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**ORGANIZATION OF AMERICAN STATES**

**ELECTORAL OBSERVATION MISSION**

**GENERAL AND REGIONAL ELECTIONS**

**THE COOPERATIVE REPUBLIC OF GUYANA**

**MARCH 2, 2020**

**FINAL REPORT**

## TABLE OF CONTENTS

I.	FINAL REPORT TO THE PERMANENT COUNCIL .....	4
A.	INTRODUCTION .....	4
B.	BACKGROUND .....	5
C.	PRE-ELECTORAL PHASE .....	6
–	Ethnic and Political Polarization.....	7
–	Substitution of Polling Places.....	7
–	The Voters’ List .....	7
–	Tabulation of Results .....	8
–	Access for Minor Political Parties .....	9
D.	DISCIPLINED SERVICES VOTE.....	9
E.	ELECTION DAY.....	10
F.	POST-ELECTORAL PHASE.....	10
i.	Issues in Region Four.....	11
ii.	National Recount.....	12
iii.	Matters before the Courts .....	14
iv.	Results of the General and Regional Elections .....	14
G.	FINDINGS AND RECOMMENDATIONS .....	16
i.	Structure of the Electoral Authority .....	16
ii.	Electoral Organization .....	16
iii.	Electoral Technology .....	17
iv.	Electoral Registries .....	18
v.	Electoral Justice.....	19
vi.	Political Finance .....	20
vii.	Political Participation of Women.....	21
H.	ACKNOWLEDGEMENTS .....	22
II.	ANNEXES – REPORTS BY TOPIC.....	23
i.	ELECTORAL ORGANIZATION AND TECHNOLOGY.....	23
ii.	ELECTORAL REGISTRIES .....	41
iii.	ELECTORAL JUSTICE .....	51
iv.	POLITICAL FINANCE .....	72

v. POLITICAL PARTICIPATION OF WOMEN ..... 75  
MEMBERS OF THE MISSION..... 86

## **I. FINAL REPORT TO THE PERMANENT COUNCIL<sup>1</sup>**

### **A. INTRODUCTION**

On March 2, 2020, the Cooperative Republic of Guyana held General and Regional elections to elect the sixty-five members of the National Assembly and the 205 members of the Regional Democratic Councils. The Official List of Electors (OLE) for the process included 660,998 names.

In a letter to the Secretary General of the Organization of American States (OAS) dated November 20, 2019, the Minister of Foreign Affairs of Guyana, Dr. the Honorable Karen Cummings, invited the OAS to observe these elections. The Secretary General accepted the invitation on November 21, 2019 and confirmed that the Organization would deploy an Electoral Observation Mission (EOM) to the General and Regional elections, contingent upon the availability of funds to do so.

On February 13, 2020, in Washington DC, the Government of Guyana and the OAS General Secretariat, signed an Agreement on the Privileges and Immunities of the Mission. An Electoral Access Agreement was also signed between the Mission and the Guyana Elections Commission, in Georgetown, on February 26, 2020.

This was the sixth occasion on which the OAS was present for an electoral process in Guyana. OAS Missions were previously deployed for the General and Regional elections in 1997, 2001, 2006, 2011 and 2015.

#### **– Composition and Methodology of the Electoral Observation Mission**

Secretary General Luis Almagro designated the Most Honorable Bruce Golding, former Prime Minister of Jamaica, as the Chief of Mission. The Mission arrived in Guyana on February 20, and comprised 17 experts and observers from 13 countries, including specialists in electoral registries, electoral organization, electoral technology, electoral justice, political finance and the political participation of women. While the majority of the Mission's members departed Guyana on March 14, 2020, the organization remained fully engaged with the post-electoral process in Guyana, including through the national recount of all ballots cast in the March 2 poll and up to the declaration of the official final results on August 2, 2020, five months later. Two OAS observers were present for the entirety of the recount which was conducted from May 6 to June 8, 2020.

On the day after the General and Regional elections, Tuesday, March 3, 2020, the OAS Mission presented a Preliminary Statement in Guyana with its principal findings and recommendations. On May 13, following the initiation of the national recount, the Chief of Mission reported to a Virtual Regular Meeting of the OAS Permanent Council on the continuing electoral process in Guyana. On July 21 the Chief of Mission reported once more

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<sup>1</sup> Presented to the Permanent Council of the Organization of American States by the Chief of Mission, Bruce Golding, on December 1, 2021.

to a Virtual Extraordinary Meeting of the OAS Permanent Council, convened to consider the state of the electoral process in Guyana.

This document is the Mission's Final Report. It complements the Preliminary Report, provides greater detail on the Mission's initial findings and recommendations and includes additional analyses and recommendations based on the post-electoral developments. The Mission hopes that the national and electoral authorities of Guyana will find the report useful as they address the several challenges brought to light by the extended 2020 electoral process and seek to strengthen the overall electoral framework for the conduct of future elections.

## **B. BACKGROUND**

The environment in Guyana prior to the elections was complex following the no-confidence motion brought by the opposition People's Progressive Party / Civic (PPP/C) against the A Partnership for National Unity / Alliance for Change (APNU/AFC) coalition Government in late 2018.

The passage of the motion, on December 21, 2018, triggered Article 106 (6) and (7) of Guyana's Constitution,<sup>2</sup> which stipulate that if the Government is defeated in a vote of confidence, the Cabinet, including the President, must resign and elections must be held within three months, or within a longer period of time approved by a vote of at least two-thirds of the elected members of the National Assembly. In the days following the passage of the no-confidence motion however, the Government did not resign and arrangements for elections were not announced. Three legal challenges were subsequently filed with the courts of Guyana.

In the first instance, *Charrandas Persaud v Compton Reid et al*,<sup>3</sup> filed on January 4, 2019, a private citizen, Compton Reid, challenged the validity of the no-confidence vote, arguing that the member of the APNU+AFC who voted with the opposition, Mr. Charrandas Persaud, was a Canadian citizen at the time of the 2015 elections and should not have been in the House at all, rendering his vote invalid.

In the second instance, *Bharrat Jagdeo v the Attorney General et al*,<sup>4</sup> filed on January 7, 2019, the Attorney General, Basil Williams, asked the court to determine whether the no-confidence motion was validly passed by 33 to 32 votes. He argued that the formula for achieving an 'absolute majority' in the Assembly was at least one half of the members plus one. As the National Assembly of Guyana comprises 65 members, he reasoned that half of all elected members would mathematically result in a fraction of 32.5, which would have to be rounded up to the next whole number (33) to represent half of the elected members. A majority of members should therefore be 33 votes plus one, for an absolute majority of 34.

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<sup>2</sup> Constitution of the Cooperative Republic of Guyana, Chapter 1:01, Act 2 of 1980 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_101\\_Constitution.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_101_Constitution.pdf)

<sup>3</sup> [2019] CCJ 10 (AJ), <https://ccj.org/wp-content/uploads/2019/06/2019-CCJ-10AJ1.pdf>

<sup>4</sup> [2019] CCJ 10 (AJ), <https://ccj.org/wp-content/uploads/2019/06/2019-CCJ-10AJ1.pdf>

In the third instance, *Christopher Ram v the Attorney General et al*,<sup>5</sup> filed on January 8, 2019, a second private citizen, Christopher Ram, sought the court's confirmation that the motion had been properly and lawfully passed, that the passage of the motion required the resignation of the Cabinet, including the President, and that in accordance with Article 106 (7) of the Constitution, elections should be held no later than March 21, 2019.

The cases related to the no-confidence motion were litigated in the courts of Guyana and taken all the way to Guyana's final appellate court, the Caribbean Court of Justice (CCJ). On June 18, 2019, the CCJ declared that the motion of no confidence in the Government was valid.

When the no-confidence matters were referred to the CCJ, the court was already reviewing a case involving the legality of the 2017 appointment of then Chairman of the Guyana Elections Commission (GECOM), Justice (Ret'd) James Patterson. In ruling on the validity of the no-confidence motion the CCJ also ruled that Justice Patterson's appointment was not in compliance with the Constitution and Justice Patterson subsequently resigned. The need to identify, agree on and induct a new GECOM Chair therefore further delayed the electoral process while this was done. By the time President David Granger announced the elections on September 25, 2019, nine months had elapsed. The Mission notes that, at that time, the OAS General Secretariat issued a public statement underscoring the importance of moving beyond the period of political uncertainty in the interests of the people of Guyana.

### **C. PRE-ELECTORAL PHASE**

Prior to the elections the Mission reviewed existing legislation, regulations and procedures related to the electoral process, to ensure a full understanding of the regulatory framework in which the poll would take place. The Mission's leadership and experts also engaged with a range of actors, including electoral and government authorities, political parties and candidates, civil society actors, domestic and international election observation missions and other members of the international community.

In this regard, the collaboration that existed among the international electoral observation missions present in Guyana for the March 2 poll was particularly noteworthy. In addition to the OAS, international missions were deployed by the CARICOM Secretariat, the Commonwealth Secretariat, The Carter Center and the European Union. These missions met regularly to share information and coordinated their engagement with the Elections Commission, where possible, in order to avoid overwhelming the electoral authority at a critical time.

The discussions held by the OAS Mission allowed its members to analyse the preparations for the process, hear different perspectives on the elections, and understand the issues of concern to stakeholders. In these conversations, the principal concerns articulated by stakeholders across the political spectrum and within the various sectors were the following:

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<sup>5</sup> [2019] CCJ 10 (AJ), <https://ccj.org/wp-content/uploads/2019/06/2019-CCJ-10AJ1.pdf>

– ***Ethnic and Political Polarization***

Many of the stakeholders with whom the Mission spoke, expressed their concern about the severe ethnicity-driven polarization in Guyana’s social and political spheres, which they observed was amplified by the rhetoric and competition of the 2020 campaign.<sup>6</sup> These divisions were reflected in the partisan stances of some of the traditional media houses. For instance, the state broadcasting mechanisms typically supported the positions of the ruling APNU+AFC party (whose supporters are primarily Afro-Guyanese), while some private media houses favored the opposition PPP/C (with which the Indo-Guyanese population tends to affiliate). While the OAS Mission did not engage in a detailed analysis of social media during the electoral campaign, it did take note that these platforms were also utilized in the dissemination of biased and at times racially charged material.

Polarization is also a defining element of the Guyana Elections Commission, where the political divisions entrenched in that body as a result of its very composition, exercise an influence on its work. The Mission acknowledges the work of the Ethnic Relations Commission, which is an important starting point in mitigating the discord between the two main ethnic groups. However, a strengthened ERC, along with deeper, more institutionalized measures to sanction discrimination, and efforts to heal the evident estrangement between the two sides, must be a priority for the newly elected administration.

A review of the composition of the Commission is also critical to transform this body into one that inspires the confidence of the people of Guyana. The partisan approach to its electoral responsibilities, which was amply demonstrated in the 2020 elections and more so in the post-electoral phase, undermines the credibility of the Commission and diminishes the expectation of impartiality and transparency in the electoral process.

– ***Substitution of Polling Places***

The Mission took note of the efforts by GECOM to reduce the use of private residences as polling places, and the concerns of the opposition PPP/C that its supporters had been unequally impacted in this process. While the issue was eventually resolved in a manner that was acceptable to both sides, with the introduction of additional polling places in public places, the Mission had some concerns regarding the lateness of the solution, just 2 days before the poll.

– ***The Voters’ List***

The Official List of Electors (OLE) for the 2020 General and Regional elections, published

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<sup>6</sup> The OAS Mission noted that the Ethnic Relations Commission, the body charged by the Constitution to investigate and mitigate racial discord in Guyana, was obliged to cite the two main political parties for the use of racially charged rhetoric during their campaigns. See in Kaieteur News, “ERC implements rapid response unit to tackle elections complaints – as parties sign code of conduct”, February 14, 2020, <https://www.kaieteurnews.com/2020/02/14/erc-implements-rapid-response-unit-to-tackle-elections-complaints-as-parties-sign-code-of-conduct/>

on February 1, 2020, contained 660,998 names, a number that was relatively high in relation to the estimated population of Guyana (783,000 approx.).<sup>7</sup> In explaining the reasons for the bloating of the list, the Guyana Elections Commission noted that it included the names of persons who were dead or who no longer resided in the country.

In July 2019, the Guyana Elections Commission commenced a house-to-house registration exercise in order to create a new National Register of Registrants Database (NRRDB) prior to the 2020 elections. In *Christopher Ram v GECOM*, filed on July 22, 2019, a private citizen, Mr. Ram, challenged the constitutionality of this exercise. Mr. Ram argued that it would result in the unlawful deregistration of persons on the existing Voters' List and omit the registration of qualified registrants, if they were not at their place of residence at the time of registration. The process was halted in August 2019 after the Chief Justice of Guyana held that while the house-to-house registration exercise was not unconstitutional, the removal of the names of registered persons from the NRR, on the grounds of non-residency was unlawful, unless they were deceased or disqualified pursuant to Article 159 of the Constitution (i.e. insanity or conviction of a qualifying offence).

The Mission noted GECOM's concerns at the time, that the ruling would create challenges in reviewing and updating the Voters' List, as it currently has no means of cleansing the list, save through the limited constitutional provisions available for the removal of names. In cases where electors no longer reside in Guyana, or where death certificates have not been registered (an act that is not mandatory) GECOM has no means to determine when or how names should be removed.

#### – ***Tabulation of Results***

The majority of the stakeholders with whom the Mission engaged, expressed their concern about the length of time typically required to tabulate and determine the results of Guyana's elections. The largely manual tabulation system, coupled with the country's geography, infrastructure and population distribution, among other factors, can create significant challenges for the organization of elections and the timely delivery of results.

The challenges in the 2020 elections ultimately led to an extended 5 month post-electoral process that overshadowed the concerns about traditional delays in the tabulation of the results. While Article 99 of the Representation of the People Act<sup>8</sup> allows up to fifteen days after Election Day for the declaration of the results of the election, efforts should be made to implement a solution that allows the Statements of Polls and collated results to be transmitted from regional locations to the central elections office in a more timely fashion. A more modern tabulation system, which facilitates the timely receipt and publication of official preliminary results, will add transparency and credibility to the electoral system and mitigate unhelpful speculation and uncertainty in the post-election period.

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<sup>7</sup> World Bank Population Indicator. Available on:  
<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=GY>

<sup>8</sup> Representation of the People Act, Chapter 1:03, Act Reg. 24/1964 (and its amendments),  
[https://www.gecom.org.gy/assets/docs/laws/Cap\\_103\\_Representation\\_of\\_the\\_People.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_103_Representation_of_the_People.pdf)

– *Access for Minor Political Parties*

Eleven political parties/coalitions contested the elections at the national and regional levels. Of this number only the two major contenders, APNU+AFC and the PPP/C, were represented on the Guyana Elections Commission. In its discussions with the minor political parties, several of which were relatively newly formed parties, the Mission was informed of their challenges in engaging with GECOM on as equal a footing as the two primary competitors. Some minor parties reported they did not have timely information on processes and deadlines, that had been readily available to the parties comprising the Elections Commission. Some also complained of a lack of complete information on the process for Nomination Day.

For the 2020 elections, three minor political parties – A New and United Guyana (ANUG), the Liberty and Justice Party (LJP) and The New Movement (TNM) – requested their lists be joined under Section 22 of the Representation of the People Act. The Mission was informed that it was the first time that Section 22 had been applied in an electoral process in Guyana. In the final days before the elections these parties advised the Mission that they did not have the information they needed on how the Joinder would be operationalized.

**D. DISCIPLINED SERVICES VOTE**

On February 21 the Mission observed the conduct of the Disciplined Services Vote in Regions 3 and 4, and was pleased to note the successful and orderly execution of this exercise. According to the Guyana Elections Commission (GECOM), of the 10,226 eligible voters from the Disciplined Services, 8,369 persons, or 81.8%, cast their ballots at 82 polling stations across the country on that day. The Mission noted that the polling stations it visited opened on time and possessed the full complement of poll workers and materials required for the proper conduct of the vote. The Mission was also pleased to note the presence of GECOM Information Officers at each of the polling stations visited, who assisted voters in verifying their place of poll and providing such guidance as was required.

The ability of members of the Disciplined Services to vote prior to the election was important in facilitating their work on Election Day. The Mission notes that there are other categories of persons who would also benefit from an opportunity to vote early, including poll workers who may not be assigned to their polling place on Election Day.

While the Disciplined Vote was widely observed by the international election observation missions present in the country, the OAS Mission noted that domestic observers were not permitted to participate in the process. The Mission reiterates that the strong desire of national civil society organizations to support the strengthening of democracy in their own country is to be commended, and encourages the electoral authority to consider their inclusion at this stage, in future electoral processes.

## **E. ELECTION DAY**

On Election Day, 660,998 persons were eligible to vote at 2,339 polling stations across the ten regions/polling districts of Guyana. Members of the OAS Mission were present in four regions from the opening of the poll to the tallying and transmission of results, and visited 344 polling stations. The Mission observed that the arrangements and processes on Election Day were well-organized and mirrored those of the Disciplined Services vote. Members of the Mission reported that the polling stations they observed opened on time, were fully staffed and had the necessary electoral materials. In general, the premises housing polling stations provided sufficient space for the safe and secret conduct of the poll. The Mission observed however that, in some cases, polling stations were located on the upper floors of polling places, even where there appeared to be alternative spaces on the lower floors, and this created challenges for elderly voters and people with disabilities.

Visits to the polling stations established shortly before Election Day suggested that voters were not unduly affected - the new polling stations were active and GECOM's Information Officers were present to guide those persons requiring assistance.

While the Mission saw long lines in the morning at many polling stations, people waited patiently, in most instances, to cast their vote and by midday most lines had disappeared. The Mission was pleased to note the presence of several domestic observer groups, the members of which executed their responsibilities in a professional and respectful fashion.

Poll workers, the large majority of whom were women, were diligent in their duties and knowledgeable about the procedures to be followed. A significant majority of party agents were also women. Taken together this underscores the role of women in ensuring that citizens are able to vote freely and fairly. The Mission commends the electoral authorities, including the poll workers, party agents, supervisory personnel and security agents who facilitated the conduct of the voting process on both days. The Mission once more commends the people of Guyana on their strong democratic commitment, as reflected in their peaceful and enthusiastic participation at the polls.

## **F. POST-ELECTORAL PHASE**

The electoral process up to the close of the polls at 6:00 pm on March 2, 2020, and through the tabulation of results, proceeded in accordance with the electoral law in nine of the ten regions of Guyana. OAS observers noted that the counting procedures at the polling stations were methodical and transparent, and conducted according to the stipulated guidelines. The counting was completed in the presence of poll workers, party agents and observers and security personnel ensured adequate security during the counting process.

In Region 4, however, which contains the largest number of electors and polling stations in Guyana (285,618 electors / 879 polling stations), there were significant challenges in the tabulation process, which eventually came to impact the entire elections. These challenges, the steps taken to resolve them, and the process leading to the final, official declaration of national results, are described below.

### *i. Issues in Region Four*

The difficulties in the tabulation process for Region 4 first emerged in the building which served as both the Office of the Returning Officer for that Region and the Office of the Chief Elections Officer<sup>9</sup> during the electoral process. They included the following events:

- Beginning on the morning of March 4, after approximately 300 of the 879 Statements of Poll for Region 4 had been verified, extended delays and repeated interruptions in the tabulation process for various irregular reasons, including, according to GECOM officials, the unavailability of electoral workers to conduct the verification and tabulation.
- Repeated disruptions in the tabulation room and in other areas of building, typically following announcements or actions by GECOM officials that undermined the transparency of the process. On March 4 at approximately 1:00 pm, for example, the Chief Elections Officer announced that instead of verifying the results from the official Statements of Poll in the presence of the authorized party representatives, the election clerks would instead use a spreadsheet that had been prepared by GECOM. The results included on the spreadsheet were significantly different from the results on the Statements of Poll held by the party representatives.
- On March 5, at around 11:20 am, evacuation of the building by all GECOM staff following an alleged bomb threat. While political party representatives and international observers remained in the building to monitor the sensitive electoral materials present in the Region 4 tabulation room at the time, these materials remained outside GECOM's chain of custody for several hours.
- A declaration of results for Region 4 on March 5 by the Returning Officer (at 1:00 pm and again at 2:30 pm approximately), while the tabulation process was at a standstill and while a significant number of Statements of Poll had not yet been reviewed in the presence of party representatives, as required by law. That declaration awarded the win in Region 4 to the APNU+AFC coalition;<sup>10</sup> an outcome that was strongly disputed by other party representatives.
- Disorder and physical altercations at the building on the evening of March 5, between the security services and political party representatives. As events escalated, members of the OAS Mission who were present to observe the process were obliged to withdraw. In a press statement later that evening, the OAS Mission condemned the acts of violence and noted that as the process did not reach its proper conclusion, the results announced by

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<sup>9</sup> A Returning Officer administers the electoral process and tabulates the election results for a single Region / Polling District, while the Chief Elections Officer administers the process for the entire country and compiles the results of the overall election.

<sup>10</sup> Taken from Form 24 – General and Regional Elections Returns, as published in “Commotion at GECOM Command Centre ...as GECOM releases unverified results for Region Four,” Kaieteur News, March 6, 2020, <https://www.kaieteurnews.com/2020/03/06/commotion-at-gecom-command-centre-as-gecom-releases-unverified-results-for-region-four/>, (accessed December 1, 2020).

the Returning Officer for Region 4 did not meet the established standards.<sup>11</sup>

Following the disturbances of March 5, the Office of the Returning Officer for Region 4 was closed, effectively halting the process entirely. The process remained at a standstill from March 5 through March 12, while matters concerning the tabulation were addressed by Guyana's High Court. In *Reeaz Holladar v Clairmont Mingo et al*, filed on March 5, 2020, Mr. Hollandar, a party agent of the PPP/C, sought an interim injunction preventing GECOM from declaring the results for Region 4, until the Returning Officer or the Deputy Returning Officer for that Region complied with the process set out in Section 84 (1) of the Representation of the People's Act regarding the ascertainment of the vote count.

The Chief Justice ruled in favor of Mr. Hollandar on March 11 and the process resumed on March 13. The Mission noted that in respect of several polling stations there continued to be significant discrepancies between the Statements of Poll presented by the Returning Officer and those in the possession of party representatives. A further resort to the High Court ensued after the Returning Officer refused to comply with the court's orders regarding the tabulation procedures. Following further direction from the High Court, the Returning Officer completed the process in keeping with the electoral law. The Mission noted however that he did not review the Statements of Poll that had already been processed using the earlier flawed approach.

A second declaration of the results issued by the Returning Officer for Region 4, just before midnight on March 13, also found APNU+AFC to be the winner of the Region 4 election.<sup>12</sup>

The OAS Mission withdrew from Guyana early on the morning of March 14, after issuing a statement<sup>13</sup> that the process conducted by the Returning Officer for Region 4 did not meet the required standards of fairness and transparency, and was unlikely to produce a credible result.

