

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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GUYANA

FINAL REPORT

(Adopted at the March 21, 2014 plenary session)

SUMMARY

This report contains the comprehensive review of the implementation in the Co-operative Republic of Guyana of Article III, paragraph 9, of the Inter-American Convention against Corruption, covering “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts,” which was selected by the MESICIC Committee of Experts for the Fourth Round; and of the follow-up of the implementation of the recommendations formulated to the Co-operative Republic of Guyana during the First Round.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee’s Rules of Procedure, and the methodologies it has adopted for conducting on-site visits and for the Fourth Round, including the criteria set out therein for guiding the review based on equal treatment for all the States Parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the States Parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out taking into account the Co-operative Republic of Guyana’s response to the questionnaire, information provided by civil society organizations, information gathered by the Technical Secretariat, and, as a new and important source of information, the on-site visit conducted between October 8 and 10, 2013, by the members of the review subgroup for the Co-operative Republic of Guyana, comprising of Haiti and Trinidad and Tobago, with the support of the Technical Secretariat. During that visit, the information furnished by the Co-operative Republic of Guyana was clarified and expanded and the opinions of civil society organizations were heard. This provided the Committee with objective and complete information on those topics, assisting with the gathering of information on best practices.

The review of the oversight bodies was intended, in accordance with the terms of the methodology for the Fourth Round, to determine whether they have a legal framework, whether that framework is suitable for the purposes of the Convention, and whether there are any objective results; then, taking those observations into account, the relevant recommendations were issued to the country under review.

The following oversight bodies in the Co-operative Republic of Guyana are reviewed in this report: the Audit Office of Guyana (AOG), the Office of the Director of Public Prosecutions (DPP), the Service Commissions, in particular the Public Service Commission and the Judicial Service Commission, and the National Procurement and Tender Administration (NPTA).

Some of the recommendations formulated to the Co-operative Republic of Guyana for its consideration in connection with the aforementioned bodies are aimed toward objectives, such as the following:

Provide the Audit Office, the Office of the Director of Public Prosecutions, the Judicial Service Commission and the Public Service Appellate Tribunal, with the financial and human resources necessary to fully perform their attributions and functions, within available resources.

Consider establishing an articulated anti-corruption strategy, which could include the establishment of specialized anti-corruption units in the Guyana Police Force and in the Office of the Director of Public Prosecutions.

Regarding the Audit Office, promote awareness campaigns to the general public on how they can help the Audit Office in its functions, especially those of its Forensic Audit Unit, related to the uncovering and deterrence of fraud and corruption in Guyana; and improve the Audit Office website, by advertising a specific hotline telephone number and/or a (secure) hotline complaint electronic form for those interested in presenting reports, complaints or allegations of fraud or corruption. Additionally, provide guidance on the website on how to present useful reports, complaints or allegations and on how interested persons can follow-up on its status.

With respect to the Office of the Director of Public Prosecutions, strengthen the skills and ability of officers in the Office of the DPP to prosecute fraud and corruption cases and to provide timely legal advice on the investigations of such cases by the Audit Office, the Guyana Police Force and any other bodies, through the provision of broader training opportunities to staff members of the Office of the Director of Public Prosecutions, especially training on the prosecution of acts of corruption and related international cooperation; and implement formal coordination mechanisms between the Guyana Police and the Office of the Director of Public Prosecutions, in order to establish settled procedures or guidelines for directing investigations related to acts of corruption, so earlier collaboration can be carried out and legal advice provided before a charge is instituted.

Pertaining to the Service Commissions, strengthen the Judicial Service Commission by providing it with the budgetary and human resources needed for the proper performance of its functions, including the preparation and implementation of training programs for magistrates/judges, judicial and legal officers, within available resources; consider modifying the Public Service Rules so that an officer who is acquitted of a criminal charge in any court is not precluded from having proceedings instituted against him or her under the Public Service Rules in respect of an alleged act of misconduct implicit in that criminal charge; establish and publish written guidelines and procedures prior to any delegation of powers of the Public Service Commission, in order to allow for the monitoring and oversight to ensure that the functions delegated by the Commission are being properly exercised; and re-establish the Public Service Appellate Tribunal.

With regard to the National Procurement and Tender Administration (NPTA), issue new regulations to the Procurement Act 2003 in order to establish clear, fair and efficient debarment procedures and mechanisms, including pecuniary sanctions, particularly for companies found to have paid bribes to any Guyanese government official or public servant, while ensuring that safeguards against the abusive or unjustified application of the debarment penalty are in place; and maintain and publish a permanently updated list of debarred companies and individuals in the Official Gazette as well as on the NPTA website and require that entities in all three branches and in every sphere of government verify the list before awarding contracts to bidders, suppliers, contractors and/or consultants.

With regard to follow-up on the recommendations formulated to the Co-operative Republic of Guyana in the First Round and with respect to which, the Committee, in the Second and Third Round reports, found required additional attention, based on the methodology for the Fourth Round and bearing in mind the information provided by the Co-operative Republic of Guyana in its response to the questionnaire and during the on-site visit, a determination was made as to which of those recommendations had been satisfactorily implemented, which required additional attention, and which required reformulation. A list of those still pending was also prepared, and has been included in Annex I of the report.

Among the progress related to the implementation of those recommendations, the following are noted: the enactment of the Mutual Assistance in Criminal Matters Act 2009 and of the Access to Information Act 2011, as well as the ratification of the Inter-American Convention on Mutual Assistance in Criminal Matters.

Some of the recommendations formulated to the Co-operative Republic of Guyana in the First Round that are still pending or have been reformulated address issues such as: Perform a comprehensive analysis on the causes for the persistent overpayment to contractors and to staff indicated in the Annual Reports of the Audit Office of Guyana, and take the necessary action to address the issue, ensuring that there are systems in place to avoid the reoccurrence of overpayments, as well as to vigorously pursue the recovery of the amounts overpaid; Enforce the sanctions already in place in the Integrity Commission Act and consider implementing additional sanctions and other types of penalties, such as the disqualification for public service in cases where the declaring official left office without submitting a final disclosure, with a view to ensure that the penalties in force are sufficiently dissuasive, bearing in mind the pertinent articles of the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions”;¹ and provide the Commissioner of Information with the human and financial resources it needs for the proper performance of its functions, bearing in mind the availability of resources.

¹ Text available at: http://www.oas.org/juridico/PDFs/model_law_declaration.pdf

**COMMITTEE OF EXPERTS OF THE MECHANISM FOR
FOLLOW-UP ON THE IMPLEMENTATION OF THE
INTER-AMERICAN CONVENTION AGAINST CORRUPTION**

**REPORT ON IMPLEMENTATION IN THE CO-OPERATIVE REPUBLIC OF GUYANA OF
THE CONVENTION PROVISION SELECTED FOR REVIEW IN THE FOURTH ROUND,
AND ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT
COUNTRY IN THE FIRST ROUND²**

INTRODUCTION

1. Content of the Report

[1] This report presents, first, a comprehensive review of the Co-operative Republic of Guyana's implementation of the provision of the Inter-American Convention against Corruption that was selected for review by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the Fourth Round. That provision appears in Article III (9) of the Convention, pertaining to "Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts."

[2] Second, the report will examine the best practices that the Co-operative Republic of Guyana has voluntarily expressed its wish to share in regard to the oversight bodies under review in this report.

[3] Third, as agreed by the Committee of Experts of the MESICIC at its Eighteenth Meeting, in compliance with recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC, this report will address the follow-up of implementation of the recommendations that the Committee of Experts of MESICIC formulated to the Co-operative Republic of Guyana in the First Round and that it deemed to require additional attention in the reports it adopted for that country in the Second and Third Rounds, which may be consulted at the following webpage: <http://www.oas.org/juridico/english/guy.htm>

2. Ratification of the Convention and adherence to the Mechanism

[4] According to the official records of the OAS General Secretariat, the Co-operative Republic of Guyana deposited the instrument of ratification of the Inter-American Convention against Corruption on February 15, 2001.

[5] In addition, the Co-operative Republic of Guyana signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2002.

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of the Co-operative Republic of Guyana

[6] The Committee wishes to acknowledge the cooperation that it received, throughout the review process from the Co-operative Republic of Guyana and in particular from the Office of the Presidential

² This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 21, 2014, at its Twenty Third Meeting, held at OAS Headquarters, March 18-21, 2014.

Advisor on Governance, which was evidenced, inter alia, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents, and in the support for the on-site visit to which the following paragraph of this report refers. Together with its response, the Co-operative Republic of Guyana sent the provisions and documents it considered pertinent. The Response as well as the provisions and documents may be consulted at the following webpage: www.oas.org/juridico/english/mesicic4_guy.htm

[7] The Committee notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-Site Visits*.³ As members of the preliminary review subgroup, the representatives of the Republic of Haiti and the Republic of Trinidad and Tobago conducted the on-site visit from October 8 – 10, 2013, with the support of the MESICIC Technical Secretariat. The information obtained on that visit is included in the appropriate sections of this report, and its agenda of meetings is appended thereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[8] For its review, the Committee took into account the information provided by the Co-operative Republic of Guyana up to October 10, 2013, as well as that furnished and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*; and the *Methodology for Conducting On-Site Visits*.

2. Information received from civil society organizations and/or, *inter alia*, private sector organizations; professional associations; academics and researchers

[9] The Committee also received, within the deadline set by the Committee in the Schedule adopted for the Fourth Round, a document from the Transparency Institute of Guyana Inc. (Guyana's Chapter of Transparency International). This document was submitted by the organization pursuant to Article 34(b) of the Committee's Rules of Procedure.⁴

[10] Moreover, during the on-site visit to the country under review, information was gathered from civil society and private sector organizations, and professional associations, who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the *Methodology for Conducting On-Site Visits*. A list of invitees is included in the agenda of the on-site visit, which has been annexed to this report. This information is reflected in the appropriate sections of this report.

II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE FOURTH ROUND

OVERSIGHT BODIES WITH A VIEW TO IMPLEMENTING MODERN MECHANISMS FOR PREVENTING, DETECTING, PUNISHING AND ERADICATING CORRUPT ACTS (ARTICLE III (9) OF THE CONVENTION)

³ Document SG/MESICIC/doc.276/11 rev. 2, which may be consulted at the following webpage: http://www.oas.org/juridico/english/met_onsite.pdf

⁴ This document was submitted in electronic format on June 20, 2013, and may be found at: http://www.oas.org/juridico/pdfs/mesicic4_guy_sc.pdf

[11] The Co-operative Republic of Guyana has a set of oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts, among which the following are highlighted: the Audit Office of Guyana; the Director of Public Prosecutions; the Service Commissions; and the National Procurement and Tender Administration Board.

[12] The following is a brief description of the purposes and functions of the four bodies selected by the Co-operative Republic of Guyana that are to be examined in this report:

[13] The Audit Office of Guyana (AOG) is responsible for the audit of the public accounts of Guyana and of all officers and authorities of the Government of Guyana (including the Commissions established by the Constitution) and the accounts of the Clerk of the National Assembly and of all courts in Guyana.

[14] The Office of the Director of Public Prosecutions (DPP), which is responsible for instituting and undertaking criminal proceedings against any person before any court, other than a court-martial, in respect of any offence against the law of Guyana.

[15] The Service Commissions, made up of the Public Service Commission, the Police Service Commission, the Judicial Service Commission, and the Teaching Service Commission, are responsible for appointing, promoting, transferring, confirming and removing public officers that fall under their purview, as well as exercise disciplinary control over them.

[16] The National Procurement and Tender Administration Board (NPTAB), whose mission is to facilitate the establishment and implementation of regulatory environment conducive to transparency, economy, efficiency, openness, fairness and accountability in public sector procurement; handles the procurement of goods and services in Guyana as provided for in the Procurement Act.

1. THE AUDIT OFFICE OF GUYANA (AOG)

1.1. Existence of provisions in the legal framework and/or other measures.

[17] The Audit Office of Guyana (AOG) has a set of provisions in its legal framework, as well as other measures that refer, among others, to the following:

[18] With respect to its objectives and functions, Article 223 of the Constitution of the Co-operative Republic of Guyana establishes that the public accounts of Guyana and of all officers and authorities of the Government of Guyana (including the Commissions established by the Constitution) and the accounts of the Clerk of the National Assembly and of all courts in Guyana, shall be audited and reported on by the Auditor General. The Auditor General shall submit his reports to the Speaker of the National Assembly, who shall cause them to be laid before the National Assembly.⁵

[19] The Audit Act 2004⁶ provides, under Article 4, that the Auditor General shall be the external auditor of the public accounts of Guyana and, in the discharge of his functions, shall have complete discretion in examining and reporting on the receipt, disbursement, and control of public moneys and on the economy, efficiency and effectiveness in the use of such moneys.

[20] The Audit Act 2004 further provides, under Article 24 that, as external auditor of the public accounts of Guyana, the Auditor General shall be responsible for conducting (a) financial and

⁵ Constitution of the Co-operative Republic of Guyana, http://www.oas.org/juridico/pdfs/mesicic4_guy_constitution.pdf

⁶ Audit Act 2004, http://www.oas.org/juridico/spanish/mesicic2_guy_audit_act_2004.pdf

compliance audits;⁷ and (b) performance and value-for-money audits,⁸ with respect to (i) the consolidated financial statements;⁹ (ii) the accounts of all budget agencies; (iii) the accounts of all local government bodies; (iv) the accounts of all bodies and entities in which the State has a controlling interest; and (v) the accounts of all projects funded by way of loans or grants by any foreign State or organization.

[21] In addition, Article 25(1) of the Financial Administration and Audit Act¹⁰ states that the “*Auditor-General shall examine in such manner as he deems necessary the accounts of all accounting officers and principal receivers of revenue and of all persons entrusted with the collection, receipt, custody, issue or payment of public moneys or with the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other Government property*”.

[22] Pursuant to Article 74(2) of the Fiscal Management and Accountability Act 2003, the Auditor General is required to, within nine months following the end of the fiscal year to which the consolidated financial statements relate, present those financial statements together with the audit report thereon to the Speaker of the National Assembly in accordance with law and who shall cause them to be laid before the National Assembly in accordance with Article 223(3) of the Constitution.

[23] There are two exceptions to the functions of the Auditor General, both found under Article 223 of the Constitution of the Co-operative Republic of Guyana: 1) the Government may cause an additional audit to be conducted by an auditor other than the Auditor General where an agreement entered into between the Government and an international financial institution so dictates; and 2) the Minister responsible for finance may request the Public Accounts Committee¹¹ to cause an additional audit to be

⁷ Pursuant to section 24(2) of the Audit Act 2004, “*In conducting financial and compliance audits, the Auditor General shall examine in such manner as he deems necessary the relevant financial statements and accounts and ascertain whether: (a) the financial statements have been properly prepared, in accordance with applicable law, and properly present the operations and affairs of the entity concerned; (b) the accounts have been faithfully and properly kept; (c) the rules, procedures and internal management controls are sufficient to secure effective control on the assessment, collection and proper allocation or revenues; (d) all moneys expended and charged to an account have been applied to the purpose or purposes for which they were intended; and (e) essential records are maintained, and the internal management controls and the rules and procedures established and applied are sufficient to safeguard the control of stores and other public property.*”

⁸ Pursuant to section 24(3) of the Audit Act 2004, “*In conducting performance and value-for-money audits, the Auditor General shall examine to which a public entity is applying its resources and carrying out its activities economically, efficiently, and effectively and with due regard to ensuring effective internal management control.*”

⁹ Under Section 73 (3) and (4) of the Fiscal Management and Accountability Act 2003, the Minister of Finance is required to deliver the consolidated financial statements to the Auditor General within four months following the end of the fiscal year to which those financial statements relate. If the Minister has not delivered the consolidated financial statements to the Auditor General within four months following the end of the fiscal year to which those financial statements relate, the Minister is required to provide to the National Assembly a statement as to the reasons why the consolidated financial statements have not been so delivered to the Auditor General.

¹⁰ The Fiscal Management and Accountability Act 2003, Section 86, repeals Parts II, III and V of the Financial Administration and Audit Act. However, it also provides that “*all subsidiary legislation made and Circulars issued under the Financial Administration and Audit Act and in operation at the commencement of this Act shall, insofar as they are not inconsistent with this Act, continue in force as if made or issued under this Act until such time as they are amended, superseded or repealed under this Act*”.

¹¹ According to section 82 of the Standing Orders of the National Assembly, the Public Accounts Committee (PAC) is a Standing Committee consisting of not less than six (6) or more than ten (10) Members, chaired by the Member of the main Opposition in the Assembly. The PAC has the duty of examining the accounts showing the appropriation of the sums granted by the Assembly to meet Public Expenditure and such other accounts laid before the Assembly as the Assembly may refer to the Committee together with the Auditor General’s report thereon.

conducted by an auditor other than the Auditor General. During the on-site visit, the Auditor General informed that these two exceptions had not been exercised in the last five (5) years.

[24] Pursuant to Article 223(4) of the Constitution, the Auditor General, in the exercise of his or her functions, is not subject to the direction or control of any person or authority. Nevertheless, Article 223(5) of the Constitution provides that the Public Accounts Committee (PAC) may exercise general supervision over the functioning of the office of the Auditor General in accordance with the Rules, Policies and Procedures Manual for the functioning of the office of the Auditor General as prepared by the Auditor General and approved by the Public Accounts Committee.

[25] Article 223(2) of the Constitution further provides that in carrying out his work, the Auditor General or any person authorized by him in that behalf shall have access to all books, records, returns and other documents relating to those accounts. Articles 30-34 of the Audit Act 2004 further expand on the powers of the Auditor General in this respect. For example, in the exercise of his/her functions, the Auditor General is entitled to require a public entity, or any officer or employee of a public entity, to produce a document in the entity's or person's custody, care or control; and provide the Auditor General with information or an explanation about any information. Article 32 entitles the Auditor General, in the course of the discharge of his or her functions, to require a person to give evidence either orally or in writing.

[26] Additionally, Article 33 of the Audit Act 2004 entitles the Auditor General, for the purpose of the discharge of his or her functions, to examine or audit the account of any person in any bank if he or she has reason to believe that *"moneys belonging to a public entity have been fraudulently or wrongfully paid into such person's account, except that - (a) to exercise this authority, the Auditor General shall establish that information obtained shall not be used for any purpose other than intended, and shall first obtain a warrant from a court authorizing such examination; (b) when presented with the warrant, the bank through its officer shall produce any documents or provide requested information relating to the relevant account; and (c) the Auditor General may make copies of any documents so produced"*.

[27] Pursuant to Article 4(1) of the Regulations to the Audit Act 2004, the Audit Office consists of the following divisions: (a) Human Resources Division; (b) Finance and Accounts Division; (c) Information Technology Division; and (d) Audit Operations Division. Article 4(2) entitles the Auditor General to establish in the Audit Office such other divisions for carrying out such functions as he or she thinks fit.

[28] Additionally, Article 8(1) of the Regulations to the Audit Act of 2004 states: *"The Auditor General shall establish within the Audit Office a Forensic Audit Unit."* During the on-site visit, the Auditor General explained that the unit was established in 2008.

[29] Article 204(1) of the Constitution provides that the Auditor General is to be appointed by the President acting in accordance with the advice of the Public Service Commission. Article 204(2) further provides that if the office of the Auditor General (Audit Office) is vacant or the holder of the office is for any reason unable to perform the functions thereof, the President acting in accordance with the advice of the Public Service Commission may appoint a person to act in the office, and any person so appointed shall continue to act until a person has been appointed to the office of the Auditor General (Audit Office) and has assumed the functions of that office or, as the case may be, until the holder thereof has resumed those functions. Article 204 (3) provides that the Auditor General shall vacate his office when he attains such age as may be prescribed by Parliament.¹² Articles 204(4) and 225(2) further provide that the

¹² During the on-site visit, the Auditor General explained that section 8 of the Audit Act 2004 establishes that *"the salary, superannuation, benefits and other conditions of service of the Auditor General shall be the same as those of the Chief*

Auditor General may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause whatsoever) or for misbehavior. The details of the removal procedures are established in Article 204(4) and 225(3)(4)(5) and (6) of the Constitution.

[30] Moreover, Article 6(1) of the Audit Act 2004 prohibits the Auditor General from having a direct or indirect official role in any private or professional entity or activity that he could profit from or influence through his powers as Auditor General and requires that he declare to the Public Accounts Committee any of his commitments, obligations or investments which may present a real or perceived conflict of interest.

[31] With respect to the staff of the Auditor General, Article 12 of the Audit Act 2004 entitles the Auditor General to establish and implement human resource management systems and policies. Article 13 further provides that the Auditor General shall establish job descriptions with clearly defined qualifications, responsibilities and performance expectations for all positions in the Audit Office.

[32] Pursuant to Article 14(1) of the Audit Act 2004, within the framework of the budget approved for the Audit Office, the Auditor General shall assess staffing needs, and appoint, pay, train, assign, promote, and discipline officers and employees in accordance with the Constitution, the Audit Act, the Rules, Policies and Procedures Manual and any other law. However, the appointment and discipline of all senior officers and senior employees in the AOG is subject to approval by the Public Accounts Committee (PAC).

[33] Under the Audit Act 2004, Article 17 (1), the officers and employees of the Audit Office are not public officers and not on the pensionable public service establishment. According to Article 14(2), they are appointed at such remuneration and on such other terms and conditions as the Auditor General may decide, within the framework of the budget approved for the Audit Office, taking into consideration the Rules, Policies and Procedures (RPP) Manual.¹³ The RPP Manual (Volumes I-IV) includes the positions, their corresponding job description and required qualifications,¹⁴ as well as establishes the process of selection of officers and employees of the Audit Office.¹⁵

[34] The work of the Audit Office is organized into three Business Units:¹⁶ a) Business Unit I, which currently comprises the Forensic and Quality Assurance Units, Trade Union Audits and Audit Operation Divisions 1 and 2; b) Business Unit II, which comprises Finance and Accounts Division, Human Resources Department, Information Technology Division, and Audit Operations Divisions 4, 5 and 6, (responsible for the audits of Ministries and Departments); and c) Business Unit III, which comprises Audit Operations Divisions 7, 8 and 9, as well as the supervision and review of audits contracted to Chartered Accountants in Public Practice, audits of Public Enterprises, Statutory Bodies, Regional Democratic Councils, Municipals and Neighborhood Democratic Councils.¹⁷

Justice". Thus, the Auditor General must vacate his office upon attaining the age of sixty-five (65), the same retirement age which is prescribed to the Chief Justice by Section 197 of the Constitution.

¹³ Rules, Policies and Procedures Manual (RPP) of the Audit Office of Guyana,

http://www.oas.org/juridico/PDFs/mesicic4_guy_manual.pdf

¹⁴ *Ibid.*, Volume III.

¹⁵ *Ibid.*, pp. 87 to 95.

¹⁶ The Organizational Chart of the AOG is available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_app5.pdf

¹⁷ In order to eliminate any concern of conflict of interest, it was informed during the on-site visit that the Audit Director responsible for Business Unit III does not review the audits or reports related to entities that fall under the purview of the Ministry of Finance or the Minister of Finance.

[35] The Auditor General further informed that, as of October 7, 2013, there were 227 posts approved for the AOG and that 212 of those posts were filled. The remaining 15 posts were expected to be filled in the following months, and include, among others, 1 post of Audit Director,¹⁸ 1 post of Director of Works and Structures, 1 post of Deputy Human Resources Manager and 4 posts of Audit Managers. Additionally, there are two consultants hired by the AOG, one of which is a fraud investigator (the acting manager). Besides the Fraud Investigator, the Forensic Audit Unit has eight (8) staff members.¹⁹

[36] As for discipline, all AOG personnel are required to abide by the Code of Ethics published by the International Organization of Supreme Audit Institutions (INTOSAI) and the Codes of Ethics published by the International Federation of Accountants (IFAC),²⁰ as well as the AOG's conflict of interest code,²¹ and disciplinary code,²² which provides the following disciplinary measures: oral warning, written warning, final warning, suspension, and dismissal.²³

[37] With respect to training, the Human Resources Division of the AOG is responsible for training of the Audit Office staff. During the on-site visit, the Auditor General provided a list of all training activities from 2010 to 2013 in which the staff of the AOG participated, including "Risk based auditing" and "IDEA Software". Moreover, detailed information was provided on the specific training activities involving the officers of the Forensic Audit Unit, as well as by the Auditor General, including various courses in a Forensic Accounting and Fraud Investigations Graduate Certificate Program over the last three years with the Algonquin College, Canada.²⁴

[38] With respect to the existence of documented procedures for performing their tasks, the Rules, Policies and Procedures (RPP) Manual of the AOG contains, among others, a section detailing the procedures for conducting the work of the Audit Office, as well as the auditing and accounting standards adopted in Guyana.²⁵ It was also informed during the on-site visit that the Forensic Audit Unit adopted a best practices manual written by an international consultant, a former principal officer of the Forensic Audit Section of the Office of the Auditor General of Canada.

[39] Regarding the implementation of modern systems or technology to facilitate its work, during the on-site visit, the Auditor General informed that his Office made use of various auditing software, which enabled the auditors to perform data mining techniques on provided data, such as "CaseWare IDEA".²⁶ The Auditor General further informed that this software is currently used to assist the AOG in their investigations, since it allows forensic auditors to display, sample, extract and analyze data from files generated by a wide variety of systems.

¹⁸ Responsible for Business Unit 1, which is being presently headed by the Auditor General himself.

¹⁹ AOG Annual Work Plan and Program for the Year 2013, http://www.oas.org/juridico/pdfs/mesicic4_guy_annual13.pdf. It was informed additionally that the officers in the Forensic Audit Unit are seeking professional certification in Fraud Auditing and Forensic Accounting. Two of the staff members have since completed the certification course in Fraud Auditing and Forensic Accounting.

²⁰ Rules, Policies and Procedures Manual (RPP) of the Audit Office of Guyana, p. 19.

²¹ *Ibid.*, pp. 54-59.

²² *Ibid.*, pp. 62-72.

²³ *Ibid.*, pp. 64 and 65. A Schedule of Offences and Penalties is provided for guidance in Appendix A (Pp. 69-71).

²⁴ This information is available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_fraud.pdf

²⁵ Rules, Policies and Procedures Manual (RPP) of the Audit Office of Guyana, pp. 18-50. The Auditing Standards of the Audit Office are all standards adopted by the Institute of Chartered Accountants of Guyana including those of INTOSAI.

²⁶ This information is available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_fraud.pdf

[40] In order to keep citizens abreast of its activities, the Audit Office has a website,²⁷ which, inter alia, includes general information on the work of the AOG, its legislation and annual reports.

[41] The AOG does not have an internal audit unit. However, Article 44 of the Audit Act 2004 provides that the PAC “*shall, in respect of each fiscal year, appoint an independent auditor to audit and report on the financial statements, accounts, and other information relating to the performance of the Audit Office that year*”.²⁸

[42] With respect to the manner in which necessary budgetary resources for its operations are ensured, Article 40 of the Audit Act 2004 regulates the preparation and presentation of the annual budget proposal of the AOG. In this regard, the country under review, in its Response to the Questionnaire, states that: “*Its annual budget proposal and work programme are presented to the PAC in July/August annually and approved and submitted to the Minister of Finance (MOF) to allocate said funds in the new budget cycle. The AOG reports quarterly to the PAC on its annual work programme and expenditure. It is important to reiterate that the constitutional amendments removed the AOG from reporting to the MOF and instead reports directly to the National Assembly through the Speaker.*”²⁹

[43] According to information requested and received during the on-site visit, the total annual budget (current plus capital budgets) allocated to the AOG for each of the past five years was as follows (in Guyanese dollars³⁰): G\$313,998,000 (2009); G\$407,280,000 (2010); G\$443,205,000 (2011); G\$539,258,000 (2012); and G\$ 606,983,000 (2013).³¹

[44] Regarding coordination mechanisms for harmonizing the AOG’s functions with those of other oversight bodies or government authorities, besides the close coordination with the Public Accounts Committee (PAC) referred to in other paragraphs, it was informed during the on-site visit that the Audit Office also works closely with the Office of the Director of Public Prosecutions (DPP) and with the Commissioner of Police.

[45] In this regard, Article 38 of the Audit Act 2004 provides that if the Auditor General has reason to believe that any of the offences described in Article 37 of the Act³² was committed, he shall request the Director of Public Prosecutions and the Commissioner of Police to take appropriate action and prosecute the offender if necessary.

[46] Additionally, Article 8(2) of the Regulation to the Audit Act of 2004 states: “*Where any matter is referred to the Forensic Audit Unit, the Unit shall investigate the matter fully and submit a report with recommendations to the Auditor General who, where a criminal offence has been committed, shall refer*

²⁷ <http://www.audit.org.gy/>

²⁸ A copy of AOG’s audited financial statement for 2012 was provided during the on-site visit and is available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_opinion.pdf

²⁹ See Guyana’s response to the Fourth Round questionnaire, p. 17.

³⁰ 1 US Dollar = 200 Guyanese Dollars (as of November 1, 2013).

