level of 1.1 per cent in 2002. The modest growth recorded in 2002 was achieved despite general contraction in the regional and global economies. Nevertheless, national disposable income increased steadily from US\$ 695.5 million in 1996 to US\$ 705.9 million in 2001, before declining to US\$ 705.2 million in 2002.

13. The Economic Recovery Programme (ERP), the National Development Strategy (NDS), the Poverty Reduction Strategy Paper (PRSP) and other policies were designed to improve fiscal performance of the macroeconomic indicators, but have not resulted in the eradication of poverty, although the 1999 household income and expenditure survey indicated a marked reduction in poverty in 1993, the incidence of poverty in Guyana is still unacceptably high. These surveys reveal that 36.4 per cent of the population lives in absolute poverty and 19.1 per cent exist in a state of critical poverty.

### **General political structure**

14. Guyana achieved its independence from Great Britain on 26 May 1966 and became a Cooperative Republic on 23 February 1970. It is a parliamentary democracy and is a member of the United Nations, the Commonwealth of Nations, the Organization of American States (OAS) and the Caribbean Community (CARICOM), among other regional groups.

15. There are several political parties in Guyana. However, the People's Progressive Party (PPP) and the People's National Congress Reform (PNC/R) have been the two major political forces over the last 50 years. PPP whose coalition with the Civic group since 1992 forms the present Government. PPP is led by its General Secretary Mr. Donald Ramotar, while the main opposition, PNC/R is led by Mr. Robert Corbin, the Leader of the Opposition.

16. Other parties which have taken on an active role in Guyana's political structure are the Guyana Alliance for Progress and Working Peoples' Alliance (GAP/WPA); Rise, Organize and Rebuild (ROAR); The Justice For All Party (JEAP) and The United Force (TUF).

### **Type of government**

17. Guyana is a democracy. Periodic elections are held on the basis of Proportional Representation. The country is led by a President who is elected by the people. The President is both the Head of State and Head of Government. However, he is not a member of the National Assembly and therefore does not participate in Parliamentary debates.

18. Further, Guyana is divided into 10 Administrative Regions.

## **Legislature**

19. Guyana has a unicameral parliament consisting of members of the Government and opposition parties. There are currently 67 elected members of the National Assembly: 37 from the Government, 27 from the main opposition and 3 from the other opposition parties.

20. Section 11B (5,6) of the Representation of the People Act, Cap. 1:03, provide that at least one third of the list of representatives of each political party contesting national elections, must be female.

21. Through Proportional Representation, members are elected through national elections held every five years.

## **The executive**

22. The Cabinet is the main body which formulates government policies. It is headed by the President and includes all ministers of government.

## **Judiciary**

23. The judicial system of Guyana is founded upon the British common law and practice. It is a four-tier judicial system consisting of the Magistrate's Court, High Court, Court of Appeal and the Caribbean Court of Justice, in that order of superiority. The Caribbean Court of Justice is the final court of appeal.

24. The Chancellor and the Chief Justice are appointed by the President after obtaining the agreement of the Leader of the Opposition. The other judges are appointed by the President acting on the advice of the Judicial Service Commission which is headed by the Chancellor of the Judiciary.

### **General legal framework under which torture and other cruel, inhuman or degrading treatment or punishment is prohibited**

25. The Constitution (Cap 1:01 of the Laws of Guyana) provides as follows:

#### **(a) Article 39, Guiding principles and objectives**

- (i) It is the duty of Parliament, the Government, the courts and all other public agencies to be guided in the discharge of their functions by the principles set out in this chapter, and Parliament may provide for any of those principles to be enforceable in any court or tribunal.
- (ii) In 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.

**(b) Article 40, Fundamental rights and freedoms of the individual**

- (i) Every person in Guyana is entitled to the basic right to a happy, creative and productive life, free from hunger, ignorance and want. That right includes the fundamental rights and freedoms of the individual.
- (ii) The provisions of Title 1 of Part 2 shall have effect for the purpose of affording the protection to the aforesaid fundamental rights and freedoms of the individual subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

**(c) Article 138, Protection of right to life**

- (i) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of an offence under the law of Guyana of which he has been convicted.

No person who was under the age of 18 years at the time when he or she committed an offence, for which that person has pleaded or was found guilty, shall be subject to capital punishment for the commission of that offence.

- (ii) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this article if he dies as the result of the use of force to such an extent as is reasonably justifiable in the circumstances of the case
  - (a) for the defence of any person from violence or for the defence of property;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) for the purpose of suppressing a riot, insurrection or mutiny; or
  - (d) in order to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

**(d) Article 139, Protection of right to personal liberty**

- (1) No person shall be deprived of his liberty save as may be authorized by law in any of the following cases, that is to say
  - (a) in execution of the sentence or order of a court, whether established for Guyana or some other country, in respect of a criminal offence of which he has been convicted;



- (b) in execution of an order of the High Court or the Court of Appeal or such other courts as may be prescribed by Parliament punishing him for contempt of any such court or of another court or tribunal;
- (c) in execution of the order of a court made to secure the fulfilment of an obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of the order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Guyana;
- (f) in the case of a person who has not attained the age of 18 years, under the order of a court or with the consent of his parent or guardian, for the purpose of his education or welfare;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Guyana, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person while he is being conveyed through Guyana in the course of his extradition or removal as a convicted prisoner from one country to another;
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Guyana or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order after it has been made or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Guyana in which, in consequence of any such order, his presence would otherwise be unlawful;
- (k) subject to the provisions of the next following paragraph, for the purposes of his preventive detention;
- (l) for the purpose of his being called up for national service;

- (2) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless a tribunal established for the purposes of this paragraph has reported before the expiration of the said period of three months that there is, in its opinion, sufficient cause for such detention.
- (b) The references in subparagraph (a) to a period of three months include references to any lesser periods that amount in the aggregate to three months:
- Provided that no two such lesser periods shall be aggregated for this purpose if the period between the expiration of the first and the commencement of the second is more than one month.
- (c) A person who has been detained by virtue of the provisions of any law providing for preventive detention and who has been released from detention and who has been released from detention in consequence of a report of a tribunal established for the purposes of this paragraph that there is, in its opinion, insufficient cause for his detention shall not be again detained by virtue of such provisions within the period of six months from his release on the same grounds as he was originally detained.
- (d) For the purposes of subparagraph (c) a person shall be deemed to have been detained on the same grounds as he was originally detained unless a tribunal established as aforesaid has reported that, in its opinion, there appear, prima facie, to be new and reasonable grounds for the detention (but the giving of any such report shall be without prejudice to the provisions of subparagraph (a)).
- (e) A tribunal established for the purposes of this paragraph shall be established by law and shall consist of persons who are Judges of the Supreme Court of Judicature or who are qualified to be appointed as Puisne Judges of the High Court.
- (3) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention and shall be permitted, at his own expense, to retain and instruct without delay a legal adviser of his own choice, being a person entitled to practice in Guyana as an attorney-at-law, and to hold communication with him.