## **ii. National Recount**

Concerns by multiple stakeholders that the results provided by the Elections Commission were flawed, resulted in a decision by GECOM on April 3, to proceed with a national recount of all ballots cast in the March 2 poll. On May 4, GECOM published Order 60 of 2020 in the Official Gazette of Guyana,<sup>14</sup> which established the legal basis as well as the procedural and

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<sup>11</sup> "Statement of the OAS Electoral Observation Mission in Guyana," OAS press release E-015/20, March 5, 2020, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-015/20](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-015/20).

<sup>12</sup> Taken from Form 24 – General and Regional Elections Returns, as published in "Region Four vote count completed after suspect process – recount request expected," Stabroek News, March 14, 2020, <https://www.stabroeknews.com/2020/03/14/news/guyana/region-four-vote-count-completed-after-suspect-process/> (accessed November 19, 2020).

<sup>13</sup> "Statement from the OAS Electoral Observation Mission in Guyana", OAS press release E-021/20, March 13, 2020, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-021/20](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-021/20)

<sup>14</sup> "The Official Gazette (Extraordinary) of Guyana, 60/2020," 4 May 2020, [https://www.gecom.org.gy/assets/docs/Press\\_Releases/2020/Gazetted\\_Order\\_Recount\\_5May2020.pdf](https://www.gecom.org.gy/assets/docs/Press_Releases/2020/Gazetted_Order_Recount_5May2020.pdf)

administrative guidelines for the recount. Order 60 also signaled that the results of the recount would be the official, final results of the 2020 process.

The recount was conducted by GECOM employees under the direct supervision of the Chief Elections Officer and in the presence of a 3-member CARICOM Scrutinizing Team, political party representatives, accredited international and local observers, including the OAS Mission, advisors to GECOM and GECOM Commissioners themselves.

The process commenced on May 6, 2020. An initial ten workstations operated simultaneously, from 8 am to 7 pm daily at the Recount Centre to verify and tabulate the results in the 2339 ballot boxes. Two additional workstations were later added to improve the speed of the recount. GECOM provided a daily audio feed of the verification of the ballots and livestreamed the tabulation process through its Facebook page. Originally projected to last 25 days, the recount eventually ended on June 8, 34 days later.

Two members of the OAS Mission were present for the entirety of the recount. They reported that despite some organizational issues, the process was conducted in a professional, transparent and impartial fashion, which allowed GECOM, political parties and other stakeholders to accurately determine the results for each polling station. The findings of the OAS Observers were shared by the CARICOM Team of Scrutineers, who had been assigned a key role in Order 60 in verifying the recount results. These results found that the PPP/C was the winner of the elections, with 233,336 out of 460,352 valid votes at the national level and 233,661 out of 459,155 valid votes at the regional level. APNU+AFC had the second highest totals, with 217,920 votes at the national level and 217,055 votes at the regional level.<sup>15</sup>

Prior to the commencement of the recount, and in light of irregular actions by senior GECOM personnel directly witnessed by OAS observers, the OAS Mission had recommended<sup>16</sup> that any official who had displayed partisan behaviour during the electoral process should be excluded from the proceedings. In this regard, the Mission noted that, from his position as the supervisor of the recount process, and the official charged with delivering the official final results of the elections to the Commission, the Chief Elections Officer engaged in further irregular, unilateral and pernicious actions in the post-recount phase, which appeared directed at avoiding compliance with his obligations and further prolonging the term of the government at the time.

In its statement of July 10, 2020, the OAS accordingly observed that one of the principal obstacles to completing Guyana's 2020 electoral process was a person whose duty it was to defend Guyana's democracy through ensuring respect for the results of elections.<sup>17</sup>

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<sup>15</sup> "The Official Gazette (Extraordinary) of Guyana, 112/20 – Declaration of Results made under the Recount Order 60 of 2020," 20 August 2020, and "The Official Gazette (Extraordinary) of Guyana, 113/20 – Declaration of Results made under the Recount Order 60 of 2020 - Addendum", 21 August 2020.

<sup>16</sup> "Statement of the OAS Electoral Observation Mission to the March 2 General and Regional Elections in Guyana", OAS Press Release E-035/20, April 15, 2020, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-035/20](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-035/20)

<sup>17</sup> "OAS Statement on the Electoral Process in Guyana", OAS Press Release E-076/20, July 10, 2020, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-076/20](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-076/20)

### **iii. Matters before the Courts**

There were four major legal challenges following the March 2 poll, regarding the tabulation and determination of results. The first matter, *Reeaz Holladar v Clairmont Mingo et al*, was described earlier in this report. In the second case, *Ulita Grace Moore v the Guyana Elections Commission et al*, Ms. Moore, a regional candidate for APNU+AFC, applied to the High Court on March 17, 2020, for judicial review of and injunctions against GECOM's decision to recount the votes cast in the 10 Regions of Guyana, under the supervision of a CARICOM team. The matter was heard up to the level of the Court of Appeal which ruled, on April 7 that the injunctions should be discharged but that no outside party, in this case CARICOM, could assume supervision of the recount process.

In the third case, *Eslyn David v the Chief Elections Officer et al*, filed on June 18, 2020 Ms. David sought a declaration that GECOM had failed to act in accordance with the terms of the Recount Order, No. 60 of 2020, and the amended Order dated May 29, 2020, and had failed to determine a final credible result. She asked that the Chief Elections Officer be prevented from submitting his report to the GECOM Chairman without determining a final credible count. The case was heard to the level of the Caribbean Court of Justice (CCJ). On July 8, in a unanimous decision, the CCJ ruled against Ms. David and advised that GECOM should ensure the CEO submitted an elections report along the lines indicated in the Recount Order.

The fourth post-election case, *Misenga Jones v Guyana Elections Commission et al*, was filed at the High Court on July 14. Ms. Jones, a private citizen, sought to have the results of the national recount deemed invalid and compel GECOM to follow the advice of the Chief Elections Officer in determining the results of the elections using the ten March 13 declarations, which had already been struck down by the GECOM Chair on July 12. The case was heard to the level of the Court of Appeal and dismissed, in a unanimous decision, on July 30. The Court of Appeal agreed that the results of the elections should be determined using the recount results and that the CEO was bound to abide by the instructions of the GECOM Chair in this regard.

### **iv. Results of the General and Regional Elections**

Eleven political parties contested the March 2, 2020 General and Regional elections. At the end of the extended post-electoral process, the official results, based on the national recount, found that 460,352 valid votes had been cast in the General Elections. Of this number, 233,336 votes, were awarded to the People's Progressive Party/Civic (PPP/C), while A Partnership for National Unity + Alliance For Change (APNU+AFC) garnered 217,920 votes. At the Regional level, there were 459,155 valid votes, of which the PPP/C won 233,661 votes and APNU+AFC 217,055 votes.<sup>18</sup>

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<sup>18</sup> "The Official Gazette (Extraordinary) of Guyana, 112/20 – Declaration of Results made under the Recount Order 60 of 2020," 20 August 2020, and "The Official Gazette (Extraordinary) of Guyana, 113/20 – Declaration of Results made under the Recount Order 60 of 2020 - Addendum", 21 August 2020.

On August 2, 2020, the Guyana Elections Commission declared Dr. Mohamed Irfaan Ali the President of Guyana.

Of the 65 seats in the National Assembly, the PPP/C earned 21 seats from the National Top-Up List and 12 seats from geographical constituencies, for a total of 33 seats. The APNU+AFC coalition earned 18 seats from the Top-Up List and 13 seats from geographical constituencies, for a total of 31 seats. The Joined Lists of A New & United Guyana (ANUG), Liberty and Justice Party (LJP) and The New Movement (TNM) earned one seat from the National Top-Up List.

Of the 205 seats on Regional Democratic Councils, the PPP/C won 109 seats, APNU+AFC won 93 seats, the LJP took two seats and Change Guyana, one seat.

The distribution of seats at the national and regional levels is shown in Tables 1 and 2.

**Table 1: Allocation of Seats - General Elections**

Political Party	National Top-Up List	Geographical Constituencies	Total Seats Allocated
A Partnership for National Unity + Alliance For Change	18	13	<b>31</b>
People's Progressive Party / Civic	21	12	<b>33</b>
Joined Lists (A New & United Guyana; Liberty & Justice Party; The New Movement)	1	-	<b>1</b>
<b>TOTAL SEATS</b>	<b>40</b>	<b>25</b>	<b>65</b>

Source: Guyana Elections Commission, Official Gazettes 112/20 and 113/2020

**Table 2: Allocation of Seats - Regional Democratic Councils**

Region	# Seats per Region	APNU+AFC	Change Guyana	LJP	PPP/C
1	15	5	-	-	10
2	17	5	-	-	12
3	27	9	-	-	18
4	35	20	1	-	14
5	18	8	-	-	10
6	30	10	-	-	20
7	15	8	-	1	6
8	15	7	-	1	7
9	15	6	-	-	9
10	18	15	-	-	3

Region	# Seats per Region	APNU+AFC	Change Guyana	LJP	PPP/C
<b>TOTAL</b>	<b>205</b>	<b>93</b>	<b>1</b>	<b>2</b>	<b>109</b>

Source: Guyana Elections Commission, Official Gazettes 112/20 and 113/2020

## **G. FINDINGS AND RECOMMENDATIONS**

Based on its analysis of the electoral system, the information it gathered through discussions with national and electoral authorities, political parties, civil society and the international community prior to the elections, its observations on Election Day and its observations of the post-electoral process, the OAS Mission wishes to offer the following recommendations:

### **i. Structure of the Electoral Authority**

The Mission observed the deep polarization among the members of the Guyana Elections Commission and the challenges this created in arriving at consensus on most issues, particularly a resolution of the electoral uncertainties in the complex post-electoral phase. The divisions appear to exert undue pressure on the Chairperson and the use of his/her casting vote to resolve decisions before the Commission.

The Mission therefore recommends:

- Guyana engages in a multi-stakeholder discussion on the structure of the electoral authority in order to enhance the deliberative nature and decision-making of the Commission and to imbue greater impartiality and credibility in this important institution.

### **ii. Electoral Organization**

While the challenges in Region Four regarding the tabulation and declaration of results cast a shadow over the overall electoral process, the work of the Guyana Elections Commission in organizing the elections themselves demonstrated a strong commitment to delivering a process that complied with the provisions of the prevailing electoral legislation. Also, the activities and processes observed by the Mission prior to Election Day, including training sessions for poll workers, and the consistently strong performance of those poll workers on Election Day, are to be commended. The Mission however noted several areas in which the electoral process and system could benefit from greater agility and certainty – particularly in ensuring that the will of voters, as expressed at the ballot box, is reflected in the final results of any election.

The Mission therefore recommends:

### Integrity of the Electoral Process

- The pertinent national authorities, including the Guyana Elections Commission, should undertake a comprehensive analysis of the events following the close of the polls on March 2, 2020, particularly the occurrences in Region Four, which gave rise to significant distrust in the initial election results and eroded confidence in the electoral system and process.
- The findings of this analysis should be applied to an evaluation of Guyana’s electoral framework, including electoral legislation, regulations, procedures and practices, as well as any provisions related to electoral offences and crimes, in order to identify and remedy any areas in which weaknesses currently exist, and which may have enabled the challenges witnessed in the 2020 electoral process.
- Given the role played by senior election officials in the 2020 challenges, the evaluation should include an assessment of the role, responsibilities and authority as well as the recruitment process of election officials at all levels, to ensure that sufficient checks and balances exist and that the overall authority of the Guyana Elections Commission is clarified.

### Access to the Vote

- Consider extending the categories of persons who are entitled to vote early to poll workers.

### Voting Procedures

- As noted by the 2015 EOM, and in order to avoid long lines of voters waiting to cast their ballots, GECOM should consider introducing a standardized process that will allow the verification of more than one voter while one voter is casting his/her ballot.
- Review and resolve the question of utilizing private residences as polling places well ahead of the next elections, to ensure that the uncertainty this issue generated prior to the 2020 elections does not reoccur.

### Tabulation Procedures

- Review, update and standardize the existing instruction manuals for electoral officials to resolve conflicting information, provide more comprehensive and explicit guidance and ensure that updated reference information is available to staff at polling stations.

### **iii. Electoral Technology**

Guyana’s largely manual electoral system requires the transportation of electoral materials, including the Statements of Poll, by land, water and air to the Returning Officers in each of

the 10 Regions and to the Chief Elections Officer in Georgetown, in order to facilitate the tabulation, verification and declaration of the results of the elections. The only area of automation in the counting process currently occurs at the Office of the Chief Elections Officer, where a computer application, specifically designed by GECOM for this purpose, supports the tabulation of the results.

Development of a technology solution that allows the collection and transmission of images of the Statements of Poll and collated results from regional locations to a central server location in Georgetown, would allow Guyana to implement a more modern tabulation system which facilitates the publication of preliminary results.

The Mission therefore recommends:

- Consider implementing a system to issue preliminary results for national elections, in order to make this information available on Election Day or on the morning thereafter. This would include establishment of a central computerized results receiving center, where election results summaries are transmitted electronically from each of the ten Regions to the Chief Elections Officer. Scanned Statements of Poll can be sent to the CEO simultaneously to be published alongside the digitized electoral results.
- Develop a technology solution for the electoral system which supports the final tabulation of the results of the election.
- Publish official tabulated elections results online, through the Electoral Commission’s official website, to ensure faster and simultaneous transmission to a wider audience, including political parties, journalists and citizens.
- Establish a help desk management system to manage and control the delivery of electoral material; monitor and control the opening and closing of the polls; and manage the delivery of information and support to electoral workers, and others.

#### **iv. Electoral Registries**

The Mission found that electoral administrators were competent and professional and complied with the existing laws and procedures in the registration of eligible electors. The Mission however identified several areas in which revised approaches would enhance the efficiency of the process as well as the credibility and acceptance of the Official List of Electors.

The Mission therefore recommends:

##### Registration of Electors

- Introduce an appropriate technology solution in order to enhance accuracy, transparency and efficiency in the voter registration system.

### Update of the National Register of Registrants

- Review and amend the electoral laws to establish a legal framework for the periodic cleansing and updating of the National Register of Registrants. This should be undertaken as soon as practicable and well in advance of the next election.

### Automatic Verification of New Electors

- Consider a process whereby the data of registrants who have reached the age of 18 is extracted from the NRR on a monthly basis and sent to the Registration Officers of the respective divisions for field research and verification. This will allow the database to be regularly updated and significantly reduce the numbers of persons in this category to be verified prior to an election.

### Official List of Electors (OLE)

- Revise the structure of the OLE to facilitate the extraction of data, providing the total number of electors at the end of the respective pages for subdivisions, divisions, polling districts and the overall List.

## **v. Electoral Justice**

In Guyana the posts of Chancellor and Chief Justice are the top two judicial posts. Both posts are currently held in an acting capacity – a circumstance that has been noted, with concern, by Guyana’s final appellate court, the Caribbean Court of Justice and by national and regional legal bodies. In commenting on the circumstance in 2017, former Chief Justice of the Caribbean Court of Justice, Justice Dennis Byron, noted that prolonged acting appointments pose “a genuine risk to the constitutional promise to every citizen of an independent and impartial judiciary”.<sup>19</sup>

Following an election, a person complaining of an unfair process or the commission of election offences may, within 28 days, file an election petition before the High Court. While there is no time limit for the determination of such a petition, it should be dealt with expeditiously. Some parties complained about the length of time it takes to determine election petitions. The Mission notes that a petition filed by the People’s Progressive Party/Civic (PPP/C) following the 2015 poll, was still awaiting a ruling by the High Court when the 2020 elections were held.

The Mission therefore recommends:

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<sup>19</sup> Byron, Dennis. “The importance of an Independent and Impartial Judiciary- Placing the Spotlight on Judicial Accountability”. November 11, 2017, Georgetown, Guyana. <https://ccj.org/wp-content/uploads/2017/11/The-Importance-of-an-Independent-and-Impartial-Judiciary-%E2%80%93-Placing-the-Spotlight-on-Judicial-Accountability.pdf>

- Engage efforts at the earliest opportunity to confirm the positions of Chancellor and Chief Justice of Guyana in order to avoid negative perceptions of the independence of the judiciary.
- Establish an appropriate timeframe for the determination of an election petition by the High Court, in the interest of justice and settling an election. This should also apply to an appeal on an election petition before the Court of Appeal.

#### **vi. Political Finance**

The provisions of the Representation of the People Act (ROPA)<sup>20</sup> stipulate that candidates must provide GECOM with a report on their expenses no later than 35 days after the declaration of the results of the elections. The provisions set a limit on expenses of GY\$50,000 (US\$240) per candidate or agent for candidates who are listed no lower than #53 on the list of candidates. The Mission was informed that these reports are not typically submitted.

The Act does not regulate private financing or anonymous donations. There is no guidance on the use of state resources and there are limited enforcement mechanisms. In its discussions with the political parties, the Mission was however advised that there was broad support among stakeholders for updated campaign finance legislation.

The Mission therefore recommends:

- Discuss and enact comprehensive legislation and regulations to govern campaign financing, including identification of the sources of funding, prevention of anonymous donations, limitation of private and in-kind donations to political and electoral campaigns, limitations on contributions from individuals and corporations, clear reporting requirements of candidates and political parties and provisions regarding access to information.
- Engage all stakeholders in a national process leading to the development and approval of the legislation and regulations. In this regard, an Independent National Commission, with representation from the National Assembly, the Executive, political parties and civil society, could be a useful mechanism to discuss modalities and suggest draft legislation on campaign financing regulations. The OAS model legislation on campaign finance, as well as efforts in other CARICOM and/or Commonwealth countries that have adopted legislation on political financing, might be a useful point of departure for these discussions.

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<sup>20</sup> Representation of the People Act, Chapter 1:03, - Part XII – Election Expenses, [https://www.gecom.org.gy/assets/docs/laws/Cap\\_103\\_Representation\\_of\\_the\\_People.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_103_Representation_of_the_People.pdf)

## **vii. Political Participation of Women**

Guyana remains a leader in the Anglophone Caribbean in legislating the political participation of women; the Election Laws (Amendment) Act of 2000<sup>21</sup> mandates that political parties must include 33% of women on their candidate lists for election to the National Assembly. The gender quota has positively impacted the inclusion of women in the parliament, from 18.5% in 1999 to 32.3% in 2015.<sup>22</sup> For the 2020 elections, 21 women (32.3%) were elected to the 65-member National Assembly.<sup>23</sup>

While GECOM scrutinizes candidate lists to ensure that they comply with the gender quota – and refuses those that do not – there are no enforceable gender quotas for the persons extracted from the list to enter the parliament. While the Election Laws (Amendment) Act of 2000 dictates that in extracting names from the candidate list, “account shall be taken” of the 33% quota as well as “the proportion that women are formed of the electorate,” this is not a binding commitment to ensure that at least 33% of elected officials are women. There are no sanctions for non-compliance with this provision.

In Guyana, women are well represented within political parties. However, while women hold leadership positions in the women’s arms of the parties, they are less well-represented in leadership. Of the nine parties or groups which contested the elections for the National Assembly, only 3 had female presidential candidates. Two parties fielded female Prime Ministerial candidates.

The Mission therefore recommends:

- Revise the legislation to strengthen the effectiveness of the existing gender quota, ensuring that the persons extracted from the candidate lists to enter the parliament reflect the gender composition of those lists. Also, consider the inclusion of measures to progressively encourage parity in the extraction of members of parliament from the lists, in order to promote the equal representation of men and women in the National Assembly.
- Compile and publish gender-disaggregated data on the various electoral processes, including data on candidates, electors, voters and poll workers.
- Formalize and enforce policies to expedite the voting process for pregnant women, women with young children, disabled voters and the elderly, while educating all electors on the right of these persons to move through the voting process quickly and, where needed, with assistance.

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<sup>21</sup> Election Laws (Amendment) Act 2000, Act No. 15 of 2000, [https://www.gecom.org.gy/assets/docs/laws/Local\\_Authorities\\_Elections\\_ACT\\_NO\\_15\\_OF\\_2000.pdf](https://www.gecom.org.gy/assets/docs/laws/Local_Authorities_Elections_ACT_NO_15_OF_2000.pdf)

<sup>22</sup> Data provided by the National Assembly of Guyana.

<sup>23</sup> Data provided by the National Assembly of Guyana.

- Protect all candidates, particularly women and youth, from social or economic retribution if they choose to stand as candidates. Political aspirants should have guarantees of legal recourse if they lose employment based on participation in electoral politics.
- Political parties, civil society and other relevant stakeholders should collaborate in developing training programs and other initiatives that promote women's participation and leadership in politics.

## **H. ACKNOWLEDGEMENTS**

The Mission wishes to thank the Government of the Cooperative Republic of Guyana, the Guyana Elections Commission, the stakeholders with whom it met and all citizens, for their willingness to engage in frank and open discussions on the issues arising in the electoral process. These discussions contributed significantly to the successful completion of the Mission's work.

The Mission is also grateful for the financial contributions of the governments of Bolivia, Brazil, Chile, France, Guatemala, Korea, Mexico, Panama and the United States, which made this Mission possible.

## II. ANNEXES – REPORTS BY TOPIC

### i. ELECTORAL ORGANIZATION AND TECHNOLOGY

#### 1. Introduction

The Cooperative Republic of Guyana is a semi-presidential parliamentary republic within the Commonwealth of Nations. Elections to the 65-seat unicameral National Assembly, constitutionally due every five years, are held under a system of proportional representation with an element of geographical and gender representation. Twenty-five members are elected from the 10 geographic constituencies, while the remaining 40 members are drawn from a closed national list (known as the “National Top-Up list”), named by the political parties.

The President is the Head of State and Head of Government. In nominating candidates for general elections each political party must designate a presidential candidate, who is deemed elected if the party wins a majority of votes. The President can only be elected for two terms. The Prime Minister, other ministers of Government, the Attorney General and other high-ranking officials are appointed by the President.

Executive power is exercised by the President, while legislative power rests in the National Assembly. The judiciary exercises its authority independently of both the executive and legislative branches.

General and Regional Elections were held on March 2, 2020, with a Voters’ List comprising 660,998 electors. Eleven political parties contested at the national and regional levels. Following an extended post-electoral process, which included several legal challenges and a national recount of all ballots cast on March 2, the final results of the elections were declared on August 2, 2020.