³¹ The complete information on the AOG budget is available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_budget.pdf

³² Section 37 of the Audit Act 2004 establishes that a person commits an offence who, knowingly and without lawful justification or excuse: (a) intentionally obstructs, hinders or resists the Auditor General or an officer authorized by him in the exercise of his power under this Act; (b) intentionally refuses or fails to comply with any lawful requirement of the Auditor General; (c) makes a statement or gives information to the Auditor General or an officer authorized by him knowing that the statement or information is false or misleading; (d) represents directly or indirectly that the person holds any authority under this Act when the person knowingly does not hold that authority; or (e) contravenes or violates the provisions of section 35 (which refers to the unauthorized publication or disclosure information obtained in the course of an audit).

the matter to the Director of Public Prosecutions and send a copy to the Commissioner of Police for appropriate action.”

[47] As regards transparency and accountability, under Article 223 (6) and (7) of the Constitution and Articles 42 and 43 of the Audit Act 2004, the Auditor General shall prepare and submit to the Public Accounts Committee (PAC) reports, on a quarterly basis, on the performance and operation of the Audit Office in the format of a Program Performance Statement; as well as, within four months of the end of each fiscal year, a copy of an Annual Systems and Financial Audit Report with respect to the Audit Office to the PAC.³³

[48] Additionally, the Audit Office Rules, Policies and Procedures Manual provides for a Strategic 3-year Plan for the Audit Office, which is to be updated annually. This Strategic Plan includes, among others, the identification of important national issues toward which the Audit Office can make a significant contribution, the establishment of multi-year audit objectives to meet the Public Account Committee’s requirements and the provision of a framework for measuring Audit Office accomplishments.³⁴

1.2. Adequacy of the legal framework and/or other measures.

[49] The Audit Office of Guyana (AOG) has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were briefly described in Section 1.1. Nonetheless, the Committee considers it appropriate to set forth certain observations in relation thereto.

[50] First, the Committee notes that there is no mention in the Guyanese legislation on how long the post of Auditor General can remain vacant. During the on-site visit, it was informed that the current Auditor General was only confirmed in his post in 2012, after having acted in that capacity for the previous seven (7) years. The Committee further notes that, unlike other top oversight government posts, which require meaningful consultation with the Opposition Leader, the Auditor General is appointed by the President acting in accordance with the advice of the Public Service Commission (PSC).

[51] The Committee believes that not having a substantive Auditor General for such an extended period of time does not contribute to the independence and to the strengthening of the oversight body, nor is it fair to the person acting in that capacity. Taking into account that this is a Constitutional matter, the Committee is limited to taking note of the situation.

[52] With respect to the aforementioned topic, during the on-site visit, the representative of the Transparency Institute of Guyana³⁵ reported that: *“The Constitution states that there shall be an Auditor General for Guyana. We interpret this requirement to mean that the holder of this office must be a substantive appointee, and that any acting arrangement should be for a short period not exceeding six months usually to allow time for the proper selection as a replacement to the previous holder. This requirement is to preserve the independence of the Auditor General which is one of the fundamental concepts in auditing. Any prolonged acting arrangement is likely to put pressure on the Auditor General to be (sic) as critical as he/she would like to be of the operations of the Government since he/she is dependent on the Government for a continuation of the acting arrangement and possibly to be appointed*

³³ A copy of AOG’s Annual Plan and Program 2013 and its annexes was provided during the on-site visit and is available at: http://www.oas.org/juridico/english/mesicic4_guy.htm

³⁴ Rules, Policies and Procedures Manual (RPP) of the Audit Office of Guyana, p. 20.

³⁵ See the presentation of the Transparency Institute of Guyana, pp. 2 and 3. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_trans.pdf

substantively at some future point in time. Prior to his substantive appointment last year, the Auditor General acted in the position for eight years. (...)"

[53] Second, with regard to the budget of the Audit Office, the Committee notes that even though it has been increasing modestly in the past five years, it only represents approximately 0.2% of the national budget. During the on-site visit, the Auditor General informed that the situation is not critical because the AOG benefits from grants from international institutions. However, it was noted that once this source of funding ends, there will be a need for supplemental budget, especially to maintain and upgrade its information technology infrastructure.

[54] The Committee further notes that the response of the country under review to the questionnaire³⁶ states that the *"AOG has been able to fill over 80% of its staffing requirements in 2012. However, the size of the country and access to all 10 Administrative Regions and the small population pose may(sic) challenges to complete the annual audit reports on time as well as carry out special audits. Most particularly when on the ground verification of physical works is done in the far reaches of the country."* During the on-site visit, the Auditor General did highlight, however, that the continued increase of staff over the years has immensely assisted the Office's success in achieving its statutory deadlines and that the Office continues its quest to bring all entities audited accounts up-to-date.

[55] Additionally, the Committee notes that during the on-site visit, the representatives of the Audit Office indicated the need for an 'in-house' lawyer to undertake routine legal work.

[56] In light of the above, the Committee believes that the Audit Office, especially its Forensic Audit Unit (responsible for the investigation of fraud and corruption) could be further strengthened to increase the Office's capacity in investigating and uncovering fraud and corruption in Guyana. The Committee will formulate a recommendation in that regard (See Recommendation 1.4.1 in Section 1.4 of this report).

[57] Third, the Committee notes that the Annual Reports of the Audit Office to the Public Accounts Committee (PAC) are published on the webpage of the oversight body. However, the Committee further notes that important accountability documents prepared by the AOG such as its Three-year Strategic Plans and the annual updates thereof, as well as the independent auditor's report to the members of PAC are not available on the website. Taking into consideration that the publication of these documents would further increase the transparency and accountability of the Audit Office, the Committee will formulate a recommendation in this regard (See Recommendation 1.4.2 in Section 1.4 of this report).

[58] Fourth, despite the affirmation contained in the response of the country under review to the questionnaire³⁷ that the Audit Office website provides for a person to make reports or complaints, the Committee notes that the website only contains a general "Contact us" section.³⁸ There is not a specific hotline telephone number nor a (secure) hotline complaint electronic form provided. Additionally, there is no information or orientation on how to present such reports, complaints or corruption allegations. Taking into consideration the importance of hotlines to detect and prevent fraud, as well as the importance that the general public is aware of its existence, the Committee will formulate a recommendation (See Recommendations 1.4.3 and 1.4.4 in Section 1.4 of this report).

³⁶ See Guyana's response to the Fourth Round questionnaire, pp. 23-24.

³⁷ *Ibid.*, p. 16.

³⁸ <http://www.audit.org.gy/contactaog.html>

[59] It should be noted in this regard that, during the on-site visit, the Auditor General and some civil society organizations highlighted the importance of comprehensive whistleblower protection legislation in order to encourage the public to come forward and assist the AOG in its functions of preventing and deterring fraud and corruption in Guyana.

[60] Considering that the topic of systems for protecting public servants and private citizens who in good faith report acts of corruption was analyzed in depth in the MESICIC Report from the Second Round of Review,³⁹ the Committee will not formulate a new recommendation on the subject. Rather, it reiterates the recommendations contained in the Report from the Second Round of Review of the MESICIC.⁴⁰

[61] Fifth, the Committee notes that the Audit Act 2004 entitles the Auditor General to establish and implement human resource management systems and policies, including appointment and selection of all staff of the Audit Office, with the exception of senior officers, which are subject to approval by the Public Accounts Committee (PAC). The Committee further notes that the Rules, Policies and Procedures (RPP) Manual provides some regulations regarding the selection process of the AOG Staff.⁴¹

[62] However, said internal rules provide an important exception to open competitions, in the following terms: *“Positions in the Audit Office shall normally be filled through a system of public advertisement. Interested persons are required to send their applications directly to the Audit Office. There may, however, be situations where the Audit Office receives applications that are not in response to a public advertisement. To the extent that there are vacancies and the applicant has met the job requirement, the Auditor General may make an offer of employment”*.

[63] During the on-site visit, information was provided on the number of recruitments and promotions, as well as the decline in the rate of turnover of AOG Staff from 9.3% in 2010 to 5.7% in 2012. However, no information was provided on the rate of open competition to AOG posts versus direct hires.

[64] Considering that the topic of systems of government hiring was analyzed in depth in the MESICIC Report from the Second Round of Review,⁴² the Committee will not formulate a new recommendation on the subject. Rather, it reiterates the recommendations contained in the Report from the Second Round of Review of the MESICIC,⁴³ especially the need to adopt, through the appropriate legislative and/or administrative procedures, provisions that regulate the hiring of public servants serving in the Audit Office, based on the principles of merit and equality, providing clearly defined criteria on the manner for carrying out examinations and the advertisement of posts.

[65] Sixth, during the on-site visit the Committee received detailed information on training activities in which AOG staff participated in the past three years. Despite a small decrease in the number of training activities in 2012, the Committee notes an overall commitment of the AOG in the training of its staff,

³⁹ See the “Report on the Implementation in Guyana of the Provisions of the Inter-American Convention against Corruption Selected for Review in the Second Round,” pp. 11, 12 and 21. Available at:

http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

⁴⁰ *Ibid.*, p. 21.

⁴¹ Rules, Policies and Procedures Manual (RPP) of the Audit Office of Guyana, pp. 87 to 95.

⁴² See the “Report on the Implementation in Guyana of the Provisions of the Inter-American Convention against Corruption Selected for Review in the Second Round,” pp. 2-5, 18 and 19. Available at:

http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

⁴³ *Ibid.*, pp. 18 and 19.

especially the forensic audit unit staff, two of which are in the process of obtaining the Certified Fraud Examiner (CFE) qualification.

[66] Additionally, during the on-site visit, the representatives from the Transparency Institute and from the Institute of Chartered Accountants of Guyana (ICAG) informed that there are three professionally qualified accountants among the staff members of the Audit Office who are qualified to audit state controlled companies. ICAG membership and practicing certificate are required by Article 170 of the Companies Act in order for an auditor to be qualified to audit companies (including state controlled companies).

[67] In this regard, the Committee believes that the AOG should provide support and incentives to its current staff to pursue and attain these professional accounting qualifications⁴⁴ and/or take these qualifications into consideration when selecting future staff. The Committee will formulate a recommendation in that regard (See Recommendations 1.4.5 in Section 1.4 of this report).

[68] Seventh, during the on-site visit, the Auditor General mentioned that the Office also works closely with the Caribbean Organization of Supreme Audit Institutions (CAROSAI). In this regard, he informed that they expect to cooperate next year on a VAT Audit. The Auditor General further informed that the AOG is willing to be reviewed in the peer-review program in the framework of CAROSAI on quality assurance and that they were working on possibly carrying out such peer-review with the Audit Office of Trinidad and Tobago. However, despite an initial approach by the AOG, this peer-review could not yet be materialized. Taking into account the importance of these programs to attest the quality of audit reports of the supreme audit institutions, the Committee strongly suggests that the AOG strengthen its efforts in participating in the peer-review. The Committee will formulate a recommendation in this regard (See Recommendation 1.4.6 in Section 1.4 of Chapter II of this Report).

[69] Finally, the Committee takes note of the information presented on pages 19 to 22 of the response of the country under review to the questionnaire regarding the establishment of internal audit departments within the Ministry of Finance and other Ministries/Departments/Agencies. While those internal audit departments are not thoroughly reviewed in this report, the Committee does wish to highlight the importance of the existence of internal controls in those bodies to aid in the early detection and deterrence of fraud and corruption.

[70] In this regard, taking into the account the information provided in the response to the questionnaire,⁴⁵ the Committee will formulate a recommendation that the country under review continue to strengthen and consider increasing the staffing of these internal audit departments (See Recommendation 1.4.7 in Section 1.4 of Chapter II of this Report).

1.3. Results of the legal framework and/or other measures.

[71] The Committee notes that the outcome of the audits of the Audit Office is provided in its annual reports submitted to the Speaker of the National Assembly, which are published on the Audit Office

⁴⁴ Such as some of the commonly recognized accounting qualifications by the ICAG: Certified Public Accountant (CPA – USA), Certified General Accountant (CGA – Canada) or Chartered Certified Accountant (ACCA – UK). See the Institute of Chartered Accountants of Guyana Act 1991, Section 10 (Qualifications for membership of Institute).

⁴⁵ See Guyana's response to the Fourth Round questionnaire, p. 21.

website.⁴⁶ These documents provide detailed information on the public accounts of the country under review.

[72] In the annual reports, the Committee observes that the Auditor General provides information on fraud uncovered in the current and previous periods. In this respect, the 2012 Annual Report provides the following:

[73] *“80. During the period under review, there was also a loss of cash amounting to \$206.379M at the Accountant General’s Department Head Office. This fraud was uncovered where payments of arrears pension and gratuity were made to sixty-one inactive, deceased and fictitious pensioners. At the time of reporting, five persons were charged by the Police and the matter is ongoing in the Courts.”*⁴⁷

[74] *“264. Over the years 1995 to 2001, there were nine matters which are either being investigated by the police or pending before the [Supreme] Court. In each case, the cases were based on apparent irregularities or suspected fraudulent acts perpetrated against the State. The estimated losses, which remain outstanding to date, were valued at \$14.476M.”*⁴⁸

[75] *“266. The Department had still not recovered amounts totaling \$962,074, which remains outstanding in relation to forty-four employees overpaid during the years 2007 and 2011. There were also three instances, where pay change directives for dismissals were forwarded late to the Central Accounting Unit, during the period under review. This resulted in overpaid salaries totaling \$113,333, including deductions amounting to \$13,848. The overpayments in the year 2012 have therefore increased the sum outstanding to date to \$1.075M.”*⁴⁹

[76] *“273. The Georgetown Magistrates Court Maintenance Bank Account №. 016290042302/3115 was overdrawn due to apparent fraudulent transactions. At the time of reporting, the Guyana Police Force was in the process of concluding an investigation into the alleged irregularities.”*⁵⁰

[77] In all of the above situations, the Auditor General’s report recommends that the respective Department take vigorous follow-up action with the relevant agencies with a view to bringing closure in these matters.

[78] Moreover, these reports also contain information on cases of overpayment to contractors, as well as overpayment of salaries to staff and deductions to Agencies. In this respect, the 2012 Annual Report provides the following, among its key findings:

[79] *“9. A significant amount of overpayments to contractors had occurred on measured works for contracts undertaken by Ministries, Departments and Regions during prior periods, with several Ministries and Regions facing serious challenges in being able to recover amounts overpaid on various contracts. In addition, some of these Ministries and Regions continued to have overpayments on various contracts during 2012 and prior years as shown below. This continued trend coupled with no evidence to suggest that disciplinary action of any kind had been meted out to engineering or other staffs involved in*

⁴⁶ See <http://www.audit.org.gy/reports.html>

⁴⁷ Annual Report 2012, p. 33. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_annual_rep.pdf

⁴⁸ *Ibid.*, p. 120.

⁴⁹ *Ibid.*, p. 121.

⁵⁰ *Ibid.*, p. 124.

*the assessment of works in progress and the certification of progress payments is troubling and hints at Management's perceived inaction to remedy the current situation.*⁵¹

<i>Ministries, Departments and Regions</i>	<i>Instances Noted</i>	<i>Amount 2012 \$'000</i>
<i>Region 1</i>	3	8,392
<i>Region 8</i>	10	3,273
<i>Region 10</i>	25	6,842
<i>Ministry of Health</i>	1	15,722
<i>Guyana Police Force</i>	1	10,773
<i>Ministry of Amerindian Affairs</i>	1	7,869
<i>Guyana Defence Force</i>	2	3,253
<i>Ministry of Culture Youth and Sport</i>	1	1,412
<i>Ministry of Home Affairs</i>	1	190

[80] *"11. The slow processing of pay change directives in several Ministries and mainly in the Regions resulted in overpayment of salaries including deductions totalling \$37.389M still to be recovered for the years 2007 to 2012. Ministries, Departments and Regions have faced serious challenges in recovering such sums, particularly because banking institutions require authorisations from account holders to do so and statutory agencies, such as, the Guyana Revenue Authority and National Insurance Scheme have not fully complied with requests to refund sums overpaid"*.⁵²

[81] Additionally, during the on-site visit, the Audit Office provided information on the number of investigations carried out in various Ministries and Entities from 2009 to September 2013. Nineteen of these investigations had been completed, while four were still in progress.⁵³ Seven of these investigations were related to fraud and only one of them resulted in disciplinary action against the perpetrators, but the criminal case is still before the court.⁵⁴ No information on the status of the other fraud cases was provided.

[82] The Committee takes note of the valuable information provided in the annual reports with respect to fraud and overpayments, as well as the information obtained during the on-site visit.

[83] From the information above, the Committee observes that there seems to be an issue with the recovery of the amounts overpaid or fraudulently stolen from the State. However, the Committee did not obtain complete information on the status of other cases of fraud, thefts, losses and overpayments other than that mentioned in the Auditor General's Annual Report 2012. The Committee will formulate a recommendation in this regard (See Recommendation 1.4.8 in Section 1.4 of Chapter II of this Report).

[84] Additionally, the Auditor General informed about the difficulties to the prosecution of fraud and corruption in Guyana which result in virtually no prosecution of fraud/corruption cases.⁵⁵

⁵¹ *Ibid.*, p. vii.

⁵² *Ibid.*, p. viii.

⁵³ See: http://www.oas.org/juridico/pdfs/mesicic4_guy_status.pdf

⁵⁴ See: http://www.oas.org/juridico/pdfs/mesicic4_guy_fraud.pdf

⁵⁵ More details on this situation are found in the next section on the Office of the Director of Public Prosecutions.

[85] In this regard, the Auditor General informed that the Guyana Police Force is the institution legally authorized to gather documents/evidence and that the Audit Office staff works closely with them in the investigation of fraud/corruption cases, accompanying them in the searches/seizures/etc., as well as in drafting reports. As per the Audit Act 2004 requirements, the Audit Office also sends its audit reports to the Office of the Director of Public Prosecutions (DPP), to seek legal advice in criminal matters.

[86] However, the Auditor General informed that both the Police Force and the Office of the DPP are overloaded with cases and that fraud/corruption cases compete with other serious crimes such as murder, sexual violence and robbery. The Auditor General also stated that fraud cases are usually complex and therefore intimidating to those unfamiliar with the subject (Police and Prosecutors).

[87] The Auditor General further informed that access to bank account information would assist in the prosecution of fraud/corruption cases and that the Audit Act 2004 requires obtaining a warrant from a court in order to obtain such information. However, the Auditor General reported that some magistrates require a criminal charge to have already been filed in order to issue such a warrant.

[88] In light of the situation described above and in the absence of detailed information regarding the final outcome of the fraud/corruption cases investigated by the Audit Office, the Committee believes the country under review should consider strengthening its ability to prosecute fraud/corruption cases, especially those of greater importance or complexity, whether due to the level of the government official involved or the amount of economic injury to the State.

[89] To this end, the Committee believes Guyana would benefit from establishing an articulated anti-corruption strategy, which could include the establishment of specialized anti-corruption units in the Guyana Police Force and in the Office of the DPP. The Committee will formulate a recommendation in this regard (See Recommendation 2.4.9 in Section 2.4 of Chapter II of this Report).⁵⁶

[90] Finally, with respect to administrative/disciplinary liability, the Auditor General reported, during the on-site visit, that in the past five years, there had been six involuntary terminations (only one staff member was dismissed because of dishonesty in official dealings).⁵⁷ The Committee considers that the above information serves to show that disciplinary investigations have been undertaken in the Audit Office, culminating in effective sanctions for staff. However, the Committee lacks complete information on the number of investigations under way, how many were shelved, and with respect to how many the statute of limitations had expired. The Committee will formulate a recommendation in this regard. (See Recommendation 1.4.9 in Section 1.4 of this report).

1.4. Conclusions and recommendations.

[91] Based on the comprehensive review conducted with respect to the Audit Office of Guyana in the foregoing sections, the Committee offers the following conclusions and recommendations:

[92] The Co-operative Republic of Guyana has considered and adopted measures intended to maintain and strengthen the Audit Office of Guyana (AOG) as an oversight body, as described in Chapter II, Section 1 of this Report.

⁵⁶ Guyana informed that it has established a Serious Organized Crimes Unit (SOCU) with an interagency National Oversight Committee comprising of the DPP, the Attorney General, the Minister of Home Affairs, the Guyana Police Force, the Financial Intelligence Unit and Office of the President in the last quarter of 2013.

⁵⁷ http://www.oas.org/juridico/pdfs/mesicic4_guy_amend.pdf

[93] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 1.4.1 Strengthen the Audit Office, especially its Forensic Audit Unit, by ensuring that it has the human, financial and technological resources necessary for the proper performance of its functions, bearing in mind the availability of resources (See Section 1.2. of Chapter II of this Report).
- 1.4.2 Publish on the Audit Office website, all accountability documents and reports prepared by the Audit Office and presented to the Public Accounts Committee (PAC), such as its Three-year Strategic Plans and the annual updates thereof, as well as the independent auditor's report to the members of PAC (See Section 1.2. of Chapter II of this Report).
- 1.4.3 Improve the Audit Office website, by advertising a specific hotline telephone number and/or a (secure) hotline for complaints in electronic form from those interested in presenting reports, complaints or allegations of fraud or corruption. Additionally, provide guidance on the website on how to present useful reports, complaints or allegations and on how the interested person can follow-up on its status (See Section 1.2. of Chapter II of this Report).
- 1.4.4 Promote awareness campaigns to the general public on how they can help the Audit Office in its functions, especially those of its Forensic Audit Unit, related to the uncovering and deterrence of fraud and corruption in Guyana (See Section 1.2. of Chapter II of this Report).
- 1.4.5 Provide support and incentives to its current staff to pursue and attain professional accounting qualifications recognized by the Institute of Chartered Accountants of Guyana and/or take these qualifications into consideration when selecting future staff (See Section 1.2. of Chapter II of this Report).
- 1.4.6 Strengthen efforts to ensure the Audit Office participation in the peer-review program on audit quality assurance in the framework of the Caribbean Organization of Supreme Audit Institutions (CAROSAI) (See Section 1.2 of Chapter II of this Report).
- 1.4.7 Continue strengthening the internal audit departments in the various Ministries/Departments/Agencies of the Government of Guyana and consider gradually increasing their staff (See Section 1.2 of Chapter II of this Report).
- 1.4.8 Prepare statistics on the amount ordered to be paid back to the State in cases of fraud, theft, losses and overpayments and the amounts actually recovered, in order to identify challenges and recommend corrective measures (See Section 1.3 of Chapter II of this Report).
- 1.4.9 Prepare comprehensive statistics on the outcomes of disciplinary investigative proceedings within the Audit Office showing how many investigations are under way, how many have been shelved, and with respect to how many the statute of limitations have expired, in order to identify challenges and recommend corrective measures (See Section 1.3 of Chapter II of this Report).

2. THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

2.1. Existence of provisions in the legal framework and/or other measures.

[94] The Office of the Director of Public Prosecutions (DPP) has a set of provisions in its legal framework, as well as other measures that refer, among others, to the following:

[95] With respect to its objectives and functions, Article 187 of the Constitution of the Co-operative Republic of Guyana establishes that the DPP shall have power in any case in which he or she considers it desirable so to do (a) to institute and undertake criminal proceedings against any person before any court, other than a court-martial, in respect of any offence against the law of Guyana; (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other person or authority.

[96] According to Article 187 (3), the powers of taking over and continuing or discontinuing any criminal proceedings that may have been instituted by any other person or authority are vested in the DPP to the exclusion of any other person or authority.

[97] Article 187(5) further provides that criminal proceedings include any appeal from any determination of any court in criminal proceedings or a case, while Article 187(2) states that the function of the DPP may be exercised through other persons acting under an in accordance with his or her general or specific instructions.

[98] During the on-site visit, the DPP informed that *“Pursuant to Act No. 4 of 2010 which amended the Court of Appeal Act, the DPP has now been vested with the authority to appeal against verdicts of acquittal including those as a result of a trial judge upholding a no case submission, that there is a defect in the depositions, the committal of the accused person for trial or the indictment; a decision by the trial judge to exclude material evidence sought to be adduced by the prosecution; the trial judge’s substantial misdirection of the jury in the course of the judge’s summation on the law or facts or on a mixed question of law or fact; or a material irregularity in the trial.”*⁵⁸

[99] Additionally, the Supreme Court of Judicature (Appeal) (Amendment) Act, No. 9 of 2013, which further amended the Court of Appeal Act and the High Court Act, confers a right of appeal in all civil proceedings which arose out of a criminal cause or matter.

[100] During the on-site visit, the DPP informed that in carrying out these functions her Office *“provides professional advice to and representation for all law enforcement and other agencies in relation to the prosecution of criminal cases depending on the availability of legal staff. In the execution of the above mentioned functions, the major activities of the DPP are: A. To proffer indictments in the criminal sessions in the Demerara, Berbice and Essequibo Jurisdictions; during these criminal sessions, one or more State Counsel would be assigned to prosecute the cases listed to be heard by the sitting trial judges; B. To appear in the Appellate Courts, the Full Court for appeals for Summary charges and Courts of Appeals for appeals from all indictable charges; C. To appear in the Magistrate’s Court for a technically high profile matter and in extreme instances where the Police Prosecutors would request assistance; D. To appear in the High Court in Applications for Bail, Habeas Corpus, or Application to Leave the Jurisdiction, and for Extension of Time to keep persons in custody pending police*

⁵⁸ See the Presentation of the Director of Public Prosecutions, p. 1, http://www.oas.org/juridico/pdfs/mesicic4_guy_dpp.pdf

investigations; E. To provide the Guyana Police Force (GPF) and other Law Enforcement Agencies such as the Customs Anti Narcotic Unit (CANU) and Guyana Energy Authority (GEA) with legal advice in the prosecution of criminal cases; F. To ensure that no citizen is charged unjustly; G. To ensure that persons who break the law are charged and prosecuted according to the relevant provisions of the Laws of Guyana.”⁵⁹

[101] The DPP also presented the following regarding the criminal procedure in Guyana: “There are two types of criminal charges in Guyana – summary charges and indictable charges. Both types of charges are instituted in the Magistrate’s Court. All summary charges are heard by a magistrate while some indictable charges are heard by a magistrate. Certain indictable charges, as prescribed by law, must be done before a judge and jury; however, for these, a preliminary inquiry (PI) or a paper committal (PC) must first be done by a magistrate in the Magistrate’s Court.

[102] After an indictable charge is instituted, if it is being disposed of by the magistrate, the trial is held. If however, the charge has to be heard by a judge and jury, then a preliminary inquiry (PI) or a paper committal (PC) has to be done by the magistrate to determine if an accused person must stand trial for the offence for which he or she is charged. A PI or PC must be conducted for indictable offences such as Murder, Manslaughter, Rape and any Fraud being done in the high court. After the PI or PC is completed, the DPP receives the depositions/PC documents.

[103] Upon receipt of the depositions/PC documents, the DPP either proffers the indictments or discontinues the charge depending on the evidence contained in the depositions/PC documents. Where indictments are proffered they will then be presented to the judges in the High Court for hearing at the Criminal Sessions.

[104] The lawyers from the Chambers appear for the prosecution in the High Court and in the Appellate Courts and rarely in the magistrate’s court in very serious cases. In all the magistrates courts the police appear for the prosecution.

[105] Most Fraud charges are indictable charges and the trial for the majority of these charges are done in the magistrate’s court. Any fraud charges concerning right to property has to be done in the High Court.”⁶⁰

[106] During the on-site visit, the DPP informed that there is no statute of limitations for indictable offenses in Guyana. However, summary offences do and need to be filed six months from the date of the criminal act.

[107] With respect to its independence, Article 187 (4) of the Constitution states that the DPP shall not be subject to the direction or control of any other person or Authority in the exercise of the powers conferred upon him or her.

[108] As for the manner in which he or she is selected, Article 203 of the Constitution provides that the Director of Public Prosecution (DPP) is appointed by the Judicial Service Commission and must be qualified to be appointed as a Puisne Judge of the High Court.⁶¹ Article 203(4) of the Constitution

⁵⁹ *Ibid.*, http://www.oas.org/juridico/pdfs/mesicic4_guy_dpp.pdf

⁶⁰ *Ibid.*, http://www.oas.org/juridico/pdfs/mesicic4_guy_dpp.pdf

⁶¹ Pursuant to Section 129 of the Constitution, a person is qualified to be appointed to hold or to act in the office of a Judge if: (a) he or she is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of

provides that the DPP is to vacate his or her office on reaching the age of sixty years. However, the Judicial Service Commission may permit that him or her continue in office until a later age, not exceeding sixty-five years. Articles 203(5) and 225(2) further provide that the DPP may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause whatsoever) or for misbehavior. The details of the removal procedures are established in Article 225(3)(4)(5) and (6) of the Constitution.

[109] With respect to the staff of the Office of the DPP, pursuant to Article 201 of the Constitution, the Public Service Commission (PSC) has the power to make appointments, to remove and to exercise disciplinary control over persons holding or acting in that Office. However, with respect to the DPP and the Deputy DPP, as well as the Police Prosecutors, that responsibility falls under the Judicial Service Commission⁶² and the Police Service Commission,⁶³ respectively. In this regard, during the on-site visit, the DPP informed that no disciplinary cases have been reported to either of the Service Commissions within the last five years.⁶⁴

[110] Additionally, during the on-site visit, the DPP informed that her Office was supported by a Deputy Director of Public Prosecutions, five Assistant Directors of Public Prosecutions, six Senior State Counsels and ten State Counsels. In addition, besides the lawyers who are employed at the Chambers, there are three Legal Assistants and three Police Prosecutors from the Guyana Police Force.

