**Government of Guyana Response to OHCHR Questionnaire (paragraph 4 of A/HRC/21/30)**

**September 8, 2014**

**i) National context.**

The issue of ethnic and racial insecurities and discrimination has characterized Guyana under Dutch, French and British colonial domination and during the post independence period (1966- 1992) under an undemocratic regime. After the first free and fair elections in October 1992, Guyana as an emerging democratic nation, has focused on reconstructing a collapsed economy, the construction of a democratic nation, and , equitable access and goods and services and improved quality of life of all of its people within available resources. These are considered the cornerstones for reducing ethnic insecurities and building social cohesion.

Guyana is a multi-ethnic, multi racial, multi -linguistic and multi- religious[[1]](#footnote-1) nation. There are six main ethnic groups; descendants of Africa who were brought here as slaves in the 17th century making up 30.2 % of the population; descendants of indentured labourers brought from India in the 19th century comprising 43.5% of the population and. The third largest group is the indigenous peoples (known as Amerindians) who represent 10 % of the population. The other ethnic groups made of Chinese, Portuguese and mixed populations make up the balance.[[2]](#footnote-2)

The 1999-2003 Constitutional Reform process made significant progress towards addressing ethnic and racial insecurities, discrimination and other forms of xenophobia. As a result, the 2003 revised Guyana Constitution now guarantees a wide range of civil, political, economic, social and cultural rights. These constitutional provisions and laws specifically promote and protect human rights of individuals as well as group rights of vulnerable persons, with the courts mandated to pay due regard to international law, international conventions, covenants and Charters bearing on human rights to which Guyana has acceded.

This information has been extensively documented by Guyana in its State Party Reports to the UNHRC UPR 2010, CEDAW and CROC in 2010 and their subsequent reviews in 2010, 2012 and 2013 respectively ; and more recently Guyana’s State report to the ISCER in September 2012 and Guyana’s Report on the National Review of the Beijing Declaration and Plan of Action June 2014.

**ii) Legal and judicial frameworks and practices, substantive and procedural measures**

**a.** Although Guyana has not developed a specific national action plan to combat racism, racial

discrimination, xenophobia or other forms of intolerance, there are numerous measures and mechanisms developed by the executive and legislature involving civil society to combat racism, racial discrimination and xenophobia and other forms of intolerance.

**b**. Article 149(1) of the Guyanese Constitution states that (a) no law shall make any provision that is discriminatory either of itself or in its effect and that (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.”

**c.** Article 149(2) defines “discriminatory” 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, color, creed, age, disability, marital status, sex, gender, language, birth, social class, pregnancy, religion, conscience, belief or culture”. This article therefore addresses the issues of one’s origins be it through geography (nationality/location), or parents.

**d.** Article 154(A)(1) provides that “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 those international treaties, and such rights shall be respected and upheld by the executive, legislature, judiciary and all organs and agencies of the Government and where applicable to them, by all natural and legal persons and shall be enforceable in the manner hereinafter prescribed”.

**e**. The Fourth Schedule of the Constitution lists the human rights treaties that Guyana has ratified, including the CERD. Any person can approach the courts on a constitutional motion if they believe that they are being discriminated against or any right is being violated. And, or, under Article 212 0 the person may also approach the Human Rights Commission.

**f.** A constitutional court has been established that allows for timely and expeditious hearings of matters relating to the constitution including motions with regard to discrimination.

**g.** Article 160A(1) provides that all persons, institutions and political parties are prohibited from taking any action or advancing, disseminating or communicating any idea which may result in racial or ethnic division among people.

**h**. The 2002 amended Racial Hostility Act 1964, Cap 23:01[[3]](#footnote-3) , makes it a criminal offence to excite hostility or ill-will against persons by reason of their race and prohibits incitement to racial hatred, punishable if one willfully excites or attempts to excite hostility or ill will against any section of the public or against any person on the ground of their race. This can include words spoken, written, or published. Upon conviction, a person is not eligible to stand for public office for a period of five (5) years commending from the date of conviction. The 2002 amendment provided for increased penalties for the commission of offences and evidential issues.

**i.** The Representation of the Peoples (Amendment) Act No. 1 of 2001 also states that it is a criminal offense for any person to make or publish, or cause to be made or published, any statement, or takes any action that results in or can result in racial or ethnic violence or hatred among people.