<b>IMPORTANT DATES</b>	
Passage of No-Confidence Motion	December 21, 2018
CCJ Confirmation of No-Confidence Motion	June 18, 2019
Announcement of Election Date	September 25, 2019
Dissolution of the Parliament and RDCs	December 30, 2019
Nomination Day	January 10, 2020
Disciplined Services Vote	February 21, 2020
Election Day	March 2, 2020
Initiation of National Recount	May 6, 2020
Conclusion of National Recount	June 8, 2020
Declaration of Results	August 2, 2020

## 2. Legal Framework

The legal framework for elections in Guyana is provided by the Constitution of the Co-operative Republic of Guyana (Chapter 1:01),<sup>24</sup> the Representation of the People Act (Chapter 1:03),<sup>25</sup> the National Assembly (Validity of Elections) Act (Chapter 1:04),<sup>26</sup> the National Registration Act and Regulations (Chapter 19:08),<sup>27</sup> the Local Democratic Organs Act (Chapter 28:09)<sup>28</sup> and the Local Authorities Elections Act (Chapter 28:03).<sup>29</sup>

## 3. Electoral Framework

### a. Electoral Commission

Articles 62 and 161-162 of the Constitution establish the Guyana Elections Commission (GECOM). GECOM is a permanent, independent body with responsibility for the organization, administration and conduct of elections in Guyana. It consists of a full-time Chairman and six Commissioners. The Chair is appointed by the President from a list of six candidates, not unacceptable to the President, which is provided by the Leader of the Opposition after meaningful consultation with political parties represented in the National Assembly. The six Commissioners are appointed by the President – three at his own discretion and three on the advice of the Leader of the Opposition, after meaningful consultation with non-governmental parties represented in the National Assembly.

GECOM establishes policy relating to the registration of voters, the maintenance of the Voters' List and the administration of all national, regional and local government elections. GECOM is also tasked with appointing and managing all staff working on elections and ensuring the efficient functioning of the Commission's Secretariat.

The Commission is supported by a Permanent Elections Secretariat headed by the Chief Election Officer (CEO), who is responsible for implementing the policies issued by GECOM relating to preparations for and delivery of elections, including voter registration, training election workers, implementing civic education campaigns, and the reconciliation of Statements of Poll on Election Day. The CEO is responsible for certifying the results of the elections, based on the compilation of the original Statements of Poll from each polling station and after having informed members of the Commission.

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<sup>24</sup> Constitution of the Co-operative Republic of Guyana, Chapter 1:01, Act 2 of 1980 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_101\\_Constitution.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_101_Constitution.pdf)

<sup>25</sup> Representation of the People Act, Chapter 1:03, Act Reg. 24/1964 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_103\\_Representation\\_of\\_the\\_People.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_103_Representation_of_the_People.pdf)

<sup>26</sup> National Assembly (Validity of Elections) Act, Chapter 1:04, Act Reg. 40 of 1964 (and its amendments), <https://mola.gov.gy/information/laws-of-guyana>

<sup>27</sup> National Registration Act, Chapter 19:08, Act 24 of 1967 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_19.08\\_National\\_Registration\\_Act.pdf?v=2](https://www.gecom.org.gy/assets/docs/laws/Cap_19.08_National_Registration_Act.pdf?v=2)

<sup>28</sup> Local Democratic Organs Act, Chapter 28:09, Act 12 of 1980 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_28.09\\_Local\\_Democratic\\_Organs.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_28.09_Local_Democratic_Organs.pdf)

<sup>29</sup> Local Authorities (Elections) Act, Chapter 28:03, Act 23 of 1969 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_28.03.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_28.03.pdf)

Section 7 of the Representation of the People Act (ROPA) provides that in the delivery of the electoral process, the Chief Elections Officer shall be supported by a Returning Officer and Election Clerk at the District level; a Presiding Officer, Poll Clerk and Counting Assistant at each polling station; and such Deputy Returning Officers, Assistant Presiding Officers and other staff as are required for the implementation of the ROPA.

b. Electoral Divisions

Article 160 (2) of Guyana’s Constitution stipulates that the parliament is responsible for the division of Guyana into geographical constituencies and for the election in each constituency of the number of members that it decides. Section 11A of the Representation of the People Act provides in this regard that Guyana shall be divided into ten electoral/geographical constituencies (Polling Districts), which are the same as its ten administrative regions.<sup>30</sup>

The ten Polling Districts are further divided into Polling Sub-Districts and Polling Divisions/Sub-Divisions. For elections, the Returning Officer, with the approval of the Chief Election Officer, establishes as many Polling Places and Polling Stations as may be required for each Polling Division or Sub-division. For the March 2, 2020 poll, there were 2,339 polling stations serving 660,998 electors, as shown in Table 1.

**Table 1: Polling Stations and Electors by Region**

Region	Name	Polling Stations	Electors
Region 1	Barima-Waini	99	18,952
Region 2	Pomeroon - Supenaam	135	37,979
Region 3	Essequibo Islands – West Demerara	355	100,758
Region 4	Demerara – Mahaica	879	285,618
Region 5	Mahaica – Berbice	158	44,663
Region 6	East Berbice – Corentyne	378	99,131
Region 7	Cuyuni - Mazuruni	82	14,887
Region 8	Potaro – Siparuni	55	7,431
Region 9	Upper Takutu – Upper Essequibo	73	17,771
Region 10	Upper Demerara - Berbice	125	33,808
	<b>Total:</b>	<b>2,339</b>	<b>660,998</b>

Source: Official List of Electors 2020, Guyana Elections Commission (GECOM)

Following elections Guyana utilizes the Hare quota/largest remainder method to distribute the seats in the House of Assembly according to the votes cast for the competing parties. While the limited number of seats in most constituencies (five constituencies have 2 seats and two constituencies have 1 seat) could make it challenging to achieve an equal distribution at the geographic level, the application of proportionality in the national “top-up” list helps to adjust for potential distortions.

<sup>30</sup> Representation of the People Act, Section 11 (A 2-3)

**Table 2: Distribution of Geographic Seats**

Region	1	2	3	4	5	6	7	8	9	10	Total
Seats	2	2	3	7	2	3	2	1	1	2	25

Source: Representation of the People Act, Section 11 (A) (4)

Nevertheless, considering the significant disparities that exist between the voting populations of the different Regions of Guyana (the largest constituency, Region 4, had over 285,000 electors, while the smallest, Potaro-Siparuni, had 7,431 voters), a regular review of the distribution of geographic seats, in keeping with population changes, would support efforts to ensure balanced representation.

c. Political Parties

Eleven political parties/coalitions contested the elections at the national and regional level. The two principal contenders, A Partnership for National Unity + Alliance For Change (APNU+AFC) coalition and the People's Progressive Party / Civic (PPP/C) were the only ones to contest both the general and regional elections in all ten regions. Two parties – the Federal United Party (FUP) and the Organisation for the Victory of the People (OVP) – each contested in a single constituency at the regional level only.

Three parties – A New and United Guyana (ANUG), the Liberty and Justice Party (LJP) and The New Movement (TNM) – requested their lists be joined under Section 22 of the Representation of the People Act. The Mission was informed that it was the first time that Section 22 had been applied in an electoral process in Guyana.

The political parties and the regions in which they contested elections are indicated in Table 3.

**Table 3: Political Parties and Elections Contested by Region**

Political Party	Type of Election	Administrative Regions										
		1	2	3	4	5	6	7	8	9	10	
A New & United Guyana (ANUG)	General		✓	✓	✓	✓	✓	✓	✓			✓
	Regional											
A Partnership for National Unity + Alliance For Change (APNU+AFC)	General	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Regional	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Change Guyana (CG)	General		✓	✓	✓	✓	✓	✓				✓
	Regional		✓	✓	✓	✓	✓					✓
Federal United Party (FUP)	General											
	Regional						✓					
	General	✓	✓		✓			✓	✓	✓		

Political Party	Type of Election	Administrative Regions									
		1	2	3	4	5	6	7	8	9	10
Liberty and Justice Party (LJP)	Regional	✓	✓		✓			✓	✓	✓	
Organisation for the Victory of the People (OVP)	General										
	Regional				✓						
People's Progressive Party / Civic (PPP/C)	General	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Regional	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
People's Republic Party (PRP)	General	✓	✓	✓	✓	✓	✓				✓
	Regional			✓	✓	✓	✓				✓
The Citizenship Initiative (TCI)	General		✓	✓	✓	✓	✓				✓
	Regional										
The New Movement (TNM)	General			✓	✓	✓	✓		✓		✓
	Regional										
United Republican Party (URP)	General	✓	✓	✓	✓	✓	✓	✓		✓	✓
	Regional	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Source: Guyana Elections Commission (GECOM)

#### 4. Registration of Electors and the Voters' List

Article 59 of the Constitution of Guyana stipulates that every citizen of Guyana or Commonwealth citizen domiciled and residing in the country, who is eighteen or older, is eligible to vote.<sup>31</sup> Under Guyana's National Registration Act, three lists of voters are prepared during each electoral process - the Preliminary List of Electors (PLE), the Revised List of Electors (RLE) and the Official List of Electors (OLE).

The Preliminary List of Electors (PLE) is extracted from the central register – the National Register of Registrants (NRR). The Revised List is published following a Claims and Objections process. The Official List is determined following a 21-day period for the incorporation of additional amendments to the RLE.

The Preliminary List of Electors (PLE) was published on September 25, 2019, and contained 646,625 persons. Claims and Objections were processed from October 1 to November 18, 2019 and the Revised List was published on December 31, 2019 with 661,378 names. The Official List of Electors, which as published on February 1, 2020, contained 660,998 electors.

<sup>31</sup> Article 59, Constitution of Guyana.

## 5. Electoral Organization

### a. Training of the Poll Workers

GECOM implemented a cascade model of training to prepare electoral staff for Election Day. Training sessions were held at the national level, with the core trainers, under the supervision of the Chief Elections Officer. Information was subsequently disseminated downwards to staff at the regional and local levels through briefings, role-playing and mock polls for appointed staff, including Presiding Officers, Assistant Presiding Officers, Poll Clerks and Counting Assistants/Ballot Clerks. The Mission requested, but did not receive, data on the percentage of poll workers trained.

In order to make the training accessible for all poll workers, GECOM conducted sessions both during the day and at night. The material provided and the format of training sessions allowed experienced election workers to review procedures and new members of electoral staff to become familiar with the concepts and procedures of voting.

Information provided by GECOM indicated that electoral staff were trained from February 8 to February 26, 2020.<sup>32</sup> Briefings were also provided for Returning Officers and Deputy Returning Officers on the election plan and deployment of support staff. Election staff were provided with the *Official Manual for Returning Officers & Other District Staff* and the *Official Manual for Presiding Officers & Other Polling Day Officials* to guide their work on Election Day. In this regard the Mission identified several deficiencies in the manuals provided which suggested an urgent need for updating and reprinting the existing material.

### b. Access to Information

Informative material on the elections was available on GECOM's website, including legislation governing the electoral process, the Official List of Electors and the approved list of political parties and candidates. Videos and infographics on the electoral system and the voting process were also available in GECOM's online Information Hub. Electors were able to use a search engine on GECOM's website to locate their assigned polling stations. During its deployment in Guyana, the Mission also noted the distribution of electoral information and guidelines through the local media.

### c. Delivery of Electoral Material

The Mission was informed that the process of preparing and delivering electoral materials commenced on January 31, 2020, with the packing of non-sensitive supplies, and ended on March 1, 2020, when election material was fully distributed to the Presiding Officers in the ten constituencies across the country.

Although there was no electronic tracking system that allowed constant monitoring of the delivery operations, the Mission noted the presence of party agents who monitored the

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<sup>32</sup> Guyana Elections Commission "Workplan for GRE 2020 (E-31 days).

transportation and distribution of materials at various locations. Members of the OAS Mission also observed the final stages of the distribution process at GECOM's main office and at staging areas in Regions 3 and 4.

#### d. Voting Procedures

On Election Day in Guyana, electors cast their votes at one of the 2,339 polling stations established across the country. In order to cast a ballot, an eligible elector must be present at his/her designated polling station. Guyanese law currently makes no provisions for overseas or absentee voting by ordinary voters. Certain categories of voters may however cast their vote by proxy or as a non-resident elector.

Section 30 (1) of the Representation of the People Act stipulates that eligible electors are entitled to vote by proxy at an election if they will be engaged in election-related work on Election Day (e.g. as a member of the disciplined services, a rural constable or if they are assigned election duties by a Returning Officer); if they will act as Returning Officer for a district other than the district in which they will vote; if they are employed by the Transport and Harbours Department and will be engaged in piloting a vessel on Election Day; if they are a candidate in the election; or if they are physically incapacitated.

A proxy vote can only be cast by a registered voter who is eligible to vote at the same polling station as the voter he/she is representing and who casts his/her vote at the same time as the proxy vote. An elector cannot be appointed as a proxy for more than two other electors.

Section 44 (1) of the ROPA also provides for overseas voting by an ambassador or High Commissioner representing Guyana abroad, their spouses and children, the staff of embassies and high commissions, and their spouses and children.

For the 2020 elections, the Mission heard concerns from some stakeholders that workers in the relatively new oil sector, who were scheduled to work offshore on Election Day, were provided with no options to cast their vote as they did not qualify for either early or proxy voting.

#### *Poll Staff*

On Election Day each polling station is assigned a team of electoral workers including a Presiding Officer, an Assistant Presiding Officer, a Poll Clerk, and a Ballot Clerk/Counting Assistant. In locations with several polling stations, there is also an Information Poll Clerk who is responsible for guiding electors. These election officials report to the Returning Officer and the Deputy Returning Officer of the Region. Members of the disciplined services are present at polling stations for security purposes.

#### *Voting Process*

On Election Day, all poll workers are expected to report for duty at 5 am. The Presiding Officer inspects and arranges the premises, ensures that all materials and requirements are

present for the proper conduct of the poll and guarantees that the ballot box is sealed and positioned. In the presence of the poll staff and party agents, the Presiding Officer also determines the unique six-digit number for the stamp – the official mark placed on each ballot. Once all arrangements are complete, the Presiding Officer declares the polling station open.

Polling stations are opened from 6 am to 6 pm. Each elector approaches the polling station and presents an identification card. The Official List of Electors (OLE) is checked and once the identity of the elector is validated, a confirmation mark is placed against the number of the elector. The Presiding Officer then checks the voter's right index finger, writes the serial number on the counterfoil of a ballot, stamps it with the six digit official mark and gives it to the elector. The voter proceeds to the voting compartment, marks the ballot and returns to the Presiding Officer's table with the ballot folded. The elector deposits the ballot in the box and dips his/her finger in the electoral ink.

Electors who are physically incapable of casting their ballot may direct the Presiding Officer, in the presence of Poll Clerks and party agents, to cast their vote according to their instructions. Registered voters who do not have their ID cards may be allowed to vote after swearing their identity through Form 19 - Oath of Identity. Members of the Mission noted multiple instances of the use of Form 19 during the course of Election Day.

#### *Closing of the Poll and Counting of Votes*

Polls close at 6 pm. If there are electors standing in line at that time, they are allowed to vote. Thereafter, in the presence of the poll workers and the candidates or their agents, the Presiding Officer counts the spoiled and unused ballots, checks this total against the number of ballots supplied, opens the ballot boxes and proceeds to the counting of votes.

Upon the conclusion of the count, the Presiding Officer seals the counted and rejected ballots papers in separate packet and completes the Statement of Poll, Form 23A, which is signed by the polling (party) agents present for the count. A copy of Statement of Poll is posted outside of the polling station and the ballot box and all electoral materials delivered to the Returning Officer/Deputy Returning Officer.

Upon receipt of the Statements of Poll from polling stations under their supervision, the Deputy Returning Officers for each region (polling district) verify and collate the preliminary results. The Mission noted that 10 polling stations on average are assigned to each of these officials. The Deputy Returning Officers then submit a signed copy of the collated results for their assigned areas to the Returning Officer who compiles all of the data for the region and communicates it to the Chief Elections Officer by the quickest means available.

Thereafter, the Returning Officer, in the presence of such persons who are entitled to be present, ascertains the total votes cast in favor of each list and publicly declares the results of the election in the region (polling district) using Form 24 (Election Return). These results are final unless the assigned Counting Agent for the region requests a recount of the votes cast before noon of the day after the results are declared. For the March 2020 poll, the

Mission noted there were several requests for recounts at the regional level. While some recounts proceeded, others were denied on the basis that the requesting Counting Agents had not been duly appointed.

## **6. Electoral Technology**

### **a. Transmission of Results**

Guyana's electoral process does not include the use of a data communication infrastructure. After the ballots are counted at the polling station, the Statements of Poll and other electoral materials are manually transported by land, water and air to the Returning Officers of each of the 10 Regions and thereafter to the Chief Election Officer in Georgetown.

### **b. Tabulation Process and Counting Process**

Results are primarily tabulated manually at the various stages of the process. At the main GECOM Office however, once the Statements of Poll are received, the results data is tabulated using a computer application specifically designed for the purpose by GECOM's Information Technology staff. Data Entry Clerks are responsible for inserting the information from the original Statements of Poll into a central database. Tabulated results are then collected from the database to prepare the official declaration of elections results at a regional and national level.

## **7. Observations on Election Day and in the Post-Electoral Period**

The Mission observed that the election material was received on time and there were no significant delays in the opening of the polls. Presiding Officers and other members of the poll staff, along with party agents, followed procedures professionally and in accordance with electoral laws. While the Mission saw long lines in the morning at many polling stations people waited patiently, in most instances, to cast their vote and by midday most lines had disappeared. Although observers noted that the atmosphere in some polling division was tense, there were no visible signs of intimidation or violence. Police officers were present at all polling sites in order to maintain security and order.

In general the polls closed at 6 pm, or as soon as the last electors in line at that time had voted. The vote count at the polling stations observed proceeded carefully and efficiently, although the Mission detected occasional difficulties in counting the ballots, primarily as two counts – General and Regional elections – were happening simultaneously. From the Mission's observations, the overall tabulation of results, proceeded in accordance with the electoral law in nine of the ten regions of Guyana.

### **a. Issues in Region 4**

In Region 4, however, which contains the largest number of electors and polling stations in Guyana, there were significant challenges in the tabulation process. These challenges, which developed initially in the building which served as both the Office of the Returning Officer

for Region 4 and the Office of the Chief Elections Officer during the electoral process, included the following:

- Beginning on the morning of March 4, after approximately 300 of the 879 Statements of Poll for Region 4 had been verified, extended delays and repeated interruptions in the tabulation process for various irregular reasons, including, according to GECOM officials, the unavailability of electoral workers to conduct the verification and tabulation.
- Repeated disruptions in the tabulation room and in other areas of building, typically following announcements or actions by GECOM officials that undermined the transparency of the process. On March 4 at approximately 1:00 pm, for example, the Chief Elections Officer announced that instead of verifying the results from the official Statements of Poll in the presence of the authorized party representatives, the election clerks would instead use a spreadsheet that had been prepared by GECOM. The results included on the spreadsheet were significantly different from the results on the Statements of Poll held by the party representatives.
- On March 5, at around 11:20 am, evacuation of the building by all GECOM staff following an alleged bomb threat. While political party representatives and international observers remained in the building to monitor the sensitive electoral materials present in the Region 4 tabulation room during this time, these materials remained outside GECOM's chain of custody for several hours.
- A declaration of results for Region 4 on March 5 by the Returning Officer (at 1:00 pm and again at 2:20 pm approximately), while the tabulation process was at a standstill and while a significant number of Statements of Poll had not yet been reviewed in the presence of party representatives, as required by law. That declaration awarded the win in Region 4 to the APNU+AFC coalition;<sup>33</sup> an outcome that was strongly disputed by other party representatives.
- Disorder and physical altercations at the building on the evening of March 5, between the security services and political party representatives. As events escalated, members of the OAS Mission who were present to observe the process were obliged to withdraw.

Following the disturbances of March 5, the Office of the Returning Officer for Region 4 was closed, effectively halting the process entirely. The process remained at a standstill from March 5 through March 12, while matters concerning the tabulation were addressed by Guyana's High Court - specifically, an injunction blocking the declaration of the results for Region 4, until the Returning Officer complied with the electoral law in determining the votes cast for each list of candidates.

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<sup>33</sup> Taken from Form 24 – General and Regional Elections Returns, as published in “Commotion at GECOM Command Centre ...as GECOM releases unverified results for Region Four,” Kaieteur News, March 6, 2020, <https://www.kaieteurnewsonline.com/2020/03/06/commotion-at-gecom-command-centre-as-gecom-releases-unverified-results-for-region-four/> (accessed December 1, 2020).

The building was re-opened and the process resumed on the morning of March 13. The Mission noted that in respect of several polling stations there continued to be significant discrepancies between the Statements of Poll presented by the Returning Officer and those in the possession of party representatives. A further resort to the High Court ensued after the Returning Officer refused to comply with the court's orders regarding the tabulation procedures. Following further direction from the High Court, the Returning Officer completed the process in keeping with the electoral law – though the Mission noted that he did not review the Statements of Poll that had already been processed using the earlier flawed approach.

A second declaration of the results issued by the Returning Officer for Region 4, just before midnight on March 13, also found APNU+AFC to be the winner of the Region 4 election.<sup>34</sup>

#### b. National Recount

Concerns by multiple stakeholders that the results provided by the Elections Commission were flawed, resulted in a decision by GECOM on April 3, to proceed with a national recount of all ballots cast in the March 2 poll. On May 4, GECOM published Order 60 of 2020 in the Official Gazette of Guyana,<sup>35</sup> which established the legal basis as well as the procedural and administrative guidelines for the recount. Order 60 also signaled that the results of the recount would be the official, final results of the 2020 process.

The recount was conducted by GECOM employees under the direct supervision of the Chief Elections Officer and in the presence of a 3-member CARICOM Scrutinizing Team, political party representatives, accredited international and local observers, including the OAS Mission, advisors to GECOM and GECOM Commissioners themselves.

The process commenced on May 6, 2020. An initial ten workstations operated simultaneously, from 8 am to 7 pm daily at the Recount Centre to verify and tabulate the results in the 2339 ballot boxes. Two additional workstations were later added to improve the speed of the recount. GECOM provided a daily audio feed of the verification of the ballots and livestreamed the tabulation process through its Facebook page. Originally projected to last 25 days, the recount eventually ended on June 8, 34 days later.

Two members of the OAS Mission were present for the entirety of the recount. They reported that despite some organizational issues, the process was conducted in a professional, transparent and impartial fashion, which allowed GECOM, political parties and other stakeholders to accurately determine the results for each polling station. The findings of the

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<sup>34</sup> Taken from Form 24 – General and Regional Elections Returns, as published in “Region Four vote count completed after suspect process – recount request expected,” Stabroek News, March 14, 2020, <https://www.stabroeknews.com/2020/03/14/news/guyana/region-four-vote-count-completed-after-suspect-process/> (accessed November 19, 2020).

<sup>35</sup> “The Official Gazette (Extraordinary) of Guyana, 60/2020,” 4 May 2020, [https://www.gecom.org.gy/assets/docs/Press\\_Releases/2020/Gazetted\\_Order\\_Recount\\_5May2020.pdf](https://www.gecom.org.gy/assets/docs/Press_Releases/2020/Gazetted_Order_Recount_5May2020.pdf)

OAS Observers were shared by the CARICOM Team of Scrutineers, who had been assigned a key role in Order 60 in verifying the recount results.