- (4) Any person who is arrested or detained
- (a) for the purpose of bringing him before a court in execution of the order of a court; or
  - (b) upon reasonable suspicion of having committed or being about to commit a criminal offence, and who is not released, shall be brought before a court within 72 hours of arrest or detention, but the police may apply to the High Court for extension of time; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.
- (5) Any person who is unlawfully arrested or detained by any other person shall be entitled compensation therefor from that person.
- (6) Nothing in the provisions of paragraphs (3) and (4) shall apply to any person arrested or detained by virtue of the provisions of any law providing for preventive detention except insofar as the provisions of said paragraph (3) require that he shall be permitted to retain and instruct a legal adviser and to hold communication with him.

**(e) Article 140, Protection from slavery and forced labour**

- (1) No person shall be held in slavery or servitude
- (2) No person shall be required to perform forced labour
- (3) For the purposes of this article, the expression “forced labour” does not include
  - (a) any labour required in consequence of the sentence of a court;
  - (b) any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
  - (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that person is required by law to perform in place of such service; or

- (d) any labour required during any period when Guyana is at war or in the event of any hurricane, earthquake, flood, fire or other like calamity that threatens the life or well-being of the community to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that calamity, for the purpose of dealing with that situation.

**(f) Article 141, Protection from inhuman treatment**

- (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question authorizes the infliction of any punishment or the administration of any treatment that was lawful in Guyana immediately before the commencement of this Constitution.

**(g) Article 144, Provisions to secure protection of law**

- (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.
- (2) It shall be the duty of a court to ascertain the truth in every case provided that every person who is charged with a criminal offence
  - (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
  - (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
  - (c) shall be given adequate time and facilities for the preparation of his defence;
  - (d) shall be permitted to defend himself before the court in person or by a legal representative of his own choice;
  - (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;

- (f) and shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, and, except with his consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence or he fails without reasonable excuse (the proof whereof shall lie on him) to attend court.
- (3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgement a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.
- (4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is more severe in degree or nature than the most severe penalty that might have been imposed for that offence at the time when it was committed.
- (5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal proceedings relating to the conviction or acquittal.
- (6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon for that offence.
- (7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.
- (8) Any court or other tribunal prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial: and where proceedings for such a determination are instituted by any person before such a court or other tribunal, the case shall be given a fair hearing within a reasonable time.
- (9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other tribunal, including the announcement of the decision of the court or other tribunal, shall be held in public.

- (10) Nothing in the preceding paragraph shall prevent the court or other tribunal from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other tribunal
- (a) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of decency, public morality, the welfare of persons under the age of 18 years or the protection of the private lives of persons concerned in the proceedings; or may by law be empowered or required so to do in the interests of defence, public safety or public order.
- (11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of
- (a) paragraph (2) (a) to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) paragraph (2) (e) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; (c) or paragraph (5) to the extent the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall, in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law.
- (12) In the case of any person who is held in lawful detention, the provisions of paragraph (1), paragraph (2) (d) and (e) and paragraph (3) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.
- (13) Nothing contained in paragraph (2) (d) shall be construed as entitling a person to legal representation at public expense but, subject thereto, it shall be the duty of the State to ensure every person charged with a criminal offence is given a fair trial and accordingly to make provision for legal aid to be given in suitable cases.
- (14) In this article “criminal offence” means a criminal offence under the law of Guyana.

- (h) **Article 153 makes provision for the “Enforcement of protective provisions”**
- (i) **Article 154 (a), Protection of human rights**
- (1) Subject to paragraphs (3) and (6), every 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.
  - (2) The rights referred to in paragraph (1) do not include any fundamental rights under this Constitution.
  - (3) The State shall, having regard to the sociocultural level of development of the society, take reasonable legislative and other measures within its available resources to achieve the progressive realization of the rights provided for in paragraph (1).
  - (4) If any person alleges that any of the rights referred to in paragraph (1), has been, is being or is about to be contravened in relation to him or her, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Human Rights Commission in such manner as the Commission may prescribe, for redress.
  - (5) Nothing contained in this article shall be construed so as to abrogate any human right, not enumerated herein, which a person had at the time of the commencement of this article.
  - (6) The State may divest itself or otherwise limit the extent of its obligations under any of the treaties listed in the Fourth Schedule, provided that two thirds of the elected members of the National Assembly have voted in favour of such divestment or limitation.
- (j) **Fourth schedule of article 154 (a)**
- 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
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

**(k) Part II, Title I, Protection of Fundamental Rights and Freedoms of the Individual, provides an overview of fundamental rights that are specifically protected under the Constitution**

- Article 138 Protection of Right to Life
- Article 139 Protection of Right to Personal Liberty
- Article 140 Protection from Slavery and Forced Labour
- Article 141 Protection from Inhuman Treatment
- Article 142 Protection from Deprivation of Property
- Article 143 Protection against Arbitrary Search or Entry
- Article 144 Provisions to Secure Protection of Law
- Article 145 Protection of Freedom of Conscience
- Article 146 Protection of Freedom of Expression
- Article 147 Protection of Freedom of Assembly, Association and Demonstration
- Article 148 Protection of Freedom of Movement
- Article 149 Protection from Discrimination on the Grounds of Race, etc.
- Article 149A Right to Work
- Article 149B Right to Pension and Gratuity
- Article 149C Right to Participate in the Decision-making Process of the State
- Article 149D Equality of Persons Before the Law
- Article 149E Equality of Status
- Article 149F Equality for Women
- Article 149G Indigenous People's Right



Article 149H	Right to Free Education
Article 149I	Right to Establish Private Schools
Article 149J	The Environment
Article 150	Provisions for Time of War or Emergency
Article 152	Saving of Existing Laws and Disciplinary Laws
Article 153	Enforcement of Protective Provisions
Article 154	Interpretation

A copy of the Constitution is attached and marked “annex I”.

