

A Human Rights Approach to Social Protection

SOCIAL PROTECTION DEFINED

According to the United Nations Research Institute for Social Development (UNRISD), "...social protection is concerned with preventing, managing, and overcoming situations that adversely affect people's well-being¹." The World Bank includes "...social assistance (such as cash transfers, school feeding, targeted food assistance and subsidies) and social insurance (such as old-age, survivorship, disability pensions, and unemployment insurance)"² in its description of social protection programmes. These programmes are intended to have a direct and positive impact on families and communities by building human capital through better health, more schooling and greater skills.³

The International Labour Organization (ILO) recognizes access to adequate social protection as a basic right and emphasises its primary objectives as⁴:

1. extending the coverage and effectiveness of social security schemes;
2. promoting labour protection, which comprises decent conditions of work, including wages, working time and occupational safety and health; and
3. working through dedicated programmes and activities to protect vulnerable groups such as migrant workers and workers in the informal economy.

The Overseas Development Institute (ODI) published research,⁵ which found that "existing evidence suggests that social protection is an important policy tool for low and middle-income country governments, not just for alleviating poverty and reducing vulnerability but for promoting inclusive growth."⁶ The authors further reported that evidence demonstrated positive impacts of social protection on household productivity and labour market participation in developing countries with no indication of negative impacts on labour-force participation, work effort or increased dependency.

THE UNITED NATIONS AND HUMAN RIGHTS

The 1976 *United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR)*, as part of the *Universal Declaration of Human Rights (UDHR)*, commits state parties to progressively achieving specific rights recognized by the Covenant such as those relating to work, social security and an adequate standard of living. Subsequently, the Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comments, which have expanded and reconfirmed that

¹United Nations Research Institute for Social Development (UNRISD), *Combating Poverty and Inequality: Structural Change, Social Policy and Politics* (2010), page 135 at

[http://www.unrisd.org/80256B3C005BCCF9/httpNetITFramePDF?ReadForm&parentunid=92B1D5057F43149CC125779600434441&parentdoctype=documentauxiliarypage&netitpath=80256B3C005BCCF9/\(httpAuxPages\)/92B1D5057F43149CC125779600434441/\\$file/PovRep%20\(small\).pdf](http://www.unrisd.org/80256B3C005BCCF9/httpNetITFramePDF?ReadForm&parentunid=92B1D5057F43149CC125779600434441&parentdoctype=documentauxiliarypage&netitpath=80256B3C005BCCF9/(httpAuxPages)/92B1D5057F43149CC125779600434441/$file/PovRep%20(small).pdf) (accessed 7/08/15)

²<http://www.worldbank.org/en/topic/socialprotectionlabor/overview#1> (accessed 26/06/15)

³ Ibid

⁴<http://www.ilo.org/global/about-the-ilo/decent-work-agenda/social-protection/lang--en/index.htm> (accessed 26/06/15)

⁵Mathers, Nicholas and Slater, Rachel, *Social protection and growth: Research synthesis* (2014) at <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9099.pdf> (accessed 7/08/152015)

⁶<http://www.odi.org/publications/8663-social-protection-economic-growth> (accessed 07/08/15)

Social Protection in Guyana

In Guyana, social protection falls under the jurisdiction of the recently renamed Ministry of Social Protection; previously the Ministry of Labour, Human Services and Social Security.

Services include child protection, the rights of workers, old-age pension, promotion of gender equality, social services and public assistance.

There is no explicit mention of protecting the rights of lesbian, gay, bisexual, or transgender (LGBT) people in the Ministry's mandate, on the website or in the current Laws of Guyana.

Under the labour laws of Guyana¹, section 4(2) of the *Prevention of Discrimination Act of 1997* protects employees from discrimination, but also does not expressly include non-discrimination on the basis of sexual orientation and gender identity.

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these rights are available to all regardless of a person's sexual orientation; e.g. General Comment No. 14 (2000) on the right to the highest attainable standard of health; General Comment No. 18 (2005) on the right to work; General Comment No. 19 (2007) on the right to social security; and General Comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.⁷

All member states of the United Nations, including Guyana, have accepted the obligations contained in the 1948 *Universal Declaration of Human Rights (UDHR)*, which affirms in Article 1 that "All human beings are born free and equal in dignity and rights." In fact, the Constitution of Guyana⁸ guarantees equal rights to all citizens and specifically provides "Protection from discrimination on the grounds of race, etc." (Part 2, Title 1, Article 149).

THE LAW IN GUYANA

However, same-sex intimacy between men is criminalized under the laws⁹ of Guyana. While it has been noted that these laws are generally not generally prosecuted, the very fact that they exist, inhibit lesbian, gay, bisexual and transgender (LGBT) people from seeking police protection when they face harassment, assault, intimate-partner violence, homophobic and transphobic violence because of fear of discrimination and threat of possible prosecution. In June 2014, the late Dr. Faith Harding, a child specialist and former government Minister stated that "if people are being abused and dying because of such [anti-buggery] laws and we are not doing anything about it, then we are all killing them, for every child that commits suicide because of rejection, we must all take the blame."¹⁰

The absence of specific prohibition against discrimination based on sexual orientation and gender identity in the *Prevention of Discrimination Act 1997* leaves LGBT persons open to discrimination with impunity in the workplace, allows employers to refuse to hire LGBT persons, to harass or otherwise discriminate against them during their employment, or to terminate their employment on these grounds, with essentially no consequences under the law.

DISCRIMINATION AND LABOUR

Many LGBT Guyanese who are open about their sexual orientation or gender identity at work regularly face discrimination. In "*Sade's Story*"¹¹, a documentary about the working experiences of a transgender woman, she noted that it was extremely hard for her to obtain work in the formal economy, and when she did, she was grossly underpaid and faced discrimination because she is a transgender woman. Transgender persons may face more discrimination when accessing employment because of their visibility.