The official results of the recount found 460,352 valid votes in the General Elections. Of this number, the largest share, 233,336 votes, was awarded to the People's Progressive Party/Civic (PPP/C), while A Partnership for National Unity + Alliance For Change (APNU+AFC) garnered 217,920 votes. At the Regional level, there were 459,155 valid votes, of which the PPP/C won 233,661 votes and APNU+AFC 217,055 votes.<sup>36</sup>

The National Recount figures are shown in Tables 4 and 5 below.

The results of the national recount were disputed by the Chief Elections Officer. In his official report on the recount, submitted on June 13, he advised that he had invalidated 275,092 of the 460,352 votes verified by the recount due to alleged anomalies and irregularities. Members of the Mission present at the recount advised that the allegations described in the CEO's report were presented primarily by one political party during the recount process, and included a significant number of unsubstantiated claims of voter impersonation. Neither the OAS Mission nor any of the other accredited observers who were present in Guyana for the March 2 poll had reported any significant instances of objections based on impersonation.

The invalidations resulting from the allegations of irregularities placed the APNU+AFC coalition in the lead once more with 125,010 votes over the PPP/C's 56,627 votes.<sup>37</sup>

A further resort to the courts regarding the validity of the recount results, which was appealed to Guyana's final appellate court, the Caribbean Court of Justice, resulted in a determination on July 8, 2020, that the recount results were valid. Subsequent efforts at the lower courts to overturn this decision ended unsuccessfully on July 30, 2020.

On August 2, 2020, the Guyana Elections Commission received the report of the Chief Elections Officer, prepared pursuant to Section 96 of the Representation of the People Act, and in keeping with Order No. 60 of 2020. The report, which utilized results of the recount (see Tables 4 and 5), confirmed that the People's Progressive Party/Civic had earned the majority of the valid votes cast in the General and Regional elections. On the basis of these results GECOM declared Dr. Mohamed Irfaan Ali the President of Guyana.

Of the 65 seats in the National Assembly, the PPP/C earned 21 seats from the National Top-Up List and 12 seats from geographical constituencies, for a total of 33 seats. The APNU+AFC coalition earned 18 seats from the Top-Up List and 13 seats from geographical constituencies, for a total of 31 seats. The Joined Lists of the ANUG, LJP and TNM parties earned one seat from the National Top-Up List.

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<sup>36</sup> "The Official Gazette (Extraordinary) of Guyana, 112/20 – Declaration of Results made under the Recount Order 60 of 2020," 20 August 2020, and "The Official Gazette (Extraordinary) of Guyana, 113/20 – Declaration of Results made under the Recount Order 60 of 2020 - Addendum", 21 August 2020.

<sup>37</sup> Report of the Chief Elections Officer on the National Recount, June 13, 2020

Of the 205 seats on Regional Democratic Councils, the PPP/C won 109 seats, APNU+AFC won 93 seats, the Liberty and Justice Party took two seats and Change Guyana, one seat.

**Table 4: Final Results of the General Elections (National Recount)**

Political Party	Administrative Regions										Total
	1	2	3	4	5	6	7	8	9	10	
A New & United Guyana		85	302	1,426	88	164	77			171	2,313
A Partnership for National Unity + Alliance For Change	3,909	7,340	23,808	116,941	14,502	20,399	4,813	2,152	4,887	19,169	217,920
Change Guyana		151	319	935	100	272	67			109	1,953
Federal United Party											
Liberty and Justice Party	170	121		755			884	450	277		2,657
Organisation for the Victory of the People											
People's Progressive Party / Civic	8,002	18,785	47,851	80,920	18,326	43,440	3,728	2,052	7,070	3,162	233,336
People's Republic Party	24	57	136	401	52	172				47	889
The Citizenship Initiative		18	77	466	22	60				37	680
The New Movement			56	135	10	16		11		16	244
United Republican Party	6	64	43	98	19	44	23		27	36	360
<b>TOTAL VALID VOTES</b>	<b>12,111</b>	<b>26,621</b>	<b>72,592</b>	<b>202,077</b>	<b>33,119</b>	<b>64,567</b>	<b>9,592</b>	<b>4,665</b>	<b>12,261</b>	<b>22,747</b>	<b>460,352</b>

Source: Guyana Elections Commission, Official Gazettes 112/20 and 113/2020

**Table 5: Final Results of the Regional Elections (National Recount)**

Political Party	Administrative Regions										Total
	1	2	3	4	5	6	7	8	9	10	
A Partnership for National Unity + Alliance For Change	3,843	7,290	23,833	116,403	14,472	20,313	4,839	2,091	4,824	19,147	217,055
Change Guyana		216	390	1,442	127	245				187	2,607
Federal United Party						153					153
Liberty and Justice Party	144	135		985			925	464	282		2,935
Organisation for the Victory of the People				448							448
People's Progressive Party / Civic	7,996	18,755	47,900	81,279	18,286	43,418	3,703	2,050	7,066	3,208	233,661
People's Republic Party			157	466	59	178				67	927
United Republican Party	77	95	177	552	60	127	62	39	56	124	1,369
<b>TOTAL VALID VOTES</b>	12,060	26,491	72,457	201,575	33,004	64,434	9,529	4,644	12,228	22,733	459,155

Source: Guyana Elections Commission, Official Gazettes 112/20 and 113/2020

The distribution of seats at the national and regional levels are shown in Tables 6 and 7.

**Table 6: Allocation of Seats - General Elections**

Political Party	National Top-Up List	Geographical Constituencies	Total Seats Allocated
A Partnership for National Unity + Alliance For Change	18	13	<b>31</b>
People's Progressive Party / Civic	21	12	<b>33</b>
Joined Lists (A New & United Guyana; Liberty & Justice Party; The New Movement)	1	-	<b>1</b>
<b>TOTAL SEATS</b>	<b>40</b>	<b>25</b>	<b>65</b>

Source: Guyana Elections Commission, Official Gazettes 112/20 and 113/2020

**Table 7: Allocation of Seats – Regional Democratic Councils**

Region	# Seats per Region	APNU+AFC	Change Guyana	LJP	PPP/C
1	15	5	-	-	10
2	17	5	-	-	12
3	27	9	-	-	18
4	35	20	1	-	14
5	18	8	-	-	10
6	30	10	-	-	20
7	15	8	-	1	6
8	15	7	-	1	7
9	15	6	-	-	9
10	18	15	-	-	3
<b>TOTAL</b>	<b>205</b>	<b>93</b>	<b>1</b>	<b>2</b>	<b>109</b>

Source: Guyana Elections Commission, Official Gazettes 112/20 and 113/2020

## 8. Recommendations

While the challenges in Region Four regarding the tabulation and declaration of results cast a shadow over the overall electoral process, the work of the Guyana Elections Commission in organizing the elections themselves demonstrated a strong commitment to delivering a process that complied with the provisions of the prevailing electoral legislation. Also, the activities and processes observed by the Mission prior to Election Day, including training sessions for poll workers, and the consistently strong performance of those poll workers on Election Day, are to be commended. The Mission however noted several areas in which the electoral process and system could benefit from greater agility and certainty – particularly

in ensuring that the will of voters, as expressed at the ballot box, is reflected in the final results of any election

### Integrity of the Electoral Process

- The pertinent national authorities, including the Guyana Elections Commission, should undertake a comprehensive analysis of the events following the close of the polls on March 2, 2020, particularly the occurrences in Region Four, which gave rise to significant distrust in the initial election results and eroded confidence in the electoral system and process.
- The findings of this analysis should be applied to an evaluation of Guyana’s electoral framework, including electoral legislation, regulations, procedures and practices, as well as any provisions related to electoral offences and crimes, in order to identify and remedy any areas in which weaknesses currently exist, and which may have enabled the challenges witnessed in the 2020 electoral process.
- Given the role played by senior election officials in the 2020 challenges, the evaluation should include an assessment of the role, responsibilities and authority as well as the recruitment process of election officials at all levels, to ensure that sufficient checks and balances exist and that the overall authority of the Guyana Elections Commission is clarified.

### Access to the Vote

- Consider extending the categories of persons who are entitled to vote early to poll workers.

### Voting Procedures

- As noted by the 2015 EOM, and in order to avoid long lines of voters waiting to cast their ballots, GECOM should consider introducing a standardized process that will allow the verification of more than one voter while one voter is casting his/her ballot.
- Review and resolve the question of utilizing private residences as polling places well ahead of the next elections, to ensure that the uncertainty this issue generated prior to the 2020 elections does not reoccur.

### Tabulation Procedures

- The Mission noted several variations in the completion of tabulation procedures and the transmission of results at the regional level. More precise guidelines and protocols, and clearer counting procedures will reduce the potential for misinterpretation by electoral officials and promote certainty and transparency in the electoral results.

- In this regard, the Mission noted the need to review, update and standardize the existing instruction manuals, in particular the *Official Manual for Returning Officers & Other District Staff*, to resolve conflicting information, provide more comprehensive and explicit guidance and ensure that updated reference information is available to staff at polling stations.

### Transmission of Results

- The Elections Commission should consider implementing a system to issue preliminary results for national elections, in order to make this information available on Election Day or on the morning thereafter. This would include establishment of a central computerized results receiving center, where election results summaries are periodically sent via secure telecommunication lines from each of the ten (10) Regions across the country to the Chief Elections Officer. Scanned Statements of Poll can be sent to the CEO simultaneously to be published alongside the digitized electoral results.
- GECOM should also consider including a technology solution in the electoral system which supports the final tabulation of the results of the election.
- Official tabulated elections results should be available online, through the Electoral Office's official web site, to ensure faster and simultaneous transmission to a wider audience, including political parties, journalists and citizens. This would promote the transparency of the election results.
- The authorities should consider establishing a help desk management system to effectively manage and control the delivery of electoral material; monitor and control the opening and closing of the polls; and manage the delivery of information and support to electoral workers, and others.

## **ii. ELECTORAL REGISTRIES**

### **1. Introduction**

The registration of voters is one of the main pillars of an electoral process. The preparation of a Voters' List that is free of political influence, up-to-date and inclusive of all eligible persons is a fundamental aspect of fair and transparent elections. It is also important in ensuring that the Voters' List is accepted by political stakeholders, and is seen as equitable, transparent, comprehensive and accurate.

Guyana's legal framework provides for the publication of three lists of voters in the course of an electoral process: the Preliminary List of Electors (PLE), the Revised List of Electors (RLE) and the Official List of Electors (OLE). For the March 2, 2020 General and Regional Elections, the OLE was a source of some concern among stakeholders. While the 2019 population of Guyana was estimated to be just under 783,000 persons,<sup>38</sup> the elections were held with an OLE comprising 660,998 electors.

This Electoral Registries report analyzes the procedures outlined in Guyana's electoral laws for the registration of voters and evaluates the mechanisms employed to prepare the Official List of Electors (OLE). The report seeks to determine whether these procedures meet required technical and electoral standards and offers recommendations to optimize the registration of new electors, update the Voters' List and strengthen this aspect of the country's electoral process.

### **2. Political and Legal Framework**

The Cooperative Republic of Guyana is a semi-presidential parliamentary republic within the Commonwealth of Nations. The President is the Head of State and Head of Government<sup>39</sup> and can only be elected for two terms. The Prime Minister, other ministers of Government, the Attorney General and other high-ranking officials are appointed by the President.

Elections to the 65-seat unicameral National Assembly are constitutionally due every five years, and are held under a system of proportional representation with an element of geographical and gender representation. Forty members of the National Assembly are drawn from a closed national list (known as the "National Top-Up list"), named by the political parties, while twenty-five members are elected from the 10 geographic constituencies as shown in Table 1.

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<sup>38</sup> World Bank Population Indicator. Available on:  
<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=GY>

<sup>39</sup> Article 177 of the Constitution stipulates that each party submitting a list of candidates for election must designate one presidential candidate. A Presidential candidate is deemed elected if he/she is the only Presidential candidate in the election, or if more votes are cast in favour of the list in which he/she is designated as Presidential candidate, than for any other list.

**Table 1: Distribution of Geographic Seats**

Region	1	2	3	4	5	6	7	8	9	10	Total
Seats	2	2	3	7	2	3	2	1	1	2	25

Source: Representation of the People Act, Section 11 (A) (4)

The legal framework for elections in Guyana is provided by the Constitution of the Co-operative Republic of Guyana (Chapter 1:01),<sup>40</sup> which is the supreme law of the country, the Representation of the People Act (Chapter 1:03),<sup>41</sup> the National Assembly (Validity of Elections) Act (Chapter 1:04),<sup>42</sup> the National Registration Act and its Regulations (Chapter 19:08),<sup>43</sup> the Local Democratic Organs Act (Chapter 28:09)<sup>44</sup> and the Local Authorities Elections Act (Chapter 28:03).<sup>45</sup>

### 3. Electoral Framework

#### a. Authorities

Article 161 of Guyana’s Constitution provides for the Guyana Elections Commission (GECOM), a permanent, independent body with responsibility for the organization, administration and conduct of elections in Guyana. GECOM consists of a full-time Chairman and six Commissioners. The Chair is appointed by the President from a list of six candidates, not unacceptable to the President, which is provided by the Leader of the Opposition after meaningful consultation with political parties represented in the National Assembly. The six Commissioners are appointed by the President – three at his own discretion and three on the advice of the Leader of the Opposition, after meaningful consultation with non-governmental parties represented in the National Assembly.

GECOM settles policy for and supervises the registration of voters, the maintenance of the Voters’ List and the administration of all national, regional and local government elections. The Commission is supported by a Permanent Elections Secretariat, headed by the Chief Election Officer (CEO), who is responsible for implementing the policies issued by GECOM relating to preparations for and delivery of elections, including voter registration.

Section 3 of the National Registration Act stipulates that there shall be a Commissioner of Registration, as well as a Deputy Commissioner and an Assistant Commissioner. The

<sup>40</sup> Constitution of the Cooperative Republic of Guyana, Chapter 1:01, Act 2 of 1980 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_101\\_Constitution.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_101_Constitution.pdf)

<sup>41</sup> Representation of the People Act, Chapter 1:03, Act Reg. 24/1964 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_103\\_Representation\\_of\\_the\\_People.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_103_Representation_of_the_People.pdf)

<sup>42</sup> National Assembly (Validity of Elections) Act, Chapter 1:04, Act Reg. 40 of 1964 (and its amendments), <https://mola.gov.gy/information/laws-of-guyana>

<sup>43</sup> National Registration Act, Chapter 19:08, Act 24 of 1967 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_19.08\\_National\\_Registration\\_Act.pdf?v=2](https://www.gecom.org.gy/assets/docs/laws/Cap_19.08_National_Registration_Act.pdf?v=2)

<sup>44</sup> Local Democratic Organs Act, Chapter 28:09, Act 12 of 1980 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_28.09\\_Local\\_Democratic\\_Organs.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_28.09_Local_Democratic_Organs.pdf)

<sup>45</sup> Local Authorities (Elections) Act, Chapter 28:03, Act 23 of 1969 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_28.03.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_28.03.pdf)

Commissioner is responsible for the compilation and maintenance of the central and divisional registers and all matters pertaining thereto and is assisted in this regard by the Deputy and Assistant Commissioners. Guyana's Elections Secretariat also carries out the tasks of the National Registration Centre under the National Registration Act. The Chief Elections Officer is the Commissioner of Registration.

Section 4 (1) of the National Registration Act provides for the appointment of such numbers of District Supervisors, Registration Officers, Assistant Registration Officers and other personnel, as may be required to carry out the provisions of the Act. Section 4 (3-4) also provides for a Registrar for each district and a Divisional Registrar for one or more registration divisions, as well as Deputy Registrars.

b. Electoral Divisions

Article 160 (2) of Guyana's Constitution stipulates that the parliament is responsible for the division of Guyana into geographical constituencies and for the election in each constituency of the number of members that it decides. Section 11A of the Representation of the People Act provides in this regard that Guyana shall be divided into ten electoral/geographical constituencies (Polling Districts), which are the same as its ten administrative regions.<sup>46</sup> For the purposes of registration, Section 5 of the National Registration Act stipulates that Guyana shall be divided into registration districts, which are subdivided into registration areas and registration divisions as approved by the Commissioner of Registration, with the approval of the Elections Commission.

#### **4. Registration of Voters**

a. Qualifications to be Registered as an Elector

Article 159 (2) of the Constitution of Guyana outlines the requirements to be registered and to vote at any election in Guyana. To qualify, a person must be:

- i. eighteen years or older;
- ii. a citizen of Guyana or;
- iii. a Commonwealth citizen domiciled and resident in Guyana for a period of one year immediately preceding the qualifying date; and
- iv. satisfy such other qualifications as may be prescribed by or under any law.

b. Registration of Electors

In order to be placed on the electoral list, a person must first be registered and included in the central register - the National Register of Registrants (NRR). Under Section 6 of the National Registration Act all persons 14 years and older must be registered. Guyana has a continuous voter registration system, whereby new applications for registration are received twice per year at offices established by the Commissioner of Registration in each

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<sup>46</sup> Representation of the People Act, Section 11 (A 2-3)

division. The National Registration Act also provides for house-to-house registration. Commencing on a specific date set by the Commissioner, a Registrar may visit each household within the registration division assigned to him/her and obtain the application for registration from all persons who are eligible at the qualifying date in that division, as well as all other persons 14 years and older.<sup>47</sup>

Persons 14 years and older who are registered automatically qualify for inclusion in the voters' list if they will be 18 years or older at the qualifying date when an election is called. They may also update their information after reaching the age of 18 during the continuous registration periods or during the Claims and Objections period after a Preliminary List has been published.

In submitting an application to be registered, an applicant must present documentation verifying his/her name and date of birth. Where an applicant is not a citizen of Guyana, official documentation must be presented confirming their residential status, such as a valid passport or a marriage certificate.

The registration officials who process the applications must verify the documentation presented by the applicant for authenticity; check the Preliminary List of Electors (PLE) to confirm that the person was not previously registered and prepare the Registration Record (Form R 01) which must include the applicant's data and signature. Thereafter, the official collects a photograph and the fingerprints of the applicant and secures directions for locating the applicant's residential address.

A name is only confirmed in the NRR when the applicant has been identified and located. When the accuracy of Form R 01 is verified by the Assistant Registration Officer (ARO) and the Registration Officer (RO), the application is introduced in the electors' ledger along with the Residence Verification Form (Form R 02).

### c. Field Investigations

Field investigations are conducted to verify the residence and identity of an applicant for registration. The field investigation comprises a maximum of three (3) visits to the residential address provided by the applicant. The first visit is conducted as soon as practicable following an application, on an agreed date stated on Form R 01. If the potential voter or the residence are not located during these visits, a "Notification of Visit" form is completed and either left at the residence (if found) or mailed to the address provided. If the applicant or residence are not located on the third visit, the electoral authority sends a written notification requesting the applicant to attend an appointment at the Registration Office at a specific time. If the petitioner does not respond, the application is cancelled.

If the applicant is located and his/her identity verified, their information is entered into the NRR database and an identification number and national identification card generated.

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<sup>47</sup> National Registration Act, Section 6

The field investigation forms an integral part of the registration process as this can determine if and where an applicant may be registered in the NRR. The investigation is led by the Registration Officer or the Assistant Registration Officer. Section 8 of the Election Laws (Amendment) Act 2000 also provides for the appointment of scrutineers to monitor the registration process by each organization or group of persons proposing to submit a list of candidates for the elections. Under Section 8, each group or organization may appoint a Chief Scrutineer for the whole of Guyana, a Deputy Chief Scrutineer and an Assistant Chief Scrutineer for each registration district or part thereof and one scrutineer for each registration division or subdivision.

Scrutineers may examine any application for registration of persons, registration cards and notices issued to applicants disallowing their application for registration. They may also accompany enumerators or Registration Officers when confirming the residency of an applicant and may submit to the Registration Officer claims for persons registered for that division.

While the work of the scrutineers had already been completed when the OAS Mission arrived in Guyana, the Mission was informed by GECOM that scrutineers were present during the different stages of the registration process, including the Claims and Objection period.

#### d. Identification Cards

Section 12 of the National Registration Act and Section 9 of the Elections Laws (Amendment) Act 2000 provide for the issuance of identification cards to persons whose names are included in the Official List of Electors. As noted above, the data, photograph and signature for the ID cards are collected during the registration process when applications are submitted by potential electors. Eligible electors collect their cards from the registration centers where their applications were submitted. Prior to Election Day, the Mission observed significant levels of activity at some registration centers as electors collected their ID cards. The Mission also observed the preparation of folios with copies of electors' registration information and photographs to assist in the identification of electors who did not have an ID card on arrival at a polling station.

On Election Day, the Mission noted the regular use of the identification card for the verification of persons presenting themselves at polling stations. The Mission also observed a number of instances where Presiding Officers effectively utilized their folios to assist in identifying electors.

In general, the registration system utilized in Guyana was comprehensive and complied with the electoral laws. The Mission noted however that it is primarily manual, requiring the preparation, retention and management of paper records. A manual system reduces efficiency in the registration process and creates opportunities for human error.

## 5. House-to-House Registration

On July 20, 2019, the Guyana Elections Commission (GECOM) embarked on a house-to-house registration process, in keeping with its Order No. 25 of 2019, dated June 11, 2019. The Commission advised that the objective of the exercise was create a new National Register of Registrants Database (NRRDB) which reflected the actual Guyanese population and which would subsequently be used to extract the Official List of Electors for the General and Regional Elections.<sup>48</sup>

The exercise was severely criticized by stakeholders. On July 22, 2019 a private citizen, Mr. Christopher Ram, filed a motion before the High Court, *Christopher Ram v GECOM*, challenging the constitutionality of the house-to-house exercise. Mr. Ram argued that the exercise would result in the unlawful deregistration of persons on the existing Voters' List and prevent the registration of qualified registrants, if they were not at their place of residence at the time of registration.

On August 14, 2019 the Chief Justice ruled that the house-to-house registration exercise was not unconstitutional, but the removal of the names of registered persons from the NRR on the grounds of non-residency was unlawful, unless they were deceased or disqualified under Article 159 of the Constitution – that is, for insanity or conviction of a qualifying offence. GECOM subsequently agreed, on August 27, 2019, to terminate the house-to-house registration exercise and to merge the data already gathered in that process with the existing National Register of Registrants Database (NRRDB), prior to extracting and publishing the Preliminary List of Electors (PLE).

The Mission noted GECOM's concerns at the time, that the ruling would create challenges in reviewing and updating the Voters' List, as it currently has no means of cleansing the list, save through the limited constitutional provisions for removal. In cases where electors no longer reside in Guyana, or where death certificates have not been registered (an act that is not mandatory) GECOM has no means to determine when or how names should be removed.

