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COOPERATIVE REPUBLIC OF GUYANA

FINAL REPORT
(Adopted at the March 15, 2018 plenary session)

SUMMARY

This report contains a comprehensive review of the implementation of the recommendations formulated to the Cooperative Republic of Guyana in the Second Round Report with respect to paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption. These provisions refer, respectively, to systems for hiring public servants and procurement of government goods and services and to protecting public servants and private citizens who in good faith report acts of corruption, as well as to legal characterization of the acts of corruption contemplated in Article VI of the Convention. The report also makes reference, where appropriate, to new developments in implementing those provisions.

The report also includes comprehensive analysis of the implementation in Guyana of paragraphs 3 and 12 of Article III, regarding, respectively, measures to establish, maintain, and strengthen instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, and the study of other preventive measures that take into account the relationship between equitable compensation and probity in public service, which were selected by the MESICIC Committee of Experts for the Fifth Round. Reference is also made to best practices reported by the country under review with respect to implementation of the provisions selected for the Second and Fifth Rounds.

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 Fifth Round, including the criteria set out therein for guiding the review based on equal treatment for all 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 mainly taking into account Guyana's Response to the Questionnaire and information gathered during the on-site visit conducted between September 26 to 28, 2017, by representatives of Belize and The Bahamas as member countries in the Guyana review subgroup in which, with the support of the Technical Secretariat of MESICIC, the information furnished by Guyana was clarified and supplemented with the opinions of civil society organizations on the issues under review.

With regard to the follow-up on the recommendations that were formulated to Guyana in the report from the Second Round which the Committee, in the Third Round Report, found required additional attention, based on the methodology for the Fifth Round and bearing in mind the information provided in the Response to the Questionnaire and during the on-site visit, the Committee made a determination as to which of those recommendations had been satisfactorily implemented, which required additional attention, which should be reframed, and which were no longer valid.

Noteworthy progress made with the implementation of those recommendation includes: the creation of the Public Procurement Commission to monitor government purchases and ensure that such goods and services procurement and works execution are done in accordance to law; and the drafting of proposed laws on whistleblower and witness protection: the 2016 Protected Disclosures Bill and the 2016 Witness Protection Bill, respectively.

Some of the recommendations formulated in the Second Round that remain valid or have been reformulated address issues as: adopting through appropriate legislative and/or administrative

procedures, provisions specifically stipulating that the hiring of public servants must, as a general rule, be based on merit; criteria governing the way that evaluations for entry into public service are conducted and ensuring that they are based on the principles of openness, equity, and efficiency required under the Convention; adopt such measures as are needed to install the Public Service Commission and endow it with the human and financial resources it needs to fulfill the function assigned to it under Article 201 (1) of the Constitution of appointing public servants; take the necessary steps to ensure that the Public Procurement Commission has the human, financial, and technological resources it needs for the proper performance of its functions, bearing in mind the resources available; develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means; and adopt comprehensive regulations on protection of public servants and private citizens who in good faith report acts of corruption.

In addition, based on the review of new developments in Guyana in relation to the implementation of the Convention provisions selected for the Second Round, the Committee also formulated recommendations on the following: adopt such measures as are needed to install the Public Service Commission and endow it with the human and financial resources it needs to fulfill the function assigned to it under Article 201 (1) of the Constitution of appointing public servants; adopt, through the competent authority, the measures needed to develop and implement websites for all government agencies that will, *inter alia*, publicize procedures relating to the hiring of public servants; develop a plan between the National Procurement and Tenders Administration and the Public Procurement Commission for the changeover of functions contemplated in Section 17(3) of the Procurement Act of 2003, so that those functions can be performed in a coordinated and appropriate manner; adopt the necessary measures to ensure that the National Procurement and Tenders Administration has the resources it needs to update the www.npta.gov.gy website and ensure that it is kept up to date in such a way that the general public can access information on important aspects of procurement activity; through the appropriate authority, and taking into account the criteria outlined in the “Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses”, adopted by the Committee, enact a comprehensive legal and regulatory framework that provides protection for public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with its Constitution and the basic principles of its domestic legal system; modify Section 338 (2) (a) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(1)(a) of the Convention, by incorporating therein, the elements of directly or indirectly accepting a bribe by a public servant or soliciting it; and modify Section 338 (2) (b) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(1)(b) of the Convention, by incorporating therein, the elements of directly or indirectly offering a bribe to a public servant.