**j.** The Broadcast Act 2011 prohibits the use of racial, ethnic or religious vilification of any individual or group by the broadcasting operators. S19 outlines the broadcasting policy and S19 (q) states that the Broadcasting operators “ensure compliance with the constitution and laws of Guyana and shall not incite violence, ethnic religious or cultural hostility”. S 35 states that the National Broadcasting Authority shall draw up, and, from time to time, review “rules with respect to content that would violate the constitution and statutes pertaining to defamation and libel, sexual violence, children’s rights and protection, women’s rights, racial hostility, public order and safety as well as ethnically and culturally sensitive material would cause offence;” S 44 provides for penalties for any offence under this Act.

**k.** The Equal Rights Act 1990 Cap 38:01 ensures equality for women in the work place and the Anti- Discrimination Act 1997, Cap 99:09, prohibits discrimination in employment , training, promotion on any grounds, and recruitment and membership in professional bodies and promotion of equal remuneration for men and women in employment who perform work of equal value and for matters connected therewith. These statutes coupled with the labour laws prohibit racial or ethnic discrimination in hiring, promotion in the work place.

**l.** The Judicial Review Act 2010 provides for review of the court’s decisions and appeals to the final court of appeal, the Caribbean Court of Justice.

**iii) National Mechanisms to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance**

1. The revised 2003 Constitution provided for the appointment of 5 Human Rights Commissions—Ethnic Relations, Women and Gender Equality, Rights of the Child, Indigenous Peoples, and Human Rights.
2. These Constitutional Rights Commissions, established pursuant to Article 212G, are premised on protecting and promoting human rights and addressing the various forms of discrimination as well as providing complaint mechanisms for redress by impartial bodies.
3. The Ethnic Relations, Women and Gender Equality, Rights of the Child and Indigenous Peoples Commissions are appointed through an agreed on parliamentary consensual mechanism after consultation with civil society and a 2/3 majority in the National Assembly. The members of these commissions are appointed by the President who has no nominee of his own nor can he change the nominations approved by the Legislature.
4. Since the enactment of these constitutional provisions the Ethnic Relations Commission was the first to be appointed in 2003. The Women and Gender Equality Commission (W &GEC) and the Rights of the Child Commission (ROCC) were appointed in 2010 and the Indigenous Peoples in 2011(IPC).[[4]](#footnote-4)
5. Each of these Commissions has their own secretariat responsible for the day to day operation of the their Commission; these continue to function in the interim to hear and investigate claims of violations and complaints where there is no appointed members of a Commission.

1. At this point of reporting the Parliamentary Standing Committee and the National

 Assembly has approved the nominations to the Ethnic Relations Commission. The

 President will appoint the new 10 members in September 2014. The new ERC

 comprises of 7 males and 3 females; 5 Indo-Guyanese, 4 Afro-Guyanese and 1 Amerindian

 as follows:-

* + 1. A representative of the Christian, Hindu and Muslim faiths, the labour movement, the business community, youth organizations and women’s organizations as well as one representative each of the three major ethnic groups- Indo-Guyanese, Afro-Guyanese and Amerindians ( indigenous).[[5]](#footnote-5)

 **ii.** Article 212D lists the extensive mandate[[6]](#footnote-6) and functions of the Ethnic

 Relations Commission. Pursuant to Article 212D (j), is mandated to

 investigate complaints of racial discrimination and make

 recommendations on the measures to be taken if such complaints are valid.

 The Ethnic Relations Commission Tribunal Act 2004 gives the ERC

 powers of the judiciary to hear cases and to make rulings and any appeal of

 its decisions goes to the Court of Appeal.

 **iii**. The ERC has a website and reported annually to the National Assembly up

 to 2008 when an approach was made to the court by the then Leader of the

 Opposition to prevent the sitting Commissioners from functioning. The

 court did not uphold the submission in late 2013.