## 6. The Voters' List

Guyana's National Registration Act provides for the publication of three lists before the electoral process, the Preliminary List of Electors (PLE), the Revised List of Electors (RLE) and the Official List of Electors (OLE).

The Preliminary List of Electors (PLE) was published on September 25, 2019 and contained the full name, address, occupation and the serial number of the registration card of all persons qualified to be registered. Section 15 (1) of the National Registration Act, requires that the PLE be affixed to at least two buildings in each registration division, along with information on the prescribed times for the presentation of claims and objections.

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<sup>48</sup> GECOM Press Release of July 19, 2019.

[https://www.gecom.org.gy/assets/docs/Press\\_Releases/2019/Press%20Release\\_GECOM%20\\_HousetoHouse%20Registration\\_19July2019.pdf](https://www.gecom.org.gy/assets/docs/Press_Releases/2019/Press%20Release_GECOM%20_HousetoHouse%20Registration_19July2019.pdf)

a. Claims and Objections

Any person whose name appears on the Preliminary List of Electors (PLE), or the scrutineer for the relevant division/sub-division, or the Chief, Deputy Chief or Assistant Chief Scrutineers may object to the inclusion of an elector's name on the Preliminary List or Electors (PLE). The objection is made through Form R 09. The Registration Officer will note the particulars in the list of objections and give public notice of the enquiries on Form R 10. He/she also gives notice of hearing of the objection to the parties concerned on Form R 11.

Section 15 of the National Registration Act states that at the hearing of an objection, a Registration Officer shall regulate his/her own procedure in determining Objections. The Mission notes this means there is no formal structure or procedure for the hearing of Objections and that the Registration Officer exercises his/her own discretion in allowing the parties to be heard.

The Claims and Objection period took place from October 1 to November 18, 2019. Investigations were conducted to verify registrants at their addresses in the presence of scrutineers from the political parties. Alterations were then made to the central and divisional registers as required, according to the decisions taken on the claims and objections in keeping with Section 15(6) of the National Registration Act.

The Mission was advised that 6,994 names of deceased persons were removed from the NRR database covering the period July 2018 to October 2019. This was based on information received from the General Registration Office (GRO), which sent information to the Voters' Registry on a monthly basis.

During the curtailed house-to-house registration exercise 365,000 persons were registered. GECOM subsequently determined that 305,000 of those persons were already included in the National Register of Registrants. During the Claims and Objections period four thousand (4,000) new registrants were added to the register.

The Mission enquired about the status of those records in the database that had not been verified during the house-to-house registration, and was advised that the names of those persons were sent to the registration divisions where the respective Registration Officers conducted investigations. Any changes were made on an Administrative Change Form and submitted to the Voters' Registry where they were encoded and the database updated.

b. Revised and Official Lists of Electors

Following the updating of the National Register of Registrants database, the Revised List of Electors (RLE) was published on December 31, 2019. This date was also the qualifying date for persons 18 years and over to be eligible to vote in the March 2 poll. Section 37 of the National Registration (Residents) Regulations Act gives the Commissioner of Registration legal authority to make changes to the Revised List of Electors within 21 days after its certification, once he is satisfied that the omission is through inadvertence. The Mission was advised that upon publication of the RLE, GECOM found that it had not included the

addresses and other information of eligible electors that had been updated during the house-to-house exercise. GECOM therefore relied on Regulation 37 to make the relevant changes to the RLE.

The Official List of Electors (OLE) was published by GECOM on February 1, 2020, with 660,998 registered voters across the ten regions of Guyana. Once the OLE is published, no further amendments can be made.

**Table 2: Number of Persons Included in the Voters' Lists**

<b>List Type and Details</b>	<b># of Persons</b>
NRR prior Claims and Objections	663,365
Preliminary List of Electors	646,625
Revised List of Electors	661,378
<b>Official List of Electors</b>	<b>660,998</b>

**Source: Data obtained from the Guyana Elections Commission (GECOM)**

The OLE contained all of the required information on electors, such as their names, ID numbers and addresses, however the Mission noted that its format made it difficult to acquire certain information, including ascertaining the number of electors on the OLE for the ten regions. On Election Day, members of the Mission observed that some Presiding Officers were unable to determine the number of persons on their respective lists unless they reviewed all of the pages to the end of the List. Section 35 of the ROPA gives the Returning Officer the authority to subdivide the OLE if more than one polling place has to be used in a particular division. The OLE should therefore facilitate an easier calculation of the total electors in the polling districts and their subdivisions.

c. Voters' List for Disciplined Services Vote

The Disciplined Services of Guyana, including the Guyana Police Force, the Guyana Defense Force and the Guyana Prison Service voted on February 21, 2020 at eighty-two (82) polling stations throughout the territory of Guyana. A special Voters' List generated from the NRR, with only the names of officers eligible to vote on that day, contained 10,226 electors.

The Mission noted that at the conclusion of the voting all materials used, including the Lists, were returned to the GECOM for safe-keeping. The names from the special Voters' List were then incorporated into the OLE for Election Day, but with the names of officers who had already voted marked to indicate they had already cast their ballot. This method ensured that persons who missed the opportunity to vote on February 21, had a second opportunity to cast their ballot - an opportunity that is not available to any other elector.

In this regard, the Mission was informed by GECOM that some 86 members of the Disciplined Services were unable to vote on February 21, due to logistical difficulties experienced in transporting the voting materials to their location. These persons were however provided the opportunity to cast their ballots on Election Day itself.

## **7. Findings and Recommendations**

For the March 2020 General and Regional elections, the Mission found that electoral administrators were competent and professional and complied with the existing laws and procedures in the registration of eligible electors. The Mission however identified several areas which would benefit from revised approaches and therefore offers the following recommendations which can enhance the efficiency of the process as well as the credibility and acceptance of the Official List of Electors.

### Registration of Electors

- While Guyana’s registration process is comprehensive and complies with the law, the introduction of technology would facilitate greater accuracy and efficiency in this critical area of Guyana’s electoral process. The digital capture and management of registrants’ data would allow GECOM to hold, transmit and track records more easily, facilitate the update of the National Register of Registrants and accelerate the issuance of identification cards. It would also reduce the incidence of human error and provide greater transparency and efficiency in the electoral process.

### Update of the National Register of Registrants

- The Official List of Electors for the 2020 elections contained 660,998 electors, a figure that stakeholders agreed suggested a significantly bloated List. The Mission suggests that the authorities review and amend the electoral laws to establish a legal framework for the periodic cleansing and updating of the National Register of Registrants.
- The process of cleansing and updating the National Register should be undertaken as soon as practicable and well in advance of the next election.

### Automatic Verification of New Electors

- Guyana’s electoral law allows all persons 14 years and older to be registered and included in the National Register of Registrants. The Mission recommends that GECOM consider a process whereby the data of registrants who have reached the age of 18 is extracted from the NRR on a monthly basis and sent to the Registration Officers of the respective divisions for investigation. This will allow the database to be regularly updated, with the automatic addition of new registrants.

### Official List of Electors (OLE)

- While the Official List of Electors included all required data, its format made it difficult to extract certain information, particularly the number of electors for each of the ten regions. The Mission recommends that the Elections Commission revise the structure

of the OLE, providing the total number of electors at the end of the respective pages for subdivisions, divisions, polling districts and the overall OLE.

### iii. ELECTORAL JUSTICE

#### 1. Introduction

Electoral Justice may be defined as a series of protective means and mechanisms designed to uphold the principles of free, fair and legitimate elections, as well as safeguard the political-electoral rights of all people.<sup>49</sup> It consists of two broad components: (1) guaranteeing that the electoral process operates in accordance with law, including international standards; and (2) ensuring that there are fair mechanisms for restoring electoral rights when they may have been violated.

Electoral justice is more than the general legalities in the country; it provides citizens with an environment in which they are not only able to exercise their electoral rights, but also believe and feel that they are able to do so. It offers guarantees to all actors involved in the electoral process, ensuring adherence to the principles of constitutionality and legality, that is - respect for the norms established in the constitutional and legal frameworks of the country.

In Guyana, as in other democracies, electoral justice plays an important role in ensuring the stability of the political system and adherence to the legal framework, and thus also contributes to the consolidation of democratic governance. The Constitution of Guyana,<sup>50</sup> the Representation of the People Act, Chapter 1:03,<sup>51</sup> the National Assembly (Validity of Elections) Act, Chapter 1:04,<sup>52</sup> and the National Registration Act, Chapter 19:08,<sup>53</sup> are the bedrock of the constitutional and statutory framework which governs the holding of elections in Guyana and provide the basis of electoral justice.

This report analyzes the system for electoral dispute resolution in Guyana, which includes the processes for filing complaints, providing evidence and ensuring resolution by the competent judicial organs. These processes are evaluated to determine whether they function in accordance with all technical-judicial requirements. The report also presents several recommendations that will help to enhance the country's electoral dispute resolution mechanisms.

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<sup>49</sup>Jesús Orozco-Henríquez, José de Jesús. (2013). Electoral Justice: IDEA International Manual, ed. IDEA International, et al

<sup>50</sup> Constitution of the Cooperative Republic of Guyana, Chapter 1:01, Act 2 of 1980 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_101\\_Constitution.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_101_Constitution.pdf)

<sup>51</sup> Representation of the People Act, Chapter 1:03, Act Reg. 24/1964 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_103\\_Representation\\_of\\_the\\_People.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_103_Representation_of_the_People.pdf)

<sup>52</sup> National Assembly (Validity of Elections) Act, Chapter 1:04, Act Reg. 40 of 1964 (and its amendments), <https://mola.gov.gy/information/laws-of-guyana>

<sup>53</sup> National Registration Act, Chapter 19:08, Act 24 of 1967 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_19.08\\_National\\_Registration\\_Act.pdf?v=2](https://www.gecom.org.gy/assets/docs/laws/Cap_19.08_National_Registration_Act.pdf?v=2)

## 2. Legal Framework for Electoral Justice in Guyana

Several international legal treaties to which Guyana is a party guarantee the full exercise of political rights and provide legal and technical guarantees for their adequate protection. These include:

- The Universal Declaration of Human Rights (Article 8);
- The American Declaration of the Rights and Duties of Man (Article XVIII);
- The International Covenant on Civil and Political Rights (Article 3);
- General Comment 25 adopted by the Human Rights Committee of the United Nations (UN), the Right to Participate in Public Affairs, Voting Rights, and the Right to Equal Access to Public Service (Article 25, ICCPR, 1996); and
- The Inter-American Democratic Charter (Article 8 (1)).

In Guyana, electoral rights are enshrined in the country's supreme law, the Constitution, which provides the framework for democracy and the practice of its principles, including the right to freedom of assembly and freedom of expression. The Constitution of Guyana also provides the right to a fair hearing, the right against non-discrimination on the basis of political affiliation and protection of the law, which are the bases of electoral justice. Some of the electoral justice principles in the Caribbean also stem from case law. The Courts of the Eastern Caribbean have identified the right to vote and the ability to stand for election as part of the very fabric of the parliamentary system of democracy and a constitutional right.<sup>54</sup>

Other fundamental legal instruments guiding Guyana's electoral system are the National Assembly (Validity of Elections) Act, the Representation of the People Act and the National Registration (Residents) Act and Regulations, as indicated earlier.

Article 64 of the Constitution states that all questions regarding membership of the National Assembly shall be determined by the High Court in accordance with the provisions of Article 163. Article 163 assigns exclusive jurisdiction to the High Court in determining such questions and outlines a specific scheme for doing so. The jurisdiction exercised by the Court in this area is however applied within a framework laid down by Parliament. Article 163 (4) (a – c) authorizes Parliament to decide the circumstances and consequences for the determination of any question arising under the Article and to lay down the practice and procedure in relation to the jurisdiction and powers conferred upon the High Court by the Constitution. These provisions are contained in the National Assembly (Validity of Elections) Act; Section 3 of that Act reinforces Article 163 of the Constitution.

Section 163(3) of the Constitution also provides for an appeal from a final decision of the High Court sitting in an election petition. An appeal lies as of right to the Court of Appeal of Guyana (a) from the decision of a Judge of the High Court granting or refusing leave to institute proceedings for an election petition or (b) from the determination by the High Court of any such question, or against any order of the High Court made in consequence of such determination.

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<sup>54</sup> Quinn-Leandro v Jonas (2010) 78 WIR 216

In some cases, a person can seek judicial review, or file a constitutional motion, either before, during or after the election, depending on the wrong done and the relief sought. The Courts have held that “the Supreme Court is the guardian of the Constitution, consequently it is not only within its competence but also its right and duty to make binding declarations, if and whenever warranted, that an enactment or actions of the state are *ultra vires* and therefore void.<sup>55</sup> The Caribbean Court of Justice (CCJ), Guyana’s final appellate court, authoritatively held that in relation to Guyana, unless specifically ousted or constrained, the court has an inherent and unfettered jurisdiction in matters relating to the interpretation of the Constitution. It is the court that authoritatively settles what the Constitution means and whether some action that is taken by a constitutional actor is within or outside that actor’s constitutional remit.<sup>56</sup>

There is however a clear distinction between the election jurisdiction of the court, created by parliament by a law intended to determine election matters, and the jurisdiction of the court under the Constitution to determine constitutional issues. Very different rules apply in the election jurisdiction than do within the constitutional or ordinary civil jurisdiction of the court. Election petitions are considered of a special nature and so where the challenge relates to the outcome of the election then the Court tends to hold that the applicant should file an election petition to challenge his opponent’s election.

In legal challenges filed before the courts of Guyana prior to the March 2020 elections, *Christopher Ram v the Attorney General et al*, *Bharrat Jagdeo v the Attorney General et al* and *Charrandas Persaud v Compton Reid et al*<sup>57</sup> the Caribbean Court of Justice held, as the National Assembly (Validity of Elections) Rules indicate, that the Court has no jurisdiction to determine matters which must be raised by way of an election petition filed otherwise than as prescribed by Parliament. They held that an assumption by the courts of an “inherent power” to interrogate qualifying and disqualifying criteria in relation to election to the National Assembly will constitute overreach on the part of the judiciary. They went on to state that such an assumption will evince a trespass by the courts on the affairs of Parliament by disregarding the method and manner by which the Constitution specifically requires the courts to determine such questions.

There are limits to the use of judicial review and constitutional motions. Judicial review is a procedure by which a person who has been affected by a particular decision, action or failure to act of a public authority may make an application to the High Court, which may provide a remedy if it decides that the authority has acted unlawfully. Judicial review is concerned not with the merits of the decision, but whether the public body has acted lawfully. The Court does not have the right to replace its own decision for that of the public authority. If a judicial review claim is successful the usual result is that the decision is “quashed” or nullified. In turn this usually means that the decision has to be taken again not that the Court makes the decision for the public authority. This was seen in the post-electoral case of *Reeaz Holladar v Clairmont Mingo et al*, as the order of the court was to quash the decision of the Chief

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<sup>55</sup> *Collymore v Attorney-General of Trinidad and Tobago* (1969) 15 WIR 229

<sup>56</sup> *Mustapha v AG & Chairman of GECOM* [2019] CCJ 9 (AJ)

<sup>57</sup> [2019] CCJ 10 (AJ), <https://ccj.org/wp-content/uploads/2019/06/2019-CCJ-10AJ1.pdf>

Elections Officer and order that he comply with the section under the law. First, this was the order that was sought by the applicant and further action by the Court could possibly amount to a breach of separation of powers.

In constitutional law matters the courts have themselves imposed certain constraints on the exercise of their jurisdiction to ensure that the jurisdiction is not abused. The intention behind this self-imposed rule is that if the High Courts were to exercise their constitutional jurisdiction so widely as to regularly override statutory procedures, they would themselves become inundated with a vast number of cases to the detriment of the litigants in those cases. Therefore, the court in constitutional cases will only grant remedies where there is no adequate alternative remedy.<sup>58</sup>

A plethora of cases decided over the years in the courts in Guyana, as in other parts of the Commonwealth, have consistently held that the legal framework for challenging an election provides a comprehensive and exclusive statutory scheme, with mandatory procedural rules for challenging the validity of an election or the return of a candidate as the elected representative in an election.

It has been made clear in cases such as the Guyanese High Court decision of *Gladys Petrie v The Attorney General et al*,<sup>59</sup> that the Court's jurisdiction in this regard is not at large and not "inherent." The jurisdiction is derived from the Constitution and the Constitution specifies that this jurisdiction is as mandated by Parliament. What is prescribed by parliament in this regard must strictly be followed by the courts. This means that, for example, the time limitations set out in legislation governing the presentation and progression of an election petition are construed as condition precedents to the validity of the petition.<sup>60</sup>

### **3. Pre-Electoral Legal Context in Guyana**

General Elections were last held in Guyana on May 11, 2015. At that time the list of candidates for the A Partnership for National Unity + Alliance For Change (APNU+AFC) coalition, headed by Mr. David Granger, won 33 of the 65 seats in the National Assembly, and took office. The list of candidates for the People's Progressive Party/Civic (PPP/C), led by Mr. Bharrat Jagdeo, secured the remaining 32 seats and moved into opposition.

In November 2018 the opposition PPP/C filed a motion of no-confidence in the APNU+AFC coalition government. Under Article 106 (6) of the Constitution of Guyana, the opposition required the support of the majority of the elected members of the National Assembly in order to win the no-confidence motion. With the APNU+AFC government holding a one-seat majority, the opposition PPP/C required one cross-over vote in support of the motion, or two abstentions from the ruling coalition, in order to win. The motion was discussed at the National Assembly on December 21, 2018 and passed by one vote (33-32) when one Member

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<sup>58</sup> *Jaroo v AG of T&T* [2002] UKPC 5

<sup>59</sup> (1968) 14 WIR 292

<sup>60</sup> See for example *Payne v Hammond* (Guyana HC, 5 June 1986); *Joseph v Codrington* (ANUHCV 2009/0147, 30th June 2009); *AG v David* (GDAHCV 2006/0018, 12th September 2006); *Ezechial Joseph v Alvin Reynolds* HCVAP 2012/ 14, 31st July 2012

of Parliament from the APNU+AFC coalition voted in its favor, along with the 32 members of the opposition. The passage of the motion was confirmed by the Speaker of the National Assembly and the Clerk issued Resolution 101 in affirmation.

The approval of the no-confidence motion triggered Article 106 (6) and (7) of Guyana's Constitution, which stipulate that the President and his Cabinet must resign upon the passage of a duly supported motion of no-confidence and that elections must then be held within three months (in this case, by March 21, 2019) or within a longer period of time approved by a vote of at least two-thirds of the elected members of the National Assembly. In the days following the passage of the no-confidence motion however, the Government did not resign and arrangements for elections were not announced. Three legal challenges were subsequently filed with the courts of Guyana.

In the first instance, *Charrandas Persaud v Compton Reid et al*,<sup>61</sup> filed on January 4, 2019, a private citizen, Compton Reid, challenged the validity of the no-confidence vote, arguing that the member of the APNU+AFC who voted with the opposition, Mr. Persaud, was a Canadian citizen at the time of the 2015 elections and should not have been in the House at all, rendering his vote invalid.

In the second instance, *Bharrat Jagdeo v the Attorney General et al*,<sup>62</sup> filed on January 7, 2019, the Attorney General, Basil Williams, asked the court to determine whether the no-confidence motion was validly passed by 33 to 32 votes, as the formula for achieving an 'absolute majority' in the Assembly was at least one half of the members plus one. He argued that as the National Assembly of Guyana comprises 65 members, half of all elected members would mathematically result in a fraction of 32.5, which would have to be rounded up to the next whole number (33) to represent half of the elected members. A majority of members should therefore be 33 votes plus one, for an absolute majority of 34.

In the third instance, *Christopher Ram v the Attorney General et al*,<sup>63</sup> filed on January 8, 2019, a second private citizen, Christopher Ram, sought the court's confirmation that the motion had been properly and lawfully passed, that the passage of the motion required the resignation of the Cabinet, including the President, and that in accordance with Article 106 (7) of the Constitution, elections should be held no later than March 21, 2019.

On January 31, 2019 the Chief Justice of Guyana ruled that the no-confidence motion had been properly passed in the National Assembly. The decision was appealed to the Court of Appeal, which ruled in a 2-1 majority decision, on March 22, 2019, that the motion was invalid. That decision was appealed to the Caribbean Court of Justice (CCJ), Guyana's final appellate court. The CCJ was already reviewing a case involving the legality of the 2017 appointment of then Chairman of the Guyana Elections Commission (GECOM), Justice (Ret'd)

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<sup>61</sup> [2019] CCJ 10 (AJ), <https://ccj.org/wp-content/uploads/2019/06/2019-CCJ-10AJ1.pdf>

<sup>62</sup> [2019] CCJ 10 (AJ), <https://ccj.org/wp-content/uploads/2019/06/2019-CCJ-10AJ1.pdf>

<sup>63</sup> [2019] CCJ 10 (AJ), <https://ccj.org/wp-content/uploads/2019/06/2019-CCJ-10AJ1.pdf>

James Patterson, in *Zulfikar Mustapha v the Attorney General and the Chairman of GECOM*<sup>64</sup> and agreed to combine this matter with those relating to the no-confidence motion.

On June 18, 2019, the CCJ ruled that the no-confidence motion of December 21, 2018 was validly passed by the National Assembly and that the 2017 appointment of Justice Patterson was not in compliance with the Constitution. Justice Patterson subsequently submitted his resignation.

Regarding the no-confidence motion, the CCJ noted in its consequential orders on July 12, 2019, that Article 106 (6) and (7) of the Constitution were clear on the steps flowing from the passage of a no-confidence vote. The CCJ enjoined all relevant bodies and personages to “exercise their responsibilities with integrity and in keeping with the unambiguous provisions of the Constitution bearing in mind that the no confidence motion was validly passed as long ago as 21 December 2018.”<sup>65</sup>

A further issue involving a resort to Guyana’s courts prior to the 2020 elections concerned the house-to-house registration exercise, which commenced on July 20, 2019 pursuant to Order No. 25 of 2019. It was intended that upon conclusion of this exercise, a new National Register of Registrants (NRR) would be created and would replace the existing NRR. In *Christopher Ram v GECOM*, filed on July 22, 2019, Mr. Ram challenged the constitutionality of the house-to-house registration exercise which he argued would result in the unlawful deregistration of persons on the existing Voters’ List and omit the registration of qualified registrants, if they were not at their place of residence at the time of registration.

On August 14, 2019 the Chief Justice ruled that the house-to-house registration exercise was not unconstitutional, but the removal of the names of registered persons from the NRR on the grounds of non-residency was unlawful, unless they were deceased or disqualified pursuant to Article 159 of the Constitution (i.e. insanity or conviction of a qualifying offence). The residency aspect of the ruling was appealed to Guyana’s Court of Appeal, and upheld.

#### **4. Post-Electoral Legal Developments in Guyana**

There were also four major legal challenges following the March 2 poll, regarding the tabulation and determination of results.