26. There is no single statutory criminal provision that encompasses the prohibition against torture and other cruel, inhuman or degrading treatment or punishment in its entirety. The following sections of the Criminal Law (Offences) Act (Cap. 8:01) outlaw different elements of the Act as defined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

A copy of this Act is attached and marked “annex II”.

27. The first part of each section provides a summary overview of specific offences, the second part to each section elaborates on certain sections that may be of particular interest to the Committee.

**(i) Title 4 - Attempt, Incitement and Threat (selected sections)**

Section 38 Doing Threatening Act Generally

Section 39 Doing Threatening Act by Night

Section 38 Doing Threatening Act Generally

Everyone who, with intent to intimidate or annoy any person, breaks or injures, or threatens to break or injure, any dwelling-house, or, by the discharge of firearms or otherwise, alarms or attempts to alarm any person in any dwelling-house, shall be guilty of a misdemeanour and liable to imprisonment for two years.

Section 39, Doing Threatening Act by Night, increases the punishment to five years' imprisonment for the above act, if committed by night.

**(ii) Title 6 - Bodily Injury, Etc. (selected sections)**

Section 48 Doing Bodily Harm by Wanton Misconduct

Section 49 Assault Causing Actual Bodily Harm

Section 50	Unlawful Wounding
Section 51	Administering Poison with Intent to Injure
Section 52	Administering Noxious Thing so as to Endanger Life or Cause Grievous Bodily Harm
Section 53	Putting Explosive Substances with Intent
Section 54	Malicious Burning by Explosion
Section 55	Discharging Loaded Firearm with Intent
Section 56	Meaning of “Loaded Firearm”
Section 57	Feloniously Wounding
Section 58	Administering Drug with Intent to Commit Indictable Offence
Section 59	Disabling with Intent to Commit Indictable Offence
Section 49	Assault Causing Actual Bodily Harm

Everyone who assaults any person so as to cause him actual bodily harm shall be guilty of a misdemeanour and liable to imprisonment for five years.

#### Section 50, Unlawful wounding

Everyone who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any person, whether with or without any weapon or instrument, shall be guilty of a misdemeanour and liable to imprisonment for five years.

### (iii) **Title 9 - Homicide**

#### Section 95, Manslaughter

Everyone who commits manslaughter shall be guilty of felony and liable to imprisonment for life.

#### Section 101, Murder

Everyone who commits murder shall be guilty of felony and liable to suffer death as a felon.

### **Kidnapping**

28. Sections 3, 5, 7 and 9 of the Kidnapping Act (Act No. 6 of 2003), prohibits and attaches sanctions to the commission of the acts of abduction, wrongful restraint, wrongful confinement and abduction, wrongful restraint or wrongful confinement for ransom.

## Trafficking in persons

29. Recently the Combating of Trafficking in Persons Act, 2005 (Act No. 2 of 2005) was enacted to provide comprehensive measures to combat trafficking in persons. Part II of this legislation outlines the “Criminal Offences and Related Provisions”. More particularly, however, is s. 3 (1) which provides that:

“Whoever engages in or conspires to engage in or attempts to engage in, or assist another person to engage in or organizes or directs other persons to engage in ‘trafficking in persons’ shall

- (i) on summary conviction
  - (a) be sentenced to not less than three years nor more than five years’ imprisonment;
  - (b) be subject to forfeiture of property under section 7; and
  - (c) be ordered to pay full restitution to the trafficked person or persons under section 6.
- (ii) on conviction on indictment
  - (a) be sentenced to not less than five years’ or to life imprisonment;
  - (b) be subject to forfeiture of property under section 7; and
  - (c) be ordered to pay full restitution to the trafficked person or persons under section 6.”

30. As regards administrative provisions there is established the office of the Ombudsman pursuant to article 122 (1) of the Constitution.

Article 192 (1) of the Constitution: Matters Subject to Investigation by the Ombudsman

Subject to the provisions of this article, the Ombudsman may investigate any action taken by any department of Government or by any other authority to which this article applies, or by the President, Ministers, officers or members of such a department or authority, being action taken in exercise of the administrative functions of that department or authority.

31. In addition, there is the Human Rights Commission established pursuant to article 212G (1) (a) of the Constitution.

Article 212N (1) of the Constitution: General Function of the Human Rights Commission:

“The Human Rights Commission shall promote the observance of and respect for, and protect and investigate violations of the rights recognized by this Constitution and any other law relating to equality of opportunity and treatment.”

32. Moreover, there are three pieces of legislation under which an (extraordinary) inquiry can be held: The Defence Act (in which case the person(s) would have to be subject to service law); the Commission of Inquiry Act (upon the order of the President), or pursuant to article 197 (A) (5) of the Constitution (upon the order of the National Assembly).

The word “extraordinary” is meant to signify that such inquiries are not the standard procedures by which investigations into matters relating to transgressions of the prohibition against torture and other cruel, inhuman or degrading treatment are conducted.

33. Furthermore, section 4 of the Police (Discipline) Act, Cap. 17:01, prohibits the use of unnecessary violence against any person whom the police officer may be brought into contact with through the execution of his or her duty and attaches sanctions to breaches of said prohibition.

#### Section 4, Police (Discipline) Act (Cap. 17:01): Schedule, Powers of Punishment

The Police Service Commission [has the] [p]ower to impose the following punishments on any member of the Force (other than the Commissioner of Police) found guilty of an offence against discipline.