 **iv**. The ERC between 2003 and 2009 also carried out investigations with

 regard to complaints of ethnic and other forms of discrimination and

 carried out special studies on hiring and recruitment practices in the public

 service, the distribution of land in the government housing programe, the

 awarding of scholarships by the Public Service Ministry and the study on

 procurement practices and awards of contracts. These were all publicly

 available.[[7]](#footnote-7)

 **v.** The ERC in 2006 was very active in organizing Multi-stakeholder

 Forums across the country under the GOG/UNDP Social Cohesion

 Project; meetings with the media and also holding peace building and

 non-violent programmes. It succeeded in the lead up to the 2006 national

 elections to develop a Peace Accord which the contesting political parties

 endorsed.[[8]](#footnote-8)

 This is the main rights commission addressing ethnic relations and insecurities.

1. In January 2014, the Ombudsman was appointed under Articles 191 and 122 by the President after consultation with the Leader of the Opposition. The Ombudsman may investigate any action based on a complainant alleging sustained injustice by any person or body of persons whether incorporated or not.

 **iv) Procedural gaps to ICERD**

The Government of Guyana notes the contents of the initial response of the Committee on the Elimination of Racial Discrimination to the “ Report of the High Commissioner for Human Rights on strengthening the UN Rights Treaty Body System, August 31 2012.”

Guyana wishes to emphasize the relevance of the limited capacities of small states being taken into account by the reviewing Committee. Guyana with a population of 747,000 and a land mass of 214, 000 square kilometers is challenged as many small states in keeping up to date with treaty reporting obligations.

The number of responses to questionnaires and initial, interim and progress reports required and extensive details requested in the preparation and submission of responses to the various treaties, not exclusively human rights, places enormous demands due to limited expertise, limited use of technology and socio-economic challenges.

Guyana notes that there are many overlaps between the content for reporting under each convention, many times requesting similar or the same information.

Guyana wishes to register its disappointment that it appears sometimes that a Committee reviewing the state party report has not comprehensively examined the documentation submitted including other submissions to the UN OHCHR and other conventions.

Guyana has no objection to the inclusion of civil society but does have concerns that the bone fides of these organizations should be a requirement and proper criteria established.

**v) Reservations on the implementation of ICERD**

Guyana did make a reservation at the time of its ratification of the UNCERD. Guyana is of the view that this has not impacted negatively on its citizens as there are available domestic remedies as has been outlined herein. Under the right to self-determination and sovereignty of each nation it would not be advisable to dis-allow or limit countries’ right to make reservations.

**vi) Article 14 of ICERD**

The Government of Guyana respectfully submits that it acceded to the ICCPR Optional Protocol 1 on January 5, 1999, which recognizes the competence of the UNHRC to receive and consider communications from individuals or groups of individuals claiming to be victims of a violation of any of the rights set forth in the ICCPR which include rights with regard to racial and ethnic discrimination ( Articles 2, 4, 24, and 27 of the ICCPR) in the CERD on the grounds that domestic remedies have been exhausted. This therefore allows citizens to lodge formal complaints to the UNHRC.

**vii) Implementation of CERD recommendations**

**a.** Guyana respectfully submits that it has implemented several CERD recommendations with regard to national mechanisms and xenophobia. For instance, in conformity with the CERD recommendation to introduce provisions whereby committing an offense with racist or xenophobic motivations constitutes a punishable offence prohibited by law, Guyana’s Racial Hostility Act, as amended in 2002, states that incitement to racial hatred is a criminal offence, punishable if one willfully excites or attempts to excite hostility or ill will against any section of the public or against any person on the ground of their race.

**b**. Pursuant to General Recommendation No. 17 to establish national commissions or other appropriate bodies, as aforementioned, Guyana, pursuant to 212G, has established 5 Human Rights Commissions—Ethnic Relations, Women and Gender Equality, Rights of the Child, Indigenous Peoples, and Human Rights—which are mandated to promote respect for the enjoyment of human rights without any discrimination, to review government policy and to make recommendations to the Government and the Legislature , to monitor legislative compliance, to educate the public about the obligations of the State as well as to assist the Government in the preparation of reports submitted to CERD.

**c**. Pursuant to General Recommendation No. 13 to improve the training of law enforcement officials, Guyana respectfully submits that police and other law enforcement authorities do receive training including the Human Rights and Professional Skills Training, Human Rights Trainer-of-Trainers and the New Perspectives on Governance, Human and Gender Rights session. Moreover, measures have been taken to ensure that members of the Guyana Police Force are adequately trained on the appropriate use of force and firearms in accordance with international standards, such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

**i**. Additionally, Section 91 of the Sexual Offences Act states that the Ministers of Legal Affairs, Home Affairs, Health, Human Services and Social Security shall ensure that training programmes on sexual violence are developed and delivered to public servants including the Guyana Police Force, members of the Judiciary, prosecutors, health practitioners and social workers.