In the first instance, *Reeaz Holladar v Clairmont Mingo et al*, filed on March 5, 2020, Mr. Hollandar, a party agent of the PPP/C, sought an interim injunction preventing GECOM from declaring the results for Region 4, until the Returning Officer or the Deputy Returning Officer for that Region complied with the process set out in Section 84 (1) of the Representation of the People’s Act regarding the ascertainment of the vote count. The Chief Justice ruled in favor of Hollandar on March 11 and declared that the results of the elections could not be declared until the Returning Officer complied with or ensured compliance with Section 84 (1).

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<sup>64</sup> [2019] CCJ 9 (AJ), <https://ccj.org/wp-content/uploads/2019/06/2019-CCJ-9-AJ1.pdf>

<sup>65</sup> [2019] CCJ 14 (AJ)

In the second case, *Ulita Grace Moore v the Guyana Elections Commission et al*, Ms. Moore, a regional candidate for APNU+AFC, applied to the High Court on March 17, 2020, for judicial review of and injunctions against GECOM's decision to recount the votes cast in the 10 Regions of Guyana, under the supervision of a CARICOM team. The PPP/C challenged the jurisdiction of the High Court to engage in the judicial review and filed an appeal in this regard with the Full Court. On March 31 the Full Court, in a unanimous decision, agreed with the PPP/C, dismissed the request for judicial review and discharged the interim injunctions. The Full Court also ruled that any concerns about the electoral process should be addressed by an elections petition. The decision of the Full Court was appealed to the Court of Appeal. On April 7 the Court ruled that the injunctions should be discharged but held that no outside party, in this case CARICOM, could assume supervision of the recount process. The Court also held that if there was such a breach of GECOM's supervisory powers the High Court could resume its inquiry.

A notice of motion for the third case, *Eslyn David v the Chief Elections Officer et al*, was filed on June 18, 2020 in the Court of Appeal and served on the Chairperson and the Chief Elections Officer of GECOM. The motion was filed after the national recount of all ballots had been completed and instructions issued to the Chief Elections Officer to prepare and submit his report on the results, using the data generated by the recount. In the motion Ms. David, a private citizen, sought a declaration that GECOM had failed to act in accordance with the terms of the Recount Order, No. 60 of 2020, and the amended Order dated May 29, 2020, and had failed to determine a final credible result. She asked that the Chief Elections Officer be prevented from submitting his report to the GECOM Chairman without determining a final credible count.

On June 22 the Court of Appeal, in a majority 2-1 decision, accepted jurisdiction to hear the matter and ruled that GECOM must determine a result based on "more valid votes cast", using quantitative and qualitative data. On June 23 the PPP/C appealed this decision to the Caribbean Court of Justice (CCJ). On July 8, in a unanimous decision, the CCJ ruled that Guyana's Court of Appeal did not have jurisdiction to hear Ms. David's case and set aside that court's ruling. The CCJ also ruled that an elections report submitted by the Chief Elections Officer on June 23, following the ruling of the Court of Appeal, and which invalidated over 115,000 votes, was illicit and of no effect. Advising that the CCJ itself did not have jurisdiction beyond these decisions, the CCJ ruled that GECOM must ensure the CEO submitted a new elections report along the lines indicated in the Recount Order.

The fourth post-election case, *Misenga Jones v Guyana Elections Commission et al*, was filed at the High Court on July 14. Ms. Jones, a private citizen, sought to have the results of the national recount deemed invalid and compel GECOM to follow the advice of the Chief Elections Officer in determining the results of the elections using the ten March 13 declarations, which had already been struck down by the GECOM Chair on July 12. On July 20, 2020 the Chief Justice ruled that Recount Order 60 of 2020 was valid and that the March 13 declarations by the 10 Returning Officers had been overtaken by events and could no longer be utilized. She further ruled that GECOM was not required to act on the advice of the CEO, as he was a functionary and subject to the control of the Commission.

The decision was appealed to the Court of Appeal and, in a unanimous decision, dismissed on July 30. The Court agreed that the results of the elections should be determined using the recount results and that the CEO was bound to abide by the instructions of the GECOM Chair. The Court also advised that the issues raised in the case were matters for an election petition.

## **5. Independent and Impartial Court**

An important criterion for any electoral justice system is the credibility of its judicial system, which is tasked to resolve conflicts. This credibility is based on the impartial nature of the court system, which should be independent of political or partisan interests. The independence of the judiciary underpins the rule of law and is essential to the functioning of democracy and the observance of human rights.

### **a. The Court System in Guyana**

In the early 1970s, following independence from Britain, Guyana enacted Constitutional, judicial and legislative reforms and abolished appeals to the Privy Council in the United Kingdom. The Guyana Court of Appeal then became the final tier in the then three-tier hierarchy, with the Magistrate's Court at the lowest rung and the High Court of the Supreme Court of Judicature following. In early 2005, another legislative amendment was made to allow Guyana's accession to the Caribbean Court of Justice (CCJ), based in Trinidad and Tobago, as its final Appellate Court.

The Supreme Court consists of the Court of Appeal and High Court of Justice. The Court of Appeal is comprised of the Chancellor, who shall be the President of the Court of Appeal, the Chief Justice and such number of Justices of Appeal as may be prescribed by law. The High Court is comprised of the Chief Justice and such number of High Court Judges as provided for by law.<sup>66</sup> The CCJ was established on 14 February 2001 by the Agreement Establishing the Caribbean Court of Justice. Its functions and judges are appointed pursuant to that Treaty.

### **b. Appointment of Judges**

Article 127 of Guyana's Constitution provides that the Chancellor and the Chief Justice are appointed by the President after obtaining the agreement of the Leader of the Opposition. If the office of either the Chancellor or the Chief Justice is vacant or the incumbent is unable to perform his/her duties or, in the case of the Chancellor, if he/she is acting as President, Article 127 (2) stipulates that another judge shall be appointed by the President in the interim, "after meaningful consultation with the Leader of the Opposition". Judges, other than the Chancellor and the Chief Justice, are appointed by the President, who shall act in accordance with the advice of the Judicial Service Commission.<sup>67</sup>

The Chancellor and Chief Justice of Guyana are currently acting in those positions. The last substantive holder of both those posts was Justice Desiree Bernard who served as Chief

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<sup>66</sup> Article 124-125 of the Constitution of Guyana

<sup>67</sup> Article 128 of the Constitution of Guyana

Justice 1996 - 2001 and as Chancellor 2001- 2005. The country's inability to appoint a Substantive Chancellor and Chief Justice has been noted, with concern, by both the Caribbean Association of Judicial Officers (CAJO)<sup>68</sup> and the Guyana Bar Association<sup>69</sup> and has been criticized by the current and former Chief Justices of the Caribbean Court of Justice, Justice Adrian Saunders and Justice Dennis Byron, respectively. Justice Byron noted in 2017 that prolonged acting appointments pose "a genuine risk to the constitutional promise to every citizen of an independent and impartial judiciary",<sup>70</sup> while Justice Saunders pointed out in 2018 that the country's failure to make substantive judicial appointments "was a significant stain on the rule of law".<sup>71</sup>

To qualify for appointment as a High Court Judge, a person must be or have been a Judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court, or a person who is qualified to practice as an advocate in such a court and has so practiced for a period of 10 years for Court of Appeal and 7 years for High Court.<sup>72</sup>

The Judicial Services Commission (JSC) which is responsible for the appointment of Judges in Guyana consists of the Chancellor, who shall be Chairman; the Chief Justice; the Chairman of the Public Service Commission and such other members as are appointed. Appointed members may include a Judge or former Judge of a court having unlimited jurisdiction or appeals from such a court, and one or two persons who are not attorneys-at-law in active practice. The former are appointed after the President has consulted with the Leader of the Opposition, and the latter after the National Assembly has consulted with the Law Association of Guyana. Vacancies are normally advertised by the JSC, interviews are conducted and candidates selected.

Appointed members of the JSC serve for a period of three years or the date specified in their instrument of appointment. If those positions are vacant, persons can be appointed to act in those positions. Decisions made by the Commission may be challenged by way of an application for Judicial Review before the Court.<sup>73</sup> There is general acceptance that the mere fact that the executive participates in the judicial appointments process is not necessarily

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<sup>68</sup> CAJO Media Release 02:2019, <https://ccj.org/wp-content/uploads/2019/11/CAJO-Media-Release-2-2019-1.pdf>

<sup>69</sup> Bar Association of Guyana Media Release, Feb. 19, 2018, <http://guyanabarassociation.org/release/statement-by-the-bar-council-of-the-bar-association-of-guyana-on-the-appointment-of-the-chancellor-and-chief-justice/>

<sup>70</sup> Byron, Dennis. "The importance of an Independent and Impartial Judiciary- Placing the Spotlight on Judicial Accountability". November 11, 2017, Georgetown, Guyana. <https://ccj.org/wp-content/uploads/2017/11/The-Importance-of-an-Independent-and-Impartial-Judiciary-%E2%80%93-Placing-the-Spotlight-on-Judicial-Accountability.pdf>

<sup>71</sup> Ongoing lack of substantive Chancellor CJ, significant stain on rule of law. May 26, 2018, Stabroek News, <https://www.stabroeknews.com/2018/05/26/news/guyana/ongoing-lack-of-substantive-chancellor-cj-significant-stain-on-rule-of-law/>

<sup>72</sup> Article 129 of the Constitution of Guyana; Section 36 Court of Appeal Act Cap 3:01; Section 5 High Court Act Chap 3:02

<sup>73</sup> See *Fraser v Judicial and Legal Services Commission and Another* [2009] 2 LRC 26; *Hugh Wildman v JLSC of the Eastern Caribbean Supreme Court Civil Appeal No.9 of 2006*.

inconsistent with judicial independence.<sup>74</sup> The JSC in Guyana has not been reconstituted since the life of the last body expired on September 30, 2017.

c. Security of Tenure of Judges

Article 197 of the Constitution lays down the provisions related to the tenure and removal of judges. Article 197 (2A) establishes that the Chancellor and a Justice of Appeal hold office until the age of sixty-eight and a High Court judge until the age of sixty-five years. Judges cannot be removed except for good cause; this is defined in Article 197 (3) as the inability to discharge the functions of their office due to infirmity of the body or mind or any other cause or for misbehaviour. The question of removal must be determined by an appropriate independent and impartial tribunal.<sup>75</sup>

The standard for removal of a judge is a high one. The Privy Council has said: 'While the highest standards are expected of a judge, failure to meet those standards will not of itself be enough to justify removal of a judge. So important is judicial independence that removal of a judge can only be justified where the shortcomings of the judge are so serious as to destroy confidence in the judge's ability properly to perform the judicial function.'<sup>76</sup> In considering the conduct, the Court will consider:

- i. Has the judge's conduct affected directly his ability to carry out the duties and discharge the functions of his office?
- ii. Has that conduct adversely affected the perception of others as to his ability to carry out those duties and discharge those functions?
- iii. Would it be perceived to be inimical to the due administration of justice if the judge remains in office?
- iv. Has the office of the judge been brought into disrepute by the judge's conduct?<sup>77</sup>

Inability to discharge functions was given a wide meaning to include a defect of character and the effects of conduct reflecting that defect.<sup>78</sup>

d. Financial Autonomy

The expenses of the High Court and Court of Appeal, including the remuneration of judges, are borne by the Consolidated Fund.<sup>79</sup>

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<sup>74</sup> Van Rooyen v The State [2003] 2 L.R.C. 533 (CCSA)

<sup>75</sup> Hearing on the Report of the Chief Justice of Gibraltar Referral under Section 4 of the Judicial Committee Act 1833 [2009] UKPC 43 [1]

<sup>76</sup> Hearing on the Report of the Chief Justice of Gibraltar Referral under Section 4 of the Judicial Committee Act 1833 [2009] UKPC 43 [31]

<sup>77</sup> Lawrence v Attorney General of Grenada [2007] 1 WLR 1474

<sup>78</sup> S Hearing on the Report of the Chief Justice of Gibraltar Referral under Section 4 of the Judicial Committee Act 1833 [2009] UKPC 43 [205]

<sup>79</sup> Section 223 of the Constitution of Guyana

## 6. Access to Justice

All activities associated with the administration of elections are subject to judicial review if challenged by a dissatisfied party. The legal framework in Guyana stipulates the means, procedures, and persons authorized to challenge electoral activities, and places limits on the timeframe in which this should be done.

Challenges that affect elections begin even before the election takes place. Complaints against the registration process may not normally be brought in an election petition and decisions of a Registration Officer during the process of the revision of the Voters' Lists are appealable.

### a. Constitutional/Judicial Review Proceedings

An effective means of securing electoral justice even before the election is the use of the Constitutional Court. As indicated earlier, the no-confidence motion passed in the National Assembly on December 21, 2018 triggered several legal challenges in the Courts regarding the constitutionality of the motion itself (*Persaud v Compton Reid et al*, *Jagdeo v the Attorney General et al* and *Ram v the Attorney General et al*), the appointment of then Chairman of GECOM Justice Patterson (*Mustapha v the Attorney General et al*), and the house-to-house registration exercise commenced by GECOM in July 2019 (*Ram v GECOM*).

The use of constitutional and judicial review proceedings can also take place during the election period and before the declaration of results. In the cases of *Holladar v Mingo et al*; *Moore v the Guyana Elections Commission et al*; *David v the Chief Elections Officer et al*; and *Jones v Guyana Elections Commission et al*, which all took place following the close of polls and prior to the August 5 declaration of results, constitutional and judicial review proceedings were important tools for securing justice. These types of proceedings should be determined without delay since they involve rights. It is therefore notable that the post-election cases in Guyana were heard and determined within reasonable timeframes. *Holladar v Mingo et al* was heard and completed within one week of its filing in the High Court. The *Moore v GECOM, et al* case was heard and determined within two weeks by the High Court, thereafter two days at the Full Court level, and in less than one week determined by the Court of Appeal. This measure was more effective in terms of speed of determination than election petitions which, as noted elsewhere in this report, incur significant delays.

### b. Voters' List Challenges

The first step in an election is the Voter's List. Section 9 of the National Registration Act defines the procedures for the registration of eligible electors, the establishment of a central register containing the originals of the registration cards of all registered persons, the maintenance of duplicate registration cards in each registration division for persons registered in those divisions, and the procedures for the preparation of the Preliminary List of Electors (PLE). Section 15 of the same Act establishes the process for claims and objections to the names of persons included on the preliminary List. Such claims and objections are

determined by the Deputy Commissioner of Registration or by a registrar and are appealable to the Commissioner of Registration, whose decision shall be final.

Regulations 23 through 36 of the National Registration (Resident) Regulations provide a comprehensive scheme for the filing, hearing and determination of objections to names which have been included in the PLE. An elector may visit the appropriate registration office/sub-office to register objections to an entry or entries in the PLE of a person(s) whom the elector (objector) believes is/are not qualified to be an elector. The objection is documented on Form R09 which is signed by the objector and then submitted to the Registration Officer/Assistant Registration Officer. An investigation of the objection is conducted and a hearing is held by the Registration Officer. The resulting report is submitted to the Secretariat, in order that, if the objection is upheld, all particulars of the objectee are removed from the Preliminary List of Electors. Thereafter a Revised List of Electors (RLE) is published.

The 2019 Claims and Objections period took place from October 1 to November 11, 2019. The Guyana Elections Commission received 17,964 objections to the PLE, of which 13,747 were withdrawn prior to their investigation. Of the remaining number, 395 were upheld and 3,822 were dismissed. There were 609 appeals.<sup>80</sup>

Regulation 37 of the National Registration (Residents) Regulations allows the Commissioner of Registration to make corrections to the Revised List of Electors if, within 21 days after certifying the list, he identifies inadvertent errors or omissions. Upon publication of the 2020 RLE, GECOM determined that it did not include the addresses and other information of eligible electors that had been updated during the house-to-house exercise. GECOM relied on Regulation 37 to make the necessary changes, to correct these anomalies. The RLE is closed to alterations twenty-one days after it has been certified<sup>81</sup> and thereafter becomes conclusive as to the persons entitled to vote at the next election.

The validity of the Voters' List is a separate issue, and the time to raise that issue is some time before it is certified.<sup>82</sup> This was further elucidated by the Courts that stated that "Where there is a legislative regime, which provides a detailed procedure for registration and for the hearing of claims and objections in relation to the electoral Register, the procedures set out in the legislation must mean something. Candidates and political parties are expected to be ever vigilant. By acting in accordance with the procedures which the regime provides, this would assist elections officials to provide an accurate Register of the persons who are entitled to vote according to law."<sup>83</sup>

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<sup>80</sup> Data provided by the Guyana Elections Commission

<sup>81</sup> Regulation 37 of the National Registration Residents Regulations Cap 19:08

<sup>82</sup> *Radix v Gairy* (1978) 25 WIR 553, per Sir Maurice Davis CJ, delivered 19 September 1978, from Grenada.

<sup>83</sup> *Frampton and Others v Pinard and Others* DOMHCV2005/0149, 150, 151, 152 and 154 - (Rawlins J) Judgment 28th October 2005 (unreported)

### c. Legitimation

As previously indicated, a challenge may be brought at different stages: before, during, and after the election. A person may bring a challenge to the registration process by filing an appeal to the High Court. Alternatively, they may file a claim, seek judicial review, or file a constitutional motion, either before, during or after the election, depending on the wrong done and the relief sought, as seen in the case of *Ram v GECOM* relative to the house-to-house registration.

In Guyana, the filing of an election petition after the election has concluded is the standard procedure for challenging the candidacy or election of a candidate who it is alleged was wrongfully elected. The jurisdiction to regulate membership in parliament is, in the constitutional theory of the separation of powers, vested in parliament itself. The court has previously held that it has no place in determining the validity of the election of a member of the House, except to the extent that parliament has delegated that power to the court.

In Guyana, the courts regard the election jurisdiction as different from the civil or purely constitutional jurisdiction of the court. The Courts have held, for example, that whereas the constitutional jurisdiction is available to any person with a relevant interest, the parliamentary or election jurisdiction is available only to the Attorney General and candidates and voters. Further, whereas the constitutional jurisdiction is regulated by procedural rules made by the Chief Justice, the parliamentary or election jurisdiction is regulated by laws made by Parliament pursuant to constitutional power. Elections legislation was considered to have been enacted to regulate election litigation proceedings, which legislation brought certain restrictions.

### d. Formal Requirements

The Constitution, elections statutes and the applicable case law require an election petition to be presented within a specified time frame, in a particular manner, and to provide specific information. At the conclusion of the trial the judge must determine whether the person elected was in fact duly elected or whether the election is void.

The rules governing the presenting of an election petition and its trial are onerous and restrictive. The public policy behind this stance is the need to ensure that there is no delay in determining who the persons are who are entitled to form the government immediately after elections have ended. A challenge to an unfair election is permitted, but it must be prosecuted within strict guidelines and timetables.

Election petitions are considered to be of a special nature and so where the challenge relates to the outcome of the election, the Court tends to hold that the applicant should file an election petition to challenge his opponent's election. In *Ram v AG et al*; *Jagdeo v AG et al* and *Persaud v Reid et al* the Caribbean Court of Justice (CCJ) held that the Court has no jurisdiction to determine matters which must be raised by way of an election petition filed otherwise than as prescribed by Parliament. They held that an assumption by the courts of an "inherent

power” to interrogate qualifying and disqualifying criteria in relation to election to the National Assembly will constitute overreach on the part of the judiciary.

Section 5 of the National Assembly (Validity of Elections) Act stipulates that an election petition must be presented within 28 days after the results of the election in question are published in the Gazette or, if the petition alleges that a financial reward was used to affect the election, within 28 days of the payment of that reward. Failure to file and serve the petition within the statutory period of twenty-one days is fatal.<sup>84</sup> The Petition can only be brought by either an elector or by a candidate.<sup>85</sup>

The National Assembly (Validity of Elections) Act and Rules provide a detailed code that guides political candidates and lawyers on filing a petition including, *inter alia*, presentation and service of an election petition, the requirement for the Registrar to publish notice of the petition; how notice of petition is to be served; and in what circumstances a petition may be amended or withdrawn.

The petition shall be set out in the form prescribed and shall be signed by the petitioner(s); state the right of the petitioner to petition; state the date and result of the election to which the petition relates; state the grounds on which relief is sought, setting out with sufficient particularity the facts relied on to sustain the prayer, but not the evidence by which they are to be proved; be divided into consecutively numbered paragraphs, each of which, as much as possible, confined to a distinct portion of the subject; and conclude with a prayer, setting out particulars of the relief sought.

The petition must be filed along with seven copies.<sup>86</sup> A Notice of the petition would then be placed on the Notice Board in the Registry, and published in the Gazette as well as a newspaper of general circulation, the cost of which is to be borne by the petitioner and paid to the Registrar before publication.<sup>87</sup>

The notice of the presentation of the petition together with a copy of the petition and of the nature of the proposed security must be served on the respondent within five days after the petition is filed. Where the respondent gave an address to the Registrar, the notice can be served via registered mail. If no address for service was provided the notice must be served personally on the respondent. If the respondent seeks to evade service or the petitioner is unable to serve, after five days, the court can order that the notice is deemed to be served if it is placed on the notice board and published in the Gazette and in the newspaper. Once deemed served the respondent must provide within 10 days his address for service and indicate any applications or objections he may wish to file.<sup>88</sup>

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<sup>84</sup> See for example *Payne v Hammond* (Guyana HC, 5 June 1986); *Joseph v Codrington* (ANUHCV 2009/0147, 30th June 2009); *AG v David* (GDAHCV 2006/0018, 12th September 2006); *Ezechial Joseph v Alvin Reynolds* HCVAP 2012/ 14, 31st July 2012

<sup>85</sup> Section 4 National Assembly (Validity of Elections) Act

<sup>86</sup> Rule 4 National Assembly (Validity of Elections) Rules

<sup>87</sup> Rule 7 National Assembly (Validity of Elections) Rules

<sup>88</sup> Rule 8 National Assembly (Validity of Elections) Rules

#### e. Economic Requirements

At the time of filing the election petition or within three days of its filing, the petitioner must provide security for all the costs or charges that may be payable by the petitioner in the petition. This security shall not exceed one thousand Guyanese dollars (US\$4.79) and can be made either by cash paid into court, or by filing a recognizance signed by sureties or partly by cash and partly by securities.<sup>89</sup> The amount of the security (US\$4.79) is however so low that petitioners usually prefer to pay the amount into court rather than bring sureties to sign a recognizance.

The statutory requirements for service of the petition and of the notice of security for costs are generally stringent. A petition may be dismissed or a respondent may be struck out on an interlocutory application if there is any defect in the giving or serving of the Recognizance for Security for Costs.