[111] With respect to training, during the on-site visit, the DPP provided a list of all training activities from 2010 to 2013 in which her staff participated which include, among other, one conference on transnational corruption and some others workshops relating to money laundering, proceeds of crime and confiscation.⁶⁵

[112] In order to keep citizens abreast of its activities, the Office of the DPP has a website,⁶⁶ which, inter alia, includes general information on its work, staff, press releases and annual reports. It also provides an electronic form for those interested in registering a complaint.⁶⁷

[113] With regard to mechanisms of internal control, during the on-site visit, the DPP informed that there is no internal audit unit in the DPP's Chambers. The (external) auditing of resources purchased by or gifted to the Office is done by the Audit Office.

[114] With respect to the manner in which necessary budgetary resources for its operations are ensured, the DPP informed, during the on-site visit, that her Office has an independent budget and that the budget process "*vis-à-vis the Financial Management and Accountability Act of 2003 is carried out pursuant to our submission of the Current and Capital Budget documents to the Ministry of Finance. Approvals are made by Parliament based on decisions made by the Ministry of Finance*".⁶⁸

[115] According to information requested and received during the on-site visit, the total annual budget (current plus capital budgets) allocated to the Office of the DPP in the past five years was as follows (in

the Commonwealth or a court having jurisdiction in appeals from any such court; or (b) he or she is qualified for admission as an attorney-at-law in Guyana and has been so qualified for such period as may be prescribed by Parliament.

⁶² Section 199 of the Constitution.

⁶³ Section 212 of the Constitution.

⁶⁴ See the Presentation of the Director of Public Prosecutions, p.7.

⁶⁵ For the full list of training activities, see the Presentation of the Director of Public Prosecutions, pp. 5 and 6.

⁶⁶ <http://www.dpp.gy/>

⁶⁷ <http://www.dpp.gy/index.php/2012-11-26-18-50-44>

⁶⁸ See the Presentation of the Director of Public Prosecutions, p. 6.

Guyanese dollars⁶⁹): G\$79,824,000 (2008); G\$77,563,000 (2009); G\$84,406,000 (2010); G\$94,683,000 (2011); and G\$ 104,206,000 (2012).⁷⁰

[116] Regarding coordination mechanisms for harmonizing the functions of the Office of the DPP with those of other oversight bodies or government authorities, during the on-site visit, the DPP informed that they routinely give legal advice to the Commissioner of Police and to the Audit Office, among others. She also informed that she has never received any requests for legal advice from the Integrity Commission.

[117] In addition, the DPP further informed that, on a monthly basis, her Office hosts a Heads Meeting which is attended by the Commissioner of Police, Director of Prisons, Chief Magistrate, Registrar of the Supreme Court and Chairman of the Police Complaints Authority. The objective of this meeting is for all the different entities in the criminal justice system to meet and discuss problems with a view to solving them.

[118] As regards transparency and accountability, the Committee notes the existence of Annual Reports of the Office of the DPP.⁷¹

[119] Finally, in its Response to the Questionnaire, the country under review informs that in May, 2013, its Ministry of Home Affairs launched a new initiative, a website “I paid a bribe - Guyana” (www.ipaidabribe.gy). On this website, any person can report whether they were asked for a bribe and provide as many details as they want.⁷²

2.2. Adequacy of the legal framework and/or other measures.

[120] The Office of the Director of Public Prosecutions (DPP) has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were briefly described in Section 2.1. Nonetheless, the Committee considers it appropriate to set forth certain observations in relation thereto.

[121] First, the Committee notes the existence of Police Prosecutors in Guyana, who generally are not lawyers but are responsible for the prosecution of the majority of crimes, including corruption and fraud in Guyana.

[122] In this regard, during the on-site visit the DPP informed that she was gradually bringing Police Prosecutors under her Office and that three (3) Police Prosecutors are assigned on a full time basis at the DPP’s Chambers. She further informed that “*The majority of criminal charges are disposed of in the Magistrate’s Court and Police Prosecutors appear for the prosecution, thereby resulting in the prosecution of most of the criminal charges being done by Police Prosecutors. All the prosecutors in the Magistrate’s Courts are police.*”⁷³

⁶⁹ 1 US Dollar = 200 Guyanese Dollars (as of November 1, 2013).

⁷⁰ For complete information on the budget of the Office, see the Presentation of the Director of Public Prosecutions, p. 7.

⁷¹ With its response to the Fourth Round questionnaire, Guyana submitted the Annual Reports of the Office of the Director of Public Prosecution for the years 2006, 2007, 2008, 2009 and 2010.

⁷² ipaidabribe.gy. According to the country under review, the complainant makes an anonymous report and is given a reference number and the complaint is publicly posted on the website. These reports are monitored and may assist in uncovering and lead to investigations of allegations of bribery and corruption and disciplinary action.

⁷³ See the Presentation of the Director of Public Prosecutions, p. 4.

[123] The Committee believes that it is a positive step that some of these Police Prosecutors are now in the Office of the DPP where they can have immediate and direct access to the legal staff whenever they need advice on the prosecution of cases. The Committee will formulate a recommendation in this regard (See Recommendation 2.4.1 in Section 2.4 of this report).

[124] Second, with respect to the budget of the Office of the DPP, the Committee notes that even though it has been increasing modestly over the past five years, it only represents approximately 0.04% of the national budget and this percentage has been slightly declining over the past five years from 0.044% in 2009 to 0.039% in 2012.

[125] During the on-site visit, the DPP informed that one of the main difficulties faced by her Office was the shortage of staff, especially the inadequate number of senior staff members. She stated that many of the State lawyers, after gaining experience, leave the DPP's Chambers to go to other jobs that offer a higher remuneration.

[126] In light of the above and taking into consideration the constitutional role of the Office of the DPP in instituting and undertaking criminal proceedings, including acts of corruption, as well as the need for it to have the human and financial resources it needs for the proper performance of its duties, the Committee will formulate a recommendation (See Recommendation 2.4.2 in Section 2.4 of this report).

[127] Third, with respect to training, the Committee notes that while the staff of the Office of the DPP did participate in various training activities in the past few years, a very small number of them were directly related to the prosecution of acts of corruption and related international cooperation.

[128] Additionally, in light of the situation described in Section 1.3 above regarding the alleged lower importance given to corruption and fraud cases vis-à-vis other serious crimes, the Committee believes that it would be beneficial for the country under review to strengthen the skills and ability of officers in the Office of the DPP to prosecute fraud and corruption cases and to provide timely legal advice on the investigations of such cases done by the Audit Office, the Guyana Police Force and any other bodies. The Committee will formulate a recommendation in this regard (See Recommendation 2.4.3 in Section 2.4 of this report).

[129] Fourth, during the on-visit, the DPP stressed that her Office does not have investigative powers.⁷⁴ As a result, they are dependent on the Guyana Police Force to be informed on matters, and at times the Guyana Police Force either does not forward some files to the Chambers for legal advice, or forwards them after charges are instituted.

[130] In her own words, she expressed that: *"In most cases the police send the files after charges are instituted and sometimes this result in charges being instituted which are weak and eventually they are dismissed. It also delays the process in court, in that; the files may have to be returned to the police station for further investigations during the course of the trial. The majority of files are sent for legal advice after charges are instituted. This system is unsatisfactory. In some instances where the files come after the charges are instituted it is too late for the police to benefit from legal advice as time for certain investigations would have already passed. It is important for investigations to be done timely, that is, immediately after the commission of the offence. When this time passes it is difficult to do the*

⁷⁴ See the Presentation of the Director of Public Prosecutions, p. 7.

investigations desired for a successful prosecution. The quality of the investigations to a great extent determines how successful the prosecutions in court are."⁷⁵

[131] The DPP further stated that: *"There is the problem of the police sometimes not forwarding some files to the Chambers for legal advice. All files for indictable charges ought to be sent to have the benefit of the advice of the DPP, whether in relation to the institution of a charge or the decision on the way forward after a case has been completed either by an acquittal or a conviction"*.⁷⁶

[132] In light of the above, the Committee believes that coordination mechanisms between the Guyana Police and the Office of the DPP should be implemented, in order to establish settled procedures or guidelines for directing investigations related to acts of corruption, so earlier collaboration can be carried out and legal advice provided before a charge is instituted. This would ensure, for example, that legal advice is given during the course of an investigation with respect to drafting a charge, obtaining wiretaps or search warrants, and other pre-charge issues. The Committee will formulate a recommendation in this regard (See Recommendation 2.4.4 in Section 2.4 of this report).

[133] The Committee further notes the perceived lack of coordination with other oversight bodies. For instance, during the on-site visit the DPP informed that her Office had never received any request for legal advice from the Integrity Commission, which is in charge of ensuring the integrity of persons in public life through their compliance with the provisions of the Integrity Commission Act No. 20 of 1997.⁷⁷

[134] Additionally, the DPP informed that no files from the cases resulting from the initiative "I paid a bribe - Guyana" of the Ministry of Home Affairs had been forwarded to the DPP's chambers. The Committee observes that the establishment of such a "hotline" did not seem to have been a coordinated effort among all the oversight bodies. It is also unclear whether the initiative, which was instituted in May 2013, is still in place.⁷⁸

[135] In light of the above and taking into account the situation described by the Auditor General in Section 1.3 above, while reiterating that Guyana would benefit from establishing an articulated anti-corruption strategy, the Committee believes that the coordination mechanisms should be strengthened through the establishment of an information exchange and coordination mechanism among the pertinent oversight bodies and investigative agencies. The Committee will formulate a recommendation in this regard (See Recommendation 2.4.5 in Section 2.4 of this report).⁷⁹

[136] Sixth, the committee notes that there is no legal obligation for the DPP to present an annual report and for those reports to be published. Thus, the last report available refers to the year 2010. The Committee also notes that the website of the Office of the DPP contains links to the annual reports for

⁷⁵ *Ibid.*, p. 9.

⁷⁶ *Ibid.*, p. 9.

⁷⁷ Section 23 of the Integrity Commission Act requires the written consent of the DPP before any prosecution under the Act.

⁷⁸ The Technical Secretariat had the opportunity to visit the "ipaidabribe.gy" website on several occasions before the on-site visit in October 2013. However, on several occasions throughout the month of November 2013, the Technical Secretariat tried to visit the website and received the error message that *"This URL is not linked to application"*.

⁷⁹ Guyana informed that it has established a Serious Organized Crimes Unit (SOCU) with an interagency National Oversight Committee comprising of the DPP, the Attorney General, the Minister of Home Affairs, the Guyana Police Force, the Financial Intelligence Unit and Office of the President in the last quarter of 2013.

2008, 2009 and 2010. However, they do not work.⁸⁰ The Committee further notes that the last press release information posted on the website refers to January 2013.

[137] In light of the above and the need to enhance the accountability of the Office of the DPP regarding performance of its duties, the Committee will formulate the corresponding recommendations (See Recommendations 2.4.6 and 2.4.7 in Section 2.4 of this report).

2.3. Results of the legal framework and/or other measures.

[138] Through the on-site visit to the country under review, the following information was gathered regarding the results obtained by the Office of the DPP:⁸¹

[139] “*Staff of the DPP’s Chambers do not do investigations due to our Constitutional mandate. We mainly appear at the High Court Criminal Sessions in offences for Murder, Manslaughter Sexual Offences and other serious indictable offences including fraud. Offences for acts of Corruption are handled by the Magistrate’s Courts, Court of Appeal and Full Court. The police appear for the prosecution in the magistrates courts. If there are appeals from these trials then the staff of the DPP would appear in the Appellate Court at the hearing of the appeal. We give legal advice to the police and they institute the charges. The police and court will have statistics on the number of cases begun in each of the past five years, and the status of each of these charges.*”

[140] **Information compiled from the DPP’s Records on CORRUPT TRANSACTION OFFENCES INVOLVING PUBLIC OFFICERS FOR THE PERIOD 2008-2012**

YEARS	Offence	Gov’t Agencies	Total Police Files Received at the DPP	CHARGES
2008	<i>Fraud</i>		14	8
2008	<i>Alleged Fraud</i>	<i>Office of the President</i>	1	1
2008	<i>Alleged Break and Enter and Larceny</i>	<i>Ministry of Legal Affairs</i>	1	1
2009	<i>Larceny by Public Officer</i>	<i>Mayor and City Council, GPL, GPF, Carnegie School of Home Economic, Ministry of Agriculture</i>	5	
2009	<i>Fraud</i>		4	1
2010	<i>Fraud</i>	25 charges	59	13

⁸⁰ <http://www.dpp.gy/index.php/2012-11-26-18-29-08/116-annual-reports>

⁸¹ See the Presentation of the Director of Public Prosecutions, pp. 7-9.

		<i>involved public officers</i>		
2010	<i>Larceny by Public Servant</i>	<i>Guyana Water Inc., General Post Office</i>	2	<i>1-for GWI</i>
2010	<i>Larceny by clerk or servant</i>	<i>Guyana Revenue Authority</i>	5	3
2011	<i>Fraud</i>		26	14
2011	<i>Larceny by clerk or servant</i>		33	14
2012	<i>Fraud</i>		31	14
2012	<i>Larceny by clerk or servant</i>		24	17
2012	<i>Break and Enter and Larceny</i>	<i>Ministry of Housing</i>		<i>No charge</i>
2012	<i>Alleged Forgery of Property Documents</i>	<i>Ministry of Housing</i>		<i>charged</i>
TOTAL			205	87

[141] The Committee notes that the information provided by the Office of the DPP is limited to those cases in which legal advice was requested from that Office. In this regard, the information above does not contain the number of charges actually instituted by the Guyana Police Force on cases of corruption. This information was requested from the Guyana Police Force, which informed the following:⁸²

[142] “Over the years spanning 2008 to 2012, the Guyana Police Force have instituted 94 charges for the offence of corrupt transactions involving public servants; of those 94 charges, three (3) convictions have been secured; there are 91 cases pending.”⁸³

[143] The Committee observes that while the results provided give an overview of the manner in which corruption cases are being carried out, further information should also be provided and broken down on the specific acts of corruption provided in the Inter-American Convention against Corruption besides fraud perpetrated against the State (such as active and passive bribery, etc.), in order to identify challenges and recommend corrective measures: the total number of investigations begun in each of the past five years; the number of investigations that remain ongoing; the number of investigations that have been suspended for whatever reason; the number of investigations that have been shelved due to statute of limitations; the number of investigations that have been shelved without a decision being reached on the merits in the case under investigation; the number of investigations that are at a stage that allows a decision to be reached on the merits of the case under investigation; and the number of investigations that have been referred to the competent body in order for such a decision to be taken (See Recommendation 2.4.8 in Section 2.4 of Chapter II of this Report).

[144] The Committee further notes that the information presented in the annual reports of the Office of the DPP for 2008,⁸⁴ 2009⁸⁵ and 2010⁸⁶ seem to confirm the situation reported by the Auditor General in

⁸² See “Reply from DPP/Police to the additional information requested by the subgroup”, p. 2. Available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_reply.pdf

⁸³ According to the information found on page 42 the response of the country under review to the questionnaire, “all of the persons charged are police ranks except for the year 2012, out of the 34 charges two were Guyana Power and Light employees, a state agency.”

Section 1.3 above. From reading these reports, it appears that there is no indictment of acts of corruption in any of the High Courts (Demerara, Berbice and Essequibo). Moreover, no corruption cases were heard by the Court of Appeal or by the Full Court in that period.⁸⁷

[145] Additionally, the response of the country under review to the questionnaire⁸⁸ provides information on three recent corruption cases which demonstrates the challenges the country faces in the prosecution of such crimes:

[146] *“The first case was the discovery through an informant that approx \$ 33 M GY had been embezzled from one of the regional hospitals in 2013 (the actual investigation reveals that figure is approx \$ 43 M GY) during the investigation the persons who were suspected of being involved all escaped from Guyana. They were charged in absentia. At this stage the Government has sought assistance from neighbouring countries under the Convention on Mutual Assistance on Criminal Matters.*

[147] *The second case refers to a fraud in the Pension Scheme (public servants) of the Ministry of Finance which was uncovered with help of public officers of over \$ 20 M GY. This case did lead to persons being charged but a number of persons cannot be found and one of the accused, since the case has not been called up, continues to go to work and intimidate the staff.*

[148] *The third case is known as the Fidelity/Customs scandal. Following information received a special audit was conducted by the Audit Office of Guyana in 2009. The Customs Officers implicated in the Fidelity matter were charged with Conspiracy to Commit a Felony to wit knowingly concerned with the Fraudulent evasion of import duties of customs. Sixteen (16) persons were charged on 2009-04-28, and the matter was discharged on 2011-05-31 by the Magistrate for insufficient evidence.*

[149] *The issue is not that public officers are not reporting but the weakness lies in the alacrity with which the investigations are conducted and the time lag between when the charges are laid and the matter is commenced in the court and completed in a timely manner. See PSC Report which illustrates this as does the cases brought by the GRA [Guyana Revenue Authority].”*

[150] In light of the above, the Committee reiterates the analysis presented in Section 1.3 above and its belief that the country under review should consider strengthening its ability to prosecute fraud/corruption cases, especially those of greater importance or complexity, whether due to the level of the government official involved or the amount of economic injury to the State.

[151] To this end, the Committee believes Guyana would benefit from establishing an articulated anti-corruption strategy, which could include the establishment of specialized anti-corruption units in the Guyana Police Force and in the Office of the DPP. The Committee will formulate a recommendation in this regard (See Recommendation 2.4.9 in Section 2.4 of Chapter II of this Report).

[152] In addition, based on the information provided by the Guyana Police Force, the Committee observes the low number of convictions as compared to the number of corruption-related cases pending in the courts in the past five years. In this regard, the Committee notes that in the interest of transparency

⁸⁴ See: http://www.oas.org/juridico/PDFs/mesicic4_guy_annual08.pdf

⁸⁵ See: http://www.oas.org/juridico/PDFs/mesicic4_guy_annual09.pdf

⁸⁶ See: http://www.oas.org/juridico/PDFs/mesicic4_guy_annual10.pdf

⁸⁷ Most of the cases heard are related to following crimes: Murder, Rape and Manslaughter.

⁸⁸ See Guyana's response to the Fourth Round questionnaire, pp. 41 and 42.

and accountability, the judicial branch should maintain and publicize information with respect to the total number of cases regarding acts of corruption investigated that were ready for a decision to be adopted in each of the past five years; the number of decisions adopted in connection with them; the number of those decisions in which responsibility was established or penalties were imposed; the number of those decisions in which no responsibility was found or acquittals were given; and the number of those decisions involving the extinction of the punishment or responsibility because of the triggering of the statute of limitations, on types of corruption offences. The Committee will formulate a recommendation in this regard (See Recommendation 2.4.10 in Section 2.4 of Chapter II of this Report).

[153] Finally, the Committee reiterates its observation made in Section 2.2, in the sense that these statistics on the work of the Office of the DPP should be made public. The numbers in this report were provided to the Technical Secretariat as part of the review process. However, they are not publicly available.

2.4. Conclusions and recommendations.

[154] Based on the comprehensive review conducted with respect to the Office of the Director of Public Prosecutions in the foregoing sections, the Committee offers the following conclusions and recommendations:

[155] The Co-operative Republic of Guyana has considered and adopted measures intended to maintain and strengthen the Office of the Director of Public Prosecutions (DPP), as an oversight body, as described in Chapter II, Section 1 of this Report.

[156] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 2.4.1 Continue to bring the Police Prosecutors into and under the Office of the Director of Public Prosecutions. In the interim, ensure that police prosecutors consult with the DPP when dealing with corruption cases (See Section 2.2 of Chapter II of this Report).
- 2.4.2 Strengthen the Office of the Director of Public Prosecutions by ensuring that it has the human and financial resources it needs for the proper performance of its functions, bearing in mind the availability of resources. In connection with those efforts, ensure that the terms and conditions of service are sufficient to attract and retain its senior legal staff members (See Section 2.2 of Chapter II of this Report).
- 2.4.3 Strengthen the skills and ability of officers in the Office of the DPP to prosecute fraud and corruption cases and to provide timely legal advice on the investigations of such cases done by the Audit Office, the Guyana Police Force and any other bodies, through the provision of broader training opportunities to staff members of the Office of the Director of Public Prosecutions, especially training on the prosecution of acts of corruption and related international cooperation (See Section 2.2 of Chapter II of this Report).
- 2.4.4 Implement formal coordination mechanisms between the Guyana Police and the Office of the Director of Public Prosecutions, in order to establish settled procedures or guidelines for directing investigations related to acts of corruption, so earlier

collaboration can be carried out and legal advice provided before a charge is instituted (See Section 2.2 of Chapter II of this Report).

- 2.4.5 Establish, as appropriate, an information exchange and coordination mechanism among the pertinent oversight bodies and investigative agencies (See Section 2.2 of Chapter II of this Report).
- 2.4.6 Consider establishing the legal obligation for the Director of Public Prosecutions to prepare and publish its annual reports disclosing its activities and the results achieved during the period (See Section 2.2 of Chapter II of this Report).
- 2.4.7 Ensure that the website of the Director of Public Prosecutions is continuously updated and that its annual reports, legislation and other relevant information are published in a timely manner and that the corresponding web links are working (See Section 2.2 of Chapter II of this Report).
- 2.4.8 Maintain and publicize results indicating the total number of investigations; the number of investigations that remain ongoing; the number of investigations that have been suspended for whatever reason; the number of investigations that have been shelved due to statute of limitations; the number of investigations that have been shelved without a decision being reached on the merits in the case under investigation; the number of investigations that are at a stage that allows a decision to be reached on the merits of the case under investigation; and the number of investigations that have been referred to the competent body in order for such a decision to be taken, in order to identify challenges and recommend corrective measures for the Office of the Director of Public Prosecutions and the Guyana Police Force. This information should be broken down by the specific acts of corruption provided for in the Inter-American Convention against Corruption, including, but not limited to, active and passive bribery and fraud against the State (See Section 2.3 of Chapter II of this Report).
- 2.4.9 Establish an articulated anti-corruption strategy, which could include the establishment of specialized anti-corruption units in the Guyana Police Force and in the Office of the Director of Public Prosecutions (See sections 1.3 and 2.3 of Chapter II of this Report).
- 2.4.10 Maintain and publicize results indicating the total number of cases investigated that were ready for a decision to be adopted; the number of decisions adopted in connection with them; the number of those decisions in which responsibility was established or penalties were imposed; the number of those decisions in which no responsibility was found or acquittals were given; and the number of those decisions involving the extinction of the punishment or responsibility because of the triggering of the statute of limitations, in order to identify challenges and recommend corrective measures for the judicial branch. This information should be broken down on the specific acts of corruption provided for in the Inter-American Convention against Corruption, including, but not limited to, active and passive bribery and fraud against the State (See Section 2.3 of Chapter II of this Report).

3. SERVICE COMMISSIONS

3.1. Existence of provisions in the legal framework and/or other measures.

[157] The Service Commissions have a set of provisions in their legal framework, as well as other measures that refer, among others, to the following:

[158] The Constitution of Guyana establishes four Service Commissions, which are vested with the power to appoint persons that fall under their purview to hold or to act in relevant offices, as well as exercise disciplinary control over them. In particular, the Constitution establishes the Judicial Service Commission (JSC), which is responsible for appointing and exercising disciplinary control over judicial and legal officers, such as magistrates and the Director of Public Prosecutions, in accordance with Articles 199 and 203 of the Constitution,⁸⁹ and the Public Service Commission (PSC), which is responsible for the appointment and exercise of disciplinary control over public officers, in accordance with Article 201 of the Constitution.⁹⁰

[159] The independence of the Commissions is established by Article 226(1) of the Constitution, in the following terms: “*save as otherwise provided in this Constitution, in the exercise of its functions under this Constitution a Commission shall not be subject to the direction or control of any other person or authority.*” However, Article 226(2) provides that the power of Service Commissions to make rules relating to their respective procedures is subject to affirmative resolution of the National Assembly. In this regard, the National Assembly has approved the Public Service Commission Rules 1998⁹¹ and the Judicial Service Commission Rules 2010.⁹²

[160] With respect to the Judicial Service Commission, Article 198 of the Constitution establishes its composition: The Chancellor of the Judiciary, who shall be the Chairperson; the Chief Justice; and the Chairperson of the Public Service Commission are automatically appointed as members. The other members include one member who has been a judge appointed by the President after meaningful consultation⁹³ with the Leader of the Opposition, and one or two nominees from the National Assembly who must not be attorneys-at-law in active practice after consultation with bodies representing the attorneys-at-law.

⁸⁹ Section 199(3) of the Constitution establishes that the power of the Judicial Service Commission to appoint and exercise disciplinary control applies to “*the office of Commissioner of Title, Magistrate, Director of Public Prosecutions, Deputy Director of Public Prosecutions, Registrar of the High Court, Deputy Registrar of the High Court, Registrar of Deeds, Deputy Registrar of Deeds and to such other offices (not being offices in respect of which provision for the making of appointments is made by any provision of this Constitution other than article 201) connected with the courts of Guyana or for appointment to which legal qualifications are required as may be prescribed by Parliament.*”

⁹⁰ The exception being those public offices that fall under the purview of the Judicial Service Commission, the Police Service or the Teaching Service, or offices to which the appointments are made by the President or by the Auditor General.

⁹¹ Available at: http://www.oas.org/juridico/english/mesicic3_guy_rules1998.pdf. Additionally, during the on-site visit, the representatives of the Public Service Commission informed that they have prepared the following revised rules, which are awaiting affirmative resolution of the National Assembly: Public Service Rules (2004), Public Service Commission Rules (2010) and Table of Offences and Penalties (2010).

⁹² Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_rules2010.pdf

⁹³ Pursuant to Article 232 of the Constitution, “consultation” or “meaningful consultation” means “*the person or entity responsible for seeking consultation shall - (a) identify the persons or entities to be consulted and specify to them in writing the subject of the consultation and an intended date for the decision on the subject of consultation; (b) ensure that each person or entity to be consulted is afforded a reasonable opportunity to express a considered opinion on the subject of the consultation; and (c) cause to be prepared and archived a written record of the consultation and circulate the decision to each of the persons or entities consulted.*”

[161] Article 127 of the Constitution provides that the Chancellor and the Chief Justice are appointed by the President after obtaining the agreement of the Leader of the Opposition. In this regard, the response of the country under review to the questionnaire⁹⁴ states that “*Since this constitutional amendment 2 successive Presidents and 3 Leaders of the Opposition have been unable to reach agreement. The present officers are acting as allowed for under the constitution.*”

[162] The Constitution further provides that the members of the JSC may only be removed from office for inability to discharge the functions of the office whether arising from infirmity of body or mind or any other cause; for misbehavior;⁹⁵ or when the office becomes vacant.⁹⁶

[163] With respect to the Public Service Commission, Article 200 of the Constitution provides that it is to consist of six members,⁹⁷ appointed as follows: three members appointed by the President acting after meaningful consultation with the Leader of the Opposition; two members appointed by the President upon nomination by the National Assembly after it has consulted such bodies as appear to it to represent public officers or classes of public officers; and if the President thinks fit, one other member appointed by the President acting in accordance with his own deliberate judgment.⁹⁸

[164] Pursuant to Article 200(2) of the Constitution, the Chairperson and Deputy Chairperson are elected by and from the PSC members using such consensual mechanism as the Commission deems fit.

[165] As with the Judicial Service Commission, these members may only be removed from office for inability to discharge the functions of the office whether arising from infirmity of body or mind or any other cause; for misbehavior;⁹⁹ or when the office becomes vacant.¹⁰⁰

[166] In addition, the Constitution further provides, at Article 200(7), that “*a person shall not, while he holds or is acting in the office of a member of the Public Service Commission or within a period of three years commencing with the date on which he last held or acted in that office, be eligible for appointment to or to act in any office power to make appointments to which is vested by this Constitution in the President acting in accordance with the advice of the Public Service Commission or in that Commission.*”

[167] Pursuant to Article 226(4) of the Constitution, decisions taken by the Judicial Service Commission and the Public Service Commission are to be made by a minimum of three members, which constitute a quorum,¹⁰¹ through majority vote. If there is an equality of votes, the Chairperson has a

⁹⁴ See Guyana’s response to the Fourth Round questionnaire, p. 10 (footnote 20).

⁹⁵ Article 198(4) of the Constitution.

⁹⁶ Pursuant to Article 198(3), a vacancy occurs upon the expiration of three years from the date of his or her appointment or at such earlier time as may be specified in the instrument by which he was appointed; or, the member is appointed to the office of Chancellor, Chief Justice or Chairman of the Public Service Commission or of the Teaching Service Commission or if he becomes a public officer.

⁹⁷ Pursuant to Article 200(1) of the Constitution, PSC members are disqualified from being appointed if they are public officers.

⁹⁸ Additionally, the Public Service Commission Rules 1998 establishes in its Articles 90 – 98, requirements of conduct of the PSC members, in order to avoid conflicts of interest.

⁹⁹ Article 200(4) of the Constitution.

¹⁰⁰ Pursuant to Article 200(3) of the Constitution, a vacancy occurs upon the expiration of three years from the date of his or her appointment or at such earlier time as may be specified in the instrument by which he was appointed.

¹⁰¹ Public Service Rules 1998, Article 5(2): “*At any meeting of the Commission, the Chairman or the Deputy Chairman or the acting Chairman and two members shall constitute a quorum.*”

second or casting vote, provided that the question for decision of the Service Commission is not related to the removal of a public officer.¹⁰²

[168] Article 226(6) of the Constitution prohibits against enquiry in any court into any question whether: “(a) a Commission has validly performed any function vested in it by or under this Constitution; (b) any member of a Commission or any other person has validly performed any function delegated to such member or person by a Commission in pursuance of the provisions of this Constitution; or (c) any member of a Commission or any other person has validly performed any other function in relation to the work of the Commission or in relation to any such function as is referred to in the preceding subparagraph.”

