

Criminalisation of Homosexuality

Updated 25 October 2015



 Guyana		
<p>National Law:</p> <p><i>Chapter 8:01 of the Criminal Law (Offences) Act, Title 25¹</i></p> <ul style="list-style-type: none"> - S352: Gross Indecency² - S353: Attempt to commit Unnatural Offence³ - S353: Buggery⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 2 years' imprisonment - 10 years' imprisonment - Life imprisonment 	<p><u>Treaty Ratification</u></p> <p>CAT⁵</p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP</p> <p>ICESCR</p>
<p>The Law is generally applicable to men only but anal intercourse is punishable regardless of whether the intercourse is between persons of the same sex.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - 22 June 2014: One MP, Manzoor Nadir, indicated that LGBTI people are not currently prosecuted under the country's anti-gay laws (see below). On the 19 January the director of Guyana Trans United said that no one has been 'locked up' recently.⁶ - 2014: The United States Country report for Guyana suggests that there are few arrests; however, the law is frequently invoked by law officers in order to intimidate men who are gay or perceived to be gay.⁷ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - 9 July 2015: Minister of Public Health Dr George Norton has said that the gap in access to healthcare is stymieing the fight against the HIV/AIDS epidemic and: <i>'Unless we can fill that gap - unless we can ensure that there is no person left behind - it will take quite a long time, or might be almost impossible, for us to conquer the AIDS epidemic'</i>.⁸ - June 2015: Guyana's new President, David Granger, stated in an interview when addressing the issue of legalising same-sex sexual conduct that <i>There was a time when same-sex relations were punishable by law, but in many countries those laws have been repealed, we have to keep abreast with what is happening in other countries. At the same time we try not to get ahead of what the people want.</i>⁹ - May 2015: The APNU and AFC, Guyana's newly elected coalition government, 	

launched their manifesto. The Coalition had campaigned on a platform of national unity, social cohesion, equal rights and gender equality. In their manifesto, the new government committed to:

*putting in place measures which will ensure that all vulnerable groups in our society, including...those marginalised because of sexual orientation are protected and not discriminated against. This means that the Coalition will strive towards equality in law and moral situations, such as democratic activities and the securing of equal pay for equal work.*¹⁰

- **22 June 2014:** Manzoor Nadir, an MP from Guyana, indicated that he would be willing to support a law decriminalising consensual same-sex conduct. In a statement, he also criticised current discussions as creating a '*storm in a teacup*', arguing that until the country's laws were enforced, the level of criticism received from LGBTI groups, was unwarranted: '*People make a lot of money and create a lot of jobs by creating these storms in a tea cup.*'¹¹

- **15 June 2014:** Guyana's former junior Finance Minister, Bishop Juan Edgehill, spoke against homosexuality within the country, saying: '*The gay agenda is an in your face agenda, that is what the religious community has stood against.*' The minister was later quoted:

*Do we want people in our school system telling young boys and girls that it's ok to have same sex, in our military barrack room two men having sex, at our border locations homosexuality... do we want at the police college two men having sex or do we want in the parks, when I take children for a walk two people of the same sex embracing each other?*¹²

- **8 June 2014:** A pastor was forced to resign after coming out in the press with statements suggesting that gay people should live on a separate island to protect the community from the 'wrath of God'. On 17 June a second Pastor, Wendell Jeffrey, criticised his resignation as an effort to stifle the debate on homosexuality within the country:

*What is the real issue? Is it that they fear a reprisal from their donor agencies or potential donor agencies? Is it that the voice of SASOD [an LGBTI organisation in Guyana] is so loud that the freedom of speech in Guyana is now under threat? Or is it that spiritual leaders - for fear of being politically incorrect - are quick to throw each other under the bus?*¹³

- **7 May 2014:** In response to calls from the European Union to decriminalise consensual same-sex sexual conduct in Guyana, former President Donald Ramotar acknowledged the issue but warned of failures under the previous administration, responding:

I wish to state that in relation to the death penalty and the sex relations you will