### **7. Fair and Effective Process**

International and constitutional requirements provide that everyone has the right to an effective remedy that swiftly and effectively protects them against acts that violate their fundamental rights. Likewise, the processing of electoral disputes must be adequate to resolve the case in a timely manner and provide an effective remedy to the affected right.

#### a. Deadlines

##### *Challenges to Voters' List*

As indicated earlier, Regulations 23 through 36 of the National Registration (Resident) Regulations provide a comprehensive scheme for the filing, hearing and determination of objections to names which have been included in the Preliminary List of Electors (PLE). For the 2020 elections, GECOM provided a 42-day Claims and Objections period, from October 1 to November 11, 2019. Thereafter, Regulation 37 of the National Registration (Residents) Regulations Act provided a further twenty-one days for the correction of any errors and the publication of the Revised List of Electors (RLE).

##### *Election Petition*

As indicated earlier, an election petition must be presented within 28 days after the results of the election in question are published in the Gazette or, if the petition alleges that a financial reward was used to affect the election, within 28 days of the payment of that reward.

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<sup>89</sup> Section 7 National Assembly (Validity of Elections) Act

The Court of Appeal has held that the requirement that a petition be presented within a particular time is substantive, not procedural, and the time cannot be enlarged in the Court's discretion, making a petition presented out of time liable to be struck out.<sup>90</sup>

Notice of the presentation of the petition, together with a copy of the petition must be served on the respondent personally within five days after filing of the petition. Once deemed served, the respondent has five days to provide his address for service and indicate any applications or objections he may wish to file.<sup>91</sup>

The Courts have stated that, as far as practicable, every election petition shall be tried as expeditiously as possible in the interest of justice. Unless statute otherwise provides, an election petition, and any amendments thereto, must be perfected within the time limited for filing the petition. The rationale is that it would otherwise defeat the underlying virtue of the mandatory nature of elections legislation, which is intended to ensure that the validity of the election of a member of the legislature is dealt with expeditiously, in the public interest. The persons who are returned as legislators should know quickly whether they have been lawfully elected and voters need to know who their elected representatives are with certainty.<sup>92</sup>

This has been challenge in Guyana and the Mission received complaints from some parties about the length of time it takes to determine election related offences. Following the 2015 elections, the People's Progressive Party/Civic challenged the validity of the election outcome claiming the elections were not held in conformity with the Constitution of Guyana. The matter, which was filed in June 2015 in the name of PPP/C parliamentarian Ganga Persaud, requested, *inter alia*, a recount of all ballots cast in the elections and such redress as the court determined appropriate, including, but not limited to, partial or completely new elections. As of the March 2, 2020 General and Regional elections, the matter remained at the Full Court of the High Court, pending a ruling.

### *Constitutional and Judicial Review Proceedings*

There is no time limit for commencing constitutional or judicial review claims. On an application for judicial review a court, if it thinks fit, may refuse any relief if it considers that there has been "undue delay" in making the application, and that the relief sought would cause substantial hardship to, or would substantially prejudice the rights of any person, or would be detrimental to good administration. Similarly, constitutional claims should be brought within a reasonable time.

In constitutional law matters the courts, as indicated above, have themselves imposed certain constraints on the exercise of their jurisdiction to ensure that the jurisdiction is not

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<sup>90</sup> Stevens v Walwyn (1967) 12 WIR 51

<sup>91</sup> Rule 10

<sup>92</sup> These principles were stated, for example, in Ethlyn Smith and others v Delores Christopher and Others, 12 in Ferdinand Frampton v Pinard and Others, 13 and in George Prime v Elvin Nimrod and Others

abused. The Court will not entertain constitutional law claims where the claimant has adequate alternative remedies.

### *Appeals*

Under Section 79 of the High Court Act,<sup>93</sup> a decision of a single judge can first be appealed to the Full Court. The Full Court is a panel of two or three judges of the High Court who hear appeals from a single judge.

Pursuant to the Court of Appeal Rules, an appeal in the case of an interlocutory appeal where leave is not required, must be filed within 14 days of the date the decision appealed against was made; in an interlocutory appeal where leave is required, within 14 days of the date when such leave was granted; and in the case of any other appeal, within six weeks of the date when judgment is delivered or the order is made.<sup>94</sup> The Court of Appeal may extend any of the time limits on an application made by the applicants.<sup>95</sup>

#### b. Right to a Defence

A candidate affected by an election petition is allowed to be part of the election petition process. The notice of the presentation of the petition together with a copy of the petition must be served on the respondent personally within ten days after it is filed. Also, any person who was the representative of any list of candidates must, after an election, provide the Office of the Registrar with an address for service within one mile of that office or the address of a solicitor for that person.<sup>96</sup>

A respondent may request particulars within five days and after that a Court or a judge may, upon application, order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual.<sup>97</sup> In relation to the security of costs the Rules provide that when the security is given wholly or partly by recognizance, it is lawful for the respondent, within ten days from the date of service, to object to the recognizance.<sup>98</sup> During the hearing of the election petition, a respondent may present witnesses and can cross examine any witness.<sup>99</sup>

#### c. Preclusion

The court has no discretion or power to extend the time for service, regardless of the circumstances. If it is not served within the required time, the court will hold that it has no jurisdiction to entertain the petition. The requirement that a petition be presented within a particular time is substantive, not procedural, and the time cannot simply be extended by

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<sup>93</sup> Cap 3:02

<sup>94</sup> Rule 3 Court of Appeal Rules Cap 3:01

<sup>95</sup> Rule 8 Court of Appeal Rules Cap 3:01

<sup>96</sup> Rule 10 National Assembly (Validity of Elections) Rules

<sup>97</sup> Rule 18 National Assembly (Validity of Elections) Rules

<sup>98</sup> Rule 9 National Assembly (Validity of Elections) Act

<sup>99</sup> Section 15 National Assembly (Validity of Elections) Act

the Court. Similarly, if the petitioner fails to serve the required notice on the respondent of the amount and nature of the security, the court has no power or discretion to cure the irregularity and extend time for compliance.

#### d. Proof

The basic principle in an election petition as in civil cases is that he who asserts must prove, unless some other specific principle or circumstance causes the burden of proof to shift to a respondent. Firstly, the petitioners must plead it in the petition.

The basic principles on pleadings in elections cases are uncontroversial. As in civil cases, generally, the purpose of pleadings is to identify the issue or issues that will arise at a trial. This is in order to avoid the opposing parties and the court being taken by surprise. A petitioner must therefore raise an issue for trial in the pleadings so that a respondent is able to prepare to meet those issues by counter-pleading and allow the parties to present evidence and counter-evidence on the issues to be tried.

The pleadings must be precise and disclose a cause or causes of action. The rules of pleading are strictly applied in election cases with respect to the time for filing and perfecting a petition, as well as to precision in pleading. In election petitions, pleadings have to be precise, specific and unambiguous so as to put the respondent on notice. The rule of pleadings, that facts constituting the cause of action must be specifically pleaded, is as fundamental as it is elementary. Any allegation approaching dishonesty in electoral petitions must be clearly and specifically pleaded with a level of precision that is not required in pleading a mere irregularity.<sup>100</sup>

Rule 18 of the National Assembly (Validity of Elections) Rules provides that Evidence need not be stated in an election petition, but the Court or a judge may upon application order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial. The Court has indicated that where the petition charges specific bribery, treating and undue influence, the petitioner must provide certain particulars including the names and the last known or present street address, and number (if any) on the register of the agents of the respondent who bribed, treated, or unduly influenced. Also, they must provide the dates when, and the places where, each act took place and the nature, character and description of each act.<sup>101</sup>

#### e. Notifications

There are ample provisions for the notification of an election petition to a respondent. The National Assembly (Validity of Elections) Rules provide that upon presentation of the petition, the Registrar of the Court shall ensure that it is published in the Gazette and in a newspaper (Rule 8) at the cost of the petitioner. Notice of the presentation of the petition

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<sup>100</sup> Charan Lal Sahu v Giani Zail Singh 1984 (2) SCR 6

<sup>101</sup> John Henry Abraham v Kelter Dwight Darroux et al, DOMHCV2010/0003 (Thomas J) Judgment 25th August 2010 (unreported)

along with a copy of the petition must be served on the respondent personally within five days, after which the respondent has another five days to provide his address for service and indicate any applications or objections he may wish to file (Rule 10). Where a respondent does not give an address for service and is evading personal service the petitioner may apply to the judge for an order deeming notice to constitute posting on a Notice Board in the Office of the Registrar; in the Gazette or a Notice published in one of the newspaper of general circulation (Rule 9).

f. Substantiation

At the end of the petition, a judge must state clearly the reasons for his decisions. The Courts have previously held that a judge must give reasons for his/her decision, although these reasons need not be elaborate and the particularity required will vary according to the circumstances of the case. It is sufficient if what the judge says shows the parties and, if need be, the Court of Appeal, the basis on which he/she has acted.<sup>102</sup> The giving of reasons is considered to be inextricably bound up with natural justice or the right to be fairly heard and is fundamentally important as a public law principle. It has been described as "one of the fundamentals of good administration"<sup>103</sup> and is regarded as requirement of the 'rule of law'<sup>104</sup> Rule 10 of the Court of Appeal Rules also provides that if no written decision is given by the Judge at the time of giving judgment such Judge shall communicate his reasons for the judgment in writing to the Registrar of the court and such reasons shall be included in the record. There is no history of a failure of the electoral court to give reasons for its decisions in Guyana.

g. Means

Section 163(3) of the Constitution provides for an appeal from a final decision of the High Court sitting in an election petition. An appeal lies as of right to the Court of Appeal of Guyana (a) from the decision of a Judge of the High Court granting or refusing leave to institute proceedings for an election petition or (b) from the determination by the High Court of any such question, or against any order of the High Court made in consequence of such determination. There is also a right to appeal to the Caribbean Court of Justice (CCJ) as seen in several of the pre-electoral legal cases and in the post-electoral case of *David v the Chief Elections Officer et al.*

As indicated earlier, an appeal may be made, in the case of an interlocutory appeal where leave is not required, within 14 days of the date the decision appealed against was made; in an interlocutory appeal where leave is required, within 14 days of the date when such leave was granted; or in the case of any other appeal, within six weeks of the date when judgment

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<sup>102</sup> *Eagil Trust Co v Pigott-Brown* [1985] 3 All ER 119

<sup>103</sup> Lord Denning MR in *Breen v. AEU* [1971] 1 All E.R. 1148, 1154

<sup>104</sup> *Shane Graham et al v The Police*. DOM MCRAP 2010/009

is delivered or the order is made.<sup>105</sup> The court of appeal may extend any of the time limits on an application made by the applicants.<sup>106</sup>

h. No Discrimination of Actors in the Process

Section 149 of the Constitution of Guyana provides that 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 on the basis of *inter alia* political opinion.

## 8. Transparency and Culture of Legality

The demand for transparency in the workings of the court is based on the right of each person to seek and receive such information from the government and other authorities under the constitution and international law.

a. Electoral Calendar and Enjoyment of Rights

The statutory time limits provide a rigid timetable to ensure that everything is done in a timely manner, because the public interest requires it. The persons who are returned as legislators should know quickly whether they have been lawfully elected. The country needs to know who the elected representatives are with certainty. Election challenges should be mounted before a new legislature sits and begins its work, or as soon as possible thereafter, in order that the legislature might be definitively lawfully constituted. This goes to the issue of legitimacy. Electoral laws and their interpretation by the courts are intended to facilitate this.<sup>107</sup>

The failure to determine election petitions within a reasonable time has caused a plethora of constitutional law and judicial review proceedings. While Guyana's sole election petition from 2015 was not concluded even after five years, judicial review proceedings were effectively used by the political parties in the 2020 elections to expeditiously determine disputes before the elections were declared. Cases were able to transit the judicial system in a matter of days or weeks, with the courts hearing cases on weekends in some cases.

b. Advertising

All decisions of the High Court and Court of Appeal in Guyana are available to the public. Audio (and video in some instances) of the court proceedings in the judicial review matters were broadcast live by media outlets and on social media. The matters heard at the Caribbean Court of Justice were also broadcast live online.

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<sup>105</sup> Rule 3 Court of Appeal Rules Cap 3:01

<sup>106</sup> Rule 8 Court of Appeal Rules Cap 3:01

<sup>107</sup> *Devan Nair v Yong Kuan Teik* [1967] 2 AC 31

## 9. Findings and Recommendations

In conclusion Guyana has reasonable electoral justice efforts. Nevertheless, certain adjustments could be made to the process to further enhance electoral justice. These include:

- The two highest positions in Guyana’s judiciary, the Chancellor of the Judiciary and the Chief Justice, are currently acting appointments – a circumstance that has been criticized by the current and former Chief Justices of the Caribbean Court of Justice, Justice Adrian Saunders and Justice Dennis Byron, respectively. Acting appointments for, as well as the non-appointment of members of the Judicial Service Commission (JSC) can impact on the perception of independence of the judiciary. Efforts should be made at the earliest opportunity to have the positions of Chancellor and Chief Justice confirmed and appointments made the JSC.
- There is currently no legislative timeframe or any other provision for the length of time it takes to determine election-related offences and petitions. As far as practicable and in the interest of justice and settling an election, every effort should be made by the High Court to expedite election petitions and complete hearings of all election related offences, within six months from the date on which the election petition is presented for trial. A decision should also be rendered soon thereafter.
- An appeal on an election petition before the Court of Appeal should likewise be expedited and dealt with, as far as possible, within three months.

## **iv. POLITICAL FINANCE**

### **1. Introduction**

The financing of political parties and campaigns is an important issue in electoral processes. Parties require funds to finance their regular operations and to engage with the electorate, whose support they hope to acquire at elections. Weak or non-existent political finance rules limit the ability of the authorities and other election stakeholders to properly regulate and monitor the sources of party financing, which has the potential to impact the transparency of an electoral process.

The financing of political parties and campaigns in Guyana is guided by the Representation of Peoples Act, Chapter 1:03, Part XII - Election Expenses,<sup>108</sup> which requires candidates and/or their agents to submit a report on their expenses no later than 35 days after the declaration of the results of the elections. There is no regulation of private financing or anonymous donations.

Efforts were made at the National Assembly in 2011, to address the issue of political party financing through a Special Select Committee constituted for that purpose (Resolution 153 of 2011).<sup>109</sup> However the Committee's report,<sup>110</sup> which was presented to the National Assembly in September 2011, simply recommended "that any future analysis of political parties campaign financing should be done in the context of the present electoral laws."

The following report reviews the existing political finance provisions in Guyana, and offers recommendations, based on international electoral standards, which may assist the country in developing a more comprehensive and equitable framework for the financing of political campaigns.

### **2. Legal Framework**

The legal framework for elections in Guyana is provided by the Constitution of the Co-operative Republic of Guyana (Chap. 1:01),<sup>111</sup> the Representation of the People Act (Cap.

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<sup>108</sup> Representation of the People Act, Chapter 1:03, Act Reg. 24/1964 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_103\\_Representation\\_of\\_the\\_People.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_103_Representation_of_the_People.pdf)

<sup>109</sup> National Assembly of Guyana, Ninth Parliament of Guyana, First Session (2006-2011), Resolution No. 153, [https://parliament.gov.gy/documents/resolutions/3019-resolution\\_no.153.pdf](https://parliament.gov.gy/documents/resolutions/3019-resolution_no.153.pdf)

<sup>110</sup> National Assembly of Guyana, "Report of the Special Select Committee on the Political Parties Campaign Financing-Resolution No. 153 of 2011", 1 September 2011, <https://parliament.gov.gy/publications/parliamentary-reports/report-of-the-special-select-committee-on-the-political-parties-campaign-financing-resolution-no.-153-of-2011>

<sup>111</sup> Constitution of the Cooperative Republic of Guyana, Chapter 1:01, Act 2 of 1980 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_101\\_Constitution.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_101_Constitution.pdf)

1:03), the National Assembly (Validity of Elections) Act Cap 1:04,<sup>112</sup> and the National Registration (Residents) Act and Regulations (Chap. 19:08).<sup>113</sup>

Issues relating to the political financing of parties and/or campaigns are addressed under Part XII - Election Expenses of the Representation of the People Act, which includes, *inter alia*, provisions relating to contracts, allowable expenses, illegal and corrupt practices, the declaration and publication of expenses and the timeframe for reporting expenses.

Part XII, Section 106 (a) of the Representation of the People Act sets a limit on expenses of GY\$50,000 (US\$240) per candidate or agent for candidates not exceeding number 53 on the list of candidates. Section 108 (1) establishes that, no later than the 35<sup>th</sup> day after the declaration of the results of an election, the election agent of each group of candidates shall forward to the Chief Elections Officer, a report on all payments, personal expenses and claims incurred. A failure or refusal to submit the required reports may be heard by the High Court of Guyana. Section 110 (1) provides that the Court may issue an order allowing an authorized excuse for the non-submission of the required reports or may apply a fine of GY\$32,500 (US\$155).

The Mission was informed by the Guyana Elections Commission that the regulations relating to political finance are not currently being enforced and have not been for the last several election cycles.

### **3. Equity and Transparency in Financing**

There is no public financing of political parties or campaigns in Guyana, although international standards for electoral processes indicate direct public financing is important in ensuring greater competitiveness and accountability in elections.

While neither of the two major political parties contesting the elections – A Partnership for National Unity + Alliance For Change (APNU+AFC) and the People’s Progressive Party/Civic (PPP/C) – provided public information on the sources of their financing, they advised the OAS Mission that funds for their campaigns had been derived in part from party membership dues, but also through party fundraisers and the solicitation of contributions from local businesses and supporters in the diaspora. In this regard the Mission heard complaints from some stakeholders that APNU+AFC had used the advantage of incumbency to boost its chances in the elections by channeling state resources, infrastructural developments and other incentives to voters in the pre-electoral period.

Nevertheless, most political parties affirmed their support for the enactment of campaign finance legislation and included this commitment in their official campaign materials. Prior to the elections, one political party, The Citizens Initiative, also published a list of

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<sup>112</sup> National Assembly (Validity of Elections) Act, Chapter 1:04, Act Reg. 40 of 1964 (and its amendments), <https://mola.gov.gy/information/laws-of-guyana>

<sup>113</sup> National Registration Act, Chapter 19:08, Act 24 of 1967 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_19.08\\_National\\_Registration\\_Act.pdf?v=2](https://www.gecom.org.gy/assets/docs/laws/Cap_19.08_National_Registration_Act.pdf?v=2)

contributions received by the party, along with the names of its donors. That was the first time any political party in the history of Guyana had taken such a step.

#### **4. Findings and Recommendations**

- The Parliament of Guyana should, as a priority, discuss and enact comprehensive legislation and regulations to govern campaign financing, including identification of the sources of funding, prevention of anonymous donations, limitation of private and in-kind donations to political and electoral campaigns, limitations on contributions from individuals and corporations, clear reporting requirements of candidates and political parties and provisions regarding access to information. Any new law should be adopted and its regulations and provisions publicized and implemented well before the next electoral process.
- All stakeholders should be engaged in a national process leading to the development and approval of the legislation and regulations. In this regard, an Independent National Commission, with representation from the National Assembly, the Executive, political parties and civil society, could be a useful mechanism to discuss modalities and suggest draft legislation on campaign financing regulations. The OAS model legislation on campaign finance, as well as efforts in other CARICOM and/or Commonwealth countries that have adopted legislation on political financing, might be a useful point of departure for these discussions.
- Consideration should be given to the inclusion in any regulatory framework of state funding for political parties and campaigns.

## v. POLITICAL PARTICIPATION OF WOMEN

### 1. Introduction

The political participation of women is both legally enshrined and informally instituted in Guyana's political system. Guyana is a regional leader in terms of the political participation of women due to its gender quota<sup>114</sup> (the only one of its kind in the English-speaking Caribbean) as well as the participation of women in the broader election process.

Since the introduction of the quota, which was instituted as part of constitutional changes in 2000, women's representation in Guyana has increased from 18.5% of the parliament in 1999, to 32.3% in 2015.<sup>115</sup>

Because there is no placement mandate, which would ensure women's representation as elected officials, the number of elected women has approached, but never met or exceeded, the candidate gender quota of 33%. Nonetheless, Guyana remains a leader in the Caribbean in the descriptive representation of women,<sup>116</sup> As of March 2020, according to the Inter-parliamentary Union (IPU).<sup>117</sup> Guyana was ranked 37<sup>th</sup> based on the percentage of women in the national parliament; a ranking that was lower than only seven other countries in the Americas,<sup>118</sup> and the second highest ranking of all OAS member states in the Caribbean.

### 2. Legal and Electoral Framework

The legal framework for elections in Guyana is provided by the Constitution of the Co-operative Republic of Guyana (Chap. 1:01),<sup>119</sup> the Representation of the People Act (Cap. 1:03),<sup>120</sup> the National Assembly (Validity of Elections) Act Cap 1:04,<sup>121</sup> and the National Registration (Residents) Act and Regulations (Chap. 19:08).<sup>122</sup>

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<sup>114</sup> The Representation of the People Act, Article 11 (B (4)), items 5 and 6, stipulate that the total number of females on each party's national top-up list and on the lists for geographical constituencies, shall be at least one third of the total number of persons on those lists.

<sup>115</sup> Data provided by the National Assembly of Guyana

<sup>116</sup> Htun, Mala and Jennifer Piscopo. Women in Politics and Policy in Latin America and the Caribbean. Social Science Research Council Working Papers. August 2014. [https://webarchive.ssrc.org/working-papers/CPPF\\_WomenInPolitics\\_02\\_Htun\\_Piscopo.pdf](https://webarchive.ssrc.org/working-papers/CPPF_WomenInPolitics_02_Htun_Piscopo.pdf) and UNDP (2015). Where Are The Women? A Study of Women, Politics, Parliaments and Equality in the CARICOM. [https://iknowpolitics.org/sites/default/files/jm\\_where\\_are\\_the\\_women\\_caricom.pdf](https://iknowpolitics.org/sites/default/files/jm_where_are_the_women_caricom.pdf)

<sup>117</sup> Inter-Parliamentary Union. Monthly Ranking of Women in National Parliaments. <https://data.ipu.org/women-ranking?month=3&year=2020>

<sup>118</sup> Bolivia (3), Mexico (5), Nicaragua (6), Grenada (8), Costa Rica (12), Argentina (19), Ecuador (27).

<sup>119</sup> Constitution of the Co-operative Republic of Guyana, Chapter 1:01, Act 2 of 1980 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_101\\_Constitution.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_101_Constitution.pdf)

<sup>120</sup> Representation of the People Act, Chapter 1:03, Act Reg. 24/1964 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_103\\_Representation\\_of\\_the\\_People.pdf](https://www.gecom.org.gy/assets/docs/laws/Cap_103_Representation_of_the_People.pdf)

<sup>121</sup> National Assembly (Validity of Elections) Act, Chapter 1:04, Act Reg. 40 of 1964 (and its amendments), <https://mola.gov.gy/information/laws-of-guyana>

<sup>122</sup> National Registration Act, Chapter 19:08, Act 24 of 1967 (and its amendments), [https://www.gecom.org.gy/assets/docs/laws/Cap\\_19.08\\_National\\_Registration\\_Act.pdf?v=2](https://www.gecom.org.gy/assets/docs/laws/Cap_19.08_National_Registration_Act.pdf?v=2)

Several international legal treaties to which Guyana is a party also address issues relating to gender equality, including:

- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979);
- The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belem do Pará).

