

Submission made on the reform of the sexual offences legislation

“STAMP IT OUT” Strengthening protection against sexual violence and reforming the law on sexual offences

Comments and recommendations from the Society Against Sexual Orientation Discrimination (SASOD)

1. The Ministry of Human Services, Labour and Social Security has embarked on a consultation on the reform of the legislation pertaining to sexual offences in Guyana. Proposals for reform are located in a consultation paper called [“Stamp It Out: Strengthening Protection against Sexual Violence and Reforming the Law on Sexual Offences.”](#)

2. The Society against Sexual Orientation Discrimination (SASOD) is a non-governmental organisation based in Guyana. In 2006, the Society against Sexual Orientation Discrimination had joined with other civil society organisations across the country and individuals to call for the reforms which are expanded in the consultation paper.

3. SASOD therefore endorses the spirit of the recommendations which are in the document and summarised in Annex 2 of the document. There are concerns about aspects of the reform and proposals are made to deal with these issues in this submission. These proposals are grouped under these headings :-

- A) Establishing the Age of Consent as 18 years
- B) Decriminalising of consensual same-sex activity in private
- C) Eliminating stigma of male victims of rape
- D) Enforcement of the reformed legislation

A) Establish the Age of Consent as 18 years for both females and males

The proposals for Age of Consent are discussed in para. 87 and other places of the document.

SASOD believes that the age of consent should be raised to 18 years for both males and females

and furthermore, that there should not be any criminalising of sexual activity between young

persons with a three year difference in ages when either party is above the age of consent.

SASOD

had joined with the Age of Consent Coalition in 2005 and the following points were made:

- Age of consent legislation has always been about the age at which children can enter consenting sexual connections with adults. It is not about the age at which adolescents should initiate sexual activity.

- Raising the age of consent is a measure to increase protection, particularly of girls, to predatory approaches by adults, usually men, whether these are exploiting poverty, manipulating immaturity or adults trafficking under-age girls.

For all the reasons listed below, the organizations in the Age of Consent Coalition, which deliberated on three occasions, agreed to raise the age to 18 years which is recognized as the point at which the children reach the age of majority.

In order to avoid the application of penalties proposed for sexual predators to consenting under-age teen-agers, SASOD further proposes that sexual connections between young people within a three- year age range of each other should not be liable to criminal penalties. This should also include when one person is over the age of consent. Any interventions required by the State as a result of In order to avoid the application of penalties proposed for sexual predators to consenting under-age teen-agers, SASOD further proposes that sexual connections between young people within a three-year age range of each other should not be liable to criminal penalties. This should also include when one person is over the age of consent. Any interventions required by the State as a result of such activity should be of a welfare or probation character. Like under-age smoking or drinking, under-age sexual activity should be discouraged but not criminalized. With this proviso there is no sound argument for not raising the age of consent as high as possible.

Summary Arguments In Support Of Raising AOC to 18 Years

- 18 conforms to the Convention on the Rights of The Child definition which the Guyana courts must now take into account following the constitutional reform (Art.154)
- 18 makes a clear distinction between adulthood and childhood
- 18 is the age of majority for other decisions of responsibility – right to vote, dispose of property, obtain passport. Public health benefits with respect to the prevention HIV, other STIs and teen-age pregnancy from encouraging delayed sexual activities
- Protection against physical and emotional health consequences for children
- Deterrence of the commercial sexual exploitation of children

B) Decriminalise consensual same-sex activity in private

4. SASOD notes that in reforming the laws on sexual offences, the Ministry of Human Services proposes not to discuss consensual same sex activity. The Ministry proposes to retain s. 351 of the Criminal Law Offences Act Cap. 8:01 as it is presently constructed.

5. The continued presence of s. 351 in its present construction is a violation of the human rights to privacy, equality, non-discrimination and health. In *Toonan v. Australia*¹, the UN Human Rights Committee found that the right to privacy under the International Covenant on Civil and Political Rights, which Guyana has signed, ratified and directly

incorporated into our Constitution, was breached by laws which criminalise private homosexual acts between consenting adults, noting that:

“... the criminalisation of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of HIV/AIDS... by driving underground many of the people at risk of infection... [it] would appear to run counter to the implementation of effective education programmes in respect of HIV/AIDS prevention.

6. The Yogyakarta Principles are a set of principles on the application of International Human Rights Law to issues related to sexual orientation and gender identity.³ These principles were developed by a group of international human rights experts convened by the International Service for Human Rights and the International Commission for Jurists. Principle 6 on the right to privacy recommends that States shall:

“Repeal all laws that criminalise consensual sexual activity among persons of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity.”

By denying a natural expression of human sexuality, criminalisation of consensual activity between adult men in private under s. 351 demoralises gay and bisexual men and robs them of their dignity and self-respect.

7. The reluctance of the Government to urgently deal with the s351 in this reform panders to homophobia and heterosexism in Guyana which are rooted in colonialism and based on constructions of masculinity and femininity which subordinate women and exclude and persecute homosexuals. Homophobia and the misogyny which fuels sexual violence against women and girls are inextricably linked and s. 351 offers a space in the law to locate those anti-social prejudices which contravene human rights protections for all citizens of Guyana.