**ii.** Section 44 of the Domestic Violence Act, Chapter 11:09, provides for the Director of Human Services in the Ministry of Labour, Human Services and Social Security to be responsible for promoting and developing educational programmes for the prevention of domestic violence. Moreover, the Director shall be responsible for providing training and orientation services for police officers and persons who assist in the treatment and counseling of victims of domestic violence and abuse.

**d.** In line with General Recommendation No. 23 concerning the rights of indigenous peoples, as aforementioned, Guyana, pursuant to Article 212 S(1), has established the Indigenous Peoples’ Commission, which is mandated to “establish mechanisms to enhance the status of indigenous peoples and to respond to their legitimate demands and needs.” The various functions of the Indigenous Peoples’ Commission listed in Article 212T largely mirrors the concerns noted by CERD in Paragraph 4(a)—(e). Guyana’s indigenous peoples communally hold absolute titles of 14 % of Guyana’s land mass and the Amerindian Act 2006 provides for on-going titling of Amerindian communities’ lands based on occupancy for 25 years and more.

**e.** Pursuant to General Recommendation No. 7, Guyana has undertaken legislative and constitutional measures designed to eradicate all incitement to, or acts of racial discrimination, paying due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of ICERD.

 **viii) Assistance provided to victims and/or affected communities of racism, racial discrimination, xenophobia and related intolerance at the domestic level**

The constitutional and legal mechanism and measures available for redress have been outlined herein. Social interventions by the various sectors such as the Ministries of Labour, Human Security and Social Services, Health, Education, Home Affairs and Legal Affairs are available to assist victims and their families were such cases to arise.

**ix) Conclusion**

**(i) Recommendations**

See response to (iv) Procedural Gaps.

**ii) Additional comments or information**

Several recent developments are of concern to Guyana, these relate to:-

(i) the role of the media and most especially the social media ( which is unregulated) in heightening ethnic insecurities ;

(ii) the recourse to the court by the Opposition Leader to prevent the members of a constitutional rights commission, the ERC , from functioning and the delay in hearing this case lead to no commissioners being appointed from 2009 to 2014.

The latter is a dangerous precedent. The former does not bode well for future efforts at social cohesion.

1. ¹Religious breakdown :-Hindu- 28.5%; Muslim-7.3%; Seventh Day Adventist- 5.0% ;Roman Catholic- 8.1%

Pentecostal-17% ;Methodist 1.7%; Anglican- 7.0%; Other-1.3 %; Other Christians- 17.9% and persons with no religious persuasion-4.35%. [↑](#footnote-ref-1)
2. The ethnic make-up has not radically changed since the last census (except for the Amerindian population which is the fastest growing ethnic group) with East Indian- 43.5%; African- 30.2%; Mixed Heritage- 16.2% ;Amerindian- 9.2%; Whites- 0.06%; Portuguese- 0.20% Chinese- 0.19% [↑](#footnote-ref-2)
3. Please see [www.legalaffairs.gov.gy/information/laws-of-guyana](http://www.legalaffairs.gov.gy/information/laws-of-guyana)

 [↑](#footnote-ref-3)
4. The life of W & GEC and the ROCC expired and the process to consult with civil society has commenced by the Parliamentary Standing Committee for Appointments to Commissions. These bodies continue to function in the interim. The IPC will expire in October 2014. [↑](#footnote-ref-4)
5. This is in keeping with the recommendation of the UNCERD 2006 report on Guyana. It would be useful to note that the membership of the Commission has been amended and expanded by the Legislature in 2014 to include the 3 representatives of the three major ethnic groups. [↑](#footnote-ref-5)
6. See http://ethnicrelations.org.gy [↑](#footnote-ref-6)
7. See http://ethnicrealtions.org.gy [↑](#footnote-ref-7)
8. The Opposition party did not sign at the official ceremony with all the other contesting political parties but did so on the eve of the elections. [↑](#footnote-ref-8)