Guyana is a semi-presidential parliamentary republic within the Commonwealth of Nations. Elections to the 65-seat unicameral National Assembly, constitutionally due every five years, are held under a system of proportional representation with an element of geographical and gender representation. Twenty-five members are elected from the 10 geographic constituencies, while the remaining 40 members are drawn from a closed national list (known as the “national top-up list”), named by the political parties. The Mission notes that a proportional representation system with multiple seats per district (particularly those with gender quota or affirmative action policies) is the system most conducive to women’s electoral success.<sup>123</sup>

The President is the Head of State and Head of Government. In nominating candidates for the elections each political party must designate a presidential candidate, who is deemed elected if the party wins a majority of votes. The President can only be elected for two terms. The Prime Minister, other ministers of Government, the Attorney General and other high-ranking officials are appointed by the President.

Guyana is the only country in the English-speaking Caribbean with a gender quota, introduced in the Election Laws (Amendment) Act of 2000 and the Representation of People’s (Amendment) Act of 2000. The gender quota is legislated at the national level for the National Assembly only, and does not apply to the subnational level. It applies only to the candidate lists presented to the Guyana Elections Commission (GECOM) prior to the election.

There are currently no binding laws determining the number or placement of women on ranked lists of elected officials. The Mission notes that the most effective gender quotas and affirmative action policies contain placement mandates for the ranked list of candidates as well as enforced sanctions for noncompliance.<sup>124</sup>

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<sup>123</sup> King, James. 2002. Single Member Districts and the Representation of Women in American State Legislatures: The Effects of Electoral Systems Change. *State Politics and Policy Quarterly*. 161-175; Golder, S., Stephenson, L., Van der Straeten, K., Blais, A., Bol, D., Harfst, P., & Laslier, J. (2017). Votes for Women: Electoral Systems and Support for Female Candidates. *13(1)*, 107–131. <https://doi.org/10.1017/S1743923X16000684>; Rule, Wilma. 1987. ‘Electoral Systems, Contextual Factors, and Women’s Opportunity for Election to Parliament in Twenty-Three Democracies.’ *Western Political Quarterly* 40: 477–98.

<sup>124</sup> UN Women. “Women in Political Leadership in the Caribbean.” November 2018. <https://parlAmericas.org/uploads/documents/WomensPoliticalLeadershipUNWomen.pdf>

The candidate quota has three components: 1) that each political party must have a minimum of 33% women on its national top-up candidate list; 2) each political party must have a minimum of 33% women on all combined national election geographic lists in which the party is contesting,<sup>125</sup> 3) each political party must field at least one woman on 80% of their combined geographic lists.<sup>126</sup> If a party's candidate lists do not conform to the gender quota, or the geographic quota<sup>127</sup> following Nomination Day, GECOM will return the candidate lists to the parties and provide them with a short window to amend their lists in order to contest in the general and/or regional elections.

For the 2020 election, the candidate lists of 11 political parties/groups were accepted by GECOM. Nine of those parties contested the national elections, where the gender quota is applied. Data provided by GECOM indicated that 42.49% of all national top-up list candidates (232 of 546) and 45.93% of all geographic constituency list candidates (158 of 344) were female.<sup>128</sup>

### **3. Electoral Participation of Women and Men**

#### **a. Inclusiveness in Elections from a Gender Perspective**

##### *i. Registration Process*

There are no formal or informal restrictions on a woman's ability to register to vote. In fact several sections of the Constitution of Guyana safeguard and promote the right of women to participate equally in national elections. Section 29 (1) of the Constitution of Guyana states that women and men have equal rights and the same legal status, including in all spheres of political life. Section 59 guarantees universal suffrage for citizens 18 years of age and older. Section 212 (G(a)) establishes the Women and Gender Equality Commission, which is mandated to promote issues relating to the empowerment and enhancement of the status of women, including their participation in national decision-making.

The Mission was unable to determine whether there were any gender gaps in the March 2020 Voters' List, as GECOM did not disaggregate the List by gender.

##### *ii. Access to the Polling Place*

Women have no formal restrictions in their access to polling places. Various electoral stakeholders noted that there are informal norms granting priority to pregnant women and individuals with disabilities when exercising the right to vote. In practice however, this priority was not enforced. Often, the Presiding Officer and other electoral workers conducting the voting process could only see the very front of the line of electors. As a result,

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<sup>125</sup> In order to be eligible to contest in the general election, all parties must contest in a minimum of six regions. The two gender quota provisions that pertain to the regional lists apply to the group of geographical candidate lists, taken together.

<sup>126</sup> Though the details are not enumerated in the law, if a party is contesting in fewer than ten regional districts, they can only present one geographic candidate list with no female candidates. If the party is contesting in all ten regions, two of their candidate lists can contain no female candidates and the party will still comply with the quota.

<sup>127</sup> Each party must submit candidate lists in a minimum of six regions.

<sup>128</sup> Data provided by the Guyana Elections Commission (GECOM)

management of the line of electors, and the assignment of priority access, was largely undertaken by security officials at each polling station or by voters themselves, with differing results across the polling places.

Individuals with young children, a significant number of whom were observed to be young women, were similarly treated in an *ad hoc* and inconsistent manner when accessing the polling place. The Mission also observed inconsistencies in the treatment of parents with children when the time came to actually cast their ballot. In some cases parents were allowed to take their infants and young children into the voting booth. In other cases observed they were denied. This presented a small, if surmountable, obstacle for families.

Civil society actors and representatives from women's party arms noted that women often rotate childcare in a community or neighborhood to allow all adults the opportunity to vote. While laudable, formal arrangements by national and electoral authorities that support the right of all individuals to vote, would ensure more consistency in this area.

### *iii. Promotion of Voting*

Prior to the 2015 election, several organizations, including the Women and Gender Equality Commission, ran radio and television advertisements that specifically promoted women's electoral participation. The Guyana Human Rights Association also produced pamphlets and distributed information about the electoral process. Neither group continued these efforts for the 2020 election. In the former case, the Commission staff and leadership cited a lack of time and resources. They instead chose to focus on publishing their policy priorities on women and gender for the next administration.

Though no agency purposefully and specifically disseminated material that promoted women's voting, materials prepared by GECOM included pronoun references to both his/her right to vote and included images and video of women.

### *iv. Casting of Ballots*

GECOM does not disaggregate data on the number of electors who cast their ballots by sex. The existence of sex-disaggregated data, further disaggregated by geographic region and age, would enable practical analysis of this topic.

## **b. Cleanliness of Elections from a Gender Perspective**

### *i. Integrity of the Preferences of Women Voters*

There were no observed restrictions on the free and secret ballot that disproportionately impacted female voters. There were also no indications of family voting, in which one member of the family (often the family patriarch) determines how the remainder of adults in the family vote; a practice that disproportionately limits the electoral rights of women.

Section 30 of the Representation of the People Act allows proxy voting if a voter meets specific conditions, including he/she has an election-related job on Election Day away from his/her polling place; he/she is an employee of the Transport and Harbours Department and is operating a vessel on Election Day; he/she is a candidate for the election; or he/she is blind

or is physically incapacitated.<sup>129</sup> Pregnancy and childcare are not listed as potential reasons for proxy voting.

*ii. Gender Equity within Electoral Bodies*

The involvement of women in electoral institutions can ensure that electoral organizations adopt more gender-sensitive policies and provide an example for the rest of the electoral process.<sup>130</sup> Guyana's electoral body, GECOM, consists of a chairperson and six commissioners. There are no gender provisions pertaining to the composition of the electoral body or the selection of poll workers.

GECOM's Chairperson for the 2020 General and Regional elections was retired Justice Claudette Singh - the first female chairperson in GECOM's history. The Deputy Chief Elections Officer was Ms. Roxanne Myers. Of the six commissioners, five were male and one was female.

*iii. Gender Equity in Polling Stations*

There are no formal gender norms governing the hiring and training of poll workers. While data disaggregating election officers by sex was not available, the Mission observed that the vast majority of poll workers for the 2020 elections were female. Women were highly represented among presiding officers, the primary leadership position in each polling station. Men, however, served disproportionately as Returning Officers, the leadership role at the District level. GECOM advised the Mission that it does not prioritize female applicants for Election Day positions, and that it has sought to increase its recruitment of male workers, with little success.

*iv. Gender Equity in the Monitoring of Voting*

Neither the major parties nor GECOM share sex disaggregated data on party agents, or those who monitor voting. However, based on reports by OAS observers, the majority of party agents were female. Domestic observers were not as widely present in polling stations as party agents, but women were well represented in that group.

**c. Competitiveness in Elections from a Gender Perspective**

*i. Gender Equity in the Electoral System*

Guyana's gender quota,<sup>131</sup> instituted in 2000/2001, ensures that political parties include at least 33% women as a total number of their candidates. This quota also guarantees geographic diversity for the number of women nominated, ensuring that no more than 20%

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<sup>129</sup> Representation of the People Act, Section 30

<sup>130</sup> Ballington, Julie, Gabrielle Bardall, Sonia Palmieri, and Katie Sullivan (2016). Inclusive Electoral Processes: A Guide for Electoral Management Bodies on Promoting Gender Equality and Women's Participation. United Nations Development Program and UN Women. [https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/electoral\\_systemsandprocesses/guide-for-electoral-management-bodies-on-promoting-gender-equali.html](https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/electoral_systemsandprocesses/guide-for-electoral-management-bodies-on-promoting-gender-equali.html); Bibler, Sarah, Vasu Mohan, and Katie Ryan (2014). Gender Equality & Election Management Bodies: A Best Practices Guide. International Foundation for Electoral Systems. [https://www.ifes.org/sites/default/files/gender\\_equality\\_and\\_emb\\_best\\_practices\\_guide\\_final\\_2017.pdf](https://www.ifes.org/sites/default/files/gender_equality_and_emb_best_practices_guide_final_2017.pdf)

<sup>131</sup> Representation of the People Act, Article 11 (B (4)), items 5 and 6.

of geographic constituency lists have no female candidates listed. There have been some efforts by the Women and Gender Equality Commission as well as by political parties to increase the quota to 40% or 50% and to include placement mandates to formalize the number of women in parliament. These efforts have not been successful so far.

Placement mandates ensure that a certain percentage of women are not only *nominated* but *elected*. In other countries, placement mandates such as a ‘zipper’ system, which alternates men and women on the candidate list, ensure that women are not placed at the bottom of the candidate list.

In Guyana, as a closed-list proportional representation system, the power to determine which individuals move from the large list of nominated candidates, to elected officials, resides with the parties. After the election results are finalized, each party submits a ranked list to GECOM with at least the number of positions the party was granted through the election tabulation.<sup>132</sup> There are no gender placement mandates at this stage to ensure 33% (or a greater proportion of) women in the final list.

Despite the lack of a placement mandate, the number of women in Guyana’s parliament has consistently grown since the introduction of the quota, approaching, but so far not exceeding 33%.

While there are no legal limitations to women standing as candidates or serving as elected officials, stakeholders noted the presence of several sociocultural limitations to women’s political participation in this area, including family pressures, employment concerns, childcare responsibilities and the impact of domestic violence.

*ii. Nominating Procedures*

Guyana’s gender quota has three components: at least one-third of the national top-up candidate list for each party must consist of women; at least one-third of all candidates on a party’s geographic constituency lists, taken together, must be women; and each party must include at least one woman in 80% of the total geographical constituencies in which they contest.

Data provided by GECOM indicated that all nine parties approved to contest the elections for the National Assembly met the gender quota conditions. Women made up the following percentage of each party list:

**Table 1: Percentage of Women on Party Lists**

Party/Coalition	Top Up List (%)	Geographic Constituency Lists (% Taken Together)	Geographic Lists with at least one Woman (%)
A New & United Guyana	40.48	41.94	85.71
A Partnership for National Unity + Alliance For Change	36.05	45.45	100

<sup>132</sup> Parties often include more candidates on their ranked list in case there are any issues with the candidates listed.

Change Guyana	40.48	47.06	100
Liberty and Justice Party	45.24	40.74	100
People’s Progressive Party Civic	34.48	42.22	100
People’s Republic Party	52.27	49.38	85.71
The Citizenship Initiative	64.29	51.72	83.33
The New Movement	51.16	50.00	100
United Republican Party	35.42	39.53	90

**Source: Data provided by the Guyana Elections Commission**

The Top-Up List percentage corresponds to the first gender quota component, while the Geographic Constituency List percentage corresponds to the second gender quota component. As no party presented a list with less than 33% in either category, all parties complied with the first two conditions of the gender quota. The final column, percentage of geographic lists with women candidates listed, corresponds to the third gender quota condition. As all parties included at least one woman on 80% of their combined geographic lists, all complied with the third condition of the gender quota.

Of the nine parties contesting the general election, four parties had one regional list in which there were no female candidates:

- A New and United Guyana: Region 10 (contested 7 regions)
- People’s Republic Party: Region 1 (contested 7 regions)
- The Citizenship Initiative: Region 2 (contested 6 regions)
- United Republican Party: Region 8 (contested in 10 regions)

It is worth noting two caveats in relation to this data. First, the Mission received this data from GECOM on February 28. GECOM advised that it was compiled in January 2020, after Nomination Day, at which point parties had presented their candidate lists to GECOM. Information provided to the Mission by individual parties, particularly smaller parties that provided disaggregated list data, was slightly different from that reported by GECOM, though there was no indication that this affected the requirements of the gender quota.

Second, the national top-up lists submitted by the two principal contenders (APNU+AFC and PPP/C) contained significantly more candidates than the number of spots in the national parliament, 86 and 116 candidates, respectively.<sup>133</sup> Article 11 (3) of the Representation of the People Act stipulates that each national top-up list submitted by political parties must include “at least 42 persons qualified to be elected to the National Assembly”. In other words, the number of seats available for election through the national top-up list (40 seats), plus two more.

The Mission notes that lists containing significantly more names than the prescribed number make it possible for parties to comply with the gender quota in candidate lists submitted to GECOM prior to the elections, but subsequently present final ranked lists of elected officials

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<sup>133</sup> GECOM. “Notice Given Under the Representation of the People Act (Cap. 1:03) General Election National Top-Up Approved Lists of Candidates.” Chairman, Guyana Elections Commission, 18 January 2020.

that do not include any women. While this has not happened in practice since the introduction of the quota, the absence of placement mandates means that political parties are not obligated to include 33% of women among their parliamentary representatives, there is nothing preventing them from removing all women from their final, ranked lists altogether, and there are no consequences if they do so.

*iii. Gender Equity in Political Parties or Organizations*

While political parties did not share hard data on the number of women who make up their membership and leadership, the Mission was informed and observed that they generally had a significant amount of female support, with women particularly well represented amongst the rank-and-file. Both APNU+AFC and PPP/C have substantial women's arms in their parties (the National Congress of Women and the Women's Progressive Organization, respectively), with large memberships and a diverse range of programs. Notably, women who are not formal members of the parties can participate in the women's arms and benefit from their social service programs.

While women hold leadership positions in the women's arms of the parties, they are less well-represented in leadership positions overall. Guyana has had one female President and Prime Minister, the late Janet Jagan who held both roles under PPP governments. In previous administrations, including the 2015 Cabinet, female ministers were generally given "soft" ministerial portfolios, such as Education and Tourism, while the "hard" ministerial portfolios (i.e. Finance or Security) were reserved for their male counterparts.<sup>134</sup>

Of the nine parties contesting the 2020 general election, six had male presidential candidates and three were female:

- People's Republic Party: Ms. Phyllis Jordan
- The Citizenship Initiative: Ms. Rhonda Ann Lam
- The New Movement: Dr. Asha Kissoon

Change Guyana and the People's Republic Party also had female Prime Ministerial candidates. While a groundbreaking achievement, these parties are small and relatively new and had limited electoral success.

Because there is no placement mandate in the gender quota, parties have power to determine how and where women are ranked in the final list to serve as elected officials. GECOM does not ask parties to submit a ranked list prior to the election and several parties informed the Mission that they would not rank their list until after electoral results were published.

While several parties, including the Liberty and Justice Party and The Citizenship Initiative, had formal commitments to women's representation in their party constitutions or manifestos, other parties only gave informal commitments to matching the candidate quota

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<sup>134</sup> Taylor-Robinson, M., & Gleitz, M. (2018). Women in Presidential Cabinets: Getting into the Elite Club? In *Gender and Representation in Latin America*. <https://doi.org/10.1093/oso/9780190851224.003.0003>

in their elected officials. Data from the Guyana National Assembly indicates that after the 2015 election, APNU-AFC selected 12 women out of 33 parliamentarians (36.3%) while PPP/C selected 9 women out of 32 parliamentarians (28.1%).

*iv. Political Financing System*

Proportional representation (PR) systems, such as Guyana’s, may be more beneficial for women candidates as political parties have a vested interest in promoting their collective party lists. In such cases, political finance may be more impactful at the party level than at the individual level. This does not however release parties from the need to allocate resources for women candidates. Even within the PR system, women must have equal opportunities for visibility and to secure the support of voters.

*v. Access to the Media*

Also as a result of the proportional representation system, media access at the party level is more significant than media access at the individual level. However, because all parties led by female presidential and prime ministerial candidates were ‘new’ or ‘smaller’ parties, and none were parties that had won parliamentary seats in the 2015 national elections, female candidates were less well represented in the media. Several smaller parties described incidents in which their social media accounts were taken down or hacked or instances in which their television and radio appearances were not distributed as widely as those by the major parties.

**d. Elective Public Offices from a Gender Perspective**

*i. Analysis of Electoral Results*

For the March 2, 2020 elections, 42.49% of all national top-up list candidates (232 of 546 candidates) and 45.93% of all geographic constituency list candidates (158 of 344 candidates) were female.<sup>135</sup>

Of the 65 seats in the National Assembly, 33 seats were awarded to the People’s Progressive Party/Civic (PPP/C), while 31 seats went to the A Partnership for National Unity + Alliance For Change coalition. The Joined Lists of A New & United Guyana (ANUG), Liberty and Justice Party (LJP) and The New Movement (TNM) earned one seat in the parliament.

The APNU+AFC coalition selected 13 women to sit in the Assembly, while the PPP/C selected 8 women, providing a total of 21 (32.3%) women elected to the National Assembly. Table 2 shows the distribution of seats among men and women following the elections.

**Table 2: Gender Distribution of Seats in the National Assembly**

<b>Political Party</b>	<b>Male</b>	<b>Female</b>	<b>Total Seats</b>
A Partnership for National Unity + Alliance For Change	18	13	<b>31</b>

<sup>135</sup> Data provided by the Guyana Elections Commission (GECOM)

<b>Political Party</b>	<b>Male</b>	<b>Female</b>	<b>Total Seats</b>
People's Progressive Party / Civic	25	8	<b>33</b>
Joined Lists (A New & United Guyana; Liberty & Justice Party; The New Movement)	1	-	<b>1</b>
<b>TOTAL SEATS</b>	<b>44</b>	<b>21</b>	<b>65</b>

Source: National Assembly of Guyana

The Mission notes that the gender quota has no provisions for the number of women in the final list submitted by parties. The Election Laws (Amendment) Act of 2001 dictates that in extracting names from the candidate list, “account shall be taken” of the 33% quota as well as “the proportion that women are formed of the electorate.” However, these are not binding commitments to ensure that at least 33% of elected officials are women and noncompliance is not sanctioned.

#### **4. Findings and Recommendations**

- While the Election Laws (Amendment) Act of 2000 dictates that in extracting names from the candidate list, “account shall be taken” of the 33% quota as well as “the proportion that women are formed of the electorate,” this is not a binding commitment to ensure that at least 33% of elected officials are women. There are no sanctions for non-compliance with this provision. The authorities should revise the legislation to strengthen the effectiveness of the existing gender quota, ensuring that the persons extracted from the candidate lists to enter the parliament reflect the gender composition of those lists. Consideration should also be given to including measures to progressively encourage parity in the extraction of members of parliament from the lists, in order to promote the equal representation of men and women in the National Assembly.
- A lack of official, consistent, and reliable sex-disaggregated data, including on electors, electors who cast ballots, and polling officers, reduces confidence in party compliance with gender quotas and makes it challenging to identify potential gender gaps and women’s equal participation at all levels of the electoral process. GECOM should compile and publish gender-disaggregated data on the various processes related to elections, including data on candidates, electors, voters, and poll workers.
- Although most stakeholders agree that pregnant women, women with young children, disabled voters, and the elderly should receive priority at their polling stations, there is no official norm to ensure this priority is legally binding and consistently applied. GECOM should formalize and enforce policies to expedite the voting process for these categories of electors, while educating all electors on the

right of these persons to move through the voting process quickly and, where needed, with assistance.

- While there are no legal limitations to women standing as candidates or serving as elected officials, social and cultural traditions may limit women’s political participation in this area. Efforts should be made to protect all candidates, particularly women and youth, from social or economic retribution if they choose to stand as candidates. Political aspirants should also have guarantees of legal recourse if they lose employment based on participation in electoral politics.
- Political parties, civil society and other relevant stakeholders should collaborate in developing training programs and other initiatives that promote women’s participation and leadership in politics.

**MEMBERS OF THE MISSION**

<b>NAME</b>	<b>COUNTRY</b>	<b>ROLE</b>	<b>GENDER</b>
Bruce Golding	Jamaica	Chief of Mission	M
Francisco Guerrero	Mexico	Secretary for Strengthening Democracy	M
Brenda Santamaria	Argentina	Chief, Electoral Observation Section	F
Melene Glynn	Trinidad & Tobago	Deputy Chief of Mission	F
Jean Ricot Dormeus	Haiti	OAS Country Representative	M
Martin Huenneke	United States	General and Methodologies Coordinator	M
Cristina Garcia Casado	Spain	Press Officer	F
Esther Rodriguez	United States	Financial Specialist	F
Alex Bravo	Chile	Electoral Organization & Technology Specialist	M
Ian Browne	Barbados	Electoral Registries Specialist	M
Westmin James	Trinidad & Tobago	Electoral Justice Specialist	M
Paul Spencer	Antigua & Barbuda	Political Finance Specialist	M
Rebecca Kuperberg	United States	Political Participation of Women Specialist	F
Denis Antoine	Grenada	Regional Coordinator	M
Ivan Acuña	Costa Rica	Regional Coordinator	M
Marie Caroline Bernard	France	Regional Coordinator	F
Anja Maria Brenes	Costa Rica	International Observer	F