8. Homophobia is often based on fear of the male being perceived as feminine and male rapists often use rape of women to reinforce perceptions of aggressive, heterosexual masculinity, while in some cases of male-male rape, the act of raping is concurrent with a perception of the 'feminising' of the male victim. Hegemonic masculinity is enforced by condemning homosexuals who are viewed as transgressing gender norms and through the possession, and objectification of women. The outcome is that 'real men' oppose homosexual men, abuse, rape, and neglect women in order to prove their masculinity. In this way, homophobia can be considered as an effort to maintain the bipolar system through which women are devalued.¹ Homophobia therefore affects all men, and not just gay men, and is rightfully viewed as a gender prejudice more than a sexual one, which it is generally assumed to be.²

9. Popular culture is replete with examples which reinforce these anti-social prejudices. For instance, dancehall artist Beenie Man, in his song, “Weeping and Moaning” preaches the following to his listeners: “You nuh see pressure man a get outa man/ Every nite Peter him wine pun Devon/ Hold hotty-boy and bun(burn) dem one by one/ Look pon Patsy,

Suzette and Yvonne/ Look how de gal-dem sexy and tan/ I charge fi' rape Suzanne/ More than go a prison/ Fi' wind pon Jonathan.” Feminist researcher, Tara Alturi assesses Beenie Man’s disturbingly-clear message, which should concern all policy-makers and state-managers seeking to eliminate sexual violence:

“In order to proclaim heterosexual masculinity, in order to protect himself from falling prey to homosexuality, the character/singer performs masculinity by objectifying, demeaning and in its most brutal form raping women. This is a perfect example of the way in which homophobia enforces a reiteration of masculine hegemony in expressions of sexual violence against women.”³

10. Statutes criminalising sexual activity between consenting adult men in private, even though they may not be enforced, their continued existence and threat of enforcement legitimizes stigmatization of homosexuals and this can undermine the response to HIV and AIDS. According to the National Assessment on HIV/AIDS Law, Ethics and Human Rights in Guyana prepared by Arif Bulkan, “criminalisation encourages secrecy, which in turn prevents the exchange of information. Whereas heterosexual young men and women freely discuss heterosexual practices and may learn about safe behaviours, such opportunities are lost in relation to homosexual behaviour.”¹

11. Bulkan also admonishes that the constant threat of enforcement can be used to persecute marginalised communities of men who practise same-sex desire in Guyana. Renowned regional sociologist Dr. Robert Carr documents the experience of gay Jamaican communities in his work on ‘judgements,’ where high levels of violence, particularly against working class gay men – are meted out by members of their families and communities and tolerated, even encouraged, by the police and government. According to Carr, “The [Jamaican] security forces, according to the informant’s testimonials, interpret the laws banning sodomy to mean the identity itself is illegal. The law thus becomes an umbrella under which they feel free to harass, single out, and threaten men they perceive to be gay or who state that they are gay.”¹ Carr notes that the influence of dancehall culture cultivating avenues of sanctioned violence has emerged from Jamaican ghettos and penetrated other countries in the region. He continues: “The violence described here in working class Jamaica is thus becoming embedded in regional culture and in the psyches of other countries.”² Bulkan warns that “even though similar levels of violence do not exist in Guyana, instances of homophobic violence are not unheard of and it is therefore important to confront this phenomenon before it takes hold.”³ Bulkan’s caveat is instructive and should be cause for urgent concern to state-managers seeking to curb gender-related violence.

12. Although s. 351 in relation to consensual, sexual behaviour in private may not be presently enforced, it is unhealthy to keep laws which are routinely violated on the statute books for this breeds disrespect for authority and is generally inimical to the rule of law and good governance.

C) Eliminating stigma of male victims of rape

13 .Part of the stigma for male victims of rape stems from the fact that the law in Guyana stigmatises consensual sexual activity between men in private. Male victims of rape are often stigmatised by society and themselves as objects of a 'homosexual attack.' While the gender-neutral definition of rape is commendable and welcomed as part of the reforms needed, the utility of the proposed reform is severely undermined by the very existence of s. 351 on the statute books which reduces same-sex practising men to unapprehended criminals in Guyana. As Caribbean gender law scholar Tracy Robinson states, "in this heterosexist paradigm, the sexual violation men experience by other men ranks no different from consensual sex between men – they are both categorised as perversion – and therefore the former does not feature as a serious social issue, and rape by men as a distinctive feature of women's lives is slowly neutered."⁴

14. Police procedures should recognise the particular social and cultural environment which would limit male victims of rape in the prosecution of rapists. Male victims of rape have special needs which must be addressed.

15. Male victims of rape have reported visible signs of arousal and even involuntary ejaculation during rape. These bodily responses are noted as being physiological and sometimes and involuntary response to the pressure on the prostate gland. Some rapists also force their victims to ejaculate so as to reinforce the perception that ejaculation means an orgasm.⁵ Consent shall not be inferred from these responses. There must be provisions which are clear that 'signs' of arousal or ejaculation should not be introduced as consent from any victim.

16.The sexual orientation of male victims of rape should not be brought into any case as a reason for the defence of rapists.

D) Enforcement of the legislation

SASOD is concerned that there are no provisions to ensure that the legislation when passed, is enforced. The framework for the proposed reforms is comprehensive, and will require political will to acquire the resources at Ministerial and Judicial levels especially. There must be a commitment to ensuring that all provisions are adhered to and that all systems are put in place to ensure that there is protection from sexual violence.

References

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Toonan v. Australia. Communication No. 488/1991. Official Records of the General Assembly, 49th Session, Supplement No. 40 (A/49/40), vol. II, annex IX EE.

Official Website of Yogyakarta Principles:
http://www.yogyakartaprinciples.org/principles_en.htm

30 December, 2007 – corrected 2 January, 2007

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