[169] In this regard, decisions made by the Public Service Commission with respect to disciplinary proceedings may only be appealed to the Public Service Appellate Tribunal.¹⁰³ However, the response of the country under review to the questionnaire¹⁰⁴ states that “the PSC has several mechanisms for review internally in the PSC as provided for in the constitution(sic) and in the PSC rules. The Public Service Appellate Tribunal can be invoked but this has not happened for over 10 years.”

[170] Regarding the Judicial Service Commission, the response of the country under review to the questionnaire¹⁰⁵ further states that “the Judicial Service Commission’s decisions can be challenged in a court of law. As recent as June 11, 2013 a Magistrate who was dismissed because she refused to cross the Essequibo River to go to hold the Magistrates Court for that region appealed to the judiciary and she was restored to her position.

[171] *The President may decide to not follow the advice of the JSC with regard to an appointment of a Judge but if the reasons for his refusal are reviewed by the JSC and it insists on its nomination then the President must proceed to appoint.”*

[172] During the on-site visit, the representatives of the Public Service Commission presented the institution’s organigram¹⁰⁶ and staff list.¹⁰⁷ Additionally, its annual report for 2012¹⁰⁸ informs that the PSC is composed of four sub-divisions namely: Services Division (Personnel); Administrative and Support Services, Registry, and Accounts.

[173] Regarding the responsibility of the Secretary of the Commission,¹⁰⁹ the Services Division is responsible for the processing of personnel matters relating to substantive and acting appointments, promotions, resignations, secondments/transfers and dismissals of officers in the traditional Public Service remunerated on the salary scales GS: 3 to GS: 14 and specific categories in the GS: 1 and 2

¹⁰² According to Article 226(4) of the Constitution, in the case of an equality of votes in these cases, the Service Commission shall be deemed to have decided that that power to remove the public officer should not be exercised.

¹⁰³ See section 215A of the Constitution and the Public Service Appellate Tribunal Act 1984. The Public Service Appellate Tribunal is limited to public servants and officers of the Public Service Commission, Police Service Commission and the Teaching Service Commission but not the Judicial Service Commission.

¹⁰⁴ See Guyana’s response to the Fourth Round questionnaire, p. 11.

¹⁰⁵ *Ibid.*, p. 11.

¹⁰⁶ See the Presentation of the Public Service Commission during on-site visit, slide 13. Available at: http://www.oas.org/juridico/ppt/mesicic4_guy_psc.ppt

¹⁰⁷ *Ibid.*, slide 14. Approximately 30 people work at the PSC, but some of its staff is shared with the Police Service Commission.

¹⁰⁸ 2012 Annual Report of the Public Service Commission, pp. 7 and 8. Available at:

http://www.oas.org/juridico/pdfs/mesicic4_guy_annual12.pdf

¹⁰⁹ Public Service Rules 1998, Rules 8 and 9.

scales.¹¹⁰ This Division is also responsible for the centralized areas of the Secretariat's work, such as discipline, retirements, training and extension of sick leave. The Personnel Section is also tasked with the responsibility of circulating to the Commission written opinions or recommendations submitted by the Ministries/Departments/Regions for approval or any other action the Commission deems fit.

[174] The procedures for discipline of public officers are established in Chapter VII (Rules 64 – 89) of the PSC Rules 1998. Rule 65 of the PSC Rules requires the Permanent Secretary or Head of any Department to inform the police of an alleged criminal offence that appears to have been committed by a public officer and provide all available supporting statements and material particulars for investigation by the police.

[175] If the Police report recommends the prosecution of the public officer, the Commission may suspend the officer until the end of the court proceedings or terminate his or her employment.¹¹¹

[176] PSC Rule 80 provides that if criminal proceedings have been instituted in any court against a public officer, no disciplinary proceedings against the officer upon any grounds arising out of the criminal charge may be instituted until after the court has determined the matter and the time allowed for an appeal from the decision of the court has expired; but where an officer, on conviction, has appealed, the PSC may commence proceedings after the withdrawal or determination of the appeal.

[177] Additionally, PSC Rule 86 provides that the fact that the public officer is acquitted of the criminal charge by the Court does not prevent him or her from being dismissed or otherwise punished in respect of any other charge arising out of his conduct in the matter, unless such other charge is substantially the same as that in respect of which he or she has been acquitted.

[178] With respect to training, during the on-site visit, the representatives of the PSC presented information on training activities from 2010 to 2013, carried out both in-house as well as externally.¹¹²

[179] With respect to the manner in which necessary budgetary resources for its operations are ensured, during the on-site visit, the representatives of the Public Service Commission explained that the budget preparation and submission is done in accordance with the Financial Management and Accountability Act of 2003.¹¹³

[180] According to information requested and received during the on-site visit, the total annual budget (current plus capital budgets) allocated to the PSC in the past five years is as follows (in Guyanese

¹¹⁰ Pursuant to Rule 14 of the PSC Rules 1998, the Commission has delegated powers to Ministries/Agencies/ Regions for the appointment of certain Public Servants on the GS:1 and GS:2 salary scales positions in the Public Service.

¹¹¹ PSC Rules 1998, Rules 65(2), 65(3)(a) and 65(3)(b).

¹¹² Details on those training activities carried out in 2012-2013 can be found on the Presentation of the Public Service Commission during on-site visit, slides 11 and 12. Information on training activities for 2010-2011 are available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_train.pdf

¹¹³ In this regard, the representatives of the PSC explained that a detailed spreadsheet is presented to the Prime Minister along with a copy of the proposed estimates listing each line item. After approved by the Prime Minister, the PSC budget proposal is submitted to the Ministry of Finance in keeping with the deadline date. The Commission's Budget Committee attends a meeting at the Ministry of Finance with the Director of Budget, Chief Planning Officer and other representatives to discuss its Proposed Budget Estimates. After the estimates are presented, debated and pass in the National Assembly, the Commission is given a copy to begin its work program for the year.

dollars¹¹⁴): G\$54,138,000 (2009); G\$54,527,000 (2010); G\$61,690,000 (2011); G\$ 65,952,000 (2012); and G\$ 67,382,000 (2013).¹¹⁵

[181] As regards transparency and accountability, the Committee notes the existence of Annual Reports of the PSC.¹¹⁶

[182] With respect to the Judicial Service Commission, its representatives informed during the on-site visit that it has no staff, formal structure or budget. The Secretary to the Judicial Service Commission is the Secretary to the Supreme Court. It was also mentioned that positions in the Judiciary are not advertised. The recommended persons are invited to apply.

[183] The representatives of the JSC informed that the Commission does not provide training to judges/magistrates. The training is provided by the Supreme Court.

[184] Finally, the representatives of the JSC informed that there are no annual reports prepared by the Commission.

3.2. Adequacy of the legal framework and/or other measures.

[185] The Service Commissions, in particular the Public Service Commission and the Judicial Service Commission, have a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were briefly described in section 3.1. Nonetheless, the Committee considers it appropriate to set forth certain observations with respect thereto.

[186] First, with respect to the Judicial Service Commission, the Committee notes that it needs to be further strengthened and institutionalized.

[187] During the on-site visit, the representatives of the Judicial Service Commission informed that the JSC is currently chaired by an acting Chancellor of the Judiciary. The representatives further informed that the President and the Leader of the Opposition have not been able to agree on the appointment of the Chancellor of the Judiciary for almost ten years, as required by Article 127(1) of the Constitution.

[188] Additionally, the Committee notes that the other two or three members of the JSC have not been appointed either.¹¹⁷

[189] The Committee notes that this political impasse has considerably weakened or even paralyzed the work of the JSC and of other important oversight bodies such as the Integrity Commission, which will be discussed further in this report.

¹¹⁴ 1 US Dollar = 200 Guyanese Dollars (as of November 1, 2013).

¹¹⁵ For complete information on the budget of the PSC, see http://www.oas.org/juridico/pdfs/mesicic4_guy_alloc.pdf

¹¹⁶ Together with its response to the Fourth Round questionnaire, Guyana submitted the Report on the Tenure of the Public Service Commission – July 2007/July 2010. Available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_tenure.pdf. Additionally, during the on-site visit the PSC provided copies of its Annual Reports for the years 2008, 2009, 2010, 2011 and 2012.

¹¹⁷ The other members include one member who has been a judge appointed by the President after meaningful consultation with the Leader of the Opposition, and one or two nominees from the National Assembly who must not be attorneys-at-law in active practice after consultation with bodies representing the attorneys-at-law (Article 198(2) of Constitution). In this regard, Guyana informed that the Parliamentary Standing Committee of Appointments was only appointed in January 2013 after the 2011 November general elections and has not reached the appointments of the Judicial Service Commission as yet. There is a backlog of appointments for the rights commissions and all 3 service commissions. The opposition has the majority and the chair on this committee.

[190] Taking into account that this is a Constitutional matter, the Committee is limited to taking note of the situation and urging both parties to reach an agreement as soon as possible with a view to institutionally strengthening such an important oversight body, as the constitutionally established Judicial Service Commission.

[191] Second, also with respect to the Judicial Service Commission, during the on-site visit, the Committee was informed that the JSC lacks its own budget. Consequently, the representatives of the JSC informed that the Commission does not have a Secretariat (or any staff for that matter), and that the JSC does not provide any training to judges/magistrates. The training is provided by the Supreme Court. It should be noted, however, that during the on-site visit the Chancellor of the Judiciary said that neither he nor the JSC had ever asked for a budget or staff.

[192] In light of the situation above, the Committee believes the Judicial Service Commission should be strengthened in order to guarantee its constitutionally established institutionality. The Committee also believes the JSC should have its own budget, staff and that the Commission should provide training to magistrates/judges. The Committee further believes that the training provided to magistrates/judges could include topics such as judicial ethics and anti-corruption sensibilization. The Committee will formulate recommendations in this regard (See Recommendations 3.4.1 and 3.4.2 in Section 3.4 of this report).

[193] Third, with respect to the Public Service Commission, the Committee notes that, according to the Public Service Rules, administrative/disciplinary liability is not fully independent from criminal liability.

[194] For instance, pursuant to PSC Rule 80, if charges have been instituted in any court against a public officer, no disciplinary proceedings against the officer on the same grounds may be instituted until the court has determined the matter. In addition, PSC Rule 86 does not allow for the dismissal or disciplinary punishment of the public officer, if the charge is substantially the same as that in respect of which the court has acquitted the officer.

[195] The Committee notes that the Judicial Service Commission Rules 2010, on the other hand, allows the JSC to institute disciplinary proceedings against an officer who has been criminally charged (Rule 81). JSC Rule 82 also allows for disciplinary proceedings to be instituted by the JSC where an officer's conduct is the subject of an investigation by the Police or criminal proceedings in any court. Moreover, JSC Rule 83 explicitly states that *“an officer who is acquitted of a criminal charge in any court is not precluded from having proceedings instituted against him under these Rules in respect of an alleged act of misconduct implicit in of (sic) that criminal charge.”*

[196] In this regard, the Committee believes that PSC Rule 86 should be modified to reflect a similar language to that contained in JSC Rule 83, taking into account that fully conditioning the administrative/disciplinary proceedings and liability upon the statutes of limitation and outcomes of the criminal proceedings can result in the ineffectiveness of the administrative/disciplinary proceedings. In other words, when criminal proceedings prescribe or are set aside or exonerated, administrative/disciplinary liability would also cease to exist. The Committee will formulate a recommendation in this regard (See Recommendation 3.4.3 in Section 3.4 of this report).

[197] Fourth, the Committee notes that the “constitutionally provided for” Public Service Appellate Tribunal has not been established in more than 10 years.

[198] While noting that the Public Service Commission has reconsidered its own disciplinary decisions in the past,¹¹⁸ the Committee believes that the establishment and full functioning of the Tribunal is fundamental to guarantee the rights of public officers to a fair and impartial analysis of disciplinary decisions taken by the Service Commissions.

[199] The establishment of the Public Service Appellate Tribunal seems even more essential when taking into account the limitations on judicial review of the Service Commissions decisions established by Article 226(6) of the Constitution, as well as the fact that judicial proceedings tend to involve additional costs and time. The Committee will formulate a recommendation in this regard (See Recommendation 3.4.4 in Section 3.4 of this report).

[200] With respect to the aforementioned topic, during the on-site visit, the representative of the Transparency Institute of Guyana¹¹⁹ reported that: *“The [Public Service Appellate] Tribunal, however, has not been in place since August 1995. As a result, aggrieved public officers seeking redress have no alternative than to petition the Courts in the form of a civil action. This is not only expensive in terms of legal costs but the matter could also take years to be brought to a satisfactory closure, given the backlog of cases to be handled by the Courts. In addition, there is the fear factor in that a public officer challenging the decision of a Service Commission may very well find himself/herself out of employment, thereby losing the accumulated benefits of serving the State. Invariably, most if not all of the aggrieved persons will choose to remain silent, move on to other employment, or migrate overseas.*

[201] (...)

[202] *It is encouraging that the President and the Leader of the Opposition are in dialogue to have, among others, the Tribunal reconstituted and become operational. This will be a welcome relief for public officers notwithstanding the untold damage to the morale of affected public servants over the last 16 years for the disregard of the important constitutional safeguard.”*

[203] Fifth, the Committee notes that, as allowed by the PSC Rules 1998, in 2008 the PSC agreed to the delegation of powers to Ministries/Agencies/Regions for the appointment of public servants on the GS:1 and GS:2 salary scales for specific positions on the establishment in the Public Service.¹²⁰

[204] The Committee further notes that the Report on the Tenure of the Public Service Commission – July 2007/July 2010 recommends the establishment of clear guidelines and procedures for Permanent Secretaries, Heads and Regional Executive Officers to make appointments, based on their Delegated Authority from the PSC.

[205] The Committee agrees with the recommendation of the Public Service Commission (2007-2010) on the importance and need for there to be clear guidelines and procedures in place for any instance in which the PSC delegates its authority to Permanent Secretaries, Head of Department or the Clerk of the National Assembly, as well as that these guidelines and procedures are written and formally conveyed to its recipients.

¹¹⁸ During the on-site visit, the representatives of the Public Service Commission informed that, in the past five years, the PSC has revoked disciplinary measures applied to two public officers. This information is available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_revoc.pdf

¹¹⁹ See the presentation of the Transparency Institute of Guyana, pp. 12 and 13.

¹²⁰ 2008 Annual Report of the Public Service Commission, p. 10. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_an08.pdf

[206] The Committee further believes that these written guidelines and procedures should be established before the PSC agrees to any delegation of its powers. This would facilitate the PSC's monitoring and oversight to ensure that the delegated functions are being properly exercised. The Committee will formulate a recommendation in this regard (See Recommendation 3.4.5 in Section 3.4 of this report).

[207] Sixth, with respect to the exceptions to the jurisdiction of the Public Service Commission, the Committee notes the existence of "contract workers" in the Guyana Public Service. These contract workers do not enjoy the guarantees established by the PSC Rules 76 and 77, which allow for the review of the Public Service Commission of the disciplinary penalties applied to a public officer. Also, these "contract workers" do not enjoy the right to appeal the decision of the PSC with the Public Service Appellate Tribunal.

[208] Thus, these "contract workers" may be particularly vulnerable to reprisals and to not having their contract renewed if they decide to come forward with allegations of fraud and corruption involving their co-workers and superiors.

[209] Bearing in mind that the topic of systems for protecting public servants and private citizens who in good faith report acts of corruption was analyzed in depth in the MESICIC Report from the Second Round of Review,¹²¹ the Committee will not formulate a new recommendation on the subject. Rather, it reiterates the recommendations contained in the Report from the Second Round of Review of the MESICIC.¹²²

[210] With respect to the aforementioned topic, during the on-site visit, the representative of the Transparency Institute of Guyana¹²³ reported that: "*The Constitution vests with PSC the power to make appointments to public offices, and to remove and to exercise disciplinary control over persons holding or acting in such offices. This arrangement provides for a high degree of assurance that government employment practices are fair, equitable and transparent. There are detailed rules for the recruitment, transfer, promotion and removal of public officers.*

[211] *A review of the estimates of revenue and expenditure for 2012, as presented in the National Assembly, revealed that a significant number of persons are employed on a contractual basis without the PSC's involvement. In addition, there is no evidence to indicate how the concerned agencies selected and remunerate these persons, and therefore the issue is one of transparency.*"

[212] Bearing in mind that the topic of systems of government hiring was analyzed in depth in the MESICIC Report from the Second Round of Review,¹²⁴ the Committee will not formulate a new recommendation on the subject. Rather, it reiterates the recommendations contained in the Report from the Second Round of Review of the MESICIC.¹²⁵

¹²¹ See the "Report on the Implementation in Guyana of the Provisions of the Inter-American Convention against Corruption Selected for Review in the Second Round," pp. 11, 12 and 21. Available at:

http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

¹²² *Ibid.*, p. 21.

¹²³ See the presentation of the Transparency Institute of Guyana, pp. 8 and 9.

¹²⁴ See the "Report on the Implementation in Guyana of the Provisions of the Inter-American Convention against Corruption Selected for Review in the Second Round," pp. 2-5, 18 and 19. Available at:

http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

¹²⁵ *Ibid.*, pp. 18 and 19.

[213] Seventh, during the on-site visit, while noting that training for public servants is the responsibility of the Public Service Ministry, the representatives of the Public Service Commission presented information on training activities conducted by the Commission both “in-house” and externally.¹²⁶ Despite the lack of details and specifics of the information provided, the Committee notes that there was no specific training activity related to the issue of ethics and the prevention of corruption.¹²⁷

[214] As previously mentioned, the Committee believes that Guyana would benefit from establishing an articulated anti-corruption strategy. The Committee further believes that such a strategy should also include the training of public officers on ethics and on mechanisms to prevent and combat fraud and corruption in the public sector. The Committee will formulate a recommendation in this regard (See Recommendation 3.4.6 in Section 3.4 of this report).

[215] Eighth, with respect to accountability mechanisms, the Committee notes that while the Public Service Commission prepares annual reports and a final report at the end of each PSC’s tenure, the Judicial Service Commission does not. However, the Committee notes that there is no legal obligation for any of the Service Commissions to prepare and publicize such reports.

[216] The Committee further notes that neither of the reviewed Service Commissions maintains a website. In this regard, the Committee observes that one of the recommendations made by the PSC in both its 2011 and 2012 Annual Report was the need to have a website where circulars, application forms, job descriptions and specifications can be posted so they can be retrieved by the public.

[217] In light of the above and the need to enhance the accountability of the Service Commissions regarding performance of their duties, the Committee will formulate the corresponding recommendations (See Recommendations 3.4.7 and 3.4.8 in Section 3.4 of this report).

[218] Finally, with respect to the budget of the Public Service Commission, the Committee notes that even though it has been increasing modestly over the past five years, it only represents approximately 0.02% of the national budget and this percentage has been declining over the past five years from 0.030% in 2008 to 0.022% in 2013.

[219] In this regard, the 2012 Annual Report of the PSC states that¹²⁸ *“In concluding, the Commission was able to accomplish its objective despite experiencing less staffing in the Personnel Department and even issued less vacancy Circulars. The Commissioners worked harder during the year under review. All Commissioners sat on the panel to conduct interviews for all positions for GS 3 -- GS 14. This caused constraints on the Commission's budgetary allocation for the year but we were able to manage well and had a little saving to hold a Social. The Commission's Budget passed without being cut but Ministry of Finance took some time to release the money under some line items, 6242 (maintenance of Building) 6284 and 6294 and 6261 (local travelling & Subsistence).”*

¹²⁶ Details on those training activities carried out in 2012-2013 can be found on the Presentation of the Public Service Commission during on-site visit, slides 11 and 12. Information on training activities for 2010-2011 are available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_train.pdf.

¹²⁷ In this regard, Guyana informed that exposure to Anti- fraud and anti- Corruption training is part of the PSM induction program for new public service employees which is held twice a year. The Office Ethics training program run by the PSC includes ethics and prevention of corruption. The Accountant General’s training program for accounts staff in the public sector on government accounting and financial procedures also includes prevention of corruption.

¹²⁸ 2012 Annual Report of the Public Service Commission, p. 14. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_annual12.pdf

[220] The Committee further notes that the issue of delay in releasing funds to the PSC was also reported in the 2011 Annual Report.¹²⁹

[221] In light of the above, the Committee notes with concern the on-going delays in the release of funds to the Public Service Commission, particularly of funds that guarantees that PSC members can visit different regions of the country to fulfill the Commission’s work. The Committee will formulate a recommendation in this regard (See Recommendation 3.4.9 in Section 3.4 of this report).

3.3. Results of the legal framework and/or other measures.

[222] Based on the response of the country under review to the questionnaire and the on-site visit, information was gathered regarding the results obtained by the Public Service Commission and the Judicial Service Commission with respect to the fulfillment of its functions, including the following:

[223] With respect to exercising disciplinary proceedings against the public officers that fall under the Public Service Commission purview, in its response to the questionnaire, Guyana states the following: *“The PSC Report July 7, 2007- July 6, 2010, (copy attached) page 9-10 shows that 141 person were dismissed in the period between 2007 and 2010 for a variety of reason including fraudulent acts. However, the data as provided does not allow for the disaggregation of the dismissals based on fraudulent acts versus those dismissed for unauthorised absence or dereliction of duty. This Report also refers to matters before the courts, page 19-20, and the status of these cases.”*¹³⁰

[224] Additionally, during the on-site visit, the Public Service Commission provided the following table with information on disciplinary measures applied (Dismissals) applied by the PSC from 2008 to Oct 2013,¹³¹ as well as Annual Reports for the years 2008 to 2012 which also contain the number of public officers dismissed each year:

YEAR	NO. OF PERSONS DISMISSED	REASON FOR DISMISSAL	TOTAL NO. OF PERSONS DISMISSED
2008	22	Unauthorized absence from duty	50
	26	Failure to give the required one month's notice	
	1	Under the influence of alcohol	
	1	Improper conduct at work	
2009	36	Unauthorized absence from duty	81
	38	Failure to give the required one month's notice	
	2	Forged qualification	
	4	Absence with Communication	
	1	Fraudulent misconduct	
2010	25	Failure to give the required one month's notice	52
	25	Unauthorized absence from duty	
	1	Absconded of duty	

¹²⁹ 2011 Annual Report of the Public Service Commission, p. 14. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_annual11.pdf

¹³⁰ See Guyana’s response to the Fourth Round questionnaire, p. 22.

¹³¹ Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_disci.pdf

	1	Negligence of duty	
2011	26	Failure to give the required one month's notice	63
	35	Unauthorized absence from duty	
	1	Fraudulent misconduct	
	1	Breaching of contract while performing duties	
2012	10	Failure to give the required one month's notice	45
	1	Failure to resumed duty	
	30	Unauthorized absence from duty	
	2	Unprofessional misconduct	
	2	Dishonest misconduct while performing duties	
2013	11	Failure to give the required one month's notice	30
	13	Unauthorized absence from duty	
	5	Misconduct on duty	
	1	Under the influence of alcohol	

[225] However, the Committee notes that, with the exception of the number of dismissals in 2010, the numbers provided in the table above are not consistent in the different reports issued by the PSC.

[226] The inconsistencies found in the information provided by the PSC are summarized in the following table:

YEAR	TABLE PROVIDED BY THE PSC ¹³²	NUMBER OF DISMISSALS IN ANNUAL REPORT	NUMBER OF DISMISSALS IN THE REPORT ON THE TENURE OF THE PSC – JULY 2007/JULY 2010 ¹³³
2008	50	91 ¹³⁴	54
2009	81	82 ¹³⁵	75
2010	52	52 (Consistent) ¹³⁶	Not applicable
2011	63	59 ¹³⁷	Not applicable

¹³² Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_disci.pdf

¹³³ Report on the Tenure of the Public Service Commission – July 2007/July 2010, pp. 9 and 10. Available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_tenure.pdf.

¹³⁴ 2008 Annual Report of the Public Service Commission, p. 8. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_an08.pdf

¹³⁵ 2009 Annual Report of the Public Service Commission, p. 7. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_an09.pdf

¹³⁶ 2010 Annual Report of the Public Service Commission, p. 7. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_an10.pdf

¹³⁷ 2011 Annual Report of the Public Service Commission, p. 8. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_annual11.pdf

2012	45	51 ¹³⁸	Not applicable
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[227] The Committee notes that not only are these figures inconsistent¹³⁹ but they also are not sufficiently broken down so as to allow for a comprehensive analysis with respect to the exercise of disciplinary control by the Public Service Commission, particularly in cases of misconduct related to fraud, corruption or conflicts of interest.¹⁴⁰ For example, it is unclear how many disciplinary proceedings are underway, how many are still pending and how many were carried over from previous years. This information would assist in determining if a backlog exists in the exercise of disciplinary proceedings.

[228] It would also be useful to have information on the number of charges withdrawn and the reasons why they were withdrawn. Moreover, there is no additional information provided as to the reasons why disciplinary proceedings were instituted or why disciplinary proceedings were not instituted when a complaint was made. In this regard, the Committee takes particular note of the lack of disciplinary action taken in cases of overpayment to contractors, one of the key findings of the 2012 Annual Report of the Audit Office, already cited in section 1.3 above:

[229] *“9. A significant amount of overpayments to contractors had occurred on measured works for contracts undertaken by Ministries, Departments and Regions during prior periods, with several Ministries and Regions facing serious challenges in being able to recover amounts overpaid on various contracts. In addition, some of these Ministries and Regions continued to have overpayments on various contracts during 2012 and prior years as shown below. This continued trend coupled with no evidence to suggest that disciplinary action of any kind had been meted out to engineering or other staffs involved in the assessment of works in progress and the certification of progress payments is troubling and hints at Management’s perceived inaction to remedy the current situation (emphasis added).”¹⁴¹*

[230] With respect to the Judicial Service Commission, as noted in the previous section, the JSC does not prepare or publish annual reports. Therefore, no statistical information on disciplinary measures is available. However, during the on-site visit, JSC representatives informed that there have only been two magistrates’ suspensions in the last two years (both of them were cases of “magisterial irresponsibility in the performance of their functions”). The representatives of the JSC further informed that there was an attempt to discipline a third but the procedure was put on hold.¹⁴²

[231] Considering that the Committee does not have additional information other than that referred to above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review to consider maintaining and publishing statistics as set out in the Questionnaire for the Fourth Round of Review. This type of information would assist the Committee in enabling it to make a comprehensive evaluation with respect to the objective

¹³⁸ 2012 Annual Report of the Public Service Commission, p. 8. Available at:

http://www.oas.org/juridico/pdfs/mesicic4_guy_annual12.pdf

¹³⁹ Guyana informed that the PSC in reconciling their data advised the information in the 2007-2010 report is the accurate one.

¹⁴⁰ The Committee notes, however, that breaches to the Code of Conduct for persons in public life established in the Integrity Commission Act are investigated by the Integrity Commission, not the Services Commissions.

¹⁴¹ Annual Report of the Audit Office 2012, p. vii. Available at:

http://www.oas.org/juridico/pdfs/mesicic4_guy_annual_rep.pdf

¹⁴² Additionally, the representatives of the Judicial Service Commission informed that no complaints from the public against members of the Judiciary had been formally received. Even though some might personally talk to the Acting Chancellor, when asked to present their complaints in writing, they are afraid to sign it. In this regard, the representatives of the JSC indicated that whistleblower protection legislation was needed.

results obtained in the application of the legal framework and other measures in place for the Public Service Commission and the Judicial Service Commission, as it corresponds to the implementation of Article III, paragraph 9 of the Convention. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.10 in Section 3.4 of Chapter II of this Report)

3.4. Conclusions and recommendations.

[232] Based on the comprehensive review conducted with respect to the Service Commissions in the foregoing sections, in particular the Public Service Commission and the Judicial Service Commission, the Committee offers the following conclusions and recommendations:

[233] **The Co-operative Republic of Guyana has considered and adopted measures intended to maintain and strengthen the Service Commissions as oversight bodies, as described in Chapter II, Section 1 of this Report.**

[234] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 3.4.1 Strengthen the Judicial Service Commission by providing it with the budgetary and human resources needed for the proper performance of its functions, including the preparation and implementation of training programs for magistrates/judges, judicial and legal officers, within available resources (See section 3.2. of Chapter II of this Report).
- 3.4.2 Broaden the training provided to magistrates/judges to include topics such as judicial ethics and anti-corruption sensibilization (See section 3.2. of Chapter II of this Report).
- 3.4.3 Consider modifying the Public Service Rules so that an officer who is acquitted of a criminal charge in any court is not precluded from having proceedings instituted against him or her under the Public Service Rules in respect of an alleged act of misconduct implicit in that criminal charge (See section 3.2. of Chapter II of this Report).
- 3.4.4 Re-establish the Public Service Appellate Tribunal and providing it with the budgetary and human resources needed for the proper performance of its functions, within available resources (See section 3.2. of Chapter II of this Report).
- 3.4.5 Establish and publish written guidelines and procedures prior to any delegation of powers of the Public Service Commission, in order to allow for the monitoring and oversight to ensure that the functions delegated by the Commission are being properly exercised (See section 3.2. of Chapter II of this Report).
- 3.4.6 Provide training to public officers on ethics and on the mechanisms to prevent and combat fraud and corruption in the public sector (See section 3.2. of Chapter II of this Report).
- 3.4.7 Consider establishing the legal obligation for the Service Commissions, particularly the Public Service Commission and the Judicial Service Commission, to render

accounts and to publish annual reports, disclosing its activities and the results achieved, as well as the institution's in-house performance, goals, and achievements (See section 3.2. of Chapter II of this Report).