	<p><i>find sympathy with your views but I am sure you will agree with me that as a democracy we have to take the opinion of our people into consideration as well.</i>¹⁴</p> <ul style="list-style-type: none"> - 15 August 2013: Guyana’s former Minister for Agriculture, Dr Leslie Ramsammy (and former Minister for Public Health) called for the removal of punitive laws against sexual minorities from the books, stating that: <i>‘while HIV/AIDs brought these [LGBT] groups to prominence, they were here before we were born’.</i>¹⁵ - While religious leaders maintain homosexuality is wrong, unlike other countries, they do not generally advocate that individuals should judge them or take action against them themselves: <ul style="list-style-type: none"> o The bishop of the Anglican Church in Guyana, Randolph George, believes some people are born with homosexual orientation. He added unless a person publicly states that he/she is a practising homosexual, those who are perceived to be gay by others are not treated any differently and should be welcomed.¹⁶ o The director of Education of the Central Islamic Organisation of Guyana (CIOG), Kerry Arthur, stated: <i>‘while the behaviour [homosexuality] is not acceptable just as fornication, it does not mean persons with such persuasions would not be accepted in the Muslim faith. Fornication and stealing are wrong, [but] you would find Muslims who would indulge in those acts.’</i>¹⁷ - 23 November 2012: the former Speaker of the Guyana Parliament called for the repeal of anti-sodomy laws: <p><i>The reality is that the archaic laws against homosexuality adopted from the UK over a century ago violate our constitution. Our young and forward looking Attorney General, who has been vociferous about the constitutional rights of high officials, should follow the example of Commodore Best and talk a bit about ordinary people who are forced to live in hiding because of fear of intolerance and worse.</i>¹⁸</p> - 12 August 2012: National consultations on death penalty and anti-gay laws were announced.¹⁹
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - April 2015: During the 2nd UPR reporting period, there had been unfettered freedom of expression by NGOs, religious organizations and the media on LGBT issues. In response to an NGO submission on LGBT rights in Guyana, the Government wished to reiterate that the State did not discriminate against persons based on their sexual orientation and that every Guyanese was entitled to the fundamental rights and freedoms as provided for in the Constitution, laws and policies of Guyana.²⁰ - 2014: The United States Country Report noted that NGOs reported widespread discrimination of persons based on their real or perceived sexual orientation or

	<p>gender identity. Discrimination was found in employment, access to education and medical care. No anti-discrimination legislation exists to protect persons from discrimination based on sexual orientation. There were also reports of LGBT persons being fearful of reporting crimes that against had been perpetrated against them.²¹</p> <ul style="list-style-type: none"> - May 2014: It was reported in the media that LGBT person were ridiculed and shunned on account of their sexual orientation when attempting to access medical care around the country. Police also allegedly ordered an LGBT person to strip and stand on a counter in a police station for hours when he tried to lodge a formal complaint against another individual.²² - April 2014: an indiscriminate shooting took place against a small group of transgender persons standing by a road. The police only initiated an investigation and prosecution following public protests.²³ - 19 January 2014: A march was organised in memory of a young man murdered in Guyana. The director of Guyana Trans United, Quincy McEwan, told reporters of three murders of LGBTI people that have taken place over the last year. Such murders are reportedly becoming increasingly common. People on the march also criticised the police for their handling of reported incidents. One member of the Society against Sexual Orientation Discrimination claimed: <i>‘There’s a lack of will to investigate these incidents against transgender people because of trans-phobia and homophobia in the police force.’</i>²⁴ - 2013: A 2013 survey on <i>‘attitudes towards homosexuality in Guyana’</i> indicated that 58% of Guyanese people are <i>‘tolerant or accepting of homosexuals’</i>, whilst 25% could be categorised as <i>‘homophobic’</i>. The report also indicated that, whilst the issue of decriminalisation was not pressing: <i>Guyanese [people] believe that a clear demonstration that these laws are impacting negatively on the physical or psychological well-being of young people or adults would provide good grounds for change. There is also support for change if it can be proven that the laws contribute to the spread of HIV/AIDS.</i>²⁵
Legislative News	<ul style="list-style-type: none"> - June 2015: Guyana’s new President, David Granger, has not committed himself or the government to reforming legislation with respect to LGBT persons. - 2015: (UPR) Following the first UPR, Guyana voluntarily committed itself to consulting on 28 recommendations of which 7 related to decriminalising consensual same-sex adult sexual relations and discrimination against LGBT persons. A 9 member Parliamentary Special Select Committee (PSSC) was appointed as part of the consultative process and commenced meeting on 28 November 2012.²⁶ The mandate of the PSSC was to receive and hear submissions on the attitude of Guyanese to any changes in legislative provisions and the

criminal code regarding consensual adult same sex relationships and discrimination, perceived or real, against LGBT persons. Guyana's UPR delegation underscored that compared to 2010, in 2014 and 2015 there had been an increase in discussions on LGBT issues, which was a good sign, but Guyana society remained divided. Due to the prorogation of the 10th Parliament the PSSC's work had ceased.²⁷ The Government hoped to resubmit these matters to the National Assembly following General Elections in May. Following the 2nd UPR, Guyana supported the below recommendations with respect to sexual orientation:

- Strengthen the protection of LGBT individuals;
- Take measures to ensure that hate crimes and discrimination based on sexual orientation or gender identity are vigorously investigated and appropriately prosecuted; and
- Continue its effort in eliminating discrimination against LGBT starting with the review of its related legislation.