In the University of the West Indies' Faculty of Law 2012 report, "*Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana*,"¹² Dr. Christopher Carrico reported that both men and women identifying as homosexual or bisexual "reported being denied access to jobs as well as being blocked from career advancement because of their sexual identity" (Carrico, P. 20). Consequently, many LGBT Guyanese choose not to disclose their sexual orientation or gender identity at work. This could result in greater anxiety and stress in the workplace, which not only impacts negatively on job performance but also has adverse psychological impacts.

DISCRIMINATION AND HEALTH

SASOD is aware of the concerns around the lack of confidentiality, stigma and discrimination that prevent LGBT persons in Guyana from using local healthcare establishments as resources for information on sexual health, screenings or treatment. This issue can, in part, be attributed to the lack of knowledge or understanding by Guyanese health care professionals on their ability to counsel LGBT persons on risks and prevention strategies related to their specific sexual-health needs. A study by Radix et al. (2004) revealed that 67 percent of Caribbean-born physicians have exhibited intolerant attitudes towards LGBT patients, compared to just 14 percent of non-Caribbean born doctors.¹³

⁷ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

⁸ Constitution of Guyana <http://parliament.gov.gy/constitution.pdf> (accessed 13/08/2015)

⁹ Sections 351 to 353 of the Criminal Law Offences Act, Cap 8:01

¹⁰ Campbell, Kurt, Presidential hopeful Faith Harding supports scrapping anti-buggery laws (iNews Guyana, 18 June 2014) at <http://www.inewsguyana.com/presidential-hopeful-faith-harding-supports-scrapping-anti-buggery-laws/> (accessed 07/08/2015)

¹¹ *Sade's Story*. https://youtu.be/DtrqJU5t_Ds (accessed 31/08/15).

¹² Carrico, Christopher. *Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana*. University of the West Indies, Cave Hill Campus, Faculty of Law. March 2012.

¹³ Radix, A.E., Buncamper, C., & Van Osch, G. (2004) Attitude of General Practitioners towards homosexuals in the Caribbean. Poster Exhibition: The XV International AIDS Conference

LGBT people face particular barriers in exercising their right to the highest attainable standards of health under Article 12 of ICESCR: discrimination in accessing health care; higher levels of mental illness caused by social stigma and discrimination; for gay and bisexual men, lack of access for detection and treatment of human papilloma virus (HPV); and for transgender people, barriers accessing hormone replacement therapy and sex reassignment surgery.

It is not an exaggeration to contend that LGBT Guyanese youth are highly susceptible to attempting or committing suicide when one considers the following factors: Guyana has one of the highest suicide rates in the world¹⁴; suicide is the second leading cause of death of youth worldwide¹⁵; and LGBT youth are four times more likely to commit or attempt to commit suicide than their heterosexual peers.¹⁶

DISCRIMINATION IN EDUCATION

While no laws or policies specifically preventing LGBT persons from accessing education, many LGBT Guyanese reportedly leave the education system early due to homophobic and transphobic bullying and discrimination, thereby preventing them from practically realising their right to education.

SASOD has documented many cases of anti-LGBT bullying. In October 2012, a 19-year-old student/fashion designer who was relieved of his duties as a prefect in high school and forced to stay away from school for extended periods due to homophobic bullying, which included verbal and physical assault by students that was not curtailed by teachers or the school's administration when he reported it. He was also subject to harassment on social media for an extended period of time. At his graduation, he was awarded with a book prize from the school on how to treat homosexuality.

Guyanese schools deliver, to some extent, the Health and Family Life Education (HFLE) curricula, which includes knowledge and skills development. Though the curriculum has a section on sexuality, reports from students suggest that this section is often overlooked because of personal bias or religion beliefs. Moreover, intolerance against LGBT persons is widespread in the education system, resulting in LGBT students facing harassment and discrimination by their peers, and even sometimes by teachers. In the SASOD-produced documentary titled *Jessica's Journey*¹⁷, Jessica, a young transgender woman recounts her brutal experiences of transphobic bullying at school in Guyana.

As a result of discrimination, LGBT students often become detached from others and lose interest in their studies and in learning generally, which may result in a high dropout rate for LGBT students in secondary school, particularly by transgender students.

CONCLUSION

In June 2015¹⁸, the newly appointed Minister of Social Protection, Hon. Volda Lawrence, MP reinforced her Ministry's commitment to the improvement of social protection in Guyana. However, while she expressly articulated the steps to be undertaken to improve the well-being of children, the elderly, women and workers, no specific mention was made regarding LGBT people. The article concluded by saying, "The ministry has been entrusted with the responsibility of governing and protecting the rights and interest [sic] of the Guyanese nation, irrespective of race, creed, colour, situation or circumstance." While this statement is intended to include all people, by not expressly mentioning "sexual orientation and gender identity," LGBT people remain exposed to discrimination, by omission, in policy and practice.

¹⁴ <http://www.suicide.org/international-suicide-statistics.html> (accessed 07/07/15)

¹⁵ <http://www.thetrevorproject.org/pages/facts-about-suicide> (accessed 07/07/15)

¹⁶ CDC. (2011). Sexual Identity, Sex of Sexual Contacts, and Health-Risk Behaviors Among Students in Grades 9-12: Youth Risk Behavior Surveillance. Atlanta, GA: U.S. Department of Health and Human Services.

¹⁷ Available from SASOD

¹⁸ "Social Protection Minister outlines... Plans to improve lives of children, women and elderly" (*Guyana Chronicle*, 27 June 2015.) <http://guyanachronicle.com/social-protection-minister-outlines-plans-to-improve-lives-of-children-women-and-elderly/> (accessed 07/07/15)