- 3.4.8 Establish and maintain updated websites for the Public Service Commission and the Judicial Service Commission, in order to allow easy access to the public of the information related to the work of the respective Commission. Ensure that the respective websites contain, among others, the annual reports referred to in the previous recommendation, relevant legislation, application forms and job descriptions/specifications for posts (See section 3.2. of Chapter II of this Report).
- 3.4.9 Ensure that the Public Service Commission promptly receives the funds approved in its annual budget, in order to ensure that delays in releasing funds do not interfere with the ability of the Commission to carry out its work (See section 3.2. of Chapter II of this Report).
- 3.4.10 Maintain and publicize statistics that provide greater consistency, clarity and detail on the origin and outcome of all types of disciplinary process carried out by Service Commissions, such as information on the reasons for instituting (or not) a disciplinary proceeding, its outcome, the sanction imposed, and the reasons for withdrawal, in order to identify challenges and recommend corrective measures (See section 3.3. of Chapter II of this Report).

4. NATIONAL PROCUREMENT AND TENDER ADMINISTRATION (NPTA)

4.1. Existence of provisions in the legal framework and/or other measures.

[235] The National Procurement and Tender Administration (NPTA) has a set of provisions in its legal framework, as well as other measures that refer, among others, to the following:

[236] Section 16(1) of the Procurement Act 2003 establishes the NPTA as an agency reporting to the Minister of Finance.

[237] Pursuant to Section 16(2) of the Procurement Act 2003, the NPTA is managed by a National Board (NPTAB) whose members are appointed by the Minister responsible for Finance from among persons of unquestioned integrity who have shown capacity in business, law, audit, finance and administration. The NPTAB shall comprise of no less than seven (7) members, no more than five (5) from the public service and no more than three (3) from the private sector after consultation with representatives of the private sector. Two (2) members must be full-time of which the Chair must be one. The rest of the members are part-time.

[238] Section 16(5) further establishes that the term of membership on the Board is two years. Section 16(8) provides that each member must declare his/her assets to the Integrity Commission.

[239] According to Section 16(10), the NPTAB meets weekly. Four members including the Chair form a quorum, with the Chairperson having a casting vote [Section 16(9)].

[240] With regard to its functions, Section 17(1) of the Procurement Act 2003 assigns the NPTAB with the main function of "*exercising jurisdiction over tenders the value of which exceeds such an*

amount prescribed by regulations,¹⁴³ appointing a pool of evaluators for such period as it may determine,¹⁴⁴ and maintaining efficient record keeping and quality assurances systems.”

[241] Additionally, pursuant to Section 17(2) of the Procurement Act 2003, pending the establishment of the Public Procurement Commission,¹⁴⁵ the NPTAB is also responsible for the following: (a) making regulations governing procurement to carry out the provisions of the Procurement Act 2003; (b) determining the forms of documents for procurement;¹⁴⁶ (c) organizing training seminars regarding procurements; (d) reporting annually to the Minister on the effectiveness of the procurement processes, and recommending therein any amendment to the Procurement Act 2003 that may be necessary to improve the effectiveness of the procurement process; (e) as provided for in section 53, upon request, reviewing decisions by the procuring entities; and (f) adjudicating debarment proceedings.¹⁴⁷

[242] With respect to the staff of the Staff of the NPTAB, Section 18(1) of the Procurement Act 2003 provides that the Board shall, in consultation with the Minister of Finance, establish a Secretariat to be responsible for the operational management of the Administration. The day-to-day activities of the Secretariat shall be managed by a professional staff of proven experience and capabilities.¹⁴⁸ Section 18(2) further provides that the NPTAB Secretariat shall receive the staff, training, and equipment necessary to discharge its responsibilities. Section 18(3) establishes the duty of each member of the Secretariat to declare his or her assets to the Integrity Commission.

[243] During the on-site visit, the representatives of the NPTAB informed that the Board is supported by the following: A Chairman of the National Board; a Vice Chairman; a Chief Executive Officer (CEO); Two (2) Procurement Specialists; One (1) Head, Information Technology (IT) Section; Four (4) Procurement Officers; Three (3) Clerk II; One (1) Office Assistant; and One (1) Cleaner.¹⁴⁹

[244] With respect to training, the response of the country under review to the questionnaire¹⁵⁰ presents information on a joint program of the Ministry of Finance and the NPTA in 2012 and 2013 with the goal

¹⁴³ See Schedule 1 of the Procurement Regulations (2004). Available at:

http://www.oas.org/juridico/spanish/mesicic2_guy_regul_procurement_act_03.pdf

¹⁴⁴ In accordance with Section 17(4) of the Procurement Act 2003, for each procurement subject to its jurisdiction, the NPTAB is to select and appoint from the pool of evaluators appointed pursuant to subsection (1), three individuals with appropriate expertise and experience, to serve as members of an Evaluation Committee for such procurement, and shall transmit to the Evaluation Committee, in a timely manner, all tenders timely received. The Evaluation Committee shall evaluate the tenders as provided for in section 39 of the Procurement Act.

¹⁴⁵ Article 212W of the Constitution provides for the establishment of an independent Public Procurement Commission (PPC) for the purpose of monitoring public procurement and the procedures. However, the PPC has not yet been established. A recommendation in this regard was formulated in the Report from the Second Round of Review of the MESICIC. See the “Report on the Implementation in Guyana of the Provisions of the Inter-American Convention against Corruption Selected for Review in the Second Round,” pp. 9 and 19. Available at: http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

¹⁴⁶ Including, but not limited to: (i) standard bidding documents; (ii) prequalification documents; (iii) contracts; (iv) evaluation forms; and (v) procurement manuals, guidelines, and procedures.

¹⁴⁷ Pursuant to Section 17(3) of the Procurement Act 2003, when the Public Procurement Commission is established, the responsibilities of the NPTAB will be limited to those provided for in Section 17(1), and all other responsibilities listed in Section 17(2) will be the responsibility of the Public Procurement Commission.

¹⁴⁸ Guyana’s response to the Fourth Round questionnaire, p. 12, states the following with respect to the staffing of the NPTAB Secretariat: “(...) *their staffing which is provided through the Ministry of Finance and therefore these are persons appointed by the PSC who could also chose to be on fixed year contracts or on the fixed pensionable establishment as all other public servants.*”

¹⁴⁹ The representatives further informed that the position of Chief Executive Officer (CEO) has been vacant since mid-January, 2013 and that the positions of two (2) Procurement Officers and one (1) IT Officer are vacant. These positions were expected to be filled soon. See: http://www.oas.org/juridico/pdfs/mesicic4_guy_npta2.pdf.

¹⁵⁰ See Guyana’s response to the Fourth Round questionnaire, pp. 14-15.

of training evaluators and contractors on the rules and procedures of the Procurement Act 2013 and regulations.

[245] Additionally, during the on-site visit, the representatives of the NPTAB provided information on its capacity building and training programs.¹⁵¹ The representatives of the Board informed that training has been conducted by the Board on a yearly basis, since 2005. Over 400 persons have been trained, with assistance from external consultants at critical stages. The areas of training covered are: Legal and Procedural Framework, Regulations; Role and Functions of Procurement Entities, Bodies; Methods of Procurement; Prequalification and Bid Evaluation; and IT and e-Procurement.

[246] With respect to the existence of documented procedures for performing their tasks, the NPTA has developed the following set of manuals to guide staff, as well as regarding ethical conduct of staff: The Guyana National Tender Board Procedure Manual (February 2009);¹⁵² the Standard Evaluation Criteria Handbook for Prequalification and Bidding (procurement of goods, works and services except consultancy services) (May 2009);¹⁵³ the Guyana Public Procurement Guide (Guyana legal and policy framework for Public Procurement) (May 2009);¹⁵⁴ Guyana Procurement Planning Manual (September 2010);¹⁵⁵ and various Standard Bidding Documents (revised in September 2012): (a) consultancy/firm evaluation criteria;¹⁵⁶ (b) consultancy individual evaluation criteria;¹⁵⁷ and (c) procurement of other services.¹⁵⁸

[247] Regarding the implementation of modern systems or technology to facilitate its work, the response of the country under review to the questionnaire¹⁵⁹ informs that the Procurement Act 2003 was amended in 2010 to allow for the use of electronic media to post tender notices. Tenders are therefore advertised in the written media and on the NPTA and e-procure websites.¹⁶⁰

[248] In addition, during the on-site visit, the representatives of the NPTA informed that a Management Information System (MIS), consistent with the requirements of the Procurement Act and Regulations, has been developed for the Administration.¹⁶¹

[249] In order to keep citizens abreast of its activities, in accordance with Section 4(1) of the Procurement Regulations, the NPTA has established and maintained a website¹⁶² to publish contracts awarded by the various tender boards and other information related to public procurement in general. The NPTA website includes, inter alia, general information on the work of the NPTA, including tender awards, minutes of tender openings, procurement related legislation, regulations manuals and standard bidding documents.

[250] In addition, Section 38(1) of the Procurement Act 2003 provides that tenders are to be opened in public, with the amount of the bids being read out.

¹⁵¹ Details on the NPTAB's training activities are available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_npta2.pdf

¹⁵² Available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_man09.pdf

¹⁵³ Available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_ev09.pdf

¹⁵⁴ Available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_proc09.pdf

¹⁵⁵ Available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_proc10.pdf

¹⁵⁶ Available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_firms.pdf

¹⁵⁷ Available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_indi.pdf

¹⁵⁸ Available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_serv.pdf

¹⁵⁹ See Guyana's response to the Fourth Round questionnaire, p. 16, footnote 28.

¹⁶⁰ <http://eprocure.gov.gy/>

¹⁶¹ See: http://www.oas.org/juridico/pdfs/mesicic4_guy_npta1.pdf

¹⁶² <http://www.npta.gov.gy/>

[251] With respect to accounting, financial, budgetary, operational and property-related oversight, during the on-site visit, the representatives informed that the Internal Audit Department at the Ministry of Finance is responsible for the internal control of the NPTA Secretariat.

[252] In addition, with respect to other control mechanisms, the representatives of the NPTAB informed that “*all members of the National, Regional and Ministerial Tender Boards, as well as each member of the NPTA Secretariat, have been reminded of their obligation under Section 16(8), 18(3), 19(6) and 22(4) of the Procurement Act 2003, to declare their assets to the Integrity Commission, vide a memoranda from the National Board.*”¹⁶³

[253] With respect to its budgetary resources, according to information requested and received during the on-site visit, the total annual budget (current plus capital budgets) allocated to the NPTA in the past five years was as follows (in Guyanese dollars¹⁶⁴): G\$27,588,000 (2008); G\$35,888,000 (2009); G\$39,438,000 (2010); G\$44,778,000 (2011); and G\$ 47,000,000 (2012).¹⁶⁵

[254] As regards transparency and accountability, Section 17(2)(d) of the Procurement Act 2003 requires that the NPTAB report annually to the Minister of Finance on the effectiveness of the procurement process, and recommend any amendment to the Act that may be necessary to improve the effectiveness of the procurement processes.

[255] Additionally, Section 54(1) of the Procurement Act 2003 provides that “*the Cabinet shall have the right to review all procurements the value of which exceeds fifteen million Guyana dollars. The Cabinet shall conduct its review on the basis of a streamlined tender evaluation report to be adopted by the authority mentioned in section 17 (2). The Cabinet and, upon its establishment, the Public Procurement Commission, shall review annually the Cabinet’s threshold for review of procurements, with the objective of increasing that threshold over time so as to promote the goal of progressively phasing out Cabinet involvement and decentralizing the procurement process.*”

[256] Pursuant to Sections 54(2), (3) and (5), in conducting such a review, the Cabinet may object to the award of the procurement contract only if it determines that the procuring entity failed to comply with applicable procurement procedures. The Cabinet has twenty-one days to exercise its right to object to an award. If the Cabinet objects to an award, the matter shall be referred to the procuring entity for further review. However, the Procurement Act 2003 does not authorize the Cabinet to award a tender to any other supplier or contractor [Section 54(4)].¹⁶⁶

[257] Finally, pursuant to Section 54(6), Cabinet’s involvement in reviewing procurement awards will cease upon the constitution of the Public Procurement Commission, except in relation to those matters referred to in Section 54(1) which are pending.¹⁶⁷

4.2. Adequacy of the legal framework and/or other measures.

¹⁶³ See: http://www.oas.org/juridico/pdfs/mesicic4_guy_npta2.pdf (p. 3).

¹⁶⁴ 1 US Dollar = 200 Guyanese Dollars (as of November 1, 2013).

¹⁶⁵ The complete information on the NPTA budget is available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_npta2.pdf

¹⁶⁶ According to information requested during the on-site visit, over the past 5 years, Cabinet has only withheld its no-objection in seven (7) cases: two (2) in 2009 and five (5) in 2013. This information is available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_num.pdf

¹⁶⁷ An amendment to the Procurement Act 2003 to maintain Cabinet’s role in public procurement even with the establishment of the Public Procurement Commission was presented in 2013.

[258] The National Procurement and Tender Administration (NPTA) has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were briefly described in section 4.1. Nonetheless, the Committee considers it appropriate to set forth certain observations with respect thereto.

[259] First, the Committee wishes to highlight that the topic “Government Systems for the Procurement of Goods and Services” was reviewed during the Second Round of the MESICIC and it is not a subject of the current round of review.¹⁶⁸ Therefore, the scope of review of the National Procurement and Tender Administration (NPTA) will be limited to the activities related to the prevention of corruption which, pursuant to Section 17(2) of the Procurement Act 2003, correspond to the NPTAB until the Public Procurement Commission is established.

[260] In this regard, the Committee also wishes to reiterate the recommendations contained in the Report from the Second Round of Review of the MESICIC, especially the need to establish the constitutionally provided and independent Public Procurement Commission.¹⁶⁹

[261] Second, the Committee notes that one of the functions given to the NPTAB, pending the establishment of the Public Procurement Commission, was that of adjudicating debarment proceedings [Section 17(2)(f) of the Procurement Act 2003].

[262] However, during the on-site visit, the representatives of the NPTAB informed that the creation of a list of debarred firms/individuals will not materialize until a comprehensive regulation on the matter comes into effect. These regulations would establish a formal procedure for debaring contractors and include safeguards against the abusive or unjustified application of the debarment penalty.¹⁷⁰

[263] The NPTAB representatives further informed that the Government of Guyana was currently reviewing a draft debarment regulation prepared by a consultancy firm under the Inter-American Development Bank (IDB) and approved by the NPTAB representatives.¹⁷¹

[264] In this regard, taking into account the importance of clear and fair debarment procedures and mechanisms in place for the prevention of corruption, including pecuniary sanctions, thus ensuring that the country under review is protected from unscrupulous bidders, suppliers and contractors, the Committee will formulate a recommendation (See Recommendation 4.4.1 in Section 4.4 of this report).

[265] In addition, the Committee also believes that, in order to ensure the efficiency of the debarment mechanisms, in addition to a maintaining a widely publicized and constantly updated list of debarred companies and individuals, entities in all three branches and in every sphere of government should be required to verify the list before awarding contracts to any bidders, suppliers, contractors and/or consultants (See Recommendation 4.4.2 in Section 4.4 of this report).

[266] Third, the Committee notes that the Procurement Act 2003 establishes the duty to present a declaration of assets to the Integrity Commission by members of the NPTAB and its Secretariat, as well

¹⁶⁸ See the “Report on the Implementation in Guyana of the Provisions of the Inter-American Convention against Corruption Selected for Review in the Second Round”. Available at:

http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

¹⁶⁹ *Ibid.*, pp. 8-11, 19 and 20.

¹⁷⁰ See: http://www.oas.org/juridico/pdfs/mesicic4_guy_npta2.pdf (pp. 5 and 6).

¹⁷¹ *Ibid.*, p. 6.

as of Regional Boards and Ministerial Tender Boards. Employees of any procurement entity who are responsible for procurement are also required to present such declaration.

[267] In this regard, during the on-site visit, the representatives of the NPTAB informed that all the Board members were reminded via memoranda from the NPTAB on their duty to declare their assets to the Integrity Commission.¹⁷² However, it was informed that not all board members had done so.

[268] The Committee notes with concern the lack of enforcement of provisions 16(8), 18(3), 19(6), 22(4) and 24(3) of the Procurement Act 2003. The Committee further notes that the fact that the Integrity Commission is not fully operational pending the appointment of its Chairperson and Commissioners does not excuse members of procurement boards of their duty under the Procurement Act. The Committee believes that failure to provide these declarations of assets or providing inaccurate or false information should disqualify a member of any board to retain his or her post. The Committee will formulate recommendation in this regard (See Recommendation 4.4.3 in Section 4.4 of this report).

[269] In addition, the Committee notes that the Procurement Act 2003 contains an important disclosure requirement designed to avoid conflicts of interest in public procurement. Section 60 of the Act establishes the duty of a member of a body who is in any way whether directly or indirectly interested in any deliberations of that body regarding the bidding process, to declare the nature of his interest at a meeting of the body. Voting in a matter without declaring his or her interest is punishable on summary conviction with a fine of two hundred thousand Guyanese dollars and to imprisonment for six months, under Section 60(4). In this regard, the Committee believes that the fine for those who violate the disclosure requirements should take into account the amount of the procurement/contract in question.

[270] The Committee also notes that the Procurement Act does not require procurement board members or other officials or employees who are involved in procurement activities to present a statement of disclosure of interests. In this regard, the Committee recognizes that the risks for conflicts of interest are significant for individuals in these types of positions. The Committee further recognizes that statements of disclosure of interests are a useful tool in preventing and detecting conflicts of interest.

[271] Given the foregoing, the Committee will formulate recommendations (See Recommendation 4.4.4 and 4.4.5 in Section 4.4 of this report).

[272] Fourth, the Committee observes that Section 17(2)(d) of the Procurement Act 2003 requires that the NPTAB report annually to the Minister of Finance on the effectiveness of the procurement process, and recommend any amendment to the Act that may be necessary to improve the effectiveness of the procurement processes. The Committee notes, however, that these reports are not public.

[273] In order to increase the transparency and accountability of the NPTA, the Committee believes these reports should be published on the website of the National Board. The Committee will formulate a recommendation in this regard (See Recommendation 4.4.6 in Section 4.4 of this report).

[274] Fifth, with respect to its Management Information System (MIS), during the on-site visit, the representatives of the NPTAB highlighted a few deficiencies associated with the current system, which prevent users from benefitting optimally from the system, such as the lack of a reporting model and the fact that the date fields on the MIS are not standardized, which results in errors being made when sorting data on the award of contracts by method of procurement.

¹⁷² See: http://www.oas.org/juridico/pdfs/mesicic4_guy_npta2.pdf (p. 3).

[275] The representatives of the NPTAB further informed that the Administration proposes to engage a consultant to develop a database at NPTAB to address the deficiencies of the current database and develop reporting formats for all stakeholders, including analytic report for the Minister of Finance.

[276] Finally, the Committee takes note of the information provided during the on-site visit, regarding training of procurement specialists and sensitization workshops with evaluators and the private sector. The Committee highlights the importance of these activities carried out by the NPTAB and believes that they should be further broadened to include the prevention and investigation of bribery/corruption, collusion and conflicts of interest in the public procurement.¹⁷³ The Committee will formulate a recommendation in this regard (See Recommendation 4.4.7 in Section 4.4 of this report).

4.3. Results of the legal framework and/or other measures.

[277] The response to the questionnaire of the country under review provides the following information regarding the results obtained by the National Procurement and Tender Administration (NPTA) with respect to the fulfillment of its functions:

[278] *“NPTA has been unable thus far to create a list of contractors that have underperformed and or are guilty of shoddy work, long delays and extensions or incomplete work.*

[279] *The problem does not lie with the NPTA per say[sic] but with the technical staff in the agencies where there may be poor designs and or who sign off on the work being completed satisfactorily when that is found later to have not been so. This is also an issue that has attracted the attention not only of the AOG [Audit Office of Guyana] but the PAC [Public Accounts Committee]. This has resulted in a 3 day training programme with the Accounting Officers and technical staff in the 10 Administrative Regions in May 2013 and has been raised at the quarterly meeting of the Permanent Secretaries with the Head of the Presidential Secretariat, in the presence of the Secretary to the Treasury and the Accountant General.*

[280] *However, the MOF[Ministry of Finance] thru the NPTA has been more aggressive in retrieving valuable funds for poor performance and incomplete works through resort to the insurance bonds and liquidation liabilities. Please find attached document “Liquidated Damages” which provides an indication of efforts to recuperate critical funds for the treasury.”¹⁷⁴*

[281] During the on-site visit, the representatives of the NPTAB further explained that in the absence of suspension and debarment regulations, clients can apply other penalties to contractors (covered in Standard Bidding Documents), such as retaining from each payment due to the Contractor the portion stated in the Special Conditions of Contract until completion of the whole of the works (in the case of defective work) and liquidated damages paid by the contractor to the employer at the rate per day stated in the Special Conditions of Contract for each day that the Completion Date is later than the intended Completion Date (in case of delays in the execution of the contracts).

[282] In light of the above, the Committee takes note of the important efforts presented in order to recover funds from underperforming contractors. However, in order to prevent and deter such situations in the future, the Committee reiterates the importance for Guyana to establish clear and fair debarment procedures and mechanisms, as well as for Guyana to create and publicize a list of debarred

¹⁷³ Details on the NPTAB’s training activities are available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_npta2.pdf

¹⁷⁴ See Guyana’s response to the Fourth Round questionnaire, p. 19. The attached document with a list of “Projects That Attracted Liquidated Damages” is available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_liq.pdf

firms/individuals and provide results on its implementation, including any pecuniary sanctions ordered to be paid back to the State and the amounts actually recovered. In addition, the Committee believes that the proposed debarment regulations should include sanctions not only in the case of underperforming contractors, but also to those found to have paid bribes to any Guyanese government official or public servant. The Committee will formulate recommendations in this regard (See Recommendations 4.4.1 and 4.4.8 in Section 4.4 of this report).

4.4. Conclusions and recommendations.

[283] Based on the comprehensive review conducted with respect to the National Procurement and Tender Administration (NPTA) in the foregoing sections, the Committee offers the following conclusions and recommendations:

[284] **The Co-operative Republic of Guyana has considered and adopted measures intended to maintain and strengthen the National Procurement and Tender Administration (NPTA), as an oversight body, as described in Chapter II, Section 1 of this Report.**

[285] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 4.4.1 Issue new regulations to the Procurement Act 2003 in order to establish clear, fair and efficient debarment procedures and mechanisms, including pecuniary sanctions, particularly for companies found to have paid bribes to any Guyanese government official or public servant, while ensuring that safeguards against the abusive or unjustified application of the debarment penalty are in place (See section 4.2 of Chapter II of this Report).
- 4.4.2 Maintain and publish a permanently updated list of debarred companies and individuals in the Official Gazette as well as on the National Procurement and Tender Administration website and require that entities in all three branches and in every sphere of government verify the list before awarding contracts to bidders, suppliers, contractors and/or consultants (See section 4.2 of Chapter II of this Report).
- 4.4.3 Consider amending the Procurement Act 2003 in order to expressly include that failure to provide declarations of assets or providing inaccurate or false information in such declarations to the Integrity Commission disqualifies a member of any board to retain his or her post (See section 4.2 of Chapter II of this Report).
- 4.4.4 Consider requiring that members of procurement boards as well as officials who are responsible for procurement present an annually-updated statement of disclosure of interest, as well as the establishment of a mechanism to ensure its compliance (See section 4.2 of Chapter II of this Report).
- 4.4.5 Examine amending Section 60(4) Procurement Act 2003 in order to establish that the fine for those who violate the disclosure requirements established therein take into account the amount of the procurement/contract in question (See section 4.2 of Chapter II of this Report).

- 4.4.6 Publish the annual reports required by Section 17(2)(d) of the Procurement Act 2003 on the National Procurement and Tender Administration website (See section 4.2 of Chapter II of this Report).
- 4.4.7 Adopt the necessary measures to broaden the training activities carried out by the National Procurement and Tender Administration with courses or modules on the prevention and investigation of bribery/corruption, collusion and conflicts of interest in the public procurement (See section 4.2 of Chapter II of this Report).
- 4.4.8 Maintain and publish statistics on the debarment processes and mechanisms, when established, including any pecuniary sanctions ordered to be paid back to the State and the amounts actually recovered, in order to identify challenges and recommend corrective measures servant (See section 4.3 of Chapter II of this Report).

III. BEST PRACTICE

[286] In accordance with Section V of the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round* and the *Format* adopted by the Committee for the Reports of that Round, reference is made to the best practice identified by the country under review, which it has said it wishes to share with the other member States of the MESICIC, as it could be beneficial to them:

- Regarding the Audit Office of Guyana (AOG):

[287] Protecting the independence of the Auditor General and the Audit Office (AOG): The best practice presented by the country under review describes the constitutional and legal reforms that took place between 1999 and 2003 aimed at protecting the independence of the AOG. The following aspects of these reforms is highlighted: the appointment of the Auditor General by the President on the recommendation of the Public Service Commission with tenure until he/she reaches the age of 65 years of age; the separation of the AOG and the Auditor General from reporting to the Ministry of Finance (MOF) and instead reporting to the National Assembly directly and to its Public Accounts Committee (PAC); the enhancement of the role of the PAC with constitutional provisions of “general supervision of the AOG” without interfering with the independence of the Auditor General and the Audit Office.

[288] For further information, see the Reply of the country under review. Annex II, pp. 82-85.

IV. FOLLOW-UP ON PROGRESS AND NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST ROUND OF REVIEW

[289] The Committee will refer below to the progress, information, and new developments made by the Co-operative Republic of Guyana in relation to the recommendations and measures suggested by the Committee for implementation in the Report of the First Round, and with respect to which the Committee deemed that additional attention was required in the Reports from the Second and Third

Rounds,¹⁷⁵ and shall, as appropriate, take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them, in accordance with provisions contained in section VI of the Methodology adopted by the Committee for the Fourth Round of Review.¹⁷⁶

[290] The Committee will also take note in this section of the Report of the difficulties in implementing the aforementioned recommendations and the measures to which the country under review has drawn attention, as well as of its technical cooperation needs to that end.

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct to prevent conflicts of interests and mechanisms to enforce them

Recommendation:

Consider strengthening the implementation of the provisions on conflicts of interest, and ensure that the laws on this matter are applicable to all public officials and employees, so as to permit the practical and effective application of a public ethics system.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Formulate specific standards, when appropriate, to limit the actions of public servants in specific situations, in accordance with the functions and activities of each institutions and the specific nature and importance of the different offices, and mechanisms for enforcing them (the basis for these measure are found in section 1.1.2 of Chapter II of the First Round Report).

[291] In its Response,¹⁷⁷ the country under review provides information and reports with respect to the foregoing measure,¹⁷⁸ of which, the Committee notes, as steps that contribute to progress in implementation of the recommendation, the following:

[292] – *The Audit Act 2004, which establishes in its Section 6(1) that the Auditor General shall not have a direct or indirect official role in any private or professional entity or activity that he could profit from or influence through his powers as Auditor General and he shall declare to the Public Accounts Committee any of his commitments, obligations or investments which may present a real or perceived conflict of interest.*

[293] – *The Rules, Policies and Procedures Manual (RPP) of the Audit Office of Guyana (2006), which contains a Conflict of Interest Code applicable to all staff. The Code may be applied to real or*

¹⁷⁵ Available at: <http://www.oas.org/juridico/english/guy.htm>

¹⁷⁶ The list of recommendations that still require additional attention or which have been reformulated following this analysis, has been included as Annex 1 to this Report.

¹⁷⁷ See Guyana's response to the Fourth Round questionnaire, pp. 28-29.

¹⁷⁸ The Committee wishes to highlight that, even though most of the provisions and/or measures provided in the Response of Guyana regarding this measure already existed during the First Round of Review, they had not been provided by the Government at that time. Thus, they had not been taken into consideration by the Committee when that measure was formulated.