For the analysis of the provision selected for the Fifth Round, which, as envisaged in Article III (3) of the Convention, concerns instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, in keeping with the methodology for this round, the country under review chose the personnel of the Department of Public Service and of the National Procurement and Tender Administration.

This review sought to determine whether, in relation to those groups of personnel, provisions and/or measures have been adopted to ensure proper understanding of their responsibilities and the ethical rules that govern their activities, the manner and timing of that instruction, the programs envisaged for that purpose, the bodies with responsibilities in that regard, and objective results obtained from the application of those provisions and/or measures governing the activities of the personnel of the

aforementioned institutions. At the same time it took note of any difficulties and/or shortcomings in accomplishing the object of that provision of the Convention.

Some of the recommendations formulated to the Cooperative Republic of Guyana in relation to the foregoing address purposes such as the following: establishment or identification of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of their responsibilities and functions and of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures that govern such matters.

In keeping with the above Methodology, the review of the second provision selected for the Fifth Round, envisaged in Article III (12) of the Convention, sought to determine whether the State has studied preventive measures that take into account the relationship between equitable compensation and probity in public service and whether it has established objective and transparent guidelines for determining civil servant remunerations. On that basis, it was recommended that Guyana consider, *inter alia*, it consider establishing a legal framework with respect to remuneration policy that establishes objective and transparent criteria to determine fair compensation for public servants in the entire public administration.

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

**FINAL REPORT ON FOLLOW-UP ON IMPLEMENTATION IN THE COOPERATIVE
REPUBLIC OF GUYANA OF THE RECOMMENDATIONS FORMULATED AND
PROVISIONS REVIEWED IN THE SECOND ROUND, AND ON THE PROVISIONS OF
THE CONVENTION SELECTED FOR REVIEW IN THE FIFTH ROUND^{1/}**

INTRODUCTION

1. Content of the Report

[1] As agreed upon by the Committee of Experts (hereinafter “the Committee”) of the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) at its Twenty-fourth Meeting,² this report will first refer to follow up on implementation of the recommendations formulated to the Cooperative Republic of Guyana in the Report from the Second Round, which the Committee found required additional attention in the Third Round Report. Those reports are posted on the following Internet website: <http://www.oas.org/juridico/english/guy.htm>

[2] Second, where applicable, it will refer to new developments in the Cooperative Republic of Guyana with regard to the provisions of the Inter-American Convention against Corruption (hereinafter “the Convention”) selected for the Second Round, and regarding such matters as the legal framework, technological developments and results, and, if applicable, appropriate observations and recommendations will be formulated.

[3] Third, it will address implementation of the provisions of the Convention selected by the Committee for the Fifth Round. Those provisions are contained in paragraphs 3 and 12 of Article III regarding, respectively, measures to establish, maintain, and strengthen “*instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities*”, and “*the study of preventive measures that take into account the relationship between equitable compensation and probity in public service.*”

[4] Fourth, it will refer to the best practices that the country under review wished voluntarily to share regarding implementation of the provisions of the Convention selected for the Second and Fifth Rounds.

2. Ratification of the Convention and adherence to the Mechanism

^{1/} This draft preliminary Report was prepared in accordance with Articles 23(a) and 28 of the Committee’s Rules of Procedure (SG/MESICIC/doc.9/02 rev. 5), and the [Methodology](#) for follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round and for the review of the provisions of the Convention selected for the Fifth Round (SG/MESICIC/doc.438/15 rev. 1) and the format for country reports (SG/MESICIC/doc.439/15 rev.1). These last two documents were adopted by the Committee at its Twenty-Fifth Meeting, held at OAS Headquarters in Washington D.C., United States of America, from March 16-20, 2015.