The following recommendations are currently being examined by Guyana:

- Repeal all provisions that discriminate against persons on the basis of their sexual orientation or gender identity, particularly those which criminalise consensual adult same-sex relations;
 - Guarantee to LGBTI persons the full enjoyment under equal conditions of their human rights, through the abolishment of the norms that criminalize and stigmatize them, and the investigation and sanction of cases of violence or discrimination motivated by sexual orientation or gender identity;
 - Amend Article 149 of the Guyana Constitution to prohibit discrimination on the basis of sexual orientation; and
 - Take the legislative and policy measures to prevent and fight against violence and fight against discrimination based on sexual orientation or gender identity.²⁸
- **5 June 2014:** Guyana indicated that it would not be able to support a "Draft Resolution on Human Rights, Sexual Orientation, and Gender Identity and Expression" (AG/CG/doc.12/14 rev. 1), stating: '*several of the issues addressed herein are currently the subject of deliberation by a special select committee of the National Assembly*'. A select committee was initially established under Resolution No. 23 of 2012.²⁹
- **6 September 2013:** Guyana's Constitutional Court held that the country's law prohibiting cross-dressing (section 153 of the Summary Jurisdiction (Offences) Act 1893) was constitutional. The Court did, however, stress that providing such an act did not constitute an 'improper purpose' under Section 153(1)(xlvii) of the Summary Jurisdiction (Offences) Act, no prosecution could be brought and cross-

	<p>dressing in and of itself was not a criminal offence. What would constitute an <i>'improper purpose'</i> for the purposes of the Act was not expanded upon.³⁰ The Chief Justice also ruled that since the law had been in existence since 1893 and it was therefore protected from challenge under Article 152 (1) of the constitution (the savings law clauses, which essentially preserved pre-existing laws at the time of independence from constitutional scrutiny). Legislative rather than curial action was necessary to invalidate that provision. The decision is being appealed and is currently before the Court of Appeal.</p> <p>- 2000: A constitutional amendment was approved to include non-discrimination on the grounds of sexual orientation. However, the bill did not receive presidential assent.³¹</p>
--	---

¹ Text of the law is : www.oas.org/juridico/mLa/en/guy/en_guy-int-text-cl_act.pdf.

² *Criminal Law (Offences) Act, Chapter 8.01, Title 25, s.352: "Any male person who, in public or private, commits, or is a party to the commission, or procures, or attempts to procure the commission, any male person, of any act of gross indecency with any other male person shall be guilty of a misdemeanour and be liable to imprisonment for two years."*

³ *Criminal Law (Offences) Act, Chapter 8.01, Title 25, s.353: "Everyone who (a) attempts to commit buggery; or (b) assaults any person with intend to commit buggery; or (c) being a male, indecently assaults any other male person, shall be guilty of felony and liable to imprisonment for ten years."*

⁴ *Criminal Law (Offences) Act, Chapter 8.01, Title 25, s.354: "Everyone who commits buggery, either with a human being or any other living creature, shall be guilty of felony and liable to imprisonment for life."*

⁵ Accepted inquiry procedure under Article 20.

⁶ Chabrol, D.S., 'March against slothful police probes into killing of homosexuals', *Caribbean News Desk*, 11 January 2014 <<http://www.caribnewsdesk.com/news/7217-march-against-slothful-police-probes-into-killing-of-homosexuals>> accessed 19 July 2014

⁷ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Guyana*, 2014 <<http://www.state.gov/documents/organization/236906.pdf>> accessed on 2 August 2014

⁸ 'Gap in access to healthcare stymieing HIV/AIDS fight – Health Minister', *Kaieteur News*, 9 July 2015, <<http://www.kaieteurnews.com/2015/07/09/gap-in-access-to-healthcare-stymieing-hiv-aids-fight-health-minister/>> accessed on 19 September 2015

⁹ Rockcliffe, A., 'Granger non-committal on LGBT legislation', *Kaieteur News*, 3 June 2015, <<http://www.kaieteurnews.com/2015/06/03/granger-non-committal-on-lbgt-legislation/>> accessed on 2 August 2015

¹⁰ APNU and AFC, *A partnership for National Unity and Alliance for Change Coalition: Manifesto*, <<http://apnuafc.net/APNU-AFC-Manifesto.pdf>> accessed on 2 August 2015

¹¹ Campbell, K., 'The cry to scrap Anti – Buggery Laws is a 'storm in a teacup' – PPP's Manzoor Nadir', *INews Guyana*, 22 June 2014, <<http://www.inewsguyana.com/the-cry-to-scrap-anti-buggery-laws-is-a-storm-in-a-teacup-ppps-manzoor-nadir/>> accessed 19 July 2014