*perceived situations of conflict of interest. The Code requires each Staff to disclose, in confidence, any outside involvement or financial interests which make or are likely to make demands that are not consistent with his or her official responsibilities, or which can inhibit the Staff's capacity to discharge assigned duties in an objective manner. The Auditor General is the authority responsible for providing direction for cases of potential conflicts of interest on how such conflict can be resolved.*¹⁷⁹

[294] – *The Procurement Act 2003, which establishes in its Section 60 the duty of a member of a body who is in any way whether directly or indirectly interested in any deliberations of that body regarding the bidding process to declare the nature of his interest at a meeting of the body. Failure to disclose is punishable on summary conviction with a fine of two hundred thousand Guyanese dollars and to imprisonment for six months.*¹⁸⁰

[295] – *The Public Service Commission Rules 1998, which establishes in its Rule 96 that no member or officer of the Commission shall accept any gift or reward from any member of the public for service rendered or to be rendered in the course of their official duties.*¹⁸¹

[296] – *The Judicial Service Commission Rules 2010, which establishes in its Rule 6 that all legal officers appointed by the Commission shall conduct themselves in such a way, among others that, do not to place themselves in positions in which they have or could have a conflict of interest; compromise the fair exercise of their official functions and duties; allow their integrity to be called into question; nor endanger or diminish respect for, or confidence in, the integrity of the Judicial Service. Rule 12 specifically forbids legal officers to (a) engage in any private work for payment or gain which conflicts with his official functions; (b) use information and/or any material gained from his official position for private gain; (c) exploit the status and privilege of his position for private gain; (d) solicit and/or accept payment and/or gifts for the performance, or neglect, of his official duties; (e) conduct private business during working hours and/or on Government property.*¹⁸²

[297] – *The Standing Orders of the National Assembly of Guyana, which establishes in its Section 38(8) that no Member of Parliament may speak on any matter in which he or she has a direct personal pecuniary interest, without disclosing the extent of that interest.*¹⁸³

[298] – *The preparation of a Draft Cabinet Code of Conduct as a guideline to Cabinet Members and Advisers with regard to conduct, abuse and corruption.*

[299] The Committee takes note of the steps taken by the country under review to advance with implementation of measure a) of Recommendation 1.1 of Chapter IV, Section 1.1 of this Report and of the need for the country under review to continue giving attention thereto, bearing in mind that, with the exception of the Code of Conduct of Audit Office of Guyana, none of the other cited legislation provides details on what constitutes a conflict of interest situation and, more importantly, there is a lack of mechanisms to ensure compliance with conflict of interest rules.

¹⁷⁹ Rules, Policies and Procedures Manual (RPP) of the Audit Office of Guyana, pp. 54 – 59. Available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_manual.pdf

¹⁸⁰ Procurement Act 2003. Available at: http://www.oas.org/juridico/spanish/mesicic2_guy_procurement_act_03.pdf

¹⁸¹ Public Service Commission Rules 1998. Available at: http://www.oas.org/juridico/english/mesicic3_guy_rules1998.pdf

¹⁸² Judicial Service Commission Rules 2010. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_rules2010.pdf

¹⁸³ Standing Orders of the National Assembly. Available at: http://www.oas.org/juridico/PDFs/mesicic4_guy_standing.pdf

[300] Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

[301] *Develop a system of admission to and retention in public service, incorporating measures that allow the resolution of cases in which private interests conflict with the public interest, including the strengthening of the bodies that regulate this area, and consider preventive mechanisms to ensure that no appointments are made which are contrary to the rules in force on incompatibility (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report).*

[302] In its Response,¹⁸⁴ the country under review provides the following information regarding the foregoing measure:

[303] *“Guyana wishes to inform the Committee that during the First and Second Round Reviews no PSC Rules were provided and in fact during the Third Round Guyana’s Response to the Questionnaire referred to the PSC 1998 Rules. Those Rules should have been submitted but regrettably it appears as if it was not.*

[304] (...)

[305] *Guyana’s emphasis has been more on implementation and monitoring of the policies and procedures which already exist and to ensure that the oversight bodies have adequate resources and skills to effectively carry out their mandates than on developing new standards as proposed in (b) above.”*

[306] Having reviewed the provided Public Service Commission Rules 1998, the Committee did not find any rule explicitly regulating the issue of conflicts of interest/incompatibilities in the public service, nor establishing measures that allow the resolution of cases in which private interests conflict with the public interest.

[307] Additionally, the Committee takes into account that the Code of Conduct for Persons in Public Life established in Schedule II of the Integrity Commission Act 1998, prohibits a person in public life from allowing the pursuit of private interests to interfere with the proper discharge of his/her public duties, provided that any conflict between his private interests and his public duties shall be resolved in favor of his public duties.

[308] The Committee notes, however, that the Integrity Commission Act gives the Integrity Commission the role of enforcer of the Code of Conduct, but that it does not provide the Integrity Commission with an advisory/consultative role to provide guidance in situations in which potential conflicts of interest may arise.

[309] Given the foregoing, the Committee considers it appropriate to reformulate measure b) of Recommendation 1.1 of Chapter IV, Section 1.1 of this Report, as follows (See Annex I, recommendation 1.1, measure b):

[310] *b) Broaden the functions of the Integrity Commission to include an advisory/consultative role regarding conflicts of interest, in order to allow it to receive and respond to consultations from persons in public life on these issues.*

¹⁸⁴ See Guyana’s response to the Fourth Round questionnaire, pp. 30-31.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Strengthen the relevant bodies, in order to improve their ability to ensure compliance with the requisites defined for the office and seek to ensure that no appointments are made in the public service that are contrary to the rules in force on ineligibility and incompatibility (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report).

[311] In its Response,¹⁸⁵ the country under review provides the following information regarding the foregoing measure:

[312] *“The PSC [Public Service Commission] Report (2007- 2010) which has been provided will inform the Committee on the efforts the Commission has made to adhere to their mandate.*

[313] (...)

[314] *Efforts are on going with available resources- human, financial and physical.”*

[315] The Committee takes note of the activities contained in the PSC Report (2007 – 2010). However, the information contained therein does not indicate any strengthening of the Public Service Commission. On the other hand, as already indicated in Section 3.3 of Chapter II of this Report, the 2012 Annual Report of the PSC states that *“In concluding, the Commission was able to accomplish its objective despite experiencing less staffing in the Personnel Department and even issued less vacancy Circulars.” (emphasis added).*¹⁸⁶

[316] Additionally, the Committee further notes that as also highlighted in Section 3.3 of Chapter II of this Report, the Committee was informed during the on-site visit that the Judicial Service Commission lacks its own budget and, consequently, the Commission does not have a Secretariat (or any staff for that matter). It should be noted, however, that during the on-site visit the Chancellor of the Judiciary said that neither he nor the JSC had ever asked for a budget or staff.

[317] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing measure c) of Recommendation 1.1 of Chapter IV, Section 1.1 of this Report.

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Develop, when necessary, other mechanisms to identify or detect any causes that might occur in the course of the exercise of public functions and that might give rise to conflicts of interest, such as officials declaring their private interests (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report).

[318] In its Response,¹⁸⁷ the country under review provides the following information regarding the foregoing measure:

¹⁸⁵ *Ibid.*, pp. 32 – 33.

¹⁸⁶ 2012 Annual Report of the Public Service Commission, p. 14. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_annual12.pdf

¹⁸⁷ See Guyana’s response to the Fourth Round questionnaire, p. 34.

[319] *“The NPTA [National Procurement and Tender Administration] governed by the Procurement Act and Regulations and supported by its Manuals clearly advice of how public officers including members of NPTA, Ministerial and regional tender boards and evaluators should address conflict of interest by declaration publicly or in writing and non-participation in the processes of evaluation, selection and awarding. To not do so is an offence.*

[320] *The Audit Office governed by the Audit Act, the Institute of Chartered Accountants, Institute of Internal Auditors Guyana Branch have addressed this issue by way of a declaration and non-participation in the process in its RPPM*

[321] *JSC [Judicial Service Commission] Rules 2010 also addresses this in the rules and code of conduct in a similar manner.”*

[322] As indicated above in the review of measure a) of Recommendation 1.1 of Chapter IV, Section 1.1 of this report, with the exception of the Audit Office, there do not seem to be any mechanisms in place to identify or detect any causes that might occur in the course of the exercise of public functions and that might give rise to conflicts of interest.

[323] Additionally, as already indicated in Section 4.2 of Chapter II of this Report, there are no mechanisms in place to ensure the enforcement of Section 60 of the Procurement Act 2003, which establishes the duty of a member of a body who is in any way whether directly or indirectly interested in any deliberations of that body regarding the bidding process, to declare the nature of his interest at a meeting of the body.

[324] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing measure d) of Recommendation 1.1 of Chapter IV, Section 1.1 of this Report.

Measure e) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Develop, when necessary, provisions that restrict the participation of former public officials in situations that involve taking undue advantage of that condition, for a reasonable period of time (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report).

[325] In its Response,¹⁸⁸ the country under review provides the following information regarding the foregoing measure:

[326] *“Due to the population size and the paucity of certain specialized skills available in the society, and more particularly in even less densely populated areas of the country, coupled with the economic imperatives of individuals to survive, this recommendation poses some daunting challenges.*

[327] *The oversight bodies in such circumstances will have to be vigilante to ensure that former public officials do not abuse or use to undue advantage (information, position and contacts they had in their previous employment). Creative mechanisms will have to be devised to reduce the opportunities for undue advantage and or abuse in such situations where due to a skills need a former public official has to hired-- such as not letting them work in the same agency they did before, or posting to a different part of the country.*

¹⁸⁸ *Ibid.*, p. 35.

[328] *The Committee should note that many senior technical public officers on reaching the age of 55 and (sic) retire or who resign, apply for consultancies with the international developmental agencies based in the country. They then return to work on projects designed by the government agencies.*”

[329] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing measure e) of Recommendation 1.1 of Chapter IV, Section 1.1 of this Report.

Measure f) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Consider strengthening the rules in force governing sanctions, incorporating other types of administrative sanctions other than those already envisaged, such as suspension, the relinquishment of the private interests in conflict, nullity of any decisions by a person in such a position; and withdrawal from official involvement in the matter (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report).

[330] In its Response,¹⁸⁹ the country under review provides the following information regarding the foregoing measure:

[331] *“These rules are in place in the AOG, the NPTA, the PSC and the DPP.”*

[332] The Committee wishes to recall that the suggested measure was based on the need to strengthen the Integrity Commission Act and its Section 27(2), particularly. In this regard, the Report of the First Round of Review states that *“With regard to the mechanisms that guarantee the applicability of these standards and the system of sanctions provided for in Section 27 (2) of the Integrity Commission Act, the Committee considers that Guyana could benefit from the inclusion of other types of administrative sanctions. Similarly, it could consider including other types of punishment and conduct, for instance suspension from office, dismissal, relinquishing the specific interests in conflict or invalidating or nullifying decisions adopted under these circumstances.”*

[333] Given that no information regarding the strengthening of the Integrity Commission Act in this regard was provided, the Committee reiterates the need for the country under review to give additional attention to implementing measure f) of Recommendation 1.1 of Chapter IV, Section 1.1 of this Report.

1.2. Standards of conduct and mechanisms to ensure the proper conservation and use of resources entrusted to government officials

Recommendation formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Perform an analysis on the enforcement and the efficiency of the standards of conduct for the conservation and proper use of the public resources as well as of the mechanisms that exist in Guyana to ensure compliance with these standards as instruments for the prevention of corruption. As a result of this review, the country under review could consider the adoption of measures to promote, facilitate, consolidate or ensure the application of these instruments for that end (the basis for this recommendation is found in section 1.2.2 of Chapter II of the First Round Report).

¹⁸⁹ *Ibid.*, pp. 38 and 39.

[334] In its Response,¹⁹⁰ the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as steps that contribute to progress in its implementation, the following:

[335] *“The Audit Office introduced performance audits and Value for Money audits in 2009 and has done 3 value for money audits in the last 4 years, two of which have been posted on their website. The third one is on the NPTA and the draft is pending.*

[336] *Recognising that this is a new area for auditors in Guyana and the Audit Office in particular there have been several training programmes both in and outside of the country for the staff of the AOG”*

[337] The Committee further notes that the 2012 Annual Report of the Audit Office highlights the persistent overpayment to contractors and to staff and that Ministries, Departments and Regions have faced serious challenges in recovering such sums. *“A significant amount of overpayments to contractors had occurred on measured works for contracts undertaken by Ministries, Departments and Regions during prior periods, with several Ministries and Regions facing serious challenges in being able to recover amounts overpaid on various contracts. In addition, some of these Ministries and Regions continued to have overpayments on various contracts during 2012 and prior years as shown below. This continued trend coupled with no evidence to suggest that disciplinary action of any kind had been meted out to engineering or other staffs involved in the assessment of works in progress and the certification of progress payments is troubling and hints at Management’s perceived inaction to remedy the current situation.*¹⁹¹

[338] Given the foregoing, the Committee considers the reformulation of Recommendation 1.2 of Chapter IV, Section 1.2 of this Report, as follows (See Annex I, recommendation 1.2):

[339] – *Perform a comprehensive analysis on the causes for the persistent overpayment to contractors and to staff indicated in the Annual Reports of the Audit Office of Guyana, and take the necessary action to address the issue, ensuring that there are systems in place to avoid the reoccurrence of overpayments, as well as to vigorously pursue the recovery of the amounts overpaid.*

1.3. Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

Recommendation:

Consider strengthening the existing mechanisms that require public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware to the appropriate authorities.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Establish measures and systems that require all public servants to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, and facilitate compliance

¹⁹⁰ *Ibid.*, pp. 38 and 39.

¹⁹¹ Annual Report of the Audit Office 2012, p. vii. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_annual_rep.pdf

with this obligation through whatever measures are considered appropriate (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report).

[340] In its Response,¹⁹² the country under review provides the following information regarding the foregoing measure:

[341] *“Public officers are not discouraged from reporting acts of corruption in the performance of their functions and if there is no action by the relevant sectoral ministries or agencies they can also report under confidential cover to higher levels of government.*

[342] *The AOG [Audit Office of Guyana], the NPTA [National Procurement and Tender Administration], and the GRA [Guyana Revenue Authority] websites allow for persons to report such acts of corruption and this would include public officers who may not feel confident in reporting within their agency. The AOG website encourages people to report under confidential cover.*

[343] *The launching of the new website under the Citizen Security Programme of the Ministry of Home Affairs on May 24, 2013 has generated much interest.*

[344] *The website title includes “ipaidabribe Guyana – uncover the market cost of corruption” People can report whether they were Asked for a bribe? Didn’t bribe? Were not asked for a bribe? Victimized? Angry?” On a daily basis a report is posted on the number of reports received, the agencies are named and even specific locations are given (eg police stations). As of June 18, 2013 over 2700 reports were made with the Ministry of Home Affairs (mainly police) and Ministry of Public Works receiving the most reports. The persons are not required to give their name, email address etc and receive a computer generated number. The site is now offering awards for information and explains how it will be done.*

[345] *This innovation is a reverse of the recommendation in that the onus is on the public to have confidence to report and to make the officials who have felt they could get away with impunity are under surveillance and could be exposed.”*

[346] The Committee refers to Section 1.2. of Chapter II of this Report in which it found that the Audit Office website *“only contains a general “Contact us” section.¹⁹³ There is not a specific hotline telephone number nor a (secure) hotline complaint electronic form provided. Additionally, there is no information or orientation on how to present such reports, complaints or corruption allegations.”*

[347] Additionally, regarding the “ipaidabribe” website, the Committee refers to the observation made in Section 1.3. of Chapter II of this Report in the sense that its establishment did not seem to have been a coordinated effort among all the oversight bodies. It is also unclear whether the initiative, which was instituted in May 2013, is still in place.¹⁹⁴

[348] Finally, the Committee has not received any information specifically referring to the establishment of measures and systems that require all public servants to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

¹⁹² See Guyana’s response to the Fourth Round questionnaire, pp. 40 and 41.

¹⁹³ <http://www.audit.org.gy/contactaog.html>

¹⁹⁴ The Technical Secretariat had the opportunity to visit the “ipaidabribe.gy” website on several occasions before the on-site visit in October 2013. However, on several occasions throughout the month of November 2013, the Technical Secretariat tried to visit the website and received the error message that “*This URL is not linked to application*”.

[349] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing measure a) of Recommendation 1.3 of Chapter IV, Section 1.1 of this Report.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Adopt and implement protection measures for public servants to encourage them to report acts of corruption in good faith (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report).

[350] In its Response,¹⁹⁵ the country under review provides the following information regarding the foregoing measure:

[351] *“Declarations by the government and the President that it will not tolerate corruption and strident statements by the Minister of Home Affairs with regards to corrupt police are beginning to have an effect as more members of staff are prepared to expose these acts and these have lead to more investigations and charges being brought.”*

[352] Given that no information was provided regarding the adoption and implementation of protection measures for public servants to encourage them to report acts of corruption in good faith, the Committee reiterates the need for the country under review to give additional attention to implementing measure b) of Recommendation 1.3 of Chapter IV, Section 1.1 of this Report.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Review the application of the provision contained in section 28(3) of the Integrity Commission Act, in order to ensure that it does not become an impediment to, or inhibit, discourage, or intimidate public officials from reporting acts of corruption in the performance of public functions of which they are aware (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report).

[353] In its Response,¹⁹⁶ the country under review provides the following information regarding the foregoing measure:

[354] *“The Government is of the opinion that this has not so far proven to be an impediment. However, this continues to be under consideration by the government.*

[355] *The media, whilst exposing abuse and corruption, has been at pains to interpret every action as such even when provided with facts to the contrary. The media has not been giving the right to reply nor covering responses to their allegations.”*

[356] The Committee notes, however, that according to the Secretary of the Integrity Commission, since her appointment in February 2008 until the date of the on-site visit, *“the Commission received one (1) letter of complaint but upon reviewing it, it was not related to any public officers in our inventory but to*

¹⁹⁵ See Guyana’s response to the Fourth Round questionnaire, p. 43.

¹⁹⁶ *Ibid.*, p. 44.

*a public office. This nature was corresponded to the relevant person and was directed to the specific agency.”*¹⁹⁷

[357] The Committee notes that the almost inexistent number of complaints received by the Integrity Commission indicates a continued need to review and expand whistleblower protection legislation in Guyana. In this regard, the Committee believes Guyana could consider reviewing the parameters established in “*Model Law To Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses*”,¹⁹⁸ adopted by the Committee of Experts of MESICIC.¹⁹⁹

[358] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing measure c) of Recommendation 1.3 of Chapter IV, Section 1.1 of this Report.

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Implement adequate measures, including training for public servants on how to report acts of corruption, and the requisites for reporting them, and on protection mechanisms for those who report such cases in good faith (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report).

[359] In its Response,²⁰⁰ the country under review provides the following information regarding the foregoing measure:

[360] “*This report has included efforts to train evaluators and contractors on the financial rules and procurement standards and laws in 2012 and 2013 through workshops and symposium.*”

[361] *The Accountant General’s programmes focuses (sic) on adherence to financial rules and regulations to prevent abuse and acts of corruption.”*

[362] The Committee notes that the information on training reviewed above in Sections 1 to 4 of Chapter II of this Report does not specifically address the issue of training for public servants on how to report acts of corruption, or the requisites for reporting them, nor on protection mechanisms for those who report such cases in good faith.

¹⁹⁷ See the Presentation of the Integrity Commission. Available at:

http://www.oas.org/juridico/ppt/mesicic4_guy_intcom.ppt

¹⁹⁸ This Model Law was the result of an extensive consultation process carried out in the framework of a cooperation program developed by the OAS General Secretariat, through the Department of Legal Cooperation of the Secretariat for Legal Affairs in its capacity as Technical Secretariat of the MESICIC, which, with the support of an international consultant in drafting the first version, was discussed at a workshop held in Lima in April 2011, with the participation of officials from Peru, Canada, Chile, Mexico, and the United States. The results of this workshop were presented at the Second Conference on the Progress and Challenges in Hemispheric Cooperation against Corruption, held in Cali, Colombia, in June the same year. This Model Law was later brought to the consideration of the members of the Committee of Experts of the MESICIC and civil society organizations for their comments and observations, which are incorporated in this latest version and endorsed by the Committee, at the March 22, 2013 plenary session, within the framework of the Twentieth First Meeting of the Committee, held at OAS headquarters in Washington, D.C., from March 18 to 22, 2013. For further information, see: http://www.oas.org/juridico/PDFs/model_law_reporting.pdf

¹⁹⁹ Guyana wishes to reiterate the request for technical assistance formulated to the OAS to draft a bill based on the Model Law.

²⁰⁰ See Guyana’s response to the Fourth Round questionnaire, p. 44.

[363] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing measure d) of Recommendation 1.3 of Chapter IV, Section 1.1 of this Report.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)

Recommendation:

Consider strengthening the systems for declaring income, assets and liabilities.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Maximize the use of systems to study the contents of the declarations of income, assets and liabilities, and to adopt suitable measures to detect and prevent conflicts of interest and cases of illicit enrichment, using modern technologies, whenever possible, to expedite their presentation and improve systems, analysis or investigation of cases (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report).

[364] In its Response,²⁰¹ the country under review provides the following information regarding the foregoing measure:

[365] *“The Integrity Commission receives declarations of assets from the post holders on Schedule 1 of the ICA [Integrity Commission Act]. It tracks those who are not submitting and reminds these officers to bring themselves into compliance. There is a linkage between the GRA [Guyana Revenue Authority] and the ICA in terms of verifying declaration of income. As bank accounts have to be declared in the annual report and their contents the ICA can make inquiries to the commercial banking sector to verify the declarations.*

[366] *The draft amendments to the ICA include strengthening the investigative capabilities of the IC [Integrity Commission] and to provide for a system of public declarations of assets.”*

[367] During the on-site visit, the Secretary of the Integrity Commission also informed of the efforts to ensure that all those required to present their declarations to the Commission do so. In this regard, she informed that the percentage of those non-compliant fell from 78% in 2008 to 37% in 2012, while the number of declarants almost doubled in the same period, from 900 to 1603.

[368] However, she also informed that *“without an appointed Chairman and Commissioners, actions cannot be taken against defaulters as set out in the Section 19 of the Commission’s Act nor any investigative capacity other than the Secretariat requesting additional documents to support information stated in a declaration form by a Public(sic) Officer.”*²⁰²

²⁰¹ *Ibid.*, pp. 46 and 47.

²⁰² See the Presentation of the Integrity Commission. Available at:
http://www.oas.org/juridico/ppt/mesicic4_guy_intcom.ppt

[369] In this regard, the Committee further notes the information provided by the country under review in its Response.²⁰³

[370] “(...) However the greatest challenge has been the appointment of the chairman as governed by Section 3 of the Integrity Commission Act who shall be appointed after consultation between the President and the Leader of the Opposition. Successive Leaders of the Opposition have not given their consent to the persons nominated by two successive Presidents. Recent efforts in 2012 and 2013 by the President have failed.

[371] *This has severely impacted on the Commission being able to fully and effectively carry out its mandate (...)*”.

[372] As already highlighted in Section 3.2 of Chapter II above, the Committee deeply regrets the fact that the lack of political compromise has weakened and undermined some of Guyana’s oversight bodies, such as the Integrity Commission, fundamentally undermining the implementing of this recommendation.

[373] This situation was highlighted during the on-site visit by almost all of the civil society organizations interviewed. In this regard, the Transparency Institute of Guyana states the following in its response to the questionnaire: “*The absence of goodwill and compromise as well as putting the public interest first as opposed vested political interest, is a major obstacle to obtain consensus on important developmental goals.*”²⁰⁴

[374] Once again, the Committee takes note of the situation and urges all parties to reach an agreement as soon as possible with a view to appointing a new Chairperson and Commissioners to the Integrity Commission so that it can properly carry out its important work in securing the integrity of those in public life in Guyana.

[375] Finally, bearing in mind the adoption by the Committee of Experts of the MESICIC of the “*Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions*”,²⁰⁵ the Committee deems it appropriate to reformulate this measure, as follows (See Annex I, recommendation 2, measure a):

[376] *a) Maximize the use of systems to study the contents of the declarations of income, assets and liabilities, and adopt suitable measures to detect and prevent conflicts of interest and cases of illicit enrichment, using modern technologies, whenever possible, to expedite their presentation and improve*

²⁰³ See Guyana’s response to the Fourth Round questionnaire, p. 37.

²⁰⁴ See the document presented by the Transparency Institute of Guyana, p. 31. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_sc.pdf

²⁰⁵ This Model Law is the result of an extensive consultation process carried out in the framework of a cooperation program developed by the OAS General Secretariat, through the Department of Legal Cooperation of the Secretariat for Legal Affairs in its capacity as Technical Secretariat of the MESICIC, which, with the support of an international consultant in drafting the first version, was discussed at a workshop held in Buenos Aires in May 2011, with the participation of officials from Argentina, Brazil, Chile, Colombia, Spain, the United States and Mexico, as well as the World Bank. The results of this workshop were presented at the Second Conference on the Progress and Challenges in Hemispheric Cooperation against Corruption, held in Cali, Colombia, in June the same year. This Model Law was later brought to the consideration of the members of the Committee of Experts of the MESICIC and civil society organizations for their comments and observations, which are incorporated in this latest version and endorsed by the Committee, at the March 22, 2013 plenary session, within the framework of the Twenty-First Meeting of the Committee, held at OAS headquarters in Washington, D.C., from March 18 to 22, 2013. For further information, see: http://www.oas.org/juridico/PDFs/model_law_declaration.pdf

*systems, analysis or investigation of cases, bearing in mind the pertinent articles of the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”*²⁰⁶

[377] At the same time, it is worth mentioning that the report presented by the Transparency Institute of Guyana Inc. (Guyana’s Chapter of Transparency International) states that “*The Integrity Commission Act 1997 provides for the establishment of the Integrity Commission and for securing the integrity of persons in public life. It requires all politicians (Members of Parliament and Ministers), senior public servants, procurement officers, and certain officers of the Guyana Revenue Authority to file with the Commission annual declarations of income, assets and liabilities. However, no Commissioners are in place. The Commissioners are appointed by the President after consultation with the Leader of the Opposition. A number of key agencies, including the Private Sector Commission, have appealed to the Government to appoint the Commissioners and to provide the Commission with adequate resources to discharge its responsibilities.*

[378] (...) *The main difficulty relates to the new configuration of Parliament whereby the combined Opposition has control of the Legislature. As a result, there are significant amounts of disagreement to get new legislation passed and to effect amendments to existing legislation. For example, two Opposition-initiated legislations are yet to be assented to by the President while there have been significant disagreements in relation to the proposed amendments to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.*

[379] (...) *As indicated above, there are no Commissioners in place for the Integrity Commission, although there might have been some degree of compliance in terms of the submission of annual returns of assets and liabilities. However, in the absence of the Commissioners detailed scrutiny of the returns is unlikely.*”²⁰⁷

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Consider the possibility of making adjustments or legal reforms to the power granted by the Integrity Commission Act to the Commission or the President[Chairman], whichever is applicable, in order to impose the appropriate administrative sanctions without the authorization of another organ or official (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report).

[380] In its Response,²⁰⁸ the country under review did not report on any new developments with respect to measure b) of the foregoing recommendation.

[381] Considering that the country under review also states in its Response that the suggested measure seems unclear, the Committee wishes to refer to the paragraph of the First Round Report in which the measure was based on: “(...) *The Committee is concerned that the Integrity Commission cannot impose administrative sanctions without the written consent of the Director of Public Prosecutions. The Committee feels that a communication to the Director of Public Prosecutions may be an important factor in cases where which an official’s behavior also breaches criminal legislation on the matter. However, conditioning the administrative sanctions that the Integrity Commission may*

²⁰⁶ Text available at: http://www.oas.org/juridico/PDFs/model_law_declaration.pdf

²⁰⁷ See the document presented by the Transparency Institute of Guyana, p. 31. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_sc.pdf

²⁰⁸ See Guyana’s response to the Fourth Round questionnaire, p. 48.

impose on the consent by an official outside the Commission may limit the powers entrusted to the Commission as a body responsible for enforcing the system for declaring income, assets and liabilities. It would therefore be advisable for Guyana to consider reviewing that provision and strengthen the powers granted in that respect by the Integrity Commission Act to the Commission or the President[Chairman], whichever is applicable, so that they can impose any legally applicable administrative sanctions without the consent of another body or official.”²⁰⁹

[382] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing measure b) of Recommendation 2 of Chapter IV, Section 2 of this Report.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Consider adjustments or legal reform of the existing system of sanctions, including other conducts, such as the late presentation of declarations or other types of sanctions (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report).

[383] In its Response,²¹⁰ the country under review provides the following information regarding the foregoing measure:

[384] *“The ICA [Integrity Commission Act] already includes provisions to address late submissions including false declarations and penalties. Section 13 provides for submission of declarations by June 30th annually. S 17, 18, 19 and 22 address the issue of late submissions of declarations in keeping with S13 and non-responsiveness to the Commission and perjury (false declarations) Section 22.*

[385] *S 16 provides for public officers putting their assets in a blind trust.*

[386] *The draft amendments to the ICA being developed relates to the areas of strengthening the investigative capacity of the IC not reforms with regards to this recommendation as the ICA adequately addresses these issues.”*

[387] With respect to the information provided by the country under review, the Committee wishes to refer to the paragraph of the First Round Report in which the measure was based on: *“(…) it would also be advisable for Guyana to consider implementing administrative sanctions, such as the late presentation of declarations, and consider other types of penalties such as the ban on reentry in cases where the declaring official left office without submitting a final disclosure; and ensuring that the penalties in force are sufficiently dissuasive. Additionally, the amount of fines should be revised periodically.”²¹¹*

²⁰⁹ See the “Report on Implementation in the Co-operative Republic of Guyana of the Provisions of the Inter-American Convention against Corruption selected for Review in the First Round”, p. 9. Available at: http://www.oas.org/juridico/english/mec_rep_guy.pdf

²¹⁰ See Guyana’s response to the Fourth Round questionnaire, pp. 49 and 50.