^{2/} See the Minutes of the 24th Meeting of the Committee, available at: http://www.oas.org/juridico/docs/XXIV_min.doc

[5] According to official records of the OAS General Secretariat, the Cooperative Republic of Guyana ratified the Inter-American Convention against Corruption on February 15, 2001.

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

I. SUMMARY OF INFORMATION RECEIVED

1. Response by the Cooperative Republic of Guyana

[7] The Committee wishes to acknowledge the cooperation that it received, throughout the review process, from the Republic Cooperative of Guyana and in particular from the State Asset Recovery Agency, 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 reference is made below. Together with its response, Guyana sent the provisions and documents it considered pertinent.³

[8] The Committee also notes that the Cooperative Republic of Guyana gave its consent for the on-site visit, in accordance with item 5 of the *Methodology for Conducting On-site Visits*.⁴ As members of the preliminary review subgroup, the representatives of Belize and The Bahamas conducted the on-site visit from September 26 - 28, 2017, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this report, and the agenda of meetings is attached thereto, in keeping with provision 34 of the above-mentioned *Methodology*.

[9] For its review, the Committee took into account the information provided by the Republic Cooperative of Guyana up to September 28, 2017, as well as that furnished and requested by the Technical Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure⁵; the Methodology for Follow-up on the Implementation of the Recommendations Formulated and Provisions reviewed in the Second Round and for Analysis of the Convention Provisions Selected for the Fifth Round⁶; and the Methodology for Conducting On-Site Visits.

2. Documents and information received from civil society organizations and/or, inter alia, private-sector organizations, professional associations, academics, and researchers.

[10] The Committee did not receive documents from civil society organizations within the time frame established in the schedule for the Fifth Round, as envisaged by Article 34(b) of the Committee's Rules of Procedure.

[11] Furthermore, in the course of the on-site visit conducted in the country under review from September 26 -28, 2017, information was collected from other civil society organizations, professional associations, and academics invited to participate in meetings to that end, in keeping with the provisions contained in provision 27 of the *Methodology for Conducting On-site Visits*. A list of those persons is

³. Available at: http://www.oas.org/juridico/english/mesicic5_guy.htm

⁴. Available at: http://www.oas.org/juridico/english/met_onsite.pdf

⁵. Available at: http://www.oas.org/juridico/english/mesicic_rules.pdf

⁶. Available at: http://www.oas.org/juridico/PDFs/mesicic5_metodologia_sp.pdf

included in the agenda for that visit, which is appended hereto. Pertinent parts of this information are reflected in the appropriate sections of this report.

II. FOLLOW UP ON IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE SECOND ROUND AND NEW DEVELOPMENTS WITH REGARD TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THAT ROUND

[12] The Committee will first refer to progress made and new information and developments in the Republic Cooperative of Guyana with respect to the recommendations formulated and measures for their implementation suggested by the Committee in its Report from the Second Round,⁷ that were deemed to require additional attention in the report of the Third Round,⁸ and it will proceed to 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 Section V of the *Methodology* adopted by the Committee for the Fifth Round.

[13] In this section, the Committee will, where applicable, take note of any difficulties indicated by the country under review with implementing the recommendations and measures alluded to in the foregoing paragraph and of any technical cooperation requested by the State in that connection.

[14] Second, where applicable, it will refer to new developments in the Cooperative Republic of Guyana in respect of the provisions of the Convention selected for the Second Round regarding such matters as the regulatory framework, technological developments and outcomes, and will formulate any observations and recommendations that may be applicable.

1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

1.1. SYSTEMS FOR HIRING GOVERNMENT OFFICIALS

1.1.1. Follow up on Implementation of the Recommendations Formulated in the Second Round