- (a) Admonition;
- (b) A reprimand;
- (c) A severe reprimand;
- (d) The award of extra duties and fatigues not exceeding 4 hours in ever 24 hours;
- (e) A fine not exceeding at any time 10 days’ pay;
- (f) Confinement to barracks for any period not exceeding 28 days with or without drill;
- (g) Reduction in rank;
- (h) Dismissal from the Force.

A copy of this Act is attached and marked “annex III”.

34. Section 8, Police Complaints Authority Act (Cap. 17:02), Complaint to Authority, gives any person “who has reasonable grounds to believe that a member of the Force is guilty of any misconduct” the right to make a complaint to the Authority, who pursuant to section 9 (1) (b)

may forward the complaint along with recommendations to the Commissioner of Police, who in turn is under obligation to investigate the matter under section 9 (2) of the Police (Discipline) Act.

A copy of the Police Complaints Authority Act, Cap. 17:02, is attached and marked “annex IV”.

35. Military: section 72 of the Defence Act (Cap. 15:01) prescribes for Disgraceful Conduct:

Every person subject to military law under the Act who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall on conviction by Court Martial be liable to imprisonment for two years or any less punishment prescribed by the Act.

A copy of this Act is attached and marked “annex V”.

36. A Note on Sources of law:

Pursuant to section 3 (b) of the Civil Law of Guyana Act, Cap. 6:01 (the Reception Provision), the common law of Guyana shall be the common law of England as it was from 1 January 1917. Therefore, in the absence of a specific statutory provision regarding any legal question, resort is automatically made to English common law, as evidenced from the large body of case law across the Commonwealth Caribbean, the United Kingdom of Great Britain and Northern Ireland and the rest of the British Commonwealth.

37. Guyana has deposited instruments of ratification or accession with the Secretary-General of the United Nations relating to the following human rights treaties:

**(i) General Assembly**

- Convention on the Elimination of All Forms of Discrimination against Women
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- International Convention on the Suppression and Punishment of the Crime of Apartheid

**(ii) United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court**

- Rome Statute of the International Criminal Court
- Agreement on the Privileges and Immunities of the International Criminal Court

**(iii) General Conferences of the International Labour Organization**

- Convention No. 111 (1958) concerning Discrimination in Respect of Employment and Occupation
- Convention No. 100 (1951) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value
- Convention No. 105 (1957) concerning the Abolition of Forced Labour
- Convention No. 98 (1949) concerning the Application of the Principles of the Right to Organize and to Bargain Collectively
- Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organize
- Convention No. 29 (1930) concerning Forced or Compulsory Labour
- Convention No. 11 (1921) concerning the Rights of Association and Combination of Agricultural Workers

**(iv) Guyana has deposited notifications of succession or accession to the Swiss Federal Council with regard to the following instruments**

- Geneva Convention relative to the Protection of Civilian Persons in Time of War
- Geneva Convention relative to the Treatment of Prisoners of War
- Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts

- (v) **Guyana has deposited instruments of ratification with the Office of Inter-American Law and Programs of the Organization of American States relating to the**
- Charter of the Organization of American States (as amended by the Protocol of Amendment to the Charter of the Organization of American States) “Protocol of Buenos Aires”, by the “Protocol of Cartagena de Indias”, by the “Protocol of Washington”, and by the “Protocol of Managua”
  - Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
- (vi) By virtue of ratifying the Charter of the Organization of American States, and in light of the 1965 second Special Inter-American Conference in Rio de Janeiro, the Inter-American Commission on Human Rights is authorized, pursuant to its residual powers, to examine alleged violations of the American Declaration of the Rights and Duties of Man relating to Guyana.

38. With the passing of the Constitution (Am.) (No. 2) Act of 2003, specifically article 154 (A) contained therein, specific international human rights instruments (including the Convention against Torture) were incorporated into the corpus of domestic law. The prohibition against torture and ill-treatment is codified in the Constitution thereby assuring that no laws are enacted that would infringe upon the right not to be subjected to such treatment.

39. Article 8 of Part I, Chapter I of the Constitution accords the Constitution supremacy over any other statute.

40. Provisions of the Convention can be invoked before domestic courts and administrative authorities pursuant to article 154 (A) (1) of the Constitution.

The Constitution was amended in 2003 to incorporate the core human rights treaties and no case has been reported claiming a violation of any right under the Convention against Torture.

41. There are judicial, administrative and/or other competent authorities with jurisdiction/mandate that cover matters dealt with by the Convention. These are:

**(i) Courts**

The High Court has original jurisdiction over matters brought before it by individuals seeking to protect their rights under article 141 or 154 (A) of the Constitution.

**(ii) Public prosecutor**

The Director of Public Prosecutions is empowered to prosecute alleged contraventions of any criminal provisions relating to torture or cruel, inhuman or degrading treatment or punishment.

**(iii) Administrative authorities in charge of police and prison administration**

Section 47 of the Prison Act, Cap. 11:01, Visiting Justices

- (1) There shall be in respect of each prison in Guyana a Board of Visiting Justices, and the Minister may appoint for such a time as may be specified in the appointment such and so many justices to be members of such board
- (2) All judges of the High Court and magistrates shall be ex officio visiting justices for each of the prisons of Guyana

Section 48 of the Prison Act, Cap. 11:01, Powers and Duties of Visiting Justices

- (1) A visiting justice may at any time visit any prison in respect of which he is a visiting justice, and may inspect any part of such prison, may enquire into and examine the food, diet, clothing, treatment and conduct of prisoners, may question any member of the prison staff or prisoner, may hear complaints from any prisoner, may enquire into any abuses and irregularities in any prison and shall ascertain as far as possible whether the provisions of this Act and the Prison Rules are being complied with, and may make a report upon any such matter to the Minister.

A copy of this Act is attached and marked “annex VI”.

42. While the Government recognizes the principle espoused in article 10 of the Vienna Declaration and Programme of Action wherein States declare that lack of development may not be invoked to justify the abridgement of internationally recognized human rights, the Government considers it an objective observation that the de facto implementation of the Convention is severely hampered by the economic costs attached to mainstreaming the provisions of the Convention throughout the public sector. In addition, a high rate of emigration exacerbate staff turnover rates, contributing to a loss of human capital and bringing about a depletion of institutional memory.

43. In order to remedy this shortcoming the Government actively seeks to cooperate with United Nations funds, programmes, and specialized agencies, as envisaged in Articles 55 and 56 of the Charter of the United Nations, and by the General Assembly of the United Nations in resolution 48/34 (Paris Principles).

44. The Government also cooperates with a range of international development agencies.

**II. INFORMATION IN RELATION TO EACH SUBSTANTIVE  
ARTICLE OF THE CONVENTION**

45. At the period of preparation of this report, there is no reported case and/or situation or any relevant statistical data, where measures giving effect to the provisions of this Convention have been enforced.



### **Article 1**

46. Article 141 (fundamental rights provision) of the Constitution prohibits torture but does not define it. Article 39 of the said Constitution reads: “[i]n the interpretation of the fundamental rights provisions [...] a court shall pay due regard to international law, international conventions, covenants and charters bearing on human rights”. It flows from article 39 that a court is empowered, even encouraged, to turn to the Convention against Torture when interpreting article 141.

47. Because of the lack of cases arguing a violation of article 141, there has been no jurisprudence to this effect as of the date of submission of this report.

48. Guyana ratified the Rome Statute of the International Criminal Court on 24 September 2004. The Statute prohibits torture when it constitutes genocide, a crime against humanity or a war crime. The definition of torture applied in those cases exceeds in scope that offered under the Convention against Torture. The jurisdiction of the Court applies should Guyana be unable or unwilling to prosecute the crimes enumerated in the Statute.

49. Guyana is also party to the Geneva Conventions and Additional Protocols thereto. The scope of protection offered by these instruments in time of international or non-international armed conflict exceeds that offered by the Convention against Torture in a number of respects.

50. The scope of protection offered by article 7 of the International Covenant on Civil and Political Rights, to which Guyana is party, may also exceed that offered by the Convention against Torture.

51. Guyana is also party to the Convention on the Rights of the Child which prohibits torture (article 37 (a)) specifically in relation to minors.

### **Article 2**

52. As regards duration of police custody, article 139 of the Constitution, Protection of Right to Personal Liberty may be instructive:

- (4) Any person who is arrested or detained
  - (a) for the purpose of bringing him before a court in execution of the order of a court; or
  - (b) upon reasonable suspicion of having committed or being about to commit a criminal offence, and who is not released, shall be brought before a court within 72 hours of arrest or detention, but the police may apply to the High Court for extension of time; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence is not tried within a reasonable time, then,

without prejudice to any further proceedings against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

53. Section 46 of the Prison Act, Cap. 11:01, addresses Access to Prisoners Under Sentence of Death, thus:

Except with the written permission of the Director, no person other than a member of the prison staff, the medical officer and a minister of the religious denomination to which the prisoner belongs shall have access to any prisoner under the sentence of death.

54. Article 144 of the Constitution, gives arrested persons the right to legal representation of his own choice:

(2) It shall be the duty of a court to ascertain the truth in every case provided that every person who is charged with a criminal offence

[...]

(d) shall be permitted to defend himself before the court in person or by a legal representative of his own choice.

55. There are no provisions that add further restrictions to detained persons subsequent to the proclamation of a public emergency, nor are there any special anti-terrorist measures to that effect.

56. Article 150 of the Constitution (Cap. 1:01) applies when Guyana is at war, or there is in force a proclamation of emergency made by the President, or there is in force a resolution of the National Assembly declaring that democratic institutions in Guyana are threatened by subversion.

57. More specifically, article 150 (2) outlines certain fundamental rights which are derogable in public emergencies. However, article 141, which protects from torture, inhuman or degrading punishment or treatment, remains non-derogable.

58. Invoking superior orders do not relieve a member of the armed forces of individual criminal responsibility for unlawful acts. Acts contravening military statutes may be handled before a Court Martial or a Board of Inquiry. Section 127 (1) of the Defence Act (Cap. 15:01) stipulate that [subject to the double jeopardy prohibition]

[n]othing in this Act shall restrict the offences for which persons may be tried by any civil court, or the jurisdiction of any civil court to try a person subject to military law under this Act for any offence.

59. A member of the armed forces is not under obligation to execute an illegal order, hence, he or she are always permitted lawfully to oppose an order to commit acts of torture.

60. To this end, section 44, Defence Act (Cap. 15:01), Disobedience to particular orders reads:

- (1) Every person subject to military law under this Act who, in such manner as to show wilful defiance of authority, disobeys any lawful command given to him or sent to him personally shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act.
- (2) Every person subject to military law under this Act who, whether wilfully or through neglect, disobeys any lawful command shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act.

### **Article 3**

61. An extraditable offence is defined in section 5 (1) of the Fugitive Offenders Act, Cap. 10:04, as:

[A]n offence of which a person is accused or has been convicted in Guyana or any Commonwealth country or treaty territory, shall be an extraditable offence, whenever the act or omission constituting the offence, however described, constitutes an offence, and is punishable with death or imprisonment for life or for a term of not less than two (2) years under the laws of Guyana and of the Commonwealth country or treaty territory making to the Government of Guyana the request for extradition or of the Commonwealth country or treaty territory to which the request for extradition is made by the Government of Guyana.

A copy of this Act is attached and marked “annex VII”.

62. In addition to the possibility of invoking the non-refoulement principle as pronounced in article 3 of the Convention against Torture before a Court pursuant to article 154 (A) of the Constitution, section 8 (1) of the Fugitive Offenders Act, Cap. 10:04, prohibits extradition where it is suspected that the person in question may be detained or restricted in his or her personal liberty in that State by reason of race, tribe, sex, religion, national or political opinion:

A person shall not be extradited under this Act from Guyana to a Commonwealth country or treaty territory, or be committed to, or held in, custody for the purposes of such extradition, if it appears to the Minister, to the Magistrate before whom he is brought in pursuance of a warrant issued under section 13, to the High Court, where any application under section 17 (1) or 19 (1) is made to that court, or to the Court of Appeal, having regard to any question of law arising in any appeal under section 21, that

- (a) the offence of which the person is accused or has been convicted is an offence of a political character;
- (b) the request for extradition; though purporting to be made on account of an extraditable offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, tribe, sex, religion, nationality or political opinions; or

- (c) he might, if extradited, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, tribe, sex, religion, nationality or political opinions.

63. There have been no states of emergencies or similar declared within Guyana which have had an impact on the principle of non-refoulement.

64. The Ministry of Home Affairs and/or the President and/or the judiciary determine when to extradite, expel, remove or refoul a person.

65. An order of extradition is subject to review in a court of law by virtue of section 15 (1) of the Fugitive Offenders Act, Cap. 10:04. An order by the President to remove an undesirable is not subject to review. Under section 27 of the Immigration Act (Cap. 14:02) an immigrant may challenge before a court of law the decision of an immigration officer to expel that person.

66. No reported decisions are available during the period of preparation of this report.

67. Providing training to officials dealing with the expulsion or extradition is a regular feature in the training programmes of disciplined forces. No separate data or figures are available during the period of preparation of this report.

68. Some of these training programmes include but are not limited to:

DATE(S): 9-10 August 2005

SUBJECT: Human Rights & Professional Skills Training Programme for Police Prosecutors and the Guyana Police Force

PARTICIPANTS: Guyana Human Rights Association/Guyana Law Association (UK)/Guyana Social Cohesion Programme/UNDP

DATE(S): 12-14 August 2005

SUBJECT: Human Rights and Professional Skills Training for Magistrates

PARTICIPANTS: Guyana Police Force/Guyana Human Rights Association/Guyana Law Association (UK)/Guyana Social Cohesion Programme/UNDP

DATE(S): Ongoing

SUBJECT: Human Rights Trainer-of-Trainers Programme for Police

PARTICIPANTS: Guyana Police Force/Guyana Human Rights Association/Guyana Social Cohesion Programme/UNDP

#### **Article 4**

69. Torture is criminalized under different legislations.

Section 76 of the Defence Act, Cap. 15:01, provides that

- “(1) Every person subject to military law under this Act who commits a civil offence whether in Guyana or elsewhere shall be guilty of an offence under this section.
- (2) In this Act the expression ‘civil offence’ means any act or omission punishable by the law of Guyana or which, if committed in Guyana, would be punishable by such law; and in this Act the expression ‘the corresponding civil offence’ means the civil offence the commission of which constitutes the offence against this section.”

70. The punishments in accordance with this section range from death to “any punishment or punishments which a civil court could award for the corresponding civil offence ...”.

71. Under the Criminal Law (Offences) Act, Cap. 8:01 (as examined above), punishments for the quoted offences range from years of imprisonment to death by hanging.

72. Offences contrary to the provisions of the Convention against Torture are generally of an indictable nature, that is, of such serious nature that they are triable in a High Court before a judge and jury. The general rule of law and practice in Guyana regarding statutory limitations for indictable offences dictate that, in the interest of public good, such crimes should not go unpunished because a certain time period has passed between the time of commission and the time of prosecution.

73. There have been no reported cases, where an act of torture or cruel, inhuman and degrading treatment or punishment have failed to result in a prosecution due to statutory limitations relating to those offences.

74. Reference is here made to section 4, Police (Discipline) Act (Cap. 17:01), Schedule, Powers of Punishment, addressed in paragraph 17 above.

#### **Article 5**

75. The courts of Guyana exercise territorial jurisdiction pursuant to section 3 of the Criminal Law (Offences) Act (Cap. 8:01). The jurisdiction of the court extends to acts committed on the High Seas onboard a Guyanese registered sea vessel (or in international airspace with regards to aircraft) pursuant to the Admiralty Jurisdiction (British Guiana) Order 1962, No. 630. This Order is in effect pursuant to section 3 (1) of the Republic Act (Cap. 1:02) (continuance in operation of existing laws post-independence) and is incorporated into the Criminal Law (Offences) Act pursuant to section 5.

76. The courts of Guyana also exercise jurisdiction with regards to acts committed partly within and partly beyond the territorial jurisdiction pursuant to section 4 of the above Act.

77. The jurisdiction of the courts extend to persons suspected of committing an act of torture abroad but who are present within the territorial jurisdiction of Guyana pursuant to two separate sources of law, being: (a) customary international law; and (b) the Reception Provision (see “Sources of law”, above). With regards to the former, any State may exercise permissive universal jurisdiction over certain crimes, one of which is torture. By virtue of the latter, the courts of Guyana may seek recourse to Commonwealth jurisprudence in order to fill a void in domestic legislation. Within this particular context, a Guyanese Court could examine the ruling in the Pinochet case as pronounced by the British House of Lords for guidance with regards to the extradition of alleged offenders of torture to a State seeking extradition based on universal or passive nationality jurisdiction.

78. There is at the time of submission of this report no jurisprudence to indicate whether the courts have inherent or implied powers with regards to active and passive nationality jurisdiction.

79. There have been no reported cases involving provisions relating to the Convention against Torture where the Courts of Guyana have established, or have been under obligation to establish jurisdiction over alleged offenders present in Guyanese territory.

#### **Article 6**

80. The Criminal Law (Procedure) Act (Cap. 10:01) make provisions for the general and specific business of the Court as they relate to procedure of a preliminary inquiry and other legal matters.

81. Section 6 (1) of the Privileges and Immunities (Diplomatic, Consular and International Organizations) Act, Cap. 18:01, stipulate that (subject to certain qualifications set out in section 7) the Vienna Convention on Consular Relations to which Guyana acceded on 13 September 1973 shall have the force of law in Guyana. Article 36 of said Convention obliges States parties to inform foreign nationals who are being arrested or detained of their right to have their embassy (or similar) notified of their detention.

82. There are no domestic law provisions to give effect to the obligation to notify other States that may have jurisdiction that such a person is in custody.

#### **Article 7**

83. Article 144 of the Constitution (Provisions to Secure Protection of Law), enact measures to ensure the fair treatment of alleged offenders at all stages of any criminal proceedings. article 144 (2) (d) guarantee the right to legal counsel; article 144 (2) (a) pronounce the right to be presumed innocent until proven guilty; article 144 (1) stipulate the right to equality before the courts (this right is also prescribed by article 149D of the Constitution, Equality of Persons Before the Law).

84. There are no provisions under Guyanese statutes relating to standards of evidence that provide for any differential treatment of foreigners vis-à-vis nationals.

85. There have been no reported cases to give examples of the practical implementation of the measures referred to above.

### **Article 8**

86. Section 5 (1) of the Fugitive Offenders Act, Cap. 10:01, defines an extraditable offence as

[a]n offence of which a person is accused or has been convicted in Guyana or any Commonwealth country or treaty territory, shall be an extraditable offence, whenever the act or omission constituting the offence, however described, constitutes an offence, and is punishable with death or imprisonment for life for a term of not less than two (2) years under the laws of Guyana and of the Commonwealth country or treaty territory making to the Government of Guyana the request for extradition or of the Commonwealth country or treaty territory to which the request for extradition is made by the Government of Guyana.

87. Outside the ambit of section 5 (1) it can be noted that acts constituting torture are extraditable offences pursuant to article 154 (A), with reference to article 8 of the Convention against Torture.

88. Extradition under Guyanese statutes is not conditional on the existence of a treaty.

89. The competent authorities with regards to extradition recognize article 8 of the Convention against Torture as the legal basis for extradition between a State with which Guyana has no legal arrangement providing for extradition, and the Republic of Guyana, with respect to acts that incur individual criminal responsibility and amount to torture as defined in the Convention.

90. There are no extradition treaties between Guyana and other States parties to the Convention against Torture that specifically include torture as an extraditable offence.

91. There are no reported cases of extradition of a person alleged to have committed crimes amounting to torture and other cruel, inhuman or degrading treatment.

### **Article 9**

92. There are no legal provisions providing for mutual judicial assistance that apply in the case of offences amounting to torture and other cruel, inhuman or degrading treatment.

### **Article 10**

93. The Guyana Prison Service conducts continuous training sessions with officers both locally and overseas.

94. Prison Fellowship International has established a chapter in Guyana and conducts sessions with inmates ranging from anger management classes, skills marketing, sex offender rehabilitation sessions and mentoring classes to creative writing and entrepreneurial development opportunities.

95. Several training sessions have been concluded by the UNDP country office in Guyana and different government entities, below of which is a recent selection of these:

- DATE(S): 9-10 August 2005
- SUBJECT: Human Rights & Professional Skills Training Programme for Police Prosecutors and the Guyana Police Force
- PARTICIPANTS: Guyana Human Rights Association/Guyana Law Association (UK)/Guyana Social Cohesion Programme/UNDP
- DATE(S): 12-14 August 2005
- SUBJECT: Human Rights and Professional Skills Training for Magistrates
- PARTICIPANTS: Guyana Police Force/Guyana Human Rights Association/Guyana Law Association (UK)/Guyana Social Cohesion Programme/UNDP
- DATE(S): Ongoing
- SUBJECT: Human Rights Trainer-of-Trainers Programme for Police
- PARTICIPANTS: Guyana Police Force/Guyana Human Rights Association/Guyana Social Cohesion Programme/UNDP
- DATE(S): 3-4 December 2004
- SUBJECT: Guyana Annual Judges Conference 2004. Training on “The Utilization of Human Rights Treaties in the Domestic Court System of Guyana”
- PARTICIPANTS: Office of the Chancellor/Guyana Social Cohesion Programme/UNDP
- DATE(S): 13-14 November 2004
- SUBJECT: Raising the Bar through New Perspectives on Governance, Human & Gender Rights
- PARTICIPANTS: Guyana Bar Association/Guyana Association of Women Lawyers/Guyana Social Cohesion Programme/UNDP

#### **Article 11**

96. Prison rule 168 (3) provide that “at all times the treatment of prisoners shall be such as to encourage their self-respect and a sense of personal responsibility”.



97. There is no overview over the use of the documents referred to in this section, although it is known that some of them have been used in training sessions with government staff conducted by the United Nations Development Programme (UNDP) within the ambit of the Social Cohesion Programme.

98. Several of the documents referred to reflect general principles of law, and as such are to be found in Guyanese statutes.

99. Section 20 of the Prison Act (Cap. 11:01), Detention of Persons Committed to Prison and Lock-Ups

The Persons in charge of prisons and lock-ups are hereby authorized and required to keep and detail all persons duly committed to their custody by any court, judge, magistrate, coroner or other public officer lawfully exercising civil or criminal jurisdiction according to the terms of any writ, warrant, or order by which such person has been committed, or until such person is discharged by due course of law.

100. The terms “lock-up” and “prison” refer to all legally recognized places of detention harbouring suspects of criminal offences or those convicted of criminal offences.

101. As regards the conduct of law enforcement personnel, there are available, in-house mechanisms to address complaints against such conduct. These mechanisms include investigation by the superior officials of law enforcement personnel in charge of the interrogation and custody of persons held in detention. From these investigations remedial measures are implemented.

## **Article 12**

102. The Police Complaints Authority constitutes that body of Government that would ordinarily carry out investigations into alleged acts of torture committed by the Guyana Police Force.

103. However, there are three pieces of legislation under which an (extraordinary) inquiry can be held: The Defence Act (in which case the person(s) would have to be subject to service law); the Commission of Inquiry Act, Cap. 19:03; and pursuant to article 197 (A) of the Constitution.

104. Inquiries under these statutes may be initiated by the National Assembly or the President.

105. Acts contravening criminal statutes are investigated by the Police, referred to the Public Prosecutor for possible prosecution, and subsequently heard before a court of law.

106. Acts contravening military statutes may be handled before a Court Martial or a Board of Inquiry or before the High Court, upon the request of that Court.

107. The Police Complaints Authority (PCA) was created in 1989 by the Police Complaints Authority Act, Cap. 17:02, to receive and consider complaints by members of the public against the police. The PCA forwards admissible complaints along with recommendations for further

action to the Commissioner of Police. The Police Service Commission is authorized to impose disciplinary penalties on members of the Police Force. This Commission also serves to hear appeals from investigations conducted pursuant to the Police (Discipline) Act, Cap. 17:01.

108. Pursuant to s. 8 of the Police (Discipline) Act, Cap. 17:01, members of the Police Force who are being investigated may be interdicted from duty pending the outcome of any inquiry.

### **Article 13**

109. A person alleging to be a victim of torture can seek redress from the High Court pursuant to article 141 or 154 (A) of the Constitution.

110. Guyana is a party to the Optional Protocol to the International Covenant on Civil and Political Rights enabling persons alleging a contravention of the Covenant to submit individual communications before the treaty body mechanism attached to the Covenant. Individual communications are admissible regardless of whether domestic remedies have been exhausted should it be apparent that the pursuit of domestic remedies is fruitless or are unduly prolonged.

111. Because of financial constraints there are no mechanisms available for the protection of complainants and witnesses against any kind of intimidation or ill-treatment. The Government recognize that this inadequacy has had, and will continue to have, a negative impact on the rate of successful prosecutions of criminal offenders who seek to intimidate witnesses, and upon the rights of those who complain or witness against such offenders.

112. No published data are available and there are no reported cases available during the period of preparation of this report.

### **Article 14**

113. Under section 13 of the Criminal Law (Offences) Act (Cap. 8:01), Power to Award Compensation to Person Injured, the Supreme Court of Judicature is competent to award monetary restitution for victims of torture (i.e. a victim of an act contrary to article 141 of the Constitution) where the perpetrator was a government official, or where the Government had knowledge of the act but failed to take reasonable measures and there can as such be said to be a link between the act and the Government to such a degree as to affix responsibility to the Government for that act.

114. The State is not legally responsible for the offenders conduct under Guyanese statutes, and as such is not obliged to compensate victims of torture or other cruel and inhuman and degrading treatment or punishment.

115. No published data are available and there are no reported cases available during the period of preparation of this report.

### Article 15

116. Current practice indicates that, in accordance with the Reception Provision and Commonwealth jurisprudence, when a defendant alleges that his statement/confession was obtained under duress, the trial judge is obliged to hold a *voir dire* to test the veracity and admissibility of the allegation. Statements obtained under torture are inadmissible in a court of law.

117. Examples of the above practice are:

(a) *State v. Yasseen and Thomas*

In *State v. Yasseen and Thomas* it was alleged that the admissions of guilt made by the defendants were the result of an act of torture perpetrated by the police. The allegations were investigated and dismissed. The matter was ultimately referred to the Human Rights Committee under article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights (communication No. 676/1996, *Yasseen and Thomas v. Republic of Guyana*). The Human Rights Committee found that

Mr. Thomas argues that he was subjected to ill-treatment in order to force him to confess the killing of Kaleem Yasseen, in violation of article 14, paragraph 3 (g). The Committee notes that this claim was examined by the judge at the first trial (1988) during a *voir dire* and found to be lacking in substance. (At 7.5)

(b) The same Committee examined the case of *Sahadeo v. Republic of Guyana* (communication No. 728/1996). The Committee concluded that

[...] Mr. Sahadeo's allegations of torture had been dealt with during the first trial in 1989 and again in the retrial in 1994. It appears from the notes of evidence of the retrial that Mr. Sahadeo had the opportunity to give evidence and that witnesses of his treatment during his detention by the police were cross-examined. (At 9.3)

[...] The information before the Committee and the arguments advanced before the author do not show that the Courts' evaluation of the facts were manifestly arbitrary or amounted to a denial of justice. In the circumstances, the Committee finds that the facts before it do not sustain a finding of a violation of article 7 and article 14, paragraph 3 (g) of the Covenant, in relation to the circumstances in which the confession was signed. (At 9.3)

118. Evidence obtained as a result of the unlawful gathering of primary evidence is not admissible before a court of law.

### Article 16

119. The obligation of the Government to prohibit torture is upheld specifically through articles 144 and 154 (A) of the Constitution.

120. Section 16 of the Prison Act (Cap. 11:01) obliges the Director [of prisons] to visit and inspect all prisons and make an annual report to the Minister on the administration and condition of the prisons, the conduct and treatment of prisoners and other matters as he or she may see fit.

121. Section 9 of the Prison Act (Cap. 11:01), Medical Officer

The Chief Medical Officer shall assign in respect of each prison, a government medical officer who shall have control generally of the health and medical welfare of the prisoners and the sanitation of the prison and such medical officer shall perform such other duties as may be directed by this Act or by Prison Rules.

The Minister of Home Affairs may upon the recommendation of a medical officer remand a prisoner of unsound mind to a mental institution, in accordance with section 26 of the above Act. Prisoners suffering from serious illness and communicable diseases may also, upon the order of the Minister, be removed to a hospital (sects. 27 and 29). Disabled prisoners may be relocated outside of the prison in order to ensure the proper care of that person, upon the order of the Minister (sect. 28).

122. Male and female prisoners are kept apart pursuant to section 32 of the Prison Act. Young prisoners are, as far as possible, kept apart from older inmates. Those awaiting trial are as far as possible kept away from those who have been committed of an offence. Under section 33 persons under 16 years of age may upon the order of the Minister be removed to an approved school.

123. Section 37, Punishment for major prison offences, allows for whipping and flogging or reduction of diet for prisoners guilty of certain offences as set out in that section.

124. Any prisoner subject to disciplinary measures may in accordance with section 43 appeal to the Director who may alter the punishment upon his or her own discretion.

### **Conclusion**

125. Guyana, in spite of critical problems of financial and human resources, has, since ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, progressed in complying with its standards. Much has been achieved but the Government is nevertheless aware of the many challenges which still exist. The present report has provided information on legislative and administrative mechanisms, which have been formulated to aid compliance and implementation.

126. As regards future reports, it is the desire of the Government of Guyana to institute an efficient and reliable system of reporting to ensure timely submission of these reports. To this end, it is hoped that a permanent electronic database system and a unit of skilled personnel would be established.

127. It is envisaged that over the next few years, much more will be achieved if the various plans of action articulated herein, and others to be yet formulated, are actively pursued.

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