¹² Campbell, K., 'Homosexuality is destructive, should not be tolerated' – Bishop Edghill defends Pastor McGarrell', *INews Guyana*, 15 June 2014, <<http://www.inewsguyana.com/homosexuality-is-destructive-should-not-be-tolerated-bishop-edghill-defends-pastor-mcgarrell/>> accessed 19 July 2014

¹³ Knews, 'Pastor condemns action to silence talks on homosexuality', *Kaieteur News*, 17 June 2014, <<http://www.kaieteurnews.com/2014/06/17/pastor-condemns-action-to-silence-talks-on-homosexuality/>> accessed 19 July 2014

-
- ¹⁴ Chabrol, D.S., 'Ramotar lukewarm to Europe's calls for death penalty abolition, same-sex relations', *Caribbean News Desk*, 7 May 2014 <<http://www.caribnewsdesk.com/news/7892-ramotar-lukewarm-to-europe-s-calls-for-death-penalty-abolition-same-sex-relations>> accessed 19 July 2014
- ¹⁵ ICPD, *Daring to dream* (International Conference on Population and Development beyond 2014 August 15 2013) <<http://icpdbeyond2014.org/whats-new/view/id/68/daring-to-dream#sthash.bQKlOwd7.dpuf>> accessed 19 July 2014
- ¹⁶ Alleyne, O., 'News Report: Guyanese Religious Community's Stance on Homosexuality and Condom Use', *SASSOD Guyana*, 30 January 2006, <<http://www.sasod.org.gy/sasod-blog-news-report-guyanese-religious-communitys-stance-homosexuality-and-condom-use>> accessed 19 July 2014
- ¹⁷ Ibid
- ¹⁸ Ramkarran, R., 'Letter to the Editor', *Stabroek News*, 23 November 2012, <<http://www.stabroeknews.com/2012/opinion/letters/11/23/the-government-should-follow-the-lead-of-the-army-the-archaic-laws-against-homosexuality-violate-our-constitution>> accessed 19 July 2014
- ¹⁹ Parliament of Guyana, 'Parliament Office', *Facebook*, 18 February 2013, <<https://www.facebook.com/guyana.parliament/posts/351226378323414>> accessed 19 July 2014
- ²⁰ Human Rights Council Twenty Ninth Session Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Guyana*, 13 April 2015, A/HRC/29/16
- ²¹ Ibid n 4.
- ²² Ibid n 4.
- ²³ Ibid n 4.
- ²⁴ Chabrol, D.S., 'March against slothful police probes into killing of homosexuals', *Caribbean News Desk*, 11 January 2014, <<http://www.caribnewsdesk.com/news/7217-march-against-slothful-police-probes-into-killing-of-homosexuals>> accessed 19 July 2014
- ²⁵ Caribbean Development Research Services, *Attitudes towards Homosexuals in Guyana*, 2013, <[http://ufdcimages.uflib.ufl.edu/AA/00/01/61/51/00001/Attitudes Toward Homosexuals in Guyana a.pdf](http://ufdcimages.uflib.ufl.edu/AA/00/01/61/51/00001/Attitudes_Toward_Homosexuals_in_Guyana_a.pdf)> accessed 19 July 2014 At 4
- ²⁶ Human Rights Council Working Group on the Universal Periodic Review Twenty-first Session *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Guyana*, 19 January 2015, A/HRC/WG.6/21/GUY/1
- ²⁷ Human Rights Council Twenty Ninth Session Universal Periodic Review *Report of the Working Group on the Universal Periodic Review: Guyana* (13 April 2015) A/HRC/29/16
- ²⁸ Ibid n 24.
- ²⁹ OAS General Assembly *Draft Resolution Human Rights, Sexual Orientation, and Gender Identity and Expression* (5 June 2014) AG/CG/doc.12/14 rev. 1
- ³⁰ SASSOD, *Constitutional Court Rules Cross-Dressing is Not a Crime if Not for "Improper Purpose" - Rights Groups Plan Appeal on Dubious Decision* (SASSOD Guyana 27 September 2013) <<http://sasod.org.gy/sasod-blog-constitutional-court-rules-cross-dressing-not-crime-if-not-%E2%80%9Cimproper-purpose%E2%80%9D-rights>> accessed 19 July 2014
- ³¹ *Speaking Out: the Rights of LGBTI Citizens from Across the Commonwealth*, Kaleidoscope Trust, 2013, <<http://kaleidoscopetrust.com/usr/library/documents/main/speaking-out-lgbti-rights-in-the-cw.pdf>> accessed 19 July 2014 at 42