²¹¹ See the “Report on Implementation in the Co-operative Republic of Guyana of the Provisions of the Inter-American Convention against Corruption selected for Review in the First Round”, p. 9. Available at: http://www.oas.org/juridico/english/mec_rep_guy.pdf

[388] The Committee notes that the sanctions already in place are not enforced because the Commission is not fully operational, pending the appointment of its Chairperson and Commissioners. In this regard, the Committee further notes the information provided by the country under review in its Response:²¹²

[389] *“(…) However the greatest challenge has been the appointment of the chairman as governed by Section 3 of the Integrity Commission Act who shall be appointed after consultation between the President and the Leader of the Opposition. Successive Leaders of the Opposition have not given their consent to the persons nominated by two successive Presidents. Recent efforts in 2012 and 2013 by the President have failed.*

[390] *This has severely impacted on the Commission being able to fully and effectively carry out its mandate. Cabinet members and Government MPs are mandated to do so by law and by policy of the executive. The Cabinet Secretary reminds Cabinet members in advance of the deadline of June 30th.*

[391] *Noteworthy is that the Members of Parliament of the parliamentary opposition parties (since the enactment of the ICA [Integrity Commission Act]) during the 8th, 9th and 10th Parliament have not make(sic) declarations to the ICA.*

[392] *Other post holders on the Schedule 1 are found to be in default but without a properly constituted Commission with a chairperson, the staff of the Commission can only collect declarations, record and question or ask for additional information, and remind delinquent public officers of non-compliance but they have no powers to investigate or to take any form of action as provided for in the law.”*

[393] The information above was confirmed, during the on-site visit, by the Secretary of the Integrity Commission, who also provided the following information regarding difficulties currently faced by the Integrity Commission:²¹³

[394] *“- Promptly compliance of submission of names of declarants by Public Offices as per Schedule 1 on a year(sic) basis,*

[395] *- Promptly compliance and non compliance of submission of declarations by Public Officer as per Schedule 1 on a yearly basis,*

[396] *- Submission of updated information of declarants by Public Offices and relatives e.g. deceased declarants, names of new declarants, declarants that have demit office due to retired, dismissed, resigned, etc.,*

[397] *- Without an appointed Chairman and Commissioners, actions cannot be taken against defaulters as set out in the Section 19 of the Commission’s Act nor any investigative capacity other than the Secretariat requesting additional documents to support information stated in a declaration form by a Pubic Officer.*

[398] *- Non Compliance of requested additional documentations from some Public Officers to support information filled in their declaration forms.*

[399] *- Without an appointed Chairman and Commissioners, the reviewing of the Commission Act is on hold since their input/recommendations are also needed. There were some recommendations from the*

²¹² See Guyana’s response to the Fourth Round questionnaire, p. 37.

²¹³ See the Presentation of the Integrity Commission. Available at:

http://www.oas.org/juridico/ppt/mesicic4_guy_intcom.ppt

former Commissioners and myself that were submit to the Attorney General Chamber for consideration during the reviewing of the Commission's Act.

[400] - *Without an appointed Chairman and Commissioners, the Commission's inventory on declaring Public Officers cannot be revised since it have positions that are not on Schedule 1 of the Act and needs to be taken off the inventory.*"

[401] However, taking into consideration that during the on-site visit the Director of Public Prosecutions informed that her Office had never received any request for legal advice from the Integrity Commission (which is required by Section 23 of the Integrity Commission Act 1997 before any prosecution for violations of said Act), the Committee notes the lack of enforcement of the sanctions already established by the Integrity Commission Act even when the Integrity Commission was fully operational.

[402] The Commission also highlights that the fact that the Chairperson and Commissioners have not been appointed does not exempt those required under the Integrity Commission Act 1997 to present their asset declarations to the Integrity Commission. The Committee particularly regrets that some Members of Parliament have not complied with their legal duty to submit their declarations without any consequences whatsoever, besides a resolution from the National Assembly declaring that "*failure or refusal of Members of Parliament to submit declarations to a duly constituted Integrity Commission is a violation of the law and a gross indictment of those Members of Parliament and by extension on the integrity of Parliament.*"²¹⁴

[403] Given the foregoing, and bearing in mind the adoption by the Committee of Experts of the MESICIC of the "*Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions*", the Committee deems it appropriate to reformulate this measure, as follows (See Annex I, recommendation 2, measures c) and d):

[404] c) *Enforce the sanctions already in place in the Integrity Commission Act and consider implementing additional sanctions and other types of penalties, such as the disqualification from public service in cases where the declaring official left office without submitting a final disclosure, with a view to ensure that the penalties in force are sufficiently dissuasive, bearing in mind the pertinent articles of the "Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions".*²¹⁵

[405] d) *Establish the appropriate sanctions for non-compliance of submission of names and other updated information of declarants by Public Offices as per Schedule 1 of the Integrity Commission Act 1997 on a yearly basis.*

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Review the possibility of extending the five-year term established in section 23 (b) of the Integrity Commission Act as a limit for instituting legal proceedings in respect of such unlawful acts committed by an official who no longer performs public functions (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report).

²¹⁴ See National Assembly Resolution No. 13 of the Tenth Parliament of Guyana, First Session (2012). Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_res13.pdf

²¹⁵ Text available at: http://www.oas.org/juridico/PDFs/model_law_declaration.pdf

[406] In its Response,²¹⁶ the country under review provides the following information regarding the foregoing measure:

[407] *“S 23 (b) is relevant to offences identified in Section 22. This section refers to and is applicable to all post holders listed in the Schedule. Whilst Section 23(b) states that “ after 5 years from the date when the person in respect of whose declaration the alleged offence was committed, ceased to be in a person in public life”.*

[408] *Section 21 (3) refers to members of the Commission and 5 years after they are no longer Commissioners.*

[409] *The Committee should take into consideration that there are no statutes of limitation on criminal offences as described under the Criminal Law (Offences) Act Cap 8:01 (attached) and other relevant statutes.*

[410] *Title 13, Fraud, Fraudulent conversion, fraud relating to companies, Falsification of Accounts; Title 17, Forgery and Similar Offences, Title 22 S 333-338 includes the President, Cabinet Members etc of the Criminal Law (Offences) and there are no statutes of limitation or time restrictions. Perjury (false declaration) also has no limit either.*

[411] *Therefore were someone to have demitted office and the 5 year limit had elapsed under the ICA there is nothing to prevent the investigation being carried nor charges being laid beyond that period.*

[412] *The Committee may wish to note that Guyana’s Limitation Act Cap 7:02 does not address limitations for criminal offences.*

[413] *Guyana therefore sees no need for further extension under the ICA as proposed in this recommendation.”*

[414] Despite what is stated by the country under review, the Committee maintains its point of view that Section 23(2) effectively establishes a statute of limitations to the offenses contained in the Integrity Commission Act 1997. The language used in Section 23 (2) does not limit the provision to the members of the Integrity Commission. It applies to any person in public life required to file a declaration with the Integrity Commission.

[415] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing measure d) of Recommendation 2 of Chapter IV, Section 2 of this Report.

Measure e) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Consider the advisability of granting to a body or official other than the President the administration, verification and application of the system for declaring assets and liabilities in respect of members of the Integrity Commission (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report).

²¹⁶ See Guyana’s response to the Fourth Round questionnaire, p. 51.

[416] In its Response,²¹⁷ the country under review provides the following information regarding the foregoing measure:

[417] *“Since the ICA [Integrity Commission Act] was enacted there have been 4 Presidents. The President submits his declarations to the IC [Integrity Commission] and the IC members to him.*

[418] *In principle, however, the President would have an interest in his appointees being in compliance with the ICA, most especially Cabinet Members which includes Presidential advisors and Permanent Secretaries.*

[419] *A draft Cabinet Code of Conduct is also under consideration which will further enhance the zero tolerance policy at the highest political(sic) forum and compliance with the constitution and laws in particular the ICA. It has been agreed that this document will be publicly available so that the public is aware of the code that Cabinet members are being held to.”*

[420] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing measure e) of Recommendation 2 of Chapter IV, Section 2 of this Report.

Measure f) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Regulate the conditions, procedures and other relevant aspects as regards making disclosures of income, assets, and liabilities public, as appropriate, in accordance with the fundamental principles of the domestic legal system (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report).

[421] In its Response,²¹⁸ the country under review provides the following information regarding the foregoing measure:

[422] *“As stated earlier, the issue of declarations being made public is under consideration in the draft amendments to the ICA.”*

[423] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing measure f) of Recommendation 2 of Chapter IV, Section 2 of this Report.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)

Recommendation formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Consider strengthening or creating oversight bodies to enforce compliance with the provisions of Chapter III, paragraphs 1, 2, 4 and 11 of the Convention, providing them with the resources needed to carry out their functions in full and establishing the mechanisms necessary for the institutional

²¹⁷ *Ibid.*, p. 52.

²¹⁸ *Ibid.*, p. 54.

coordination of their actions and their periodic evaluation and follow-up (the basis for this recommendation is found in section 3.2 of Chapter II of the First Round Report).

[424] In its Response,²¹⁹ the country under review provides the following information regarding the foregoing recommendation:

[425] *“Following the revised 2003 Constitution, new laws with regards to oversight bodies have made good faith efforts to be in compliance. The early part of this response has gone into some depth with regards to the functioning of the selected oversight bodies. The major challenge is to ensure that these oversight bodies implement their mandate effectively and efficiently in accordance with the relevant statutes.*

[426] *Earlier in the report Guyana has provided information with regards to reporting mechanisms being improved by oversight bodies, staffing and budgetary allocation including the use of new technology and websites.”*

[427] The Committee notes, however, that important oversight bodies responsible for the enforcing compliance with the provisions of Chapter III, paragraphs 1, 2, 4 and 11 of the Convention were not reviewed in Chapter II of this Report, such as the Integrity Commission and the Ombudsman.

[428] The Commission further notes that, in fact, those two oversight bodies have been stymied by the long delays in appointing their respective authorities.

[429] At the same time, it is worth mentioning that almost all of the civil society organizations interviewed during the on-site visit highlighted this as a very important issue and expressed an urgent need for the appointment of the Ombudsman, as well as for political compromise regarding the appointments of Chairperson and Commissioners of the Integrity Commission.²²⁰

[430] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing Recommendation 3 of Chapter IV, Section 3 of this Report.

[431] At the same time, it is worth mentioning that, during the on-site visit, the representatives of the Transparency Institute of Guyana expressed the following regarding the Ombudsman: *“It is indeed very disappointing that no Ombudsman has been in place since the last person, Mr. S.Y. Mohamed, demitted office around 2005. Citizens have therefore been without the services of the ‘poor man’s lawyer’ for seven years. Whatever the reason(s) for this unfortunate state of affairs, Guyana cannot be viewed in good light when compared with its Caribbean counterparts - Jamaica, Barbados, Trinidad and Tobago, Dominica, St. Lucia, and Antigua - that have a functioning system to investigate citizens’ complaints via the Ombudsman.”*²²¹

4. MECHANISMS TO PROMOTE THE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)

²¹⁹ *Ibid.*, p. 55.

²²⁰ In this regard, Guyana informed that the Ombudsman was appointed in December 2013 and was sworn in January 2014. Retired Justice Winston Moore has commenced his work and reported to the media in February, weeks after taking office that he has received 15 complaints. The Office of the Ombudsman is allocated a budget and has a small staff; it is expected in the 2014 Annual Budget that additional resources will be made available to strengthen his office and its operations.

²²¹ See the presentation of the Transparency Institute of Guyana, pp. 12 and 13. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_trans.pdf

4.1. General participation mechanisms

Recommendation formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Consider the need for Guyana to reassess and strengthen its general approach for encouraging the participation of civil society and non-governmental organizations in efforts to prevent corruption.

[432] In its Response,²²² the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as steps that contribute to progress in implementation of the recommendation, the following:

[433] “(...) -Series of 4 TV debates on corruption in 2012 with regards to major infrastructural projects which included members of the opposition political parties. Each session allowed for the public to text their questions and comments to the panel while the debate was going on.

[434] -New website “*ipaidabribeguyana*” launched on May 24, 2013

[435] -Media coverage of allegations of corruption has been heightened.

[436] -Call in tv and radio programmes on police, Revenue Authority, various ministries and agencies that provide services.”

[437] Additionally, the Committee wishes to highlight the level of openness demonstrated by the country under review regarding the invitation of civil society organizations and professional associations to participate in the on-site visit.

[438] However, as indicated by some of those organizations during the on-site visit, such as the Guyana Association of Women Lawyers (GAWL) and the Georgetown Chamber of Commerce and Industry (GCCCI), more can be done to increase civil society participation in efforts to prevent corruption. In this regard, the representative of GAWL stated that: “GAWL and many other CSOs are often consulted and invited to make submissions on proposed legislation as well as attend forums at which some general issues of national concern are discussed. The association has, however, not been directly or specifically engaged in matters relating to corruption issues, except for a few months ago when it was invited to make written submissions on the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Bill, 2013.”²²³

[439] Given the foregoing, the Committee takes note of the steps taken by the country under review to advance with implementation of Recommendation 4.1 of Chapter IV, Section 4 of this report and of the need for the State to continue giving attention thereto.

[440] At the same time, it is worth mentioning that the report presented by the Transparency Institute of Guyana Inc. (Guyana’s Chapter of Transparency International) states that “*The Transparency Institute*

²²² See Guyana’s response to the Fourth Round questionnaire, p. 56.

²²³ See the presentation of the Guyana Association of Women Lawyers (GAWL), p. 4. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_GAWL.pdf

*of Guyana Inc. (TIGI) was established through the private initiatives of certain members of society concerned about the effects of corruption. The Government is yet to embrace the work of TIGI.*²²⁴

[441] *As indicated above, the Ministry of Home Affairs has launched a website whereby the public can report cases where police officers are demanding bribes.*

[442] *The Government periodically engages in outreach activities to sensitise the public on its programmes and activities. There are also television programmes that are being used to relay Government's messages.*²²⁵

4.2. Mechanisms for access information

Recommendation:

Strengthen the mechanisms for ensuring public access to information.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Develop and regulate the processes through which requests are received in order to respond to them on a timely basis, for appeals in cases where requests are denied, and establish sanctions in the event of failure to comply with the obligation to furnish public information.

[443] In its Response,²²⁶ the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as a step which allow it to conclude that this recommendation has been satisfactorily considered, the following:

[444] – *The enactment of the Access to Information Act 2011 and the appointment of the Commissioner of Information on July 1st, 2013.*

[445] *The Access to Information Act regulates the processes through which access to information requests are received and responded to. Section 16(1) of the Act provides that a person who wishes to obtain access to an official document shall make a request either using the form set out in the Schedule to the Act or on the website of, or by other electronic means to, the Commissioner of Information.*

[446] *Section 18(1) provides that on receipt of a request, the Commissioner of Information, shall acknowledge receipt of the request within thirty (30) days from the date of its receipt and advise the applicant if the request is approved or denied within sixty (60) days from the date the request is received. This period may be extended by the Commissioner of Information, according to Section 18(2), for another sixty (60) days and the applicant must be informed of the reasons thereof. Section 18(3) further provides that the request is deemed to have been refused if the Commissioner of Information fails to give access within the time-limit.*

²²⁴ The Government of Guyana does not know what “embrace the work of the TIG” entails. The Government, including the Presidential Advisor on Governance and no less than the Minister of Finance have attended a number of seminars and workshops when invited and participate in the discussions. The TIG takes an adversarial stance with regard to the Government and its perceived shortcomings versus one of working with the Government towards making improvements and reversing Guyana’s deficiencies.

²²⁵ See the document presented by the Transparency Institute of Guyana, pp. 27 and 28. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_sc.pdf

²²⁶ See Guyana’s response to the Fourth Round questionnaire, p. 58.

[447] *With respect to appeals of the decisions of the Commissioner of Information, Section 43 (1) allows a person aggrieved by a decision of the Commissioner under the Access to Information Act 2011 may apply to the High Court for review of the decision. The application, pursuant to Section 43(2) is to be heard and determined by a Judge in the Chambers, unless the Court, with the consent of the parties, directs otherwise.*

[448] *Section 50 provides a list of penalties to those who fail to comply with the provisions of the Act.*

[449] Additionally, during the on-site visit, the Commissioner of Information informed that he had already complied with Section 8(1) of the Access to Information Act 2011 which requires the Commissioner to cause to be published in the official Gazette and in a daily newspaper circulating in Guyana information with respect to the implementation of the Act by public authorities.

[450] The Commissioner informed, however, that his office had not received any request for information as of the date of the visit (October 2013), because the Act is not fully operational until his Office receives proper funding and staff, which he expressed should take place in 2014. Accordingly, his office does not yet have a website through which requests for access to information can be channeled, as per Section 16(1)(b) of the Act.

[451] The Committee further notes that Section 5(3) of the Act establishes that the Commissioner of Information is to be provided with requisite staffing and budgetary support in order to discharge his functions under the Act.²²⁷

[452] Additionally, the Committee takes note of several other important articles such as Sections 27 to 38, regarding exempt documents; Section 44, which requires the preparation of annual reports on the operation of the Act in the National Assembly; Section 45, which, among others, calls for the development of educational programs to advance the understanding of the public as to how to exercise the rights conferred under the Act, including the compilation of a guide, within eighteen months from the commencement of the Act, containing information in an easily comprehensible form and manner to allow anyone who wishes to exercise his/her rights under the Act; and Section 46, which provides that the Minister may make regulations to the Act which are to be subject to negative resolution of the National Assembly.

[453] Finally, the Committee notes that sections 50(7) and (8) establish penalties, such as imprisonment for six (6) months to one (1) year, to any person who discloses any content of exempt documents or who publishes exempt information on a website, blog, social media or any other media. While understanding the general reasons for these sanctions, the Committee notes that they can impose several difficulties to the work of investigative journalists uncovering corruption cases in the absence of comprehensive legislation on the protection of whistleblowers who, in good faith, report acts of corruption.

[454] Given the foregoing, while considering that the measure as originally formulated has been satisfactorily considered by the country under review, the Committee deems it appropriate to reformulate this measure, as follows (See Annex I, recommendation 4.2, measures a), b), c), d), e) and f):

[455] *a) Provide the Commissioner of Information with the human and financial resources it needs for the proper performance of its functions, bearing in mind the availability of resources.*

²²⁷ In this regard, Guyana informed that the Commissioner of Information has hired additional staff and that in the 2014 budget adequate budgetary provisions have been made to ensure that his office can be effective.

[456] *b) Give special consideration to the implementation of Section 45 of the Access to Information Act regarding programs to educate the public on the importance of access public information and on how to exercise their rights under the Act.*

[457] *c) Issue the Regulations to the Access to Information Act 2011, bearing in mind that they should not include further restrictions or exemptions other than those found in the Act.*

[458] *d) Consider the possibility of shortening the time-limits established in Section 18 of the Access to Information Act 2011, with a view to make it a more expeditious process.*

[459] *e) Create and maintain a website for the Office of the Commissioner of Information and make use of this or other electronic means to receive and respond to requests for access to information under the Act.*

[460] *f) Maintain and publish statistics on the implementation of the Act, such as how many requests have been received by the Commissioner of Information, how many were denied and the reasons for denial, how many were granted or partially granted, how many public authorities have failed to comply with the requirements of the Act, and how many sanctions were applied, in order to identify challenges and recommend corrective measures.*

[461] At the same time, it is worth mentioning that the report presented by the Transparency Institute of Guyana Inc. (Guyana's Chapter of Transparency International) states that "*The Freedom of Information Act was passed some time ago but was not made operational since one of the prerequisites is the appointment of a Commissioner of Information. The appointment has since been made but it is too early to assess the impact.*"²²⁸

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Consider the creation or adoption of systems to ensure that the public has access, when appropriate, to information on public government organizations and their financial and program planning activities, specifically including oversight bodies responsible for matters covered by this report.

[462] In its Response,²²⁹ the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as steps that contribute to progress in implementation of the recommendation, the following:

[463] "*The ATI [Access to Information] Act provides for the implementation of this recommendation.*

[464] *The oversight bodies chosen in this report – the AOG, the NPTA and the DPP, have established and functioning websites. In addition, new websites- eprocure and IC, GRA, and ministries such as Ministry of Finance, Attorney General and Minister of Legal Affairs contribute additional access.*

[465] *Once the redesign and upgrading of the Guyana Parliament website is completed, access to all records tabled and debated and resolved in the National Assembly will be available to the public. The digitalization of the Parliament records commenced in 2008 and has moved from current date to*

²²⁸ See the document presented by the Transparency Institute of Guyana, p. 29. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_sc.pdf

²²⁹ See Guyana's response to the Fourth Round questionnaire, p. 59.

incrementally adding on previous years. The objective is to digitalise all records from the early 1900s.”

[466] Given that the implementation of the Access to Information Act is still in process, the Committee takes note of the steps taken by the country under review to advance with the implementation of measure b) of Recommendation 4.2 of Chapter IV, Section 4.2 of this Report and of the need for the country under review to continue giving attention thereto.

4.3. Mechanisms for consultation

Recommendation 4.3.1 formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Develop laws and procedures capable of supporting consultation mechanisms to encourage civil society organizations and citizens to provide opinions and proposals to be taken into account.

[467] In its Response,²³⁰ the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as steps that contribute to progress in implementation of the recommendation, the following:

[468] *“Although there is no specific statute on consultation mechanisms with civil society, Article 13 of the Constitution calls for “ providing increasing opportunities for the participation of citizens, and their organizations the management and decision-making processes of the state , with particular emphasis on those areas of decision-making that directly affect their well-being”.*

[469] *Government policy dictates that no new legislation can be brought to Cabinet without having been subjected to a consultative process with the relevant stakeholders; so too any policy change by the cabinet is normally sent to a consultative process before the final decision is taken.*

[470] *Complex and or controversial bills are sent to parliamentary special select committees where the public may be invited to submit their views and proposed changes.*

[471] *In the 9th Parliament, 16 bills were treated in this manner. The Access to information Bill was sent to a Parliamentary Special Select Committee in 2011 and received submissions from the public, both written and oral presentations before the committee. So too were the Anti-Money Laundering and Countering the Financing of Terrorism Bill and the Money Transfer Licensing Bill in 2009.*

[472] *In the 10th Parliament, 8 bills are before special select committees, most recent of these is the Anti-Money laundering and Countering the Financing of Terrorism (Amendment) Bill to bring Guyana into compliance with the CFATF/FATF obligations. The public has been invited to make submissions on this bill and persons will be called before the committee on July 3.2013.*

[473] *Matters sent to a Special Select Committee need not be a bill but a matter such as the UN HRC recommendations to Guyana on the abolition of corporal punishment, the abolition of the death penalty and the decriminalization of consensual adult same sex relations and discrimination against LGBTs is presently before such as committee and the public has submitted and is being invited to present before the committee.*

²³⁰ *Ibid.*, pp. 60 and 61.

[474] *There are no formal standards, however, there are measures and mechanism to provide for consultation as a feature of decision-making enshrined in the constitution and a power-sharing model. Terms such as “meaningful consultation” is specifically defined.*

[475] *However, the present model which has been evolving since 2003 has provided important lessons and ensured that government must listen to people’s views and be more responsive to their issues. Community meetings across the country with Ministers, for example, expose the levels of inefficiencies, allegations of corruption, shoddy work, questionable transactions and poor performance of officials. This form of non-legislative means is more populist in character but has provided Guyana with a useful watchdog mechanism that is invaluable to government functioning, protecting scarce resources and exposing acts of corruption. Residents in these communities are vocal and vent their frustrations but also propose some new approaches and anticipate that there will be results.*

[476] *Legislation governing agencies and statutory bodies and the appointment of their Boards require that there is some representation of national stakeholders from civil society depending on the Board. The Broadcasting Board has a nominee from the Leader of the Opposition and one from civil society, the NPTA Board as described earlier has representatives of the private sector.*

[477] *If one totaled the lists of civil society bodies who were consulted in the appointment of the 4 Human rights commissions and the three Service Commissions, this would probably included(sic) over 300 csos.”*

[478] While the Committee takes note of these important examples of civil society consultation carried out by the country under review, the Committee reiterates the importance of the establishment of a legal framework regulating the participation of civil society organizations in public administration, including consultation, especially with regard to anti-corruption issues.

[479] Given the foregoing, the Committee takes note of the steps taken by the country under review to advance with implementation of Recommendation 4.3.1 of Chapter IV, Section 4 of this report and of the need for the State to continue giving attention thereto.

Recommendation 4.3.2 formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Design and implement programs to publicize consultation mechanisms, and when appropriate, provide civil society, nongovernmental organizations and public officials and employees with the training and instruments necessary for effective implementation of those mechanisms.

[480] In its Response,²³¹ the country under review provides the following information regarding the foregoing recommendation:

[481] *“The implementation of the ATI [Access to Information] Act will call for training of the staff in various government agencies as well as public awareness programmes.*

[482] *Through exposure to a broad sphere of consultations and communication, public officials are more comfortable with this approach to policy making and problem solving described in the section above. Training is also on-going.”*

²³¹ *Ibid.*, p. 63.

[483] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing Recommendation 4.3.2 of Chapter IV, Section 4 of this report and of the need for the State to continue giving attention thereto.

4.4. Mechanisms to encourage participation in public administration

Recommendation formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

The Committee considered it useful to formulate recommendations 4.3.1 and 4.3.2 of this section with respect to the mechanisms to encourage participation in the public administration.

[484] In its Response,²³² the country under review provides the following information regarding the foregoing recommendation:

[485] *“This is an on-going process with new initiatives and innovations being tried to improve and build trust and confidence in the legislative, judicial and executive branches of government.”*

[486] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing Recommendation 4.4 of Chapter IV, Section 4 of this report and of the need for the State to continue giving attention thereto.

[487] At the same time, it is worth mentioning that during the on-site visit, the Guyana Association of Women Lawyers (GAWL) stated that *“GAWL does not actively participate in the government's decision making process. Participation is limited to consultations. In light of Article 13 of the Constitution of Guyana, which states the objective of our political system to be that of establishing an inclusionary democracy by providing increasing opportunities for the participation of citizens, and their organisations in the management and decision-making processes of the State GAWL recommends that there be institutional arrangements for consultation. Permanent or ad hoc advisory bodies and commissions that include CSOs should be established to contribute to anti-corruption policy formation and implementation.”*²³³

4.5. Mechanisms to encourage participation in the follow-up of public administration

Recommendation formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

The Committee considered it useful to formulate recommendations 4.3.1 and 4.3.2 of this section with respect to the mechanisms to encourage participation in the public administration.

[488] In its Response,²³⁴ the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as steps that contribute to progress in implementation of the recommendation, the following:

²³² *Ibid.*, p. 64.

²³³ See the presentation of the Guyana Association of Women Lawyers (GAWL), pp. 4 and 5. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_GAWL.pdf

²³⁴ See Guyana's response to the Fourth Round questionnaire, pp. 60 and 61.

[489] – *The new role of the Governance Unit in the Office of the President, which is moving from an ad-hoc coordination of state party reports to the IACC and other international conventions to a more formal coordination mechanism.*

[490] *This new coordination Mechanism will be a standing inter-agency headed by the Presidential Advisor on Governance and which will comprise of representatives from the Ministry of Finance, the Ministry of Legal Affairs, the Ministry of Foreign Affairs, the Ministry of Home Affairs, the Audit Office of Guyana, the Office of the Director of Public Prosecution, the NPTA, the Financial Intelligence Unit, the Guyana Revenue Authority, the Bankers' Association of Guyana and the Public Service Commission.*

[491] *As needs be representatives may be invited to specific meetings from the private sector, the Institute of Chartered Accountants and Institute of Internal Auditors or any other civil society body.*

[492] The Committee takes note of this important development presented by the country under review; however, it notes that the participation of civil society organizations in this new mechanism is limited to participation on an ad-hoc basis.

[493] Given the foregoing, the Committee takes note of the steps taken by the country under review to advance with implementation of Recommendation 4.5 of Chapter IV, Section 4 of this report and of the need for the State to continue giving attention thereto.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

Recommendation 5.1 formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Ensure that both the mutual assistance treaties signed and the Convention are applied in specific cases of corruption (the basis for this recommendation is found in section 5.1.2 of Chapter II of the First Round Report).

[494] In its Response,²³⁵ the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as steps that contribute to progress in implementation of the recommendation, the following:

[495] *“Guyana reported in the Third Round Review of the MESICIC that Guyana ratified the Inter-American Convention on Mutual Assistance in Criminal Matters, the UN Convention on Corruption and the CARICOM Cooperation Treaty on Matters of Mutual Criminal Matters. The latter was enacted into domestic legislation.*

[496] (...)

[497] *No country has sought assistance from Guyana under the auspices of the Inter-American Convention against Corruption.”*

[498] It is difficult for the Committee to determine the implementation of this recommendation in the absence of requests for mutual legal assistance formulated to Guyana regarding corruption offences.

²³⁵ *Ibid.*, pp. 67-71.

[499] Given the foregoing, the Committee takes note of the steps taken by the country under review to advance with implementation of Recommendation 5.1 of Chapter IV, Section 5 of this report and of the need for the State to continue giving attention thereto.

Recommendation 5.2 formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Promote the adoption and effective application of the Mutual Assistance in Criminal Matters Bill (the basis for this recommendation is found in section 5.1.2 of Chapter II of the First Round Report).

[500] In its Response,²³⁶ the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as steps that contribute to progress in implementation of the recommendation, the following:

[501] *“Efforts are on going to ensure that the Mutual Assistance in Criminal Matters Act is being effectively utilized for the purposes of fighting crime and apprehending persons accused of acts of corruption.*

[502] *The Office of the Minister of Home Affairs has transmitted requests for assistance to Central Authorities under the Mutual Assistance in Criminal Matters Act 2009 in respect of Guyanese citizens accused under section 191 of the Criminal Law (Offences) Act, Cap 8:01 in respect of embezzlement by a clerk or servant as follows:*

[503] *Trinidad and Tobago (2010)- locating the accused in requested country for the purpose of prosecution in Guyana;*

[504] *Suriname and Bolivarian Republic of Venezuela (2011)- ditto; and*

[505] *United States of America (2011) - ditto.*

[506] *These requests have not led to the institution of charges against the individuals as they have not been located.*

[507] *No country has sought assistance from Guyana under the auspices of the Inter-American Convention against Corruption.”*

[508] As noted above, it is difficult for the Committee to determine the implementation of this recommendation in the absence of requests for mutual legal assistance formulated to Guyana regarding corruption offences.

[509] Given the foregoing, the Committee takes note of the steps taken by the country under review to advance with implementation of Recommendation 5.2 of Chapter IV, Section 5 of this report and of the need for the State to continue giving attention thereto.

Recommendation 5.3 formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

²³⁶ *Ibid.*, p. 71.

Determine and prioritize specific areas where technical cooperation by other States party might be useful in strengthening their capacities for preventing, detecting, investigating and punishing acts of corruption (the basis for this recommendation is found in section 5.2.2 of Chapter II of the First Round Report).

[510] In its Response,²³⁷ the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as steps that contribute to progress in implementation of the recommendation, the following:

[511] *“Guyana as part of CARICOM has been receiving technical assistance under the US Caribbean Basin Security Initiative. The UNODC also assists. The GoG/IDB Citizen Security Programme (loan agreement) has contributed to improvements in citizen security. Guyana also benefits from assistance from bi-lateral cooperation agreements and multilateral developmental partners.”*

[512] It is difficult for the Committee to determine, in the absence of additional information, how these initiatives are strengthening Guyana’s capacities for preventing, detecting, investigating and punishing acts of corruption.

[513] Given the foregoing, the Committee takes note of the steps taken by the country under review to advance with implementation of Recommendation 5.3 of Chapter IV, Section 5 of this report and of the need for the State to continue giving attention thereto.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

Recommendation 6.1 formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Appoint the Central Authority provided for in Article XVIII of the Convention for the purposes of international assistance and cooperation foreseen therein, either through approval of the provisions in this area found in the Mutual Assistance in Criminal Matters Bill referred to in the response to the questionnaire, or by taking the appropriate administrative decisions (the basis for this recommendation is found in section 6.2 of Chapter II of the First Round Report).

[514] In its Response,²³⁸ the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as a step which allow it to conclude that this recommendation has been satisfactorily considered, the following:

[515] *“The Minister of Home Affairs has been designated as the Central Authority for Guyana pursuant to section 3(1) of the Mutual Assistance in Criminal Matters Act 2009 which would extend to the transmission and receipt of requests for assistance envisaged under the Convention.”*

[516] The Committee takes note of the satisfactory consideration by the country under review of Recommendation 6.1 formulated in Chapter IV, Section 6 of this report.

Recommendation 6.2 formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

²³⁷ *Ibid.*, p. 75.

²³⁸ *Ibid.*, p. 74.

Formally notify the General Secretariat of the OAS the appointment of the central authority, pursuant to the prescribed formalities (the basis for this recommendation is found in section 6.2 of Chapter II of the First Round Report).

[517] In its Response,²³⁹ the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as a step which allow it to conclude that this recommendation has been satisfactorily considered, the following:

[518] *“The General Secretary of the Organization of the American States has been notified of the designation of the Minister of Foreign Affairs as the Central Authority for Guyana for the purposes of international assistance and cooperation, pursuant to Article XV111 of the Inter-American Convention Against Corruption on June 10, 2011”*

[519] The Committee takes note of the satisfactory consideration by the country under review of Recommendation 6.2 formulated in Chapter IV, Section 6 of this report.

Recommendation 6.3 formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Ensure that once the authority has been appointed it has the resources it needs to adequately fulfill its functions (the basis for this recommendation is found in section 6.2 of Chapter II of the First Round Report).

[520] In its Response,²⁴⁰ the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as a step which allow it to conclude that this recommendation has been satisfactorily considered, the following:

[521] *“The Office of the Minister of Home Affairs is adequately staffed and equipped to function as the Central Authority under the Mutual Assistance in Criminal Matters Act 2009.*

[522] *The Office of the Minister of Foreign Affairs is adequately staffed and receives additional support from the Governance Unit of the Office of the President, the Minister of Home Affairs and the Secretary to the Cabinet.”*

[523] The Committee also notes that the Ministry of Home Affairs, at the time of preparation of this report, was in the process of hiring a Treaty Officer to provide, among others, guidance to the Minister and to act on all matters pertaining to Mutual Legal Assistance Treaties in criminal matters to which Guyana is Party.²⁴¹

[524] The Committee takes note of the satisfactory consideration by the country under review of Recommendation 6.3 formulated in Chapter IV, Section 6 of this report.

7. GENERAL RECOMMENDATIONS

²³⁹ *Ibid.*, p. 75.

²⁴⁰ *Ibid.*, p. 74.

²⁴¹ See: http://eprocare.gov.gy/index.php?option=com_content&view=article&id=989:vacancy&catid=93:home-affairs&Itemid=171

Recommendation 7.1 formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Design and implement, as appropriate, training programs for public officials responsible for applying the systems, standards, measures and mechanisms considered in this report, to guarantee that they are properly understood, handled and applied.

[525] In its Response,²⁴² the country under review provides the following information regarding the foregoing recommendation:

[526] *“With the introduction of the manuals that have been provided in this report and which are available on the relevant websites, these have all been accompanied by training programmes in the relevant agencies to ensure that the users properly understand, handle and apply these manuals. This is on-going.”*

[527] The Committee notes, however, that as indicated in previous sections of this Report, the training activities analyzed were not specifically related to the topics under review in the First Round, such as conflicts of interest, systems for registering income, assets and liabilities, access to information, among others.

[528] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing Recommendation 7.1 of Chapter IV, Section 7 of this Report.

Recommendation 7.2 formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Select and develop procedures and indicators, as appropriate, for verifying follow-up of the recommendations contained in this report, and notify the Committee accordingly through the Technical Secretariat. For said purposes, Guyana could take into account the list of broader indicators applicable to the inter-American system that were available for selection, as necessary, by the State under review, and which have been published by the Technical Secretariat of the Committee on the OAS Internet website. The State under review could also take into account any information arising from the review of mechanisms developed pursuant to recommendation 7.3 below.

[529] In its Response,²⁴³ the country under review provides the following information regarding the foregoing recommendation:

[530] *“At the completion of each round, the report is circulated to the Cabinet members and to the Heads of the relevant agencies to familiarize with the recommendations and to encourage where possible amendments, changes as a follow-up. These issues are brought on to the agenda of the Cabinet sub-Committee on Governance, External and Parliamentary Affairs in order to move these issues to the various stages of decision-making.*

[531] *In preparation of this response to the questionnaire of the IV Review Round, the relevant agencies (the Auditor General, the NPTA, the MOF, the MOHA, the DPP, the Attorney General, the Police , the Public Service Commission) have contributed to the contents of this document.”*

²⁴² See Guyana’s response to the Fourth Round questionnaire, p. 77.

²⁴³ *Ibid.*, p. 79.

[532] Given that the information provided by the country under review does not specifically address the development of procedures and indicators for verifying follow-up of the recommendations contained in the First Round report, the Committee reiterates the need for the country under review to give additional attention to implementing Recommendation 7.2 of Chapter IV, Section 7 of this Report.

Recommendation 7.3 formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Implement the recommendations contained in this report and develop, as appropriate and where none exist, procedures to review the mechanisms mentioned herein.

[533] In its Response,²⁴⁴ the country under review provides the following information regarding the foregoing recommendation:

[534] *“The information in this report indicated what efforts have been made.”*

[535] As previously indicated in Sections 1.2; 2.2.; and 3.2 of Chapter II of this Report, the Committee believes that Guyana would benefit from establishing an articulated anti-corruption strategy. The Committee further believes that one of the aspects of this strategy should be a comprehensive review of the recommendations formulated by the MESICIC.

[536] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing Recommendation 7.3 of Chapter IV, Section 7 of this Report.

Recommendation 7.4 formulated by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Optimize the general statistical records of the oversight bodies so as to allow objective review of the results of the legal framework and other measures that are adopted.

[537] In its Response,²⁴⁵ the country under review provides the following information regarding the foregoing recommendation:

[538] *“This is on-going as indicated in the Third Round Review para 201 with improved connectivity and the computerization of the government management information systems. The e-governance(sic) project in train now will provide greater capabilities and more timely access to data and provision of statistics in a more timely manner.”*

[539] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing Recommendation 7.4 of Chapter IV, Section 7 of this Report.

²⁴⁴ *Ibid.*, p. 80.

²⁴⁵ *Ibid.*, p. 81.

ANNEX I

OUTSTANDING AND REFORMULATED RECOMMENDATIONS REGARDING THE TOPICS REVIEWED IN THE FIRST ROUND

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct to prevent conflicts of interest and mechanisms to enforce them

Recommendation:

Consider strengthening the implementation of the provisions on conflicts of interest, and ensure that the laws on this matter are applicable to all public officials and employees, so as to permit the practical and effective application of a public ethics system.

Suggested Measures:

- a) Formulate specific standards, when appropriate, to limit the actions of public servants in specific situations, in accordance with the functions and activities of each institutions and the specific nature and importance of the different offices, and mechanisms for enforcing them.
- b) Broaden the functions of the Integrity Commission to include an advisory/consultative role regarding conflicts of interest, in order to allow it to receive and respond to consultations from persons in public life on these issues.
- c) Strengthen the relevant bodies, in order to improve their ability to ensure compliance with the requisites defined for the office and seek to ensure that no appointments are made in the public service that are contrary to the rules in force on ineligibility and incompatibility.
- d) Develop, when necessary, other mechanisms to identify or detect any causes that might occur in the course of the exercise of public functions and that might give rise to conflicts of interest, such as officials declaring their private interests.
- e) Develop, when necessary, provisions that restrict the participation of former public officials in situations that involve taking undue advantage of that condition, for a reasonable period of time.
- f) Consider strengthening the rules in force governing sanctions, incorporating other types of administrative sanctions other than those already envisaged, such as suspension, the relinquishment of the private interests in conflict, nullity of any decisions by a person in such a position; and withdrawal from official involvement in the matter.

1.2. Standards of conduct and mechanisms to ensure the proper conservation and use of resources entrusted to government officials

Recommendation:

Perform a comprehensive analysis on the causes for the persistent overpayment to contractors and to staff indicated in the Annual Reports of the Audit Office of Guyana, and take the necessary action to

address the issue, ensuring that there are systems in place to avoid the reoccurrence of overpayments, as well as to vigorously pursue the recovery of the amounts overpaid.

1.3. Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

Recommendation:

Consider strengthening the existing mechanisms that require public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware to the appropriate authorities.

Suggested Measures:

- a) Establish measures and systems that require all public servants to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, and facilitate compliance with this obligation through whatever measures are considered appropriate.
- b) Adopt and implement protection measures for public servants to encourage them to report acts of corruption in good faith.
- c) Review the application of the provision contained in section 28(3) of the Integrity Commission Act, in order to ensure that it does not become an impediment to, or inhibit, discourage, or intimidate public officials from reporting acts of corruption in the performance of public functions of which they are aware.
- d) Implement adequate measures, including training for public servants on how to report acts of corruption, and the requisites for reporting them, and on protection mechanisms for those who report such cases in good faith.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)

Recommendation:

Consider strengthening the systems for declaring income, assets and liabilities.

Suggested Measures:

- a) Maximize the use of systems to study the contents of the declarations of income, assets and liabilities, and adopt suitable measures to detect and prevent conflicts of interest and cases of illicit enrichment, using modern technologies, whenever possible, to expedite their presentation and improve systems, analysis or investigation of cases, bearing in mind the pertinent articles of the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”²⁴⁶
- b) Consider the possibility of making adjustments or legal reforms to the power granted by the Integrity Commission Act to the Commission or the Chairman, whichever is applicable, in order to impose the appropriate administrative sanctions without the authorization of another organ or official.

²⁴⁶ Text available at: http://www.oas.org/juridico/PDFs/model_law_declaration.pdf

- c) Enforce the sanctions already in place in the Integrity Commission Act and consider implementing additional sanctions and other types of penalties, such as the disqualification from public service in cases where the declaring official left office without submitting a final disclosure, with a view to ensure that the penalties in force are sufficiently dissuasive, bearing in mind the pertinent articles of the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions”.²⁴⁷
- d) Establish the appropriate sanctions for non-compliance of submission of names and other updated information of declarants by Public Offices as per Schedule 1 of the Integrity Commission Act 1997 on a yearly basis.
- e) Review the possibility of extending the five-year term established in section 23 (b) of the Integrity Commission Act as a limit for instituting legal proceedings in respect of such unlawful acts committed by an official who no longer performs public functions.
- f) Consider the advisability of granting to a body or official other than the President the administration, verification and application of the system for declaring assets and liabilities in respect of members of the Integrity Commission.
- g) Regulate the conditions, procedures and other relevant aspects as regards making disclosures of income, assets, and liabilities public, as appropriate, in accordance with the fundamental principles of the domestic legal system.

3. OVERSIGHT BODIES RESPONSIBLE FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4, AND 11 OF THE CONVENTION)

Recommendation:

Consider strengthening or creating oversight bodies to enforce compliance with the provisions of Chapter III, paragraphs 1, 2, 4 and 11 of the Convention, providing them with the resources needed to carry out their functions in full and establishing the mechanisms necessary for the institutional coordination of their actions and their periodic evaluation and follow-up

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11)

4.1. General participation mechanisms

Recommendation:

Consider the need for Guyana to reassess and strengthen its general approach for encouraging the participation of civil society and non-governmental organizations in efforts to prevent corruption.

4.2 Mechanisms for access to information

Recommendation:

²⁴⁷ Text available at: http://www.oas.org/juridico/PDFs/model_law_declaration.pdf

Strengthen the mechanisms for ensuring public access to information.

Suggested Measures:

- a) Provide the Commissioner of Information with the human and financial resources it needs for the proper performance of its functions, bearing in mind the availability of resources.
- b) Give special consideration to the implementation of Section 45 of the Access to Information Act regarding programs to educate the public on the importance of access public information and on how to exercise their rights under the Act.
- c) Issue the Regulations to the Access to Information Act 2011, bearing in mind that they should not include further restrictions or exemptions other than those found in the Act.
- d) Consider the possibility of shortening the time-limits established in Section 18 of the Access to Information Act 2011, with a view to make it a more expeditious process.
- e) Create and maintain a website for the Office of the Commissioner of Information and make use of this or other electronic means to receive and respond to requests for access to information under the Act.
- f) Maintain and publish statistics on the implementation of the Act, such as how many requests have been received by the Commissioner of Information, how many were denied and the reasons for denial, how many were granted or partially granted, how many public authorities have failed to comply with the requirements of the Act, and how many sanctions were applied, in order to identify challenges and recommend corrective measures.
- g) Consider the creation or adoption of systems to ensure that the public has access, when appropriate, to information on public government organizations and their financial and program planning activities, specifically including oversight bodies responsible for matters covered by this report.

4.3. Mechanisms for consultation

Recommendation 4.3.1:

Develop laws and procedures capable of supporting consultation mechanisms to encourage civil society organizations and citizens to provide opinions and proposals to be taken into account.

Recommendation 4.3.2:

Design and implement programs to publicize consultation mechanisms, and when appropriate, provide civil society, nongovernmental organizations and public officials and employees with the training and instruments necessary for effective implementation of those mechanisms.

4.4. Mechanisms to encourage participation in public administration

Recommendation:

The Committee considered it useful to formulate recommendations 4.3.1 and 4.3.2 of this section with respect to the mechanisms to encourage participation in the public administration.

4.5. Mechanisms for participation in the follow up of public administration

Recommendation:

The Committee considered it useful to formulate recommendations 4.3.1 and 4.3.2 of this section with respect to the mechanisms to encourage participation in the public administration.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendation 5.1:

Ensure that both the mutual assistance treaties signed and the Convention are applied in specific cases of corruption.

Recommendation 5.2:

Promote the adoption and effective application of the Mutual Assistance in Criminal Matters Act.

Recommendation 5.3:

Determine and prioritize specific areas where technical cooperation by other States party might be useful in strengthening their capacities for preventing, detecting, investigating and punishing acts of corruption

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

Design and implement, as appropriate, training programs for public officials responsible for applying the systems, standards, measures and mechanisms considered in this report, to guarantee that they are properly understood, handled and applied.

Recommendation 7.2:

Select and develop procedures and indicators, as appropriate, for verifying follow-up of the recommendations contained in this report, and notify the Committee accordingly through the Technical Secretariat. For said purposes, Guyana could take into account the list of broader indicators applicable to the inter-American system that were available for selection, as necessary, by the State under review, and which have been published by the Technical Secretariat of the Committee on the OAS Internet website. The State under review could also take into account any information arising from the review of mechanisms developed pursuant to recommendation 7.3 below.

Recommendation 7.3:

Implement the recommendations contained in this report and develop, as appropriate and where none exist, procedures to review the mechanisms mentioned herein.

Recommendation 7.4:

Optimize the general statistical records of the oversight bodies so as to allow objective review of the results of the legal framework and other measures that are adopted.

ANNEX II

**AGENDA OF THE ON-SITE VISIT TO THE
CO-OPERATIVE REPUBLIC OF GUYANA**

<u>Monday, October 7, 2013</u>	
10:00 am – 11:00 am <i>Cara Lodge Guyana</i>	Coordination meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
11:00 am – 12:00 pm <i>Cara Lodge Guyana</i>	Coordination meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat.
<u>Tuesday, October 8, 2013</u>	
9:00 am – 10:30 am <i>Cara Lodge Guyana</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers.²⁴⁸
	<p>Topic:</p> <ul style="list-style-type: none"> • Civil society perspectives on government oversight bodies that prevent, detect, punish and eradicate corrupt acts.
	<p><u>Participants:</u></p> <p><i>Transparency Institute of Guyana (TIGI)</i> Mr. Anand Goolsarran, <i>President</i> Mr. Gino Persaud, <i>Director</i> Mr. Clifton Nigel Hinds, <i>Director</i></p> <p><i>Institute of Chartered Accountants of Guyana (ICAG)</i> Mr. Ronald Alli, <i>President</i> Mr. Ramesh Lal, <i>Council Member</i></p> <p><i>Guyana Association of Women Lawyers (GAWL)</i></p>

²⁴⁸ The civil society organization “Transparency Institute of Guyana Inc. – Guyana Chapter of Transparency International” participates in these meetings pursuant to the provisions of item 26 of the Methodology for Conducting On-Site Visits, inasmuch as it presented a document related to the Questionnaire for the Fourth Round of Review, as provided in Article 34 b) of the *Committee’s Rules of Procedure*. It is suggested that other organizations and individuals be invited to attend, as envisaged in item 27 of the above Methodology, which permits the invitation to these meetings of civil society organizations and/or, *inter alia*, private sector organizations, professional associations, academics, or researchers.

	<p>Mrs. Simone Morris Ramlall, <i>President</i> Mrs. Sadie Amin, <i>Vice President</i> Ms. Chandrawattie Persaud, <i>Committee Member</i> <i>Consultative Association of Guyanese Industry Ltd. (CAGI)</i> Mr. S. J. Goolsarran, <i>Executive Director</i> Mr. Chandradat Chintamani, <i>Counsellor</i> <i>Georgetown Chamber of Commerce and Industry (GCCCI)</i> Mr. Clinton Urling, <i>President</i> <i>Federation of Independent Trade Unions of Guyana</i> Mr. Seepaul Narine, <i>Treasurer</i></p>
<p>10:45 am – 12:30 pm <i>Cara Lodge Guyana</i></p>	<p>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers.</p>
	<p>Topic: Follow-up on first-round recommendations</p> <ul style="list-style-type: none"> • Conflicts of Interest. • Systems for Registering Income, Assets and Liabilities. • Access to Public Information. • Mechanisms to Encourage Participation of Civil Society in Efforts to Prevent Corruption.
	<p><u>Participants:</u> <i>Transparency Institute of Guyana (TIGI)</i> Mr. Anand Goolsarran, <i>President</i> Mr. Gino Persaud, <i>Director</i> Mr. Clifton Nigel Hinds, <i>Director</i> <i>Institute of Chartered Accountants of Guyana (ICAG)</i> Mr. Ronald Alli, <i>President</i> Mr. Ramesh Lal, <i>Council Member</i> <i>Guyana Association of Women Lawyers (GAWL)</i> Mrs. Simone Morris Ramlall, <i>President</i> Mrs. Sadie Amin, <i>Vice President</i> Ms. Chandrawattie Persaud, <i>Committee Member</i> <i>Consultative Association of Guyanese Industry Ltd. (CAGI)</i></p>

	<p>Mr. S. J. Goolsarran, <i>Executive Director</i> Mr. Chandradat Chintamani, <i>Counsellor</i> Georgetown Chamber of Commerce and Industry (GCCCI) Mr. Clinton Urling, <i>President</i> Federation of Independent Trade Unions of Guyana Mr. Seepaul Narine, <i>Treasurer</i></p>
12:30 pm – 2:00 pm	Lunch
2:00 pm – 5:00 pm <i>Cara Lodge Guyana</i>	Audit Office
2:00 pm – 3:20 pm	<p>Panel 1:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Exceptions to the Jurisdiction of the Auditor General • Tenure of the Auditor General • Human Resources • Training/Forensic Audit Unit • Internal Control Mechanisms • Accountability Mechanisms/Strategic and Annual Plans <p><u>Participants:</u> Mr. Deodat Sharma, <i>Auditor General</i> Mr. Sheldon Hazelwood, <i>Human Resources Manager</i> Mr. Dhanraj Persaud, <i>Manager (ag.) Forensic Audit Unit</i> Mr. Lakeram Ramkoomar, <i>Audit Manager</i> Mr. Philip Smith, <i>Director, Works and Structures</i> Mr. Heeralal Gendon, <i>Finance Manager</i> Mr. Rohit Kalicharan, <i>Information Systems Manager</i> Mr. Bryan Viera, <i>Fraud Investigator</i></p>
3:30 pm – 5:00 pm	<p>Panel 2:</p> <ul style="list-style-type: none"> • Coordination with other Government bodies in Compliance with its Mandates • Budgetary Regime

	<ul style="list-style-type: none"> • Results Obtained in the Performance of its Duties • Difficulties in Attaining its Goals
	<p><u>Participants:</u></p> <p>Mr. Deodat Sharma, <i>Auditor General</i></p> <p>Mr. Sheldon Hazelwood, <i>Human Resources Manager</i></p> <p>Mr. Dhanraj Persaud, <i>Manager (ag.) Forensic Audit Unit</i></p> <p>Mr. Lakeram Ramkoomar, <i>Audit Manager</i></p> <p>Mr. Philip Smith, <i>Director, Works and Structures</i></p> <p>Mr. Heeralal Gendon, <i>Finance Manager</i></p> <p>Mr. Rohit Kalicharan, <i>Information Systems Manager</i></p> <p>Mr. Bryan Viera, <i>Fraud Investigator</i></p>
5:00 pm	Informal meeting ^{249/} between the representatives of the member states of the subgroup and the Technical Secretariat.
<u>Wednesday, October 9, 2013</u>	
08:30 am – 10:30 am <i>Cara Lodge Guyana</i>	Public Service Commission (PSC)
	<p>Panel 3:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Public Service Rules • Human Resources • Training • Budgetary Regime • Internal Control Mechanisms • Results of Disciplinary Proceedings/Coordination with other Government Bodies • Accountability Mechanisms • Follow-Up Recommendations of the First Round <p>- Conflicts of Interest</p>

²⁴⁹. The second paragraph of provision 20 of the *Methodology for Conducting On-site Visits* states: “At the conclusion of the meetings on each day of the on-site visit, the Technical Secretariat shall organize an informal meeting with the members of the Subgroup, to exchange preliminary points of view on the topics addressed at those meetings.”

	<p><u>Participants:</u> Mr. Carvil Duncan, <i>Chairman</i> Mr. Cecil Seepersaud, <i>Member</i> Mr. Michael Desmond Hope, <i>Member</i> Ms. Vedyawattie Looknauth, <i>Member</i> Mr. Jaigobin Jaisingh, <i>Secretary</i> Ms. La Vaughn Stewart, <i>Principal Personnel Officer</i></p>
10:45 am – 1:15 pm <i>Cara Lodge Guyana</i>	Office of the Director of Public Prosecutions (DPP)
10:45 am – 11:45 am	<p>Panel 4:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Training • Internal Control Mechanisms • Accountability Mechanisms • Coordination with other Government Bodies in Compliance with its Mandates
	<p><u>Participants:</u> Mrs. Shalimar Ali-Hack, <i>Director of Public Prosecutions</i> Ms. Jo-Ann Barlow, <i>Deputy Director of Public Prosecutions</i> Ms. Merlyne Lall, <i>Administrative Officer</i></p>
12:00 pm – 1:15 pm	<p>Panel 5:</p> <ul style="list-style-type: none"> • Budgetary Regime • Results Obtained in the Performance of its Duties • Difficulties in Attaining its Goals
	<p><u>Participants:</u> Mrs. Shalimar Ali-Hack, <i>Director of Public Prosecutions</i> Ms. Jo-Ann Barlow, <i>Deputy Director of Public Prosecutions</i> Ms. Merlyne Lall, <i>Administrative Officer</i></p>
1:15 pm – 2:45 pm	Lunch

<p>3:00 pm – 4:45 pm <i>Judicial Service Commission</i></p>	<p>Judicial Service Commission (JSC)</p>
	<p>Panel 6:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Judicial Service Rules • Human Resources • Training • Budgetary Regime • Internal Control Mechanisms • Results of Disciplinary Proceedings/Coordination with other Government Bodies • Accountability Mechanisms <p><u>Participants:</u> Mr. Carl A. Singh, <i>Chancellor of the Judiciary(ag) and Chairman of the JSC</i> Mr. Ian Chang, <i>Chief Justice, Member of the JSC</i> Mr. Carvil Duncan , <i>Chairman of the Public Service Commission and ex-officio member of the JSC</i></p>
<p>5:00 pm</p>	<p>Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.</p>
<p><u>Thursday, October 10, 2013</u></p>	
<p>08:30 am – 10:30 am <i>Cara Lodge Guyana</i></p>	<p>Integrity Commission</p>
	<p>Panel 7:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Follow-Up Recommendations of the First Round: <ul style="list-style-type: none"> - Conflicts of Interest - Systems Requiring Government Officials to Report Acts of Corruption

	<p>- Oversight Bodies</p> <p><u>Participants:</u> Mrs. Amanda Jaisingh, <i>Secretary/Chief Executive Officer</i> Mrs. Vidyantie Pritipaul, <i>Accounts Clerk</i></p>
<p>10:45 am – 12:30 pm <i>Cara Lodge Guyana</i></p>	<p>Office of the Commissioner of Information</p>
	<p>Panel 8:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Follow-Up Recommendations of the First Round: <ul style="list-style-type: none"> - Mechanisms for Access to Information <p><u>Participants:</u> Mr. Charles R. Ramson, <i>Commissioner of Information</i></p>
<p>12:30 pm – 2:00 pm</p>	<p>Lunch</p>
<p>2:00 pm – 4:00 pm <i>Cara Lodge Guyana</i></p>	<p>National Procurement and Tender Administration Board</p>
	<p>Panel 9:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Human Resources • Training • Internal Control Mechanisms • Accountability Mechanisms • Budgetary Regime • Results Obtained in the Performance of its Duties/ Difficulties in Attaining its Goals <p><u>Participants:</u> Mr. Donald DeClou, <i>Chairman</i> Ms. Lavern Lawrence, <i>Deputy Chairwoman</i> Mr. Ron Rahaman, <i>Chief Roads & Bridges Officer/ Board Member</i> Mr. Michael DeJonge, <i>Training Coordinator/Procurement Specialist</i></p>

	Mr. Arvind Parag, <i>Head, Information Technology</i>
4:00 pm – 4:30 pm	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
4:30 hrs. – 5:30 pm	Final meeting ^{250/} between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat.

²⁵⁰. The third paragraph of provision 20 of the *Methodology for Conducting On-site Visits* states: “At the end of the on-site visit, a meeting shall be held, to be attended by the Subgroup experts, the Technical Secretariat, and the Lead Expert of the State under review and/or the official appointed in his stead in accordance with rule 10, second paragraph, of this Methodology. That meeting shall identify, if applicable, the information that, for whatever reason, the State under review is still to submit through the Technical Secretariat and the deadline within which it is to do so, and it shall also coordinate any other pending matters arising from the on-site visit.”

**CONTACT AUTHORITY FROM THE COUNTRY UNDER REVIEW FOR
COORDINATION OF THE ON-SITE VISIT, AND REPRESENTATIVES OF THE
MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP AND THE
TECHNICAL SECRETARIAT OF THE MESICIC**

COUNTRY UNDER REVIEW:

CO-OPERATIVE REPUBLIC OF GUYANA

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Presidential Advisor on Governance

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TRINIDAD AND TOBAGO

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