

IDPADA-G input in response to:

Call for inputs for the preparation of the report of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council Resolution 47/21 on the “**Promotion and Protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers through transformative change for racial justice and equality**”

SUMMARY

There has been no transformative change for racial justice and equality in the experience of the African descendant population of Guyana nor is there any indication at the level of the state of any awareness of the need to address the human rights violations and indignities that are their daily experience. In fact, to the contrary, there has been a serious erosion in their human rights and freedoms. The brief report below identifies two critical areas of concern.

I. EXTRA-JUDICIAL KILLINGS OF UNARMED AFRICAN GUYANESE

Mr. Orin Boston was a prominent businessman and family man of Dartmouth Village, Essequibo Coast, Region 9, Guyana, South America. He was gunned down by police literally in his bed during the early morning hours of Wednesday, 15th of September 2021 in the presence of his wife and possibly children. The motive for the forced and sudden entry into the Boston’s home that night is not clear at this time. However, the Guyana Police Force said in a statement that, acting on information received, they were searching for “prohibited items.” No prohibited items were found in the home. But even if the police were conducting a search operation, there was no justification for shooting since Mr. Boston was not armed at the time of his death.

Around 4:00 AM on the morning of Wednesday, 15th of September 2021, members of the SWAT force of the Guyana Police Force forcibly entered the home of Mr. Orin Boston, traumatized his family, including two young children under the age of 10, rushed up to his bedroom and shot him dead.

At first, the police in a statement said that Mr. Boston was shot in the upper left arm, but an autopsy revealed that he died from hemorrhage and shock secondary to a gunshot wound to his chest. The family members told police that after Mr. Boston was shot by the police, the police lifted him outside and laid him down by the door before coming back into the house to search for items. None were found. This fatal delay might have caused his death. Subsequently, the police went back outside, loaded Mr. Boston onto the back of the police van and transported him to the hospital where he was pronounced dead on arrival.

After months of protest and demands by the public, a police constable, a member of the Special Weapons and Tactics (SWAT) unit that killed Boston in his home, was

charged with manslaughter. The police constable was not represented by Counsel during the hearing. His bail was set at G\$1 million.

The extrajudicial killing of Orin Boston brought back terrifying memories of the period in the early 2000's, when the current ruling party, the People's Progressive Party, was last in office. During their time in office over 400 young African Guyanese men were killed. African Guyanese still await justice for the families of those victims.

II. HUMAN RIGHTS VIOLATIONS WITHIN THE CRIMINAL JUSTICE SYSTEM

It is difficult from a statistical point of view to determine the number of persons by race or ethnicity who interact with the criminal justice system as either persons of interest or persons accused of the commission of a crime. The records kept by the police, the courts and the prisons do not disaggregate those who interact with the criminal justice system according to race or ethnicity. Further, there are no public records compiled by the police disclosing the names of persons arrested, processed, and charged or released from custody. Similarly, no such records exist for the courts, save for the lists of matters in the criminal assizes which are published on the website of the Office of the Director of Public Prosecutions. In any event, even if such records existed, one could not determine conclusively on the face of the records whether the persons so listed belong to one racial or ethnic group or another. Likewise, one could not determine from the face of any such records the nature of the experience of each or any individual in his/her interaction with the criminal justice system.

The records that perhaps come closest in capturing persons interaction with the criminal justice system are the case jackets and notes of evidence kept by the courts. These are not available publicly. The case jackets capture information such as the accused persons' names, ages, addresses, employment, number of children, marital status, quantum of bail granted- if bail is granted, whether any complaints are made of police brutality, antecedents, etc. The information contained in the case jackets can give an insight into the accused persons' educational background, financial ability to post bail and/or retain an attorney, whether there is recidivism, whether they come from so-called depressed communities, etc.

Media reports invariably do not capture accurately or comprehensively what transpires upon the arrest of persons and their experience as they are shuffled through the criminal justice system.

The empirical challenge is patent in determining how Afro Guyanese or any other racial or ethnic group is treated by the criminal justice system. Reliance, therefore, must be placed on several other factors to construct a picture of how the criminal justice system treats Afro Guyanese.

It is widely accepted that there exists in Guyana a social and economic wealth gap between Afro Guyanese, one the major racial groups, and other racial or ethnic groups,

especially Indo Guyanese. Among the consequences of this gap are disparity in housing, disparity in education, disparity in employment and the dividends thereof, disparity in access to justice, etc, preferring the other racial groups, especially Indo Guyanese. Communities across Guyana that are deemed to be depressed are populated predominantly by Afro Guyanese. These communities are characterised by either inadequate or no infrastructure, substandard housing, poor healthcare, restrictive access to a quality education, and joblessness. While most criminal activities occur outside of these communities, persons from these communities are invariably suspected as being responsible for their commission and are accordingly arrested.

It is routine for persons from these communities to be arrested and detained by the police, invariably for the constitutional 72 hours before either being charged or released. This is even more common for offences of a serious nature. Oftentimes, persons are arrested by the police and detained for 'inquiries' upon bare complaints which are sometimes not investigated with haste, occasioning their detention for 72 hours or longer. Innumerable such persons, especially those arrested for offences of a serious nature, complain about the harsh conditions of the lockups and police brutality in the police's endeavour to procure confessions. For persons who are released from custody without charge, these complaints are invariably not pursued beyond disclosure to family members and their attorneys at all if they can afford to involve an attorney at all during their initial detention. Still many more of these instances are not relayed to the Police Complaints Authority. For those persons who are charged and are brought before the magistrate, their complaints, if they do make any, are simply recorded. The magistrates are not empowered to act upon these complaints save to determine as a matter of evidence whether these events did in fact happen and their bearing upon any confession statements made by the accused persons. The same occurs at the high court before a judge.

On the face of it, more Afro Guyanese than any other racial or ethnic group interact with the criminal justice system. Much of this interaction is as a consequence of racial profiling; and much of this racial profiling is the cause of persons being detained in custody upon 'inquiries,' made subject to harsh treatment from police officers, and are then released without charge or brought before the court on trumped up charges or upon evidence that cannot objectively result in a conviction. Oftentimes in this process precious resources must be directed to retaining attorneys to secure their release or facilitate their defence. And these resources are oftentimes pooled from the scarcity of family resources that should otherwise be directed to basic needs.

For many Afro Guyanese appearing before the court, bail may either be denied or granted in quantum that makes its granting academic due to its sheer inaccessibility. The denial and quantum of bail might be influenced by an assortment of factors including the circumstances peculiar to the accused and the nature of the offence - even if the charge is trumped-up or the evidence would not ultimately result in conviction. There is no dedicated Bail Act in Guyana to guide in a systematic and objective way the granting of bail, so the considerations sometimes appear subjective to the magistrate or judge as well as the sum in which bail is granted. The fortunes are

graver for those who cannot afford to retain an attorney and the mere fact of this may manifest in their denial of bail and their ultimate conviction. This, of course, would have reverberating consequences for both the accused person and their family and taint, even if just in their minds, the administration of justice. There is also the worrisome practice in Guyana to invite those who are brought before the court on summonses to make an application for bail. This is contrary to common law which effectively guides the matters of bail in Guyana, save for the restricted instances in which statutes prescribe the circumstances in which bail should be granted.

Those who are remanded in custody or who are ultimately convicted and receive committal sentences must contend with overcrowding in the prisons and other conditions which they describe as subhuman. There are those who may be convicted upon evidence that do not objectively support their convictions or their convictions may be tainted by errors in the interpretation and application of the law by the court. Or their sentences may be disproportionate in the circumstances. They may not have the means to challenge these outcomes through the appellate process and would simply have to sit in prison either completely innocent or for longer than they should. Quite apart from the myriad personal impacts of these outcomes, the consequences spill over into the lives of their families and perpetrate the vicious cycle of the social and economic wealth gap.

There is another dimension to the criminal justice system which sees the employ of the state apparatus to pursue political opponents and those who are deemed to be supportive of them. The most recent incursion into this practice is the state's seemingly relentless pursuits of opposition executive and ordinary members, their supporters and those accused of marring the electoral process - primarily if not exclusively Afro Guyanese. Several of these persons have been taken into custody and detained for the constitutional 72 hours upper limit in circumstances that do not warrant their protracted detention even if the state is committed to being aggressive in its investigations. Several of these persons have been charged, taken before the court, and placed on exorbitant bail. Some of them have been repeatedly taken before the courts on added charges warranting the lodgement of other heavy sums of bail which are not objectively justifiable when they have been diligently attending court on their other connected charges, given that the core object in the granting of bail is to ensure the attendance of the accused at court. For those persons, there is no objective risk that they may not attend court; and properly, the assortment of other charges should see them released on their own recognisance.

The comments herein do not capture by any stretch all the variants of how the criminal justice system is, on its face, stacked against Afro Guyanese. Suffice it to say, however, that the criminal justice system needs urgent reforms even to get to that stage of apparent fairness, let alone across-board fairness in substance.