



*“Achieve gender
equality and
empower all
women
and girls.”*

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Introduction

This report was commissioned by the Women and Gender Equality Commission (WGEC). The findings have been discussed with the Chair and CEO of the WGEC. The conclusions and recommendations were presented to stakeholders on 9th March 2018 during a public event marking International Women’s Day (8th March) at which the main speakers were First Lady Sandra Granger and the author of this report. The report has been adjusted to take into account comments from the First Lady, the WGEC as well as recommendations from the stakeholder consultation. The law is stated at it was at the date of the public consultation.

Background

“To account for, and excuse the tyranny of man, many ingenious arguments have been brought forward to prove, that the two sexes, in the acquirement of virtue, ought to aim at attaining a very different character: or to speak explicitly, women are not allowed to have sufficient strength of mind to acquire what really deserves the name of virtue.”
A vindication of the Rights of Women, Mary Wollstonecraft (1792)

1. The role of women in a society is invariably influenced by a nation’s social, religious, economic and political history. European and colonial ideas about women in the eighteenth and nineteenth centuries, patriarchal attitudes left over from pre-Vatican II Catholicism and the structuring of economic and social relations for the purpose of providing wealth and pleasure for a planter class still exert a significant influence on law, politics and the daily lived experience of women in Guyana in the twenty-first century. Two significant religions in Guyana, Christianity and Islam, are both patriarchal in origin.
2. This deep structure remains intact. Despite the fact that women have made resolutely and impressive progress towards equality in Guyana, the society remains patriarchal. The Government of Guyana has admitted that there is still, *“a predominance of behaviours and attitudes at all levels of society that support beliefs of the superiority of the male over the female.”*¹ The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) has also pointed out that attitudes in Guyanese society are set by *“patriarchal norms and stereotypical and discriminatory cultural practices towards women”*.²
3. Patriarchal norms enable men to hold on to power and to discriminate against women. The UNDP Human Development Report for 2015³ - the most recently available - puts Guyana at 117 out of 188 countries for gender equality and at 127 overall. This is a dismal result for a

¹ Committee on the Elimination of All Forms of Discrimination against Women, *State Report of Guyana*, UN Doc. CEDAW/C/GUY/3-6, 2004, Para 5a.

² Committee on the Elimination of All Forms of Discrimination against Women, *Concluding Observations on Guyana*, UN Doc. A/60/38, paras.269–314, 2005, Para 271.

³ <http://hdr.undp.org/en/composite/GII>

country that has, at least in formal terms, a progressive legal framework. Guyana has admitted that while constitutional provisions and statutes provide for equality at all levels, “.....there is a cultural lag in terms of attitudes, prejudices, cultural and religious traditions, and ignorance, etc.”⁴ Out-dated views about a ‘woman’s place’ in society contribute to gender-based violence and sexual harassment, as well as discrimination against women in the home, in education and in employment.

4. In 2015, the Special Rapporteur on Violence Against Women stated that despite unimaginable strides at the international, regional and local levels, women are still vulnerable to experiencing violence.⁵ This is visibly the case in Guyana where the gravity of the situation has led citizens to protest at the violence against women.⁶ Within the religious sector, some churches are taking steps to reduce violence against women. Bishop Alleyne, the Roman Catholic Bishop in Guyana, has emphasised that, “*domestic violence is at no time acceptable or justified. It is an ill, an evil that must be addressed and dispelled.*”⁷ Amnesty International has also expressed concern at the high levels of physical and sexual violence against women and girls in Guyana.⁸ Nevertheless, violence against women remains perhaps the most visible (and at times fatal) indication of discrimination against and disrespect towards women in Guyana.⁹

Executive summary

5. Women’s rights are human rights. An extensive body of law has been developed to protect women and to advance women’s rights. It consists (nationally and internationally) of general human rights law which protects women as individuals and laws that have been developed specifically to protect women as women.
6. There are a number of declarations, resolutions, statements etc. from international conferences and bodies which promote women’s rights and access to justice. Such declarations etc. are not legally binding but they can contribute to the emergence of a rule of customary law. Some, such as the General Recommendations made by the Committee for the Elimination of All Forms of Violence Against Women, are mentioned in this report where relevant for Guyana.
7. Guyana has shown significant leadership by introducing laws that protect women. But there is little point in having a progressive legal framework if magistrates, judges, police officers and other public officials lack the resources to identify, arrest, try, convict and punish offenders or if the criminal justice system does not provide genuine opportunities for rehabilitation of offenders or for any form of restorative justice for women. It is also self-

⁴ Para 117 Periodic Report to CEDAW 2010

⁵ Dubravka Simonovic Report to General Assembly 70th Session in New York (October 2015)

⁶ <https://newsroom.gy/2017/11/12/victims-march-to-end-violence-against-women/> ; <https://guyanatimesgy.com/largest-march-held-to-end-domestic-violence-against-women-in-guyana/>

⁷ <https://www.stabroeknews.com/2012/news/stories/03/18/men-warned-not-to-misuse-scripture-to-justify-violence-against-women/>

⁸ Amnesty International, Submission to the UN Universal Periodic Review January 2015

⁹ <https://www.stabroeknews.com/2016/features/in-the-diaspora/10/31/guyanese-women-continue-subjected-widespread-violence/> ; <https://guyanatimesgy.com/7-women-killed-3-brutalised-by-partners-for-2018/>

defeating to rely on public officials who do not understand women's rights or continue to hold patriarchal attitudes. There appears to be something close to a culture of impunity for discrimination against women, including Gender Based Violence. The criminal justice system, especially the enforcement of laws that exist to protect women, needs a thorough overhaul.

8. There is a lack of credible and up to date research on the situation of women in Guyana. In its response to Guyana's report in 2012, the Committee on the Elimination of All Forms of Discrimination Against Women, expressed concern at the lack of disaggregated data and lack of detail in response to questions. There is an urgent need for Guyana to collect and record credible data on the situation of women, in particular data on Gender Based Violence. There is also a need for up to date empirical research on women's actual experiences of the justice system in order to assess and improve the delivery of justice to women.
9. It is essential for Guyana to bring about an extensive change in cultural attitudes. In particular patriarchal attitudes need to be replaced by attitudes that demonstrate respect for the dignity and equality of women. This is not simply a male problem, *"In respect to the attitude towards domestic violence approximately one in every five women (18%) believed that a husband/partner is justified in beating his wife/partner. This belief was most prevalent among women who reside in interior areas (39%) where the proportion of this belief was double that of respondents on the rural coast (20%) and five times that in the urban coast (8%). Education, household wealth and access to information, and pressure in very small communities to accept the norm, seem to influence women's attitude towards domestic violence."*¹⁰
10. To the extent that women in Guyana have internalised patriarchal norms, there is also a need for deep cultural change to enable women to value themselves and to empower women to assert their dignity and fundamental rights. As part of that cultural change it is essential to educate women and girls on how to protect themselves especially from danger and abuse. A cultural framework that actually prevents Gender Based Violence is infinitely preferable to a society that allows Gender Based Violence and then seeks to deal with it through a criminal justice system.
11. It is also important to understand that law is not necessarily gender neutral. On the contrary its deep structures are patriarchal and may perpetuate discrimination against women, explicitly, implicitly or through unspoken biases.

Fundamental Rights

"Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status.

We are all equally entitled to our human rights without discrimination.

*These rights are all interrelated, interdependent and indivisible."*¹¹

¹⁰ Para 390. Guyana's Periodic Report to CEDAW 2010

¹¹ <http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>

12. Women's rights are human rights. Such rights are based on the principle of human dignity which has become the foundation of human rights following the horrors and barbarism of the Second World War. The Universal Declaration of Human Rights opens with the statement that *"recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."*
13. The Universal Declaration of Human Rights also proclaims that all human beings are born free and equal in dignity and rights. All human beings are entitled to the rights and freedoms set out in the declaration without any distinction based on sex.
14. Since the basis of human rights is the inherent dignity and equality of each person, women cannot be treated as if they are of less value than men. The starkest example of inequality in Guyana is the tolerance, and in some cases approval, of Gender Based Violence directed against women.
15. **Human dignity means that Gender Based Violence is unacceptable, intolerable and unjustifiable no matter what.**
16. Women are entitled to the protection of the 'international bill of rights' (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights) and all other treaties equally with men

Theoretical framework

17. The central thesis of this report is that law and the legal system are based on patriarchal norms which discriminate against women. Feminist critical legal theory is one method of raising awareness of the patriarchal nature of law and of the deep structure of discrimination against women.

The myth of Eve

18. Guyana's legal system developed from the European legal tradition, (mostly Dutch and British) which in turn has Christian roots. The quintessential Christian myth is that of Eve and *"Its [the myth of Eve] great achievement was to reinforce the problem, of sexual oppression in society so that women's inferior place in the universe became doubly justified. Not only did she have her origin in the man; she was also the cause of his downfall and all of his miseries."*¹²
19. In Judao-Christian myth, Eve was created from the rib of man. She was literally his property. This notion has persisted in traditional marriage where the woman is 'given away' by the male head of the family to another male. Adam and all males are rational, superior and autonomous individuals. Eve and all women are emotional, inferior and dependent.
20. At the same time the law uses the myth of Eve rescue the rational, superior male. In rape

¹² Hilaire Barnett, *Sourcebook on Feminist Jurisprudence* p 48

cases the man may suddenly take on the role of a vulnerable defendant who was ‘led on’ by feminine wiles and rendered incapable of distinguishing ‘no’ from ‘yes.’¹³ It is still a defence to rape if the man reasonably believes that the woman consented – even if she did not.

21. It is also not unknown for a woman, who complains about rape, to find that the police, and even the court, may be influenced against her by what they consider to be the immorality of her life. The violence directed against her may be perceived as less grave because of how the judge or jury view her behaviour. A decision which should be based on the evidence before the court may be adversely affected by the male perception of what a woman should be. Like Eve, she is eternally to blame for what Adam does.

The public/private divide

22. The law has traditionally drawn a distinction between the public arena regulated by law and the private arena unregulated by law. Historically the home has been categorised as part of that private arena and the public/private divide has privileged male power. As Justice Barrow pointed out in a case from St Lucia, “*Among the causes which perpetuate this systemic evil [domestic violence] are the tendency to treat violence as a private matter, the lack of laws dealing specifically with such violence....*”¹⁴
23. In the ‘History of the Common Pleas of the Crown’ published in 1736, some 60 years after his death, Sir Mathew Hale, the Chief Justice of England Hale had written that “*the husband cannot be guilty of rape committed by himself upon his lawful wife for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract.*” This legal pronouncement which became established law, “*expresses and legitimises a view of unequal power relations within marriage.*”¹⁵ It took until 1992 for the House of Lords¹⁶ to determine held that Hale’s view had never been law and to conclude that, “*The fact is that it is clearly unlawful to have sexual intercourse with any woman without her consent.*”¹⁷ Marital rape was permitted in Guyana for another 18 years until prohibited by the Sexual Offences Act 2010.¹⁸
24. The CEDAW Committee has pointed out, “*Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes.*” But it is precisely because it takes place within the home, or is perpetrated by someone from that home, that violence against women in the home continues to be treated less seriously.

¹³ For more discussion on this see Lacy, *Unspeakable subjects*

¹⁴ *Francois v Attorney-General* LC 2001 HC 16, 24 May 2001

¹⁵ Lacy p69

¹⁶ The House of Lords did not have a woman judge until 2003 when Baroness Hale was appointed

¹⁷ *R v R* [1991] UKHL 14

¹⁸ Section 37

Gender neutral/male domination

25. A number of feminist scholars have pointed out that traditional approaches value the law as a hierarchy of rules but fail to perceive the way in which those rules reflect, express and reinforce male power and male domination. The default position continues to be male; everything else is merely a deviation from the male norm. In the legal system male reason takes priority over female thought processes.
26. An example that is so obvious that it is generally overlooked comes from the law of tort. For decades the standard test of behaviour was that of the 'reasonable man.' now replaced by the gender neutral language of 'the reasonable person.' It is entirely possible however that a 'reasonable woman' test could have yielded a different result, perhaps a more compassionate and less competitive society.
27. The language of law has tended to be male and to use 'he', 'his', 'him' and 'himself' to refer to humanity as a whole. The message is that the male is the standard. Women may, or may not, be included. Clause 6(1) of the Interpretation and General Clauses Act Cap 2:01 states that, "*In any written law made after 8th March, 1856, and in any public document made or executed after 15th July, 1891, unless the context otherwise requires— (a) words importing the masculine gender shall include females;*" There is no provision for the words which import the female gender to include males. The default language of the law remains resolutely male.

Direct discrimination

28. The principle of equality requires that like should be treated alike. Direct discrimination exists when women are treated differently simply because they are women. It is not unusual to see advertisements specifying 'female' for positions that ought to be gender neutral (cashier; sales assistant). Such advertisements are illegal.
29. More worryingly Guyana's Constitution appears to permit direct discrimination against women. Article 149(6) allows laws to discriminate against women (among others) in the exercise of some of their fundamental rights and freedoms. This is discussed later.

Indirect Discrimination

30. Indirect discrimination arises when the law appears to be neutral but its effect is to treat women differently simply because they are women rather than because a particular requirement is objectively necessary. Underrepresentation of women in a particular field may be attributable to exclusionary practices such as subjective criteria, unnecessary conditions (height or weight restrictions that are irrelevant to the job), or job recruitment policies that disadvantage women (e.g. requiring recommendations from existing employers in a field dominated by men).

Price v Civil Service Commission (England) [1970 IRLR 291

Price applied for a job with the civil service. A condition of the job was that the applicant should be under 28. Price argued that the condition disadvantaged women because many women in their twenties were having or looking after children and returned to work in their thirties by which time they were too old to qualify. The Employment Appeal Tribunal upheld her complaint and stated that it was harder for women than for men to comply with the condition.

31. Job descriptions in Guyana which include criteria that are not relevant for the job are examples of indirect discrimination.

Enforcement of the law

The Queen v Paddy

“It is now the duty of the courts to send out a strong message that domestic violence in any form will not be tolerated and that men do not have an unfettered licence to batter women. The only way the courts can effectively show this is by the sentences that are passed which are aimed at ensuring that the wrongdoer does not repeat the offence and that potential offenders get the message that society will not condone such behaviour.” (HC, BVI 27 April 2011)

32. Research carried out by various organisations shows that magistrates, police officers etc., who are usually male, do not take the complaints of women as seriously as those of men. This is borne out by Guyana’s report to the CEDAW Committee which confirmed that in one year 1,708 domestic violence offences were reported. 52.1% of the perpetrators were warned and 21.43% were referred to the Probation and Welfare Services.¹⁹ The number of convictions was not stated. In effect in nearly 75% of the reported cases the police did not bother to charge the perpetrator. This may be discriminatory against women, not simply because of the low percentage of charges but also because domestic violence is more likely to be reported when it entails serious physical abuse. Unfortunately it has not been possible to obtain statistics on how the police deal with violence against men or to find out what percentage of offenders are let off with a warning when the victim is male.
33. The Report of the Working Group on Guyana’s Universal Periodic Review in 2015 show that there has been some improvement, *“The total number of reports of domestic violence had decreased by more than 50 per cent, and the number of persons charged increased from 25 per cent to 52 per cent..”*
34. However the report also admitted that, *“While the number of persons charged and sentenced by Magistrates for domestic violence offences had increased significantly, the number of successful prosecutions and convictions of sexual offences had been disappointing.”*

¹⁹ Para 392

International Law v National Law

35. This report looks at both national and international law. It is important to understand the difference in order to use both legal systems effectively. National law governs the relationship between the State (Guyana) and the citizen. It is enforced in the courts of Guyana, with appeals to the Court of the Appeal and a final appeal to the Caribbean Court of Justice. A court decision is legally binding and must be obeyed by public officials, including the President and Ministers. Disobedience amounts to contempt of court and can be punished with imprisonment.
36. International law, on the other hand, is the law that governs the relationship between States. It consists of customary international law and treaty law. Customary international law binds all States whether or not they agree. It consists of State practice which must be sufficiently uniform (enough States must act in the same way) and of *opinio juris* i.e. the belief by States that they are acting under a rule of international law.²⁰ Customary international law evolves over time and it is not always clear when a norm has become legally binding. Treaty law binds only those States who are parties to the treaty.
37. There is no international equivalent of the national court system. The international courts and tribunals can hear a dispute between States only if the States have accepted their jurisdiction. Individuals do not have a right to appear before international courts and tribunals. International law also lacks an enforcement mechanism. A State cannot be compelled by an international court to obey international law.
38. International treaties which deal with human rights have committees to monitor State compliance. The mechanism of the Universal Periodic Review (UPR) assesses a State's compliance with its treaty obligations. There is scope for women, either as individuals or as part of an organisation, to participate in the UPR by making submissions to the treaty body. Guyana could then be called upon to provide a response or give commitments to improve its performance.
39. Article 154A and the Fourth Schedule to the Constitution of Guyana, add to the protection of human rights in Guyana by incorporating into the Constitution the following international treaties: the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment, the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. These treaties give individuals additional rights within the national system as discussed later.
40. Article 39 of the Constitution requires the Courts, when interpreting the fundamental rights provisions in the Constitution to, “*pay due regard to international law, international conventions, covenants and charters bearing on human rights.*” In addition to the treaties mentioned above, the court would also be expected to take into account the regional human

²⁰ Brownlie, *Principles of Public International Law* (7th Ed) P 8-10

rights systems, viz the African, the European and the Inter-American systems and the decisions of their Commissions and Courts as well as the Caribbean Community. Case law from the regional systems is a rich legal source that national courts can draw on to protect the rights of women in Guyana.

41. Finally, even if there is no enforcement mechanism or no access to a treaty body, international law still has a useful role to play in the protection of women at the national level. It is difficult for a State to refuse to accept that it should at least take steps to comply with the obligations that it has voluntarily signed up to. Women can use international law to put political pressure on a State to do what it promised to do and to improve its record on women's rights.

PART 2: The International system

International Standards

Universal Declaration of Human Rights (UDHR)

42. The UDHR is the foundation of modern human rights. As a declaration and not a treaty, it is not legally binding. Nevertheless it is a significant influence as it sets out principles and values that are intended to guide how States behave towards their citizens. It has also influenced the various human rights treaties since the Second World War. The following articles are particularly relevant for women:
 43. Article 1. All human beings are born free and equal in dignity and rights.
 44. Article 2. Everyone is entitled to all the rights and freedoms set forth in the Universal Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
 45. Article 4. No one shall be held in slavery or servitude.
 46. Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law.
 47. Article 16
 - (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found (have) a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution
 - (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
 - (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
 48. Article 25
 - (1) Everyone has the right to a standard of living adequate for the health and well-being of

himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

49. For the most part these provisions have been incorporated into treaties. Some, like the prohibition on discrimination, have evolved into customary international law.

50. The UDHR was written shortly after the Second World War and the use of the words ‘himself’ and ‘his’ reflect the patriarchal norms of the time.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)

51. These rules set out the minimum standards for women and address issues such as the vulnerability of women, the need to take into account their role as primary carer for their children and their specific needs such as hygiene. For example Rule 5 states that, *“The accommodation of women prisoners shall have facilities and materials required to meet women’s specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.”*

52. There are also requirements for medical screening and access to legal assistance in the event of sexual abuse. Gender specific health care must also be provided. The rules are comprehensive and deal with mental and psychological health, physical conditions and legal issues.

Customary international law

53. Perhaps the most important contribution that customary international law has made to women’s rights is to develop a prohibition on Gender Based Violence against Women. In May 2017, the Committee on the Elimination of All forms of Discrimination against Women (CEDAW Committee) stated that, *“For more than 25 years, in their practice, States parties have endorsed the Committee’s interpretation. The opinio juris and State practice suggest that the prohibition of gender-based violence against women has evolved into a principle of customary international law.”*²¹

54. This is a significant change in international law. It means that, even if a State has not signed up to the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), such a State still has an obligation under international law to protect women from Gender-Based Violence.

²¹ General Comment 35 paragraph 2

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en

55. General Comment 35 also emphasises that, “*the term ‘gender-based violence’ against women is used as a more precise term that makes explicit the gendered causes and impacts of the violence.*”²² In other words it is not sufficient to say that there was violence and the victim was a woman. The point is that the violence was directed at that particular victim because the victim was a woman.
56. In General Comment 19 the CEDAW Committee also confirmed that, “*Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.*” It is obvious, but bears emphasising that, while States must create sound legal frameworks and systems to promote women’s rights, such efforts will fail unless every woman is physically safe. The right to life is the most fundamental right of all. Under customary international law Guyana has an obligation to protect women from being killed and injured as a result of physical violence directed at them as women.
57. It should be noted that Gender Based Violence against women goes beyond physical brutality and includes “*psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.*”²³ A significant cultural change is necessary to protect women from these forms of violence as well.
58. Gender Based Violence against women is not an individual problem, Rather, it is “*one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated.*”²⁴ Again what this demonstrates is the need to question cultural norms and bring about significant cultural change.
59. The prohibition on Gender Based Violence is not limited to State actors; it may also extend to acts of violence perpetrated by private entities. As the CEDAW Committee pointed out in General Comment 19 in 1992, “*Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.*”²⁵

General Recommendation No. 12 (eighth session, 1989): Violence against women

60. The CEDAW Committee recommended that States should include in their periodic reports to the Committee information about:

“1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the work

²² General Comment 35 paragraph 9

²³ General Comment 35 paragraph 14

²⁴ General Comment 35 paragraph 10

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en

²⁵ General Comment 19 <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom18>

place etc.);

2. Other measures adopted to eradicate this violence;

3. The existence of support services for women who are the victims of aggression or abuses;

4. Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.”

61. Such information is critical for making informed decisions about the levels of violence towards women and the effectiveness of measures to reduce that violence and remedy the harm done to women. While the first three items can be found with some difficulty, it appears that the information in item 4 is not available. Guyana is therefore in breach of its reporting obligations under CEDAW.

General Recommendation 19: Violence Against Women

62. This recommendation was referred to earlier as the foundation for the emergence of a customary rule of international law prohibiting violence against women. It establishes that gender based violence is a form of discrimination against women and states that, *“The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.”*²⁶

63. The Committee’s recommendations included recommendations that States should

- (a) take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;
- (b) ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity and that appropriate protective and support services should be provided for victims;
- (c) compile statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;
- (d) take effective measures to ensure that the media respect and promote respect for women;
- (e) report to CEDAW on attitudes, customs and practices that perpetuate violence against women and measures taken to deal with such violence;
- (f) use education and public information programmes to help eliminate prejudices which hinder women’s equality;
- (g) take specific preventive and punitive measures to overcome trafficking and sexual exploitation;
- (h) report to CEDAW on measures to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation;
- (i) provide effective complaints procedures and remedies, including compensation;
- (j) report to CEDAW on sexual harassment and measures to protect women from sexual harassment and other forms of violence of coercion in the workplace;

²⁶ Para 6

- (k) provide services for victims of family violence, rape, sex assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling;
- (l) ...
- (m) prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control;
- (n)
- (o) provide services for rural women who are victims of violence;
- (p) protect women from violence by training and employment opportunities and monitoring domestic workers;
- (q) report on the risks to rural women
- (r) overcome family violence through criminal penalties where necessary and civil remedies in case of domestic violence and services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes;
- (s) report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken
- (t) take all legal and other measures to provide effective protection of women against gender-based violence, including, penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence;
- (u) report on all forms of gender-based violence, and that such reports should include all available data on the incidence of each form of violence, and on the effects of such violence on the women who are victims;
- (v) include in the report, information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures.

64. **International Covenant on Civil and Political Rights 1966 (ICCPR)**

65. Under Article 1 each State undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, politics or other opinion, national or social origin, property, birth or other status. Gender is not a prohibited ground.
66. Article 3 guarantees the equal right of men and women to the enjoyment of all civil and political rights in the ICCPR.
67. Article 14 provides that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.²⁷
68. Article 16 provides that “*Everyone shall have the right to recognition everywhere as a person before the law.*”

²⁷ Note again the use of ‘him’ and ‘his’ as the norm in a patriarchal society.

69. Article 18 guarantees the right to freedom of thought, conscience and religion. Paragraph 4 requires States to respect the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.
70. Article 23 (1) protects the family as the “*natural and fundamental group unit of society*” and says that the family is entitled to protection by society and the State. Paragraph (2) recognises the right of men and women of marriageable age to marry and to found (have) a family. Paragraph (3) states that no marriage shall be entered into without the free and full consent of the intending spouses. Paragraph (4) requires the States Parties to take appropriate steps to ensure equality of rights and responsibilities of spouses during marriage and at its dissolution.
71. Article 26 provides that “*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*” This article does not prohibit discrimination on the basis of gender.
72. According to the UN HRC equality may require a State to take affirmative action in order to “*diminish or eliminate conditions which cause or help to perpetuate discrimination*” as prohibited by the ICCPR.²⁸

73. International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)

74. Article 2 guarantees that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, politics or other opinion, national or social origin, property, birth or other status. As with the ICCPR gender is not one of the prohibited grounds.
75. Under Article 3 the State Parties undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set out in the Covenant.
76. Under Article 10 the State Parties recognise that

“(1) The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

(3) Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”

²⁸ Human Rights Committee, *General Comment 18: Non-discrimination*, 1989, Para 10.

77. Article 12 deals with the issue of childbirth and requires States to take steps to reduce stillbirths.
78. The Committee on Economic, Social and Cultural Rights, has recognized that non-discrimination provisions should prohibit both direct and indirect discrimination,²⁹ and that State Parties should “*ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds*”.³⁰ The ICESCR has also stated that “*States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination.*”³¹
79. Relevant issues include the difficulty women face in returning to work after childbirth. In patriarchal societies, the career of the child’s father is usually given priority over the career of the child’s mother and the mother is expected to stay home to take care of the child. Two changes in the working environment would help to reduce indirect discrimination against women. These would be the provision of paternity leave so that fathers are entitled to stay home and meet their responsibilities for child care. The other change would be child care facilities at places of work for infants, pre-school toddlers and older children.
80. Progressive employers should be encouraged to include paternity leave in their employment conditions; unions should seek to include it in collective labour agreements.
81. These are not simple issues. In a society where the ‘child-father’ may be absent, it may be difficult to decide who should benefit from the paternity leave.
82. Another difficult issue is the cultural assumption that having children is a ‘good thing.’ The planet is increasingly over-populated³² and human consumption is unsustainable.³³ It may be time to rethink cultural assumptions about women in order to enable present and future generations to have a reasonable standard of living and a life of dignity free of want.
- 83. Convention on the Elimination of all forms of Discrimination against Women (CEDAW)**
84. The provisions of the ICCPR and the ICESCR did not result in equality for women. In December 1979 the UN General Assembly noted that despite the various resolutions, declarations and recommendations adopted by the United Nations and the specialised agencies promoting equality of rights of men and women there was still extensive discrimination against women. The General Assembly therefore opened for signature a new covenant to eliminate all forms of discrimination against women. Guyana ratified CEDAW on 17th July 1980.

²⁹ Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, U.N. Doc. E/C.12/GC/20, 2009, Para 10.

³⁰ Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, U.N. Doc. E/C.12/GC/20, 2009, Para 11.

³¹ Committee on Economic, Social and Cultural Rights, *General Comment 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 9.

³² <https://www.populationmatters.org/the-issue/overview/>

³³ <https://www.overshootday.org/>

85. CEDAW entered into force as an international treaty in 1981 after it was ratified by the twentieth country. It is the most comprehensive treaty on equality for women. In its preamble CEDAW states that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women.
86. The CEDAW Committee has made a series of General Recommendations which provide guidance on the interpretation of its various articles.
87. Article 1 of CEDAW defines discrimination against women as, “*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*” It therefore covers direct as well as indirect discrimination.
88. Under Article 2, State Parties “*condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.*” Each State therefore has a legal obligation to start immediate action to remove discrimination against women. Articles 2 and 3 require Guyana to take legal steps to protect women including to
- (1) embody in the Constitution the principle of equality of men and women;
 - (2) adopt legislative and other measures including sanctions to prohibit discrimination;
 - (3) ensure that there are competent tribunals and other public institutions which protect women effectively against discrimination and enforce their rights equally with men;
 - (4) refrain from discriminating against women
 - (5) take appropriate measures to eliminate discrimination against women by any person/organisation/enterprise
 - (6) modify or abolish existing laws, practices, customs etc. which discriminate against women; and
 - (7) take steps to guarantee that women can fully enjoy their fundamental rights and freedoms.
89. Article 2 puts an obligation on Guyana to eliminate discrimination in the public sphere, such as government ministries, public office, and the day to day administration of the country. It also requires Guyana to address and eliminate discrimination in the private sector.
90. Article 3 requires Guyana to take appropriate measures including legislation, in all fields, in particular political, social, economic and cultural fields, to ensure the full development and advancement of women and to guarantee that women can exercise and enjoy human rights and fundamental freedoms on the basis of equality with men.
91. Article 4 establishes the principle that special measures which give women preference are not discriminatory provided that they are temporary. Under Article 4 measures to protect maternity and temporary measures to accelerate de facto equality do not amount to discrimination. General Recommendation No.5 recommends that “*States Parties make more*

use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment.” Guyana could therefore develop a programme of temporary measures to reverse the effects of discrimination and enable women to ‘catch up’ with men.

92. Article 5 deals with the structure of society and requires Guyana to take appropriate measures to *“modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”*
93. This article requires changes in the behaviour and attitudes of women as well as men. Inequality may continue not just because of male domination but if women accept it as the norm and, worse yet, inculcate that attitude in their children. Guyana has an obligation to take steps to modify such attitudes and the resulting behaviour. Article 10 tackles this by requiring States to give women equality in education and career choices as well as by eliminating stereotypes of men and women in the curricula. Education also includes family planning education.
94. Article 5 (b) deals with family and requires Guyana to ensure that citizens are educated to understand maternity as a “social function” and that men and women have a “common responsibility” for the upbringing and development of their children. This article is designed to prevent women from being penalised for having to take time off from work in order to give birth or take care of children. However there is a risk that it could be used to reinforce patriarchal attitudes about women and their place in society. It could be misused by religious groups to place too much emphasis on the role of a woman as a mother. Since the article was drafted over-population has become a growing concern. Article 5(b) should therefore be read subject to the right of women to a material and psychological life that is equal and equally fulfilling to that of men.
95. Overpopulation may not seem relevant now to Guyana with its low population but Guyana is not well placed to handle an influx of refugees or to resist emigration. Poverty and environmental degradation affect women more seriously than men. Patriarchal norms enable men to control access to scarce resources and leave women worse off.
96. Article 6 requires States to protect women from trafficking and prostitution.
97. Article 7 provides for equality in the political and public life of the country including voting in elections, standing for election, participating in government, and participating in civil society organisations.
98. General Recommendation 23 defines political and public life widely as follows, *“.....the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers..... all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels.many aspects of civil society, including public boards and local councils and the activities of*

organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life.”

99. The Committee also considers that equality must be achieved in a political system in which each citizen enjoys the right to vote and be elected at genuine periodic elections held on the basis of universal suffrage and by secret ballot.³⁴ Guyana's political system requires citizens to vote for a party list and does not permit an individual to stand for election. This is a violation of the citizen's civil rights and is contrary Article 21 of the Universal Declaration of Human Rights and Article 25 of the International Covenant on Civil and Political Rights.
100. The Committee also points that even when women participate in politics they are restricted to areas such as the environment, children and health and other areas seen as suitable for women. Women are general excluded from responsibility for finance, budgetary control and conflict resolution. The current Cabinet reflects this bias - the President, Prime Minister, Minister of Finance and Vice-Presidents are all male.
101. The Committee also points out that in countries where women leaders assume power this can be the result of the influence of their fathers, husbands or male relatives rather than electoral success in their own right. Guyana's only female president – Janet Jagan – was the wife of a former President, Cheddi Jagan.
102. Article 8 protects the right of women to represent their country at the international level and to participate in international organisations.
103. Article 9 gives women equal rights to nationality.
104. Article 11 deals with employment and requires Guyana to ensure equal rights for men and women including the right to work, equal employment opportunities including being selected on the same criteria, free choice of profession/career, equal rights to promotion, equal remuneration, social security and safe working conditions, including the safeguarding of the function of reproduction.
105. In General Recommendation 19 the CEDAW Committee, commenting on Article 11, stated that, *“Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”*³⁵
106. In General Recommendation No. 13 on Equal remuneration for work of equal value the Committee recommended that States should adopt gender-neutral criteria in order compare

³⁴ Para 6

³⁵ Committee on the Elimination of Discrimination Against Women, *General Recommendation 19: Violence Against Women*, 1992, Para 18.

the value of those jobs in which women predominated, with the value of jobs in which men predominated. They also recommended that collective bargaining agreements should ensure equal remuneration for work of equal value.

107. Article 11(2) prohibits discrimination on the basis of marriage or pregnancy and requires Guyana to have maternity leave with pay and to provide social services to enable parents to combine parenting responsibilities with work obligations and participation in public life.
108. In General Recommendation 16 on Unpaid women workers in rural and family enterprises the Committee recommended that States should, in carrying out their obligations under Article 11,
- (a) Include in their reports to the Committee information on the legal and social situation of unpaid women working in family enterprises;
 - (b) Collect statistical data on women who work without payment, social security and social benefits in enterprises owned by a family member, and include these data in their report to the Committee; and
 - (c) Take the necessary steps to guarantee payment, social security and social benefits for women who work without such benefits in enterprises owned by a family member.

Guyana is still to comply with this recommendation and to obtain such information.

109. This was supplemented by General Recommendation 17: Unremunerated domestic activities of women and recognition in the Gross National Product in which The Committee recommended that States should
- (a) support research and experimental studies to measure and value the unremunerated domestic activities of women e.g. including time-use surveys as part of national household survey programmes; collecting statistics disaggregated by gender on time spent on activities both in the household and on the labour market;
 - (b) Take steps to quantify and include the unremunerated domestic activities of women in the gross national product;
 - (c) Report to the Committee on compliance with (a) and (b) above.

Guyana is still to comply with this recommendation and to obtain such information.

110. Article 12 complements Article 11 by providing for women to have equal access to health care including family planning.
111. General Recommendation 24: Women and Health confirms that Article 12 protects girls and adolescents as well as women. The Committee points out that equality of health care does not mean the same health care. The health system must provide for the health rights of women from the perspective of women's needs and interests.³⁶

112. The Committee recommends that, “*States parties should implement a comprehensive national strategy to promote women's health throughout their lifespan. This will include interventions aimed at both the prevention and treatment of diseases and conditions affecting*

³⁶ Para 12

women, as well as responding to violence against women, and will ensure universal access for all women to a full range of high-quality and affordable health care, including sexual and reproductive health services.” This is clearly an area in which Guyana has a great deal to do.

113. Article 13 provides for equality in economic life including access to finance and benefits. This is particularly important in the context of the tax system. Article 13 also provides for equality in social life including access to recreational, sports and cultural life.
114. Article 14 requires the State to take into account the particular problems faced by women in rural areas and to extend the benefits of CEDAW to them. Under the Amerindian Act 2006 women have equal rights with men to stand for election as toshaos and councillors, but face cultural barriers in Amerindian societies. The overwhelming majority of toshaos are male. The Amerindian Act 2006 provides for absolute titles which are held by the community; as a result women are equal landowners with men wherever the Amerindian community has settled its land claim and obtained a title from the State.
115. Article 16 requires Guyana to take all appropriate measure to eliminate discrimination against women in all matters relating to marriage and family relations. The CEDAW Committee has stated that, “A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being.”³⁷ Coercion in any form, whether for family or religious purposes, whether well-intentioned or not, is a violation of a woman’s dignity and is prohibited. While this principle is easy to state it can be difficult for a State to know whether a woman is making a free choice or to determine the point at which family or religious influence becomes unacceptable.
116. The General Recommendations form a substantial body of work and a detailed examination of their provisions is outside the scope of this report. However the General Recommendations should be read in their entirety for a full understanding of international standards on women.³⁸
117. The recommendations at the end of this report will also take into account recommendations made by the CEDAW Committee to improve the effectiveness of the reporting mechanism. (e.g. General Recommendation 6 on national machinery; General Recommendation 9 on the requirement for statistics; etc.)

ILO Equal Remuneration Convention³⁹

118. Article 1 states that, “For the purpose of this Convention--
(a) the term **remuneration** includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;
(b) the term **equal remuneration for men and women workers for work of equal value**

³⁷ General Recommendation 21 Para 16

³⁸ The full set of recommendations can be found here:

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom12>

³⁹ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100

refers to rates of remuneration established without discrimination based on sex.”

119. Article 2 requires States to apply the principle of equal remuneration for men and women workers for work of equal value. States may do so through, “(a) *national laws or regulations;*(b) *legally established or recognised machinery for wage determination;*(c) *collective agreements between employers and workers;* or(d) *a combination of these various means.”*
120. Article 3 allows for differential rates of remuneration which are not attributable to a worker’s sex and which are justified by an objective appraisal.

Regional Systems

Charter of Civil Society for the Caribbean Community

121. The Charter provides protection of core rights as well as specific protection for women.
122. Article II provides that States shall, “*respect the fundamental human rights and freedoms of the individual without distinction as to age, colour, creed, disability, ethnicity, gender, language, place of birth or origin, political opinion, race, religion or social class but subject to respect for the rights and freedoms of others and for the public interest.”*
123. Article III requires States to ensure “*respect for and protection of the human dignity of each person.”*
124. Article XII deals specifically with women’s rights and provides that, “*For the promotion of policies and measures aimed at strengthening gender equality, all women have equal rights with men in the political, civil, economic, social and cultural spheres. Such rights shall include the right:*
(a) *to be elected or appointed to Public Office and to be eligible for appointment to positions of decision-making bodies at all levels of their society;*
(b) *to be afforded equal opportunities for employment and to receive equal remuneration with men for work of equal value;*
(c) *not to be discriminated against by reason of marital status, pregnancy, lactation or health-related matters which affect older women;*
(d) *to legal protection including just and effective remedies against domestic violence, sexual abuse and sexual harassment.”*
125. The charter is an international instrument which imposes obligations on Guyana and would be taken into account by national courts when considering women’s rights.

American Declaration on the Rights and Duties of Man

126. Guyana has signed the Declaration which contains protection for the core human rights

that are found in other treaties and declarations including:

“Article II: 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.

Article VII. All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.”

The Declaration uses the ‘male’ as the standard and almost all references are to ‘his’ rights.

127. Complaints may be made to the Inter-Commission on Human Rights for violations of the rights in the Declaration.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem Do Para)⁴⁰

128. Guyana is a party to this Convention which provides strong prohibition against Gender Based Violence. The Convention states that, *“violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men.”*

129. Article 1 states that, *“Violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”*

130. Article 2 makes it clear that the Convention prohibits all violence against women wherever it occurs including the family/home, the community (including the workplace, educational institutions, health facilities) or is perpetrated or condoned by the State irrespective of where it occurs. It is clear therefore that if the State causes psychological harm to women that amounts to violence and is prohibited. Within Guyana, an institution such as a women’s prison could result in psychological harm and should be investigated.

131. Article 3 states that, *“Every woman has the right to be free from violence in both the public and private spheres.”* Guyana is in breach of this provision to the extent that Guyana fails to protect women from violence. Such violence may be in the home or in public. For example the simple fact that women cannot walk safely on the streets is a clear violation of the right to life. Similarly Guyana is in breach of this provision by failing to protect women from domestic violence, an obligation that goes beyond merely passing legislation.

132. Article 4 provides that, *“Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments.”* This includes the right to life, liberty, freedom from torture, equal protection of the law, religion, participation in public affairs etc. This article also states that the right to dignity is one of the rights covered by this Article.

⁴⁰ <http://www.oas.org/juridico/english/sigs/a-61.html>

133. Article 5 provides that a woman is entitled to “*the free and full exercise of her civil, political, economic, social and cultural rights.*” A chauvinistic society in which women are devalued and at risk from physical violence is incompatible with this right.
134. Article 5 also states that, “*The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.*”
135. This is expanded by Article 6 which provides that, “*The right of every woman to be free from violence includes, among others: a. The right of women to be free from all forms of discrimination; and b. The right of women to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination.*”

The patriarchal norms in Guyanese society are a violation of this article.

136. Chapter III of the Convention sets out the duties of the States to protect women. In Article 7 the States parties, “*condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence.*” The required measures are very similar to those in CEDAW.
137. Chapter IV of the Convention sets out the Inter-American Mechanisms of Protection which include national reports, advisory opinions and a right to petition the Inter-American Commission on Human Rights.

European Convention on Human Rights (ECHR)⁴¹

138. The ECHR was signed in 1948. It protects fundamental rights and freedoms very similar to the UDHR. These include (1) the right to life, (2) prohibition of torture, inhuman and degrading treatment, (3) prohibition of slavery and forced labour, (4) right to liberty and security, (5) right to a fair trial, (6) no punishment without law, (7) right to respect for private and family life, (8) freedom of thought religion and conscience; (9) freedom of expression, (10) freedom of assembly and association, (11) the right to marry, (12) the right to an effective remedy, (13) prohibition of discrimination.
139. Like other human rights instruments of the time it does not mention gender as a prohibited ground of discrimination. However the European Court of Human Rights (ECtHR) has held that, “*[T]he advancement of gender equality is today a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention ... In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on grounds of sex.*”⁴²

⁴¹ <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680063765>

⁴² *Konstantin Markin v. Russia*, Grand Chamber judgment of 22 March 2012, § 127

140. The ECtHR has taken a strong line against GBV as evidenced by various cases.

141. In *Opuz v Turkey*, a man repeatedly attacked his ex-wife and killed his mother-in-law. The ECtHR held that Turkey had violated Article 2 (right to life) as a result of the killing of the mother-in-law and had violated Article 3 (prohibition of torture and of inhuman and degrading treatment) because the Turkish authorities failed to protect the ex-wife from violent and abusive behaviour. The ECtHR also held that there had been a violation of Article 14 (prohibition of discrimination) read in conjunction with Articles 2 and 3 because the violence suffered by both women was gender-based. This amounted to a form of discrimination against women, especially as in cases of domestic violence in Turkey, the general passivity of the judicial system and impunity enjoyed by aggressors mainly affected women.⁴³

142. Similarly in *Eremia v the Republic of Moldova* the ECtHR held that the failure of the authorities to protect a woman and her daughters from her abusive husband violated the prohibition on discrimination because the inaction on the part of the authorities suggested that they condoned such violence.

143. In *Talpis v Italy* the ECtHR held that the failure of the authorities to protect a woman against acts of domestic violence amounted to a breach of the prohibition against inhuman and degrading treatment.

144. In *A v Croatia*⁴⁴ the ECtHR held that Croatia had violated Article 8, the right to respect for private and family life because the authorities had failed to protect a woman from her ex-husband and she was forced to go into hiding.

145. **The European Union** is a political union with its own court. The European Court of Justice has recognised equal pay as an expression of a fundamental human right.⁴⁵

The African Charter on Human and Peoples Rights (Banjul Charter)

146. Like the other regional human rights instruments the Banjul Charter protects fundamental rights and freedoms. Interestingly the first right protected under the Banjul Charter is protection against discrimination including discrimination on grounds of sex (but not gender).

147. The Banjul Charter provides for equality before the law.

148. Article 4 states that. “*Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.*”

⁴³ *Opuz v Turkey* <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-2759276-3020932%22%7D%7D>

⁴⁴ Application no. 55164/08

⁴⁵ Case C-50/96 *Deutsche Telekom AG, formerly Deutsche Bundespost Telekom v Lilli Schröder* [2000] ECR I-743 (*Schröder*), at para 57

149. In addition to the general rights the Banjul Charter goes further. Article 18.3 provides that, “*The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.*”

150. The Banjul Charter was followed in 2003 by the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa.

Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (the “Maputo Protocol”)

151. The Maputo Protocol is one of the most comprehensive statements on women’s rights. It protects the standard list of rights, similar to the international and regional human rights treaties. It defines discrimination against women as, “*distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.*” But it goes further.

152. The Maputo Protocol recognises, “*the crucial role of women in the preservation of African values based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy.*” While the other international and regional human rights instruments seek to include women, the African Protocol locates women as the foundation of African society.

153. Article 3 protects a woman’s right to dignity.

154. Article 10 provides that women have the right to a ‘*peaceful existence.*’ They also have a right to a more active role *viz.* the right to participate in the maintenance and promotion of peace.

155. Another innovative provision is Article 15 which gives women a right to food security. This includes, “*access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food.*”

156. Article 16 gives women a right to adequate housing.

157. Article 17 gives women a right to “*live in a positive cultural context and to participate at all levels in the determination of cultural policies.*”

158. Article 18 gives women a right to live in a, “*healthy and sustainable environment.*”

159. Article 19 provides for a right to sustainable development and sets out duties on the State to make sure that the right is respected. For example, States have a duty to introduce gender perspective into national development planning and include women in decision making.

160. Article 19 also requires States to promote women’s access to and control over productive

resources such as land and guarantee their right to property. This is a complete contrast to western patriarchal norms where landholding has been dominated by men.

161. The Maputo Protocol also protects girls, and gives special protection to elderly women and disabled women.

162. The ‘Women’s Rights in Africa’ Report points out that, *“In the area of political participation, female participation in African legislatures outpaces many in developed countries. Rwanda (at 63.8 per cent) is ranked number one in the world, with Senegal and South Africa in the top 10. Fifteen African countries rank ahead of France and the United Kingdom, 24 rank ahead of the United States, and 42 rank ahead of Japan.”*⁴⁶ The Maputo Protocol is a progressive and innovative instrument which could provide useful lessons for Guyana.

NATIONAL LAW

The Constitution

163. Preamble: The preamble to the Constitution states that the people of Guyana *“[c]elebrate our cultural and racial diversity and strengthen our unity by eliminating any and every form of discrimination.”*⁴⁷ While this is not justiciable it is significant that the commitment to eliminating discrimination is found right at the beginning of the Constitution.

164. Article 22: provides for equal pay for equal work as follows:

“Each citizen has the right to be rewarded according to the nature, quality and quantity of his or her work, to equal pay for equal work or work of equal value and to just conditions for work.”

165. Article 29: This article states that, *“Women’s participation in the various management and decision-making processes, whether private, public or state, shall be encouraged and facilitated by laws enacted for that purpose or otherwise.”*

166. Article 149 sets out the protection from discrimination. Paragraph (1) states that, *“Subject to the provisions of this article – (a) no law shall make any provision that is discriminatory either of itself or in its effect; and (b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.”*

167. Paragraph (1)(a) offers protection from direct discrimination i.e. a law whose provisions are discriminatory, as well as protection from indirect discrimination i.e. a law which appears to be equally applicable to men and to women but has a negative impact on women. Paragraph 1(b) prohibits discriminatory actions by public officials.

⁴⁶ Page 11

⁴⁷ Constitution of Guyana, Preamble.

168. Article 149 does not fulfil Guyana’s obligations under international law. Paragraph (1)(b) is restricted to public officials and therefore does not provide women with protection if private actors discriminate against them. This limits the protection available to women.
169. Discriminatory treatment is defined by paragraph (2) as “*affording different treatment to different persons attributable wholly or mainly to their or their parents’ or guardians’ respective descriptions by race, place of origin, political opinion, colour, creed, age, disability, marital status, sex, gender, language, birth, social class, pregnancy, religion, conscience, belief or culture whereby persons of one such description are subjected to disabilities or restrictions to which other persons of the same or another such description are not made subject or are accorded privileges or advantages which are not afforded to other persons of the same or another such description.*” This covers direct discrimination only and limits the protection available to women. If a public official applies a law in such a way that it has the effect of discriminating against women, Article 149(1)(b) will not provide protection. This is clearly contrary to the requirements of the ICESCR which, as noted above, requires protection against discrimination in the private sphere as well as protection against indirect discrimination.
170. Article 149 does not include sexual orientation or gender identity as prohibited grounds and does not protect lesbian or bi-sexual women or those who are transgender.
171. The protection against discrimination does not apply to any law in so far as that law makes provision “*with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law.*” These exceptions for personal matters permit discrimination against women in key areas and should be removed.
172. Paragraph (4), allows discrimination (other than on grounds of marital status, sex, gender, or pregnancy) in any laws that set “standards or qualifications” for any person appointed to a position in the public service, disciplined forces or local government. While direct discrimination is clearly prohibited, the Constitution appears to allow indirect discrimination in respect of the process for public appointments. There is no requirement for the standards or qualifications to be relevant or necessary.
173. Paragraph (6) provides three further exceptions, two of which together substantially limit the protection provided under Article 149. Paragraph (6)(a) states that nothing “contained in or done under the authority of any law” will contravene the right to non-discrimination:
- [W]hereby persons of any such description as is mentioned in paragraph (2) may be subjected to any restriction on the rights and freedoms guaranteed by articles 143, 145, 146, 147 and 148, being such a restriction as is authorised by article 143(2), article 145(5), article 146(2), article 147(2) or article 148(3), other than subparagraph (c) thereof, as the case may be*
174. These articles provide protection against arbitrary search or entry (Article 143), freedom of conscience (Article 145), freedom of expression (Article 146), freedom of assembly,

association and demonstration (Article 147) and freedom of movement (Article 148). The effect of paragraph (6)(a) is to allow discrimination when considering the restrictions that may be placed on the exercise of these rights. So it is possible to put greater restrictions on women's exercise of these fundamental rights. This violates the fundamental principle that human rights are held equally by women and men. It also violates Article 2(1) of the ICCPR, which requires a state to "*respect and to ensure to all individuals without distinction of any kind, such as sex*". Paragraph (6)(a) should be removed.

175. Paragraph (7) states that "paragraph (1)(b) shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings". This exception would allow the police, DPP, magistrates and judges etc. to discriminate against women. It violates the international law requirements for women's equality and should be removed.
176. The exception to the right to non-discrimination would allow the State to adopt laws or do things which discriminate against women. It is possible (although very unlikely, for example for the State to restrict the right of women to meet, to form groups and to protest against discrimination.
177. The exception would also allow the State to discriminate indirectly against women when setting qualifications for positions in public bodies, by including unnecessary requirements.
178. Article 149D The right to equality: This Article provides that
- (1) *The State shall not deny to any person equality before the law or equal protection and benefit of the law.*
 - (2) *The State shall, for the purpose of promoting equality, take legislative and other measures designed to protect disadvantaged persons and person with disabilities.*
 - (3) *Equality includes the full and equal enjoyment of all rights and freedoms guaranteed by or under this Constitution or any other law.*
179. This article protects all persons. Unlike Article 149 there are no exceptions that would enable the State or State actors to justify discriminatory treatment. Article 149D therefore provides strong protection of the right to equality in line with Guyana's obligations under international human rights law, in particular Article 26 ICCPR. There is scope to use Article 149D to overcome some of the defects of Article 149. It is possible to argue that that Article 149D impliedly repeals those parts of Article 149 which conflict with the newer standard in Article 149D. However international best practice suggests that the right to non-discrimination should be separately and specifically protected as a fundamental and free-standing right and Article 149 should be amended accordingly.
180. Article 149F Equal rights of women: states that "*Every woman is entitled to equal rights and status with men in all spheres of political, economic and social life.*" This article does not fully meet the requirements of CEDAW which states that equality must extend to cultural and civil life. This is a significant omission given the way that women are portrayed in the media and the entertainment industry.
181. Article (2) states that, "*All forms of discrimination on the basis of gender or sex are*

illegal.” This provision is progressive in that it goes beyond the ICCPR and the ICESCR which omit gender as one of the grounds on which discrimination is prohibited.

182. Article 154A Protection of Human Rights

183. Paragraph (1) states: *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.*⁴⁸

184. A person who alleges that any right referred to in 154A (1) is being, or is about to be, contravened may apply to the Human Rights Commission for redress.⁴⁹ This is a positive amendment which CEDAW noted “with satisfaction”, in 2005 while welcoming the fact that “all international human rights instruments, including the [CEDAW] Convention are incorporated into domestic legislation.”⁵⁰ However no Human Rights Commission has been established to date.

185. The scope of Article 154A is unclear. The Article is limited to rights that are not otherwise provided for in the Constitution.⁵¹ However the Constitution already protects fundamental rights *viz.* Article 138 the right to life, Article 139 liberty, Article 140 protection from slavery and forced labour, Article 141 protection from torture and inhuman treatment, Article 142 the right to property, Article 143 protection against arbitrary search, Article 144 right to a fair trial, Article 145 freedom of conscience, Article 146 freedom of expression, Article 147 freedom of assembly, Article 148 freedom of movement, Article 149 protection from discrimination.

186. Additional articles added in 2003 protect other civil, political, economic, cultural and social rights including the rights to equality and the right to a healthy environment.

187. Arguably Article 154A is of limited value because Guyana already protects the core fundamental rights and freedoms. On the other hand, since that protection is hedged about with exceptions it may be possible to use Article 154A to strike down those exceptions which are inconsistent with wider protection under the relevant international covenants.

188. A further difficulty with Article 154A(3), is that it limits implementation to “*reasonable legislative and other measures within its available resources to achieve the progressive realisation*” of these rights and “*having regard to the socio-cultural level of development.*”⁵²

⁴⁸ Constitution of Guyana, Article 154A(1). The treaties listed in the Fourth Schedule are ICRC, ICEDAW, ICERD, ICESCR, ICCPR, ICAT and the OAS International Convention on the Prevention, Punishment and Eradication of Violence against Women.

⁴⁹ Constitution of Guyana, Article 154A(4).

⁵⁰ Committee on the Elimination of Discrimination against Women, *Concluding Observations on Guyana*, UN Doc. A/60/38, paras.269–314, 2005, Para 280.

⁵¹ Constitution of Guyana, Article 154A(2).

⁵² Constitution of Guyana, Article 154A(3).

This appears to give the State a wide margin since the allocation of resources is usually a political not a judicial matter.

Limiting the rights in the Constitution

Article 152 Savings clause

189. The “savings” clause protects any law that existed prior to the coming into force of the Constitution, unless the law was challenged within 6 months. If Parliament enacts a law in 2018 that discriminates against women, the courts can strike that law down as unconstitutional. However the court cannot strike down any law that was passed by the colonial government, no matter how absurd that law is and irrespective of its impact on women. To take a simple example if a woman dresses as a man and the police believe that she had mischievous intent, they can treat her as a criminal, arrest and charge her.⁵³ The court has provided no objective guidance as to what constitutes mischievous intent.⁵⁴ This absurd colonial law should also be removed from the statute books.
190. The effect of Article 152 is that the rights in Articles 138-149 do not protect women against violations of their fundamental human rights if such violations arise from a colonial law or action taken under such a law.
191. As a result of Article 152 Guyana is locked into a pre-Independence legal regime. This is a wholly unacceptable provision in a modern constitution and should be removed.
192. Arguably however Article 152 cannot apply to the new articles 149A – 149J. It would be possible to challenge colonial laws which violate these new rights. Women could therefore seek to challenge these laws under the right to equality.

Article 154(6) limitation/divestment

193. Article 154A(6) provides that, “*The State may divest itself of otherwise limit the extent of its obligation 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.*” The CEDAW Committee has expressed concern about this provision and has urged Guyana to “*place high priority on the process of fully incorporating the [CEDAW] Convention without any limitations, into its national legal system in order to give central importance to the Convention as the basis for the elimination of all forms of discrimination against women.*”⁵⁵

Enforcement

194. Under Article 153 (2) the High Court has original jurisdiction in actions alleging a breach of fundamental rights under the Constitution. The court has wide power to make orders and

⁵³ Summary Jurisdiction (Offences) Act Section 153(1) (xlvi)

⁵⁴ See *Quincy et al v Attorney-General*

⁵⁵ CEDAW Committee Concluding Observations on Guyana 2010 Para 11

provide redress. There are also wide provisions for *locus standi*. Challenges can be brought by an individual in her own right, an individual on behalf of another individual or a group, or an organisation acting on behalf of its members. Individual women may therefore go to court to protect their individual rights or to protect the rights of another woman. Or women's organisations can do so on behalf of women as a group.

Sexual harassment

195. The Judicial Service Commission rules made under the Constitution are often overlooked in discussions on women's rights. However paragraph 24 of the rules clearly states that, "*Sexual harassment at the work place is forbidden. Officers who engage in sexual harassment are liable to disciplinary action, including dismissal.*" This provision should be included in all employment situations. (And see the Sexual Discrimination Act below).

The Equal Rights Act 1990

196. The Equal Rights Act 1990 is intended to put into operation Article 29 of the Constitution on equality for women. Section 2(1) states that women and men have equal rights and the same legal status in all spheres of political, economic and social life.⁵⁶

197. The act makes it an offence to:

- Provide unequal remuneration to women and men for the same work or work of the same nature;⁵⁷
- Discriminate against someone in respect of any employment, appointment or promotion on the ground only of sex;⁵⁸
- Deny someone access to academic, vocational and professional training⁵⁹ or equal opportunities in social, political or cultural activity⁶⁰ on the ground only of sex;
- Discriminate against women in employment by offering men more favourable opportunities or conditions than women or giving preference to men in respect of arrangements for determining employment, terms of employment, refusal of employment and access to opportunities for promotion, transfer, training or other benefits;⁶¹
- Allow a woman to be searched by a man or a man to be searched by a woman.

198. However it is clear that equal treatment "*is not in itself sufficient to address inequality in society. Equal treatment may well lead to unequal results.*"⁶² As one legal scholar observes, "*It is widely recognised that a legal commitment to formal equality is insufficient to guarantee the fair treatment of groups which have suffered a history of prejudice and discrimination.*"⁶³ In a world in which men have acquired greater power than women, "*the ascription of formally equal rights will in effect entrench the competitively asserted rights of*

⁵⁶ Equal Rights Act 1990, subsection 2(1).

⁵⁷ Equal Rights Act 1990, subsection 2(3).

⁵⁸ Equal Rights Act 1990, subsection 2(4).

⁵⁹ Equal Rights Act 1990, paragraph 2(5)(a).

⁶⁰ Equal Rights Act 1990, paragraph 2(5)(b).

⁶¹ Equal Rights Act 1990, subsection 2(6).

⁶² Fredman, *Discrimination Law 2nd Ed* p177

⁶³ Lacy, *Unspeakable Subjects Feminist Essays in legal and social theory*

*these privileged people.*⁶⁴ Therefore action is needed to redress the balance.

199. Section 2 has an exception which permits employers to make “*special labour and health protection measures for women*”.⁶⁵ It can be used for affirmative action as permitted by Article 4.1 of CEDAW.
200. However the scope of Section 2 is unclear. There is a risk that it would be used to excuse discriminatory actions that are based on paternalistic ideas about the role of a woman in society or women’s role in the workplace.
201. Under Section 2(7) employers can make “*provision for conditions enabling mothers to work or for material and moral support for mothers and children, including paid leave and other benefits for mothers and expectant mothers*”. This allows employers to set up maternity leave with pay schemes. This goes some way towards meeting Guyana’s obligations under CEDAW. However since there is no requirement to set up schemes for paternity leave, the law still assumes that a woman is, and must continue to be, primarily responsible for the child. There should also be a requirement for male friendly spaces at childcare facilities to enable fathers to take more responsibility.
202. The Equal Rights Act meets some of Guyana’s obligations under Article 2 of CEDAW, such as the obligation to adopt “*appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women*”⁶⁶ and the obligation to “*modify or abolish existing laws [...] which constitute discrimination against women.*”⁶⁷ CEDAW has welcomed the Act, but expressed concern “*about the lack of systematic enforcement of existing legislation, of mechanisms to monitor and ensure compliance, and of effective remedies in case of breach.*”⁶⁸

Prevention of Discrimination Act 1997

203. The Prevention of Discrimination Act prohibits public and private employers from discrimination. It also applies to those providing goods and services.⁶⁹ Section 4 of the Act defines discrimination as “any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity in any employment or occupation” on standard grounds including sex, family responsibilities, and marital status. It extends to “(b) *any characteristic which appertains generally or is generally imputed to persons or a particular sex..... family responsibility, pregnant state, marital status...* ”.⁷⁰

⁶⁴ Ibid page 27

⁶⁵ Equal Rights Act 1990, subsection 2(7).

⁶⁶ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, entered into force 3 September 1981, Article 2(b).

⁶⁷ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, entered into force 3 September 1981, Article 2(f).

⁶⁸ Committee on the Elimination of Discrimination against Women, *Concluding Observations on Guyana*, UN Doc. CEDAW/C/GUY/CO/3-6, 2005, Paras 23.

⁶⁹ Prevention of Discrimination Act 1997, section 3.

⁷⁰ Prevention of Discrimination Act 1997, subsection 4(2).

204. The list of protected grounds does not include sexual orientation and gender identity, although these are prohibited grounds under international law.⁷¹
205. Employers have an obligation to “*pay equal remuneration to men and women performing work of equal value.*”⁷² As noted above equal pay is treated in the European Union as an expression of a fundamental human right.⁷³ The CEDAW Committee has recommended that Guyana should, “*effectively enforce the principle of equal pay for work of equal value through awareness-raising, increased sanctions and more effective labour inspections, and to narrow and close the wage gap between women and men in accordance with the International Labour Organization Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (Convention No. 100).*”⁷⁴
206. Discrimination includes acts, omissions, practices or policies, which directly or indirectly discriminate. There is no need for intention on the part of the discriminator. The law looks at the effect of the action not the mind of the person or the intention of the policy.
207. Section 16 prohibits “*discrimination by subterfuge*”, which is defined as follows: “*Where a requirement or condition which is not apparently in contravention of any provision in this Act, has the effect of giving preference to a person on the grounds not (sic) out in section 4(2) in a situation where such preference would be unlawful under this Act, the imposition of that condition or requirement shall be unlawful unless the person imposing it establishes good reason for its imposition and shows that its imposition is not a subterfuge to avoid complying with this Act.*”
208. Section 5(2)(f) prohibits an employer from discrimination by “*subjecting the employee to any other disadvantage*”. Section 6 provides a “*genuine occupational qualification*” exception to the protections provided under section 5. Paragraph 6(2)(a) allows discrimination where:
- the essential nature of the job calls for a person of a particular race, sex, religion, national extraction, indigenous population, ethnic origin, social origin, disability, pregnancy, family responsibilities, marital status or age for reasons of physiology (excluding physical strength or stamina) or, in dramatic performances or other entertainment for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a person of the opposite sex or a person with an occupational qualification which is different from any stated aforesaid;*⁷⁵

⁷¹ See for example, Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, U.N. Doc. E/C.12/GC/20, 2009, Para 32; Committee on the Rights of the Child, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, U.N. Doc. CRC/GC/2003/4, 2003, Paras 2 and 6; Human Rights Committee, *Concluding Observations on Poland*, U.N. Doc. CCPR/CO/82/POL, 2004, Para 18.

⁷² Prevention of Discrimination Act 1991, subsection 9(1).

⁷³ Case C-50/96 *Deutsche Telekom AG, formerly Deutsche Bundespost Telekom v Lilli Schröder* [2000] ECR I-743 (Schröder), at para 57

⁷⁴ CEDAW Committee Concluding Observations on Guyana 2010 para 31

⁷⁵ Prevention of Discrimination Act 1997, paragraph 6(2)(a).

209. There are specific exceptions for requirements that employees must be of a particular sex:

- a) *For the preservation of decency or privacy where the job requires physical contact where persons may object to this contact from persons of the opposite sex or is in a situation in which persons are in a state of undress or use the same sanitary facilities.*⁷⁶
- b) *Where employees are required to live in premises provided by the employer which are occupied by persons of the same sex, and not equipped with separate sleeping accommodation and sanitary facilities for persons of the opposite sex, and it is not reasonable to expect the employer to make arrangements for both sexes.*⁷⁷
- c) *The nature of the establishment where work is undertaken is for persons of one sex requiring special care, supervision or attention, such as a hospital or prison, and it is reasonable having regard to the essential character of the establishment that the job not be held by a person of the opposite sex.*⁷⁸
- d) *The job holder provides personal services promoting health, welfare or education, and those services can most effectively be provided by a person of a particular sex.*⁷⁹

210. Section 7 states that “*special measures taken by employers of a temporary nature to promote equality of opportunity in employment based on the grounds set out in section 4(2) shall not be deemed to be unlawful discrimination*”. This allows employers to take action to increase the number of women that they employ by e.g. giving priority to women candidates for jobs, recruiting through channels that are more likely to reach women than men.

211. Section 7 requires such special measures to be temporary as recommended by the CEDAW Committee.⁸⁰

212. Section 8 provides that, “*Any act of sexual harassment against an employee committed by an employer, managerial employee or co-worker shall constitute unlawful discrimination based on sex within the meaning of section 4 of this Act.*”

213. In line with Guyana’s obligations under the ILO Equal Remuneration Convention⁸¹ and CEDAW,⁸² section 9 obliges employers to “*pay equal remuneration to men and women performing work of equal value*”.⁸³ Equal remuneration is defined as “*rates of remuneration that have been established without differentiation based on grounds of sex*” while work of equal value is defined as “*equal in value in terms of the demands it makes in relation to such matters as skill levels, duties, physical and mental effort, responsibility and conditions of*

⁷⁶ Prevention of Discrimination Act 1997, paragraph 6(2)(c).

⁷⁷ Prevention of Discrimination Act 1997, paragraph 6(2)(d).

⁷⁸ Prevention of Discrimination Act 1997, paragraph 6(2)(f).

⁷⁹ Prevention of Discrimination Act 1997, paragraph 6(2)(g).

⁸⁰ See for example, Committee on the Elimination of Discrimination Against Women, *General Recommendation 25: on temporary special measures*, Para 20.

⁸¹ Equal Remuneration Convention, 1951 (C100), Article 2.

⁸² Convention on the Elimination of All Forms of Discrimination Against Women, Article 11(1)(d).

⁸³ Prevention of Discrimination Act 1997, subsection 9(1).

work.” Under section 9(3), the employer bears the burden of proof in relation to demonstrating equal pay requirements are being met.⁸⁴

214. Discrimination in employment in certain types of organisations is dealt with under separate provisions of the Act.

Section 10 - professional partnerships

Section 11- professional or trade union, employer’s organisations and trade associations from discriminating in relation to accepting persons as members, membership conditions, other benefits or conditions of membership or by subjecting persons to unfair treatment.

Section 13 - educational bodies, vocational training bodies

Section 14- employment agencies cannot discriminate in relation to their provision of services to job seekers.⁸⁵

215. Part IV of the Act provides protection against discrimination in areas other than employment. Section 15 states: *“It shall be unlawful for a person who, whether for payment or not, provides goods and services, or makes facilities available, to discriminate against a person on the grounds set out in section 4(2) -*

(a) by refusing to provide that person with those goods or services or to make those facilities available; or

(b) in the manner in which or in the terms and conditions on which those goods or services are provided, or made available to that person.

216. Section 17 prohibits the publication or display of any advertisement or notice “which indicates, or could reasonably be understood as indicating, an intention to commit a breach of any provision under this Act”. Subsection (2) provides an exception for cases where the publisher of any such notice or advertisement relied on a statement by another person and such reliance was reasonable.

217. Section 19 makes an exception for charitable benefits.

218. Section 20 makes exemptions for religious bodies which allow discrimination in the ordination of priests and their training, and in the selection or appointment of persons to perform religious practices. There is a general exemption for *“any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of a religion or is necessary to avoid injury to the religious susceptibilities of adherents to that religion.”*⁸⁶ This is an extremely wide provision. It locates the protection of religion in the public sphere but puts religious practice firmly in the private sphere. This could be used to allow discrimination against women for reasons that may be irrational, superstitious or wholly without merit. The law has chosen to ignore the patriarchal structure of most religions.

219. Section 21, makes it unlawful to induce or attempt to induce a person, either by providing or offering a benefit, or subjecting or threatening a detriment, to discriminate in any of the

⁸⁴Prevention of Discrimination Act 1997, subsection 9(3).

⁸⁵ Prevention of Discrimination Act 1997, section 14.

⁸⁶ Prevention of Discrimination Act 1997, subsection 20(d).

ways defined by the Act.

220. Section 22 prohibits victimisation in relation to complaints.
221. It can be difficult to prove discrimination. Section 23 therefore alters the burden of proof in order to assist the victim. It provides that a person claiming discrimination is only required to show a “*prima facie* case of discrimination or of an offence related to discrimination under this Act.” Once that *prima facie* case is made out Section 23 shifts the burden of proof to the respondent to disprove the allegations.
222. Section 23 provides that a respondent who wishes to claim an exemption also bears the burden of proof.
223. Section 25 provides that a person found guilty can be fined up to \$20,000. This is a derisory amount and should be increased.
224. Section 26 provides for supplemental remedies including damages from the employer, an order directing the employer to redress the discrimination, an order for reinstatement if both parties agree, and any other order that the court thinks is fair and just.
225. Under Section 29 the Chief Labour Officer may also enforce the provisions of the Act.
226. Section 30 provides that the procedure to be used is the procedure in the Summary Jurisdictions Act.

CEDAW has expressed concern and highlighted the “*lack of systematic enforcement of existing legislation, of mechanisms to monitor and ensure compliance, and of effective remedies in case of breach.*”⁸⁷

Matrimonial Causes Act Cap 45:02

227. Either spouse may apply for divorce if the other spouse has committed adultery, desertion, cruelty or is of incurably unsound mind.⁸⁸ An attempt to introduce no-fault divorce in 2008 was resisted by the Guyana Bar Association⁸⁹ on the grounds that there was no empirical evidence that it would be good for Guyana. As a result Guyana still does not provide for no-fault divorce as called for by CEDAW in its Concluding Observations.⁹⁰
228. Divorce based on fault requires the parties to make allegations that are destructive and likely to lead to conflict and bitterness. There is no guarantee that a court will not be less

⁸⁷ Committee on the Elimination of Discrimination against Women, *Concluding Observations on Guyana*, UN Doc. A/60/38, paras.269–314, 2005, Para 291.

⁸⁸ Matrimonial Causes Act 1916, subsection 9(1).

⁸⁹ <https://www.kaieteurnews.com/2008/11/12/local-attorneys-called-for-%E2%80%98no-fault-divorce%E2%80%99-decades-ago/>

⁹⁰ See for example, Committee on the Elimination of Discrimination Against Women, *Concluding Observations on Sri Lanka*, UN Doc. CEDAW/C/LKA/CO/7, 2011, Para 45; Committee on the Elimination of Discrimination Against Women, *Concluding Observations on Luxemburg*, UN Doc. CEDAW/C/LUX/CO/5, 2008, Para 34.

sympathetic towards a woman as a result of her husband's allegations of fault or that the court will not reflect society's double standards. As CEDAW has pointed out, "*Fault-based divorce regimes may condition financial rights on lack of fault. They may be abused by husbands to eliminate any financial obligation towards their wives.*"⁹¹

229. The Matrimonial Causes Act goes back to 1916 and should be thoroughly revised to entrench equality in a marriage as well as to enable either party to terminate the marriage without having to show fault.

230. Summary Jurisdiction (Magistrates) Act 1894 allows the court to make orders which declare that spouses no longer required to cohabit, and to provide for custody and maintenance in certain circumstances including where the spouse has been convicted of aggravated assault, desertion, or cruelty.⁹²

231. This should be repealed and there should be one law governing marriage based on equality between the two persons concerned.

Married Persons Property Act Cap 45:04

232. This act was first passed in 1904 and was strictly patriarchal, with the woman and her property regarded as belonging to the husband. It has been subject to several amendments reflecting changing attitudes. Nevertheless it does not sufficiently reflect equality. For example under Section 12 a wife has full civil and criminal remedies against her husband but is subject to the following proviso, "*Provided that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act, while they are living together, as to or concerning any property claimed by her, or while they are living apart as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless that property has been wrongfully taken by the husband when leaving or deserting his wife, or about to leave or desert her.*" There is no equivalent provision for the husband. This should be repealed.

Domicile Reform Act 1988

233. Section 5 states that a child is taken to have the domicile of their father. This is contrary to international law by which a child may have the domicile of either parent. It should be amended.

234. Sexual Offences Act Cap8:03 (as amended up to 2013)

235. The Sexual Offences Act is a comprehensive piece of legislation in response to advocacy and campaigning by women's groups and civil society. It removes discriminatory principles of the common law and provides greater protection for women. The Act runs to over 100 pages and deserves a report of its own. This report will highlight some key provisions.

⁹¹ General Recommendation on Article 16, Para 39

⁹² Summary Jurisdiction (Magistrates) Act 1894, sections 34-36.

236. Section 3 states that one of the elements of rape is that, “*the accused does not reasonably believe that the complainant consents.*” Under this section it is irrelevant whether the woman in fact denies her consent. The woman is treated as an object. The law privileges the man’s belief over the factual situation. This provision should be altered so that the offence of rape is committed if a woman does not consent. It would then be a matter of evidence to determine whether the woman in fact consented.
237. Section 5 states that consent cannot be inferred from silence or lack of physical resistance or from sexual arousal. Marital or other pre-existing relationship is not a defence to a sexual offence.⁹³
238. Section 6 states that, “*Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps the accused has taken to ascertain whether the complainant or the third person consents.*”
239. Section 6 also provides that reasonable belief is not a defence if, “*the belief of the accused arose from the self-induced intoxication or reckless or wilful blindness of the accused; or (b) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting.*” The law continues to focus on the man’s belief rather than the fact of the woman’s lack of consent.
240. Section 37 prohibits marital rape.
241. A significant barrier to justice for victims of sexual offences is the way that the court handles their complaint. There has been a lack of understanding of the complainant and the trauma she has experienced. This is addressed to some extent in the act.
242. Section 41 requires the police to record and investigate each complaint and institute charges within 3 months or send the file to the Director of Public Prosecutions.
243. Section 41(4) states that, “*A person who makes a false complaint to the police may, on the advice of the Director of Public Prosecutions, be charged for the offence of making a false complaint and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for three years.*” This section is likely to have a chilling effect. If a jury refuses to convict a man of rape, does that open space for the police to charge the complainant under this section?
244. The Act introduces some much-needed protection for victims. Section 42 prohibits the police from requiring the complainant to make her complaint in front of the accused or from viewing or being in the presence of the accused. She is also entitled to identify him remotely through a two-way mirror or other manner sensitive to her well-being.
245. During the trial the judge can make various orders e.g. including that the Court be closed,⁹⁴ that witnesses be screened while giving evidence so that they cannot see the

⁹³ Sexual Offences Act 2010, section 37.

⁹⁴ Sexual Offences Act 2010, sections 45-6.

accused⁹⁵, and that witness give evidence via audio visual link.⁹⁶

Criminal law

246. Under the English Common Law, battery is the infliction of unlawful physical injury on another. The Summary Jurisdiction (Offences) Act Cap 8:02 also prohibits assault and other offences against the person. The police already have powers to arrest and charge offenders under these provisions. In *The Queen v Paddy*⁹⁷, a case from the British Virgin Islands a Guyanese man was charged under Section 163 of the criminal code with unlawfully and maliciously causing grievous bodily harm to his wife. The judge opened her decision with the following words, “*This is a case of domestic violence, a crime of moral turpitude that causes far more pain than the visible marks of bruises and scars.*”

Domestic Violence Act 1996

247. The fact that the Domestic Violence Act 1996 was necessary illustrates how difficult it has been for women to obtain protection under the criminal law. It also shows the extent to which the criminal justice system treated the home as a private space in which violence against women was tolerated.

248. The purpose of the Domestic Violence Act 1996 is said to be, “*To afford protection in cases involving domestic violence by the granting of a protection order, to provide the police with powers of arrest where a domestic violence offence occurs....*”

249. The Act provides for protection orders against domestic violence, harassment, and psychological abuse.

250. Section 2 provides an extensive definition of harassment as, “*(a) the intimidation of a person by— (i) persistent verbal abuse; (ii) threats of physical violence; (iii) the malicious damage to the property of a person; (iv) inducing fear of physical or psychological violence; or (v) any other means; (b) the persistent following of a person from place to place; (c) the hiding of any clothing or other property owned by or used by a person or the depriving of a person of the use thereof or the hindering of a person in the use hereof; (d) the watching or besetting of the house or other places where a person resides, works, carries on business or happens to be or the watching or besetting of the premises that are the place of education of a person, or the watching or besetting of the approach to the house, other place or place of education; (e) the making of persistent unwelcome communications to a person; (f) using abusive language to or behaving towards a person in any other manner which is of such a nature and degree as to cause annoyance to, or result in ill-treatment of that person.*”

251. Section 2 also makes it clear that health is not merely physical but includes emotional health. It would however have been better to include the mental, psychological and spiritual health of the victim.

⁹⁵ Sexual Offences Act 2010, section 55.

⁹⁶ Sexual Offences Act 2010, section 56.

⁹⁷ HC, BVI 27 April 2011

252. Section 2 defines psychological abuse as, “*a repeated or habitual pattern of conduct which is performed to the dishonour, discredit or scorn of the personal worth of a person, unreasonable limitation to access and handling of common property, blackmail, repeated or habitual vigilance, isolation, deprivation of access to adequate food or rest, deprivation of custody of sons or daughters, threats of deprivation of custody of sons or daughters or destruction of objects held in esteem by the person, except those that privately belong to the respondent.*”

253. The act applies where there is a domestic connection between the victim and the perpetrator such as a spouses, cohabitants, sexual partners or relatives.

254. The court may make protection orders preventing an offender from going to the home, workplace or other areas frequented by the complainant, prohibiting the offender from harassing the complainant, psychological abuse, communicating with the complainant etc.⁹⁸

255. CEDAW has expressed concern about the lack of implementation and support services,⁹⁹ and urged Guyana to, “*...accord priority attention to the effective enforcement and monitoring of legislation on domestic violence to ensure that all women who are victims of violence, including Amerindian women and those living in rural and hinterland areas, have access to immediate means of redress and protection, including protection orders, legal aid and shelters in sufficient numbers.*”¹⁰⁰

256. Medical Termination of Pregnancy Act 1995

257. The act provides for legal abortion. Section 5 allows any medical practitioner to administer an abortion by a nonsurgical method to terminate a pregnancy of up to eight weeks duration. A pregnancy of between eight and 16 weeks can only be terminated by an authorised medical practitioner at an approved institution, subject to various conditions. In most cases, the consent of the pregnant women is the only consent necessary; a medical practitioner is not required to seek the consent of the parents of a pregnant child or of a partner.¹⁰¹ However, if the pregnant woman is of unsound mind, the parents or guardian must give consent.¹⁰²

258. There are special rules where termination is necessary to save the life of, or prevent grave permanent injury to, a pregnant woman. Under Section 10 in such case a pregnancy can be terminated immediately by any medical practitioner, without the need for counselling or the concurring opinions of other medical practitioners.¹⁰³

⁹⁸ Domestic Violence Act 1996 Section 6

⁹⁹ Committee on the Elimination of Discrimination against Women, *Concluding Observations on Guyana*, UN Doc. A/60/38, paras. 269–314, 2005, Para 301.

¹⁰⁰ Committee on the Elimination of Discrimination against Women, *Concluding Observations on Guyana*, UN Doc. A/60/38, paras. 269–314, 2005, Para 302.

¹⁰¹ Medical Termination of Pregnancy Act 1995, section 8.

¹⁰² Medical Termination of Pregnancy Act 1995, subsection 8(2).

¹⁰³ Medical Termination of Pregnancy Act 1995, section 10.

Representation of the People Act 1964

259. Section 11B requires all parties to ensure that at least one third of those on each of their party lists are women. The Elections Commission must ensure that party lists comply with this rule. CEDAW has commended “*the Government on the mandatory representation of 33 1/3 per cent women on the lists of all political parties contesting the general elections and regional elections and a representation of a critical mass of women in a range of professions in the public sector.*”¹⁰⁴

Combatting of Trafficking in Persons Act 2005

260. The Act aims to provide comprehensive measures to stop the trafficking of persons. The United Nations confirms that the majority of trafficking victims are women and girls.¹⁰⁵ There is insufficient data on trafficking in Guyana especially on numbers involved, what routes are used, who the victims are and who is responsible for the trafficking. This data should be obtained and used to inform policy and action.

261. Under Section 3 trafficking is a criminal offence with a prison term of between three and five years on summary conviction and over five years on indictment. Under Section 8 the court can increase the five year term on indictment where there was violence, threats, or sexual assaults.

262. The trafficker can also be required to make restitution to the victim. The court may also forfeit money and other property which the trafficker used for trafficking.¹⁰⁶

263. Section 11 protects victims by providing that, “*A victim of trafficking is not criminally liable for any migration-related offence, prostitution, or any other criminal offence that was a direct result of being trafficked.*”

264. Part III of the Act contains more provisions to protect the victims of trafficking including protection against being found, protection from threats and intimidation, protection of their privacy and anonymity as well as assistance to witnesses through relocation and employment programmes.

Freedom of Expression

265. Article 146 protects freedom of expression. This freedom is not unlimited and may be restricted in the interests of public morality and public health. For example Section 167 of the Summary Jurisdiction (Offences) Act Cap8:02 makes it a criminal offence to sing any indecent or obscene song or ballad in public or within public hearing.

¹⁰⁴ Committee on the Elimination of Discrimination against Women, *Concluding Observations on Guyana*, UN Doc. A/56/38, Paras.145-184, 2001, Para 159.

¹⁰⁵ <http://www.un.org/sustainabledevelopment/blog/2016/12/report-majority-of-trafficking-victims-are-women-and-girls-one-third-children/>

¹⁰⁶ Section 7

266. Women in Guyana are often portrayed as sexual objects in public communications such as media and advertising. It is not unusual to see companies advertising their products and services with well-dressed men and scantily clad women. The CEDAW Committee has pointed out that, “*Stereotyping, including that perpetrated by the media, confines women in political life to issues such as the environment, children and health, and excludes them from responsibility for finance, budgetary control and conflict resolution.*”¹⁰⁷
267. Guyana’s culture is also largely disrespectful of women. Popular music especially dancehall music denigrates women and promotes violence against them. Such music is almost entirely male and inflicted on the general population. The music culture is aggressive with speakers playing at over 100 decibels posing a health hazard.¹⁰⁸ Public officials, including government ministers and police officers, display an attitude of tolerance to the volume and the content of such music.
268. It has been pointed out that “*Culture is often invoked as a justification for violations of women’s human rights, reflecting deep-seated patriarchal structures and harmful gender stereotypes. In several countries, culture is invoked to negatively impact the rights of women.....However, culture is not a static or unchanging concept, although some States tend to present it as such in order to justify discrimination and violent practices against women and girls.*”¹⁰⁹
269. It is the responsibility of the State to ensure that there is respect for women in public space i.e. space that is used by citizens to communicate and engage with one another. CEDAW General Recommendation 19 recommends “*Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women.*” There needs to be a concerted effort by the State to restrain those elements of national culture which undermine women and to replace them with activities that make it the norm to see women as equal citizens with inherent dignity.
270. Women who are insulted and aggrieved often feel disempowered to intervene and reluctant to speak up for fear of violence. Article 27 of the UDHR provides that, “*Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.*” Article 15 of the ICCPR likewise recognises the right of everyone to take part in cultural life. Women have equal rights with men to determine the content of culture and to change it for the better. Change will take longer unless there women refuse to accept current culture and are more active in forming setting cultural norms.

The Justice System

271. It should be clear from the above review and analysis that women remain at a significant disadvantage in the justice system. There is a range of structural barriers to women’s access to justice.

¹⁰⁷ General Recommendation 23, para 12

¹⁰⁸ Measured by the author at Mashramani and other public functions using standard decibel meters

¹⁰⁹ Women’s Rights in Africa p19

272. Women in rural or hinterland areas have extremely limited access to courts. It can take days to get to Court from a remote location only to be told that the matter is being adjourned. Court times are often inconvenient for working women.
273. The Common Law which Guyana has inherited began with the King's courts travelling through England to dispense justice. In the modern era with improved communications, there seems to be no good reason why Guyana cannot institute a system of mobile courts which go to rural and hinterland locations to hear cases as suggested by Madame Justice Roxane George in 2015.¹¹⁰
274. For many women their first encounter with the justice system is the police officer to whom they are making a report. There is no doubt that police responses to women need to be improved. Chauvinistic attitudes to women need to be identified and replaced with a commitment to equality and respect for the inherent dignity of each woman.
275. There is also a need to increase awareness among the judiciary of CEDAW and of other international jurisprudence that protects the rights of women. The CEDAW Committee has called upon Guyana to disseminate the CEDAW and General Recommendations to the judiciary and law enforcement officers in order to "*establish firmly in the country a legal culture supportive of women's equality and non-discrimination.*"¹¹¹ I
276. It should also be noted that a Judicial Colloquium on Equality was held in Guyana in 2013 as part of the activities of the Justice Institute Guyana in partnership with the Chancellor of the Judiciary and the Equal Rights Trust. The colloquium covered equality for women.
277. In 2015 Guyana reported that, "*On judicial training, as it related to women's rights, work had been carried out with the police and prosecutors, and seven domestic violence units, in each of the police divisions, had been established.*"¹¹² While this is a good start, it is clearly not enough.

¹¹⁰ <http://guyanachronicle.com/2017/11/24/violence-women-endemic-wgoc>

¹¹¹ Para 9: Concluding Observations 2010

¹¹² Report of the Working Group on Guyana's UPR 2015 para 111

Recommendations

278. The following is a preliminary list of recommendations

- (1) Produce a Harmonised Code of Law on Women's Rights: this should be one book that contains all laws protecting women but set out as a code, not separate laws. The code should be harmonised with international law obligations and with other national laws to ensure that there are no gaps in the protection afforded to women. The code should be written in simple accessible language as far as is possible. The Maputo Protocol could provide guidance on enhancing women's rights.
- (2) The Government should ensure that its report to the CEDAW Committee is submitted regularly and on time. Before submitting the report to the CEDAW committee, the government should consult the Women and Gender Equality Commission as well as civil society organisations e.g. Help and Shelter; Guyana Association of Women Lawyers etc.
- (3) Establish a Task Force with the Women and Gender Equality Commission to consider the recommendations of the Committee on the Elimination of All Forms of Violence Against Women and develop a strategy for putting those recommendations into practice.
- (4) The Women and Gender Equality Commission, women's organisations, religious organisations and other interested parties should develop and submit to the Committee the questions that they require Guyana to answer in its periodic report and the recommendations that they wish Guyana to follow
- (5) Guyana should ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Article 2 states that, "*Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.*"
- (6) Repeal Article 149(6) which allows discrimination against women (and others) in the exercise of their fundamental rights and freedoms.
- (7) Repeal Article 152 (Savings clause) which protects colonial legislation from challenge under the fundamental rights provisions of the Constitution.
- (8) Repeal Article 154(6) which allows Guyana to divest itself or limit its obligations under the international covenants incorporated into the Constitution.
- (9) A Sexual Harassment Policy should be instituted at all places of work and educational

institutions as recommended by the WGEA in 2017.¹¹³

- (10) An immediate action would be to write to all employers asking them to publish the following statement “*Sexual harassment at the work place is forbidden. Employees who engage in sexual harassment are liable to disciplinary action, including dismissal.*”
- (11) Guyana should introduce and enforce legislation to identify and punish those who engage in sexual harassment.
- (12) Guyana should improve access to justice for rural women by having mobile courts.
- (13) Guyana should provide on-going specialised training on the Sexual Offences Act and the Domestic Violence Act for judges, magistrates, police officers, and others involved in the criminal justice system.
- (14) Guyana should investigate and report on conditions for women prisoners and evaluate conditions against the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).
- (15) Review the penalties for criminal offences – raise the level of fines; add a wider range of penalties including compensation to victims, apologies/admission of wrongdoing and other possibilities for non-coercive restorative justice
- (16) Carry out an analysis of the employment sector
 - What jobs are women in
 - What are women paid compared to men
 - Are women in low paid jobs
 - Are jobs low paid because they are done by women
- (17) Introduce paternity leave in law.
- (18) Include paternity leave in contracts of employment.
- (19) Provide facilities for child care at places of employment.
- (20) Provide legal aid services throughout Guyana with priority being given to matters that affect women such as Gender Based Violence and other forms of discrimination.
- (21) Conduct training workshops and provide women with information on their legal remedies including redress for criminal offences and remedies against discrimination.
- (22) Hold a judicial colloquium on women’s rights.

¹¹³ <http://guyanachronicle.com/2017/11/24/violence-women-endemic-wgea>

- (23) Provide information to Parliamentarians on the rights of women – there should be a compulsory training course on women’s rights for all MPs before they take up their seats.
- (24) Put a ban on all music in the public arena which violates the dignity of women.
- (25) Develop a code of conduct for advertisers to ensure respect for the dignity of women.
- (26) Develop a code of conduct for media and provide training to journalists to ensure respect for the dignity of women.
- (27) Ensure that all public officials are given training on women’s rights.
- (28) Conduct research into the factors that lead or contribute to violence against women and develop and implement a strategy to reduce that violence to zero.

ADDENDUM
Guyana's report to CEDAW for 2011-2015
Post Script
Preliminary Comments

1. Guyana's report to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) for the years 2011-2015, was submitted on 17th April 2018 and made available by CEDAW on 24th April 2018, after the conclusion of this report. Nevertheless in the interests of making this report as useful as possible, some preliminary comments are set out below. However detailed analysis should still be undertaken by the WGEC and other stakeholders.
2. The Government is to be congratulated for submitting the report. However the overall impression is that the focus has been on training and outreach activities that have not yielded tangible results. There is little or no evidence that the Government has taken effective action to reduce the numbers of women killed or injured through Gender Based Violence.
3. Overall the report contains inaccuracies and could create a misleading impression. There is a lack of detail which makes it difficult if not impossible to ascertain the level of effort that the Government has made. For example simply stating that workshops were held is meaningless unless the Government also states how long the workshops lasted, confirms that the training was provided by accredited or qualified trainers and that it resulted in changed behaviour.
4. Conceptual misunderstandings.
 - The report appears to treat the steps that should be taken to achieve the goals of CEDAW as if those steps are goals in themselves. For example the report treats the development and finalisation of a policy or plan as an achievement whereas that is merely an activity that might or might not result in fulfilment of Guyana's international obligation to ensure equality for women and the elimination of Gender Based Violence.
 - The report itself shows gender bias and a lack of understanding of women's equality.
 - The report assumes that the rights of women are also met by provisions to protect children. This implies that issues affecting children are and must be dealt with by women. This appears to be unintended step backwards.
 - Paragraph 99 states that, "*Females attempt suicide more frequently (75 percent) with a proportion of almost 3:1.....Data also reveal that cases of suicide attempts occurred in the following groups of individuals: single people (60 percent), individuals without children (68 percent), and individuals living with family.*" This creates the unfortunate impression that being childless or unmarried is a contributory

factor in suicide. It is a misuse of statistics as well as implying that the role of a woman is to get married and have children.

- States are required to report on, “*the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect....*” Paragraph 22 sets out work carried out by civil society organisations, not the State party Guyana. Paragraph 29 (c) cites work by the NGO Legal Aid. Paragraph 116 refers to Guyana Responsible Parenthood Association and so on.
- The report does not provide adequate information on progress but focuses on steps taken. In doing so it may omit work carried out by Government agencies that deserves to be recognised.
- The report provides general information about children rather than girls.
- The report provides general information about ‘indigenous peoples’ without dealing specifically with ‘indigenous’ women. The report also fails to provide any criteria by which ‘indigenous peoples’ can be identified. Does it for example include Amerindian groups such as the Wapichan who came from Brazil in the eighteenth century, the Spanish Arawaks who settled in Moruca in the early nineteenth century, or the Arecuna who entered Guyana in the 20th century, or others who have migrated to Guyana after colonisation? Does it include the descendants of enslaved Africans who were brought to Guyana in the Dutch colonial era before the arrival of some Amerindian groups?

5. Inaccurate/misleading statements

- Paragraph 18 claims that, “*The laws of Guyana are harmonized with the CEDAW....*” This is incorrect as set out in this report for the WGEC.
- Paragraph 18 continues as follows, “*and the obligations of the State party are respected and upheld by the executive, legislature, judiciary and agencies of government and where applicable by all natural and legal persons.*” This is clearly incorrect. The State consistently fails to ensure equality for women and in particular to protect women from Gender Based Violence. As at 30th April 2018 seven women have been murdered by their partners and another three brutalised.
<https://guyanatimesgy.com/7-women-killed-3-brutalised-by-partners-for-2018/>
The violations of women’s rights were equally egregious in the period 2011 to 2015.
- Paragraph 23 refers to the fact that CEDAW has been inserted into the Constitution and states, “*Hence CEDAW in its entirety must be implemented.*” This ignores the restrictions set out in Article 154A including the State’s right to divest itself of the obligations under CEDAW.

- Paragraph 27 states “*The GCROG recognizes its responsibility to ensure that legal gaps are removed to prevent discrimination based on sexual orientation and gender identity.*” However this is not reflected in action. The government has not repealed the old British colonial laws which criminalise cross-dressing and buggery. The government is also defending a cross-dressing case all the way to the Caribbean Court of Justice rather than taking the simple step of repealing one section of one colonial law.
- Paragraph 29 (a) states that, “*Courts are operational in all ten regions of the country; In the urban and rural settings Courts are permanent and sit daily, while in the hinterland there are seven functioning Magistrates Court -- Region # 1 North West: Matthews Ridge, Mabaruma, Aqueiro; Region # 7: Bartica and Kamarang; Region # 8: Madhia and Region # 9: Lethem—that sit quarterly;* There is no mention of the limits on access to justice e.g, the short time that the court sits, how long cases take nor the long distances that have to be travelled to get to those courts.
- Paragraph 31 states that, “*The financing of the national machinery was approximately 1 percent of the national budget.*” This is for the period from 2011 to 2015. The total revenue for 2015 was estimated to be \$163,652,000,000. The impression is that in 2015, \$1,636,520,000 went to the national machinery. This appears to be the WGEC, Gender Affairs Bureau, Regional Gender Affairs Committee and the Guyana Women’s Leadership Institute. However the figures in the report do not appear to support this impression.
- Paragraph 32(a): while various civil society organisations have been named, there is no recognition of the fact that the Justice Institute Guyana was responsible for bringing Madame Claire L’Hereux Dube to Guyana and for organising and participating in the Judicial Colloquium on Equality including equality for women.
- Paragraph 49 creates the impression that the government is acting to eliminate negative cultural practices and stereotypes. This is unfortunate as the government has not taken adequate action to stop State media from portraying women negatively or playing songs that devalue women.
- Paragraph 69 omits to inform CEDAW that women are unable to stand for election unless they join a party list and are therefore at a structural disadvantage.

6. Unclear/obscure

- Paragraph 8 states, “*The individual rights of all citizens, women, men, girls and boys with permanent or temporary residence within the jurisdiction of Guyana, are protected under the Constitution.*” This implies that non-citizens are not protected. However Article 40 of the Constitution makes it clear that all persons in Guyana have fundamental rights and freedoms.

- Paragraph 21 states that, “ *The GCRG continued to work closely with civil society organisations including Help & Shelter, Red Thread Women’s Inc., Guyana Association of Women Lawyers and Women Across Differences to promote gender equality through consultations; related training workshops; and program collaboration.*” It is unclear what is meant by ‘work closely’ and what the government achieved.
 - The report uses unhelpful acronyms e.g. ‘GCRG’, ‘GCROG’, ‘GOCRG’. ‘GOG’ etc. (Government of the Cooperative Republic of Guyana?)
7. Conclusion: The report submitted by Guyana is data deficient and focuses on activities rather than outcomes. The report glosses over the reality that Guyana has not made genuine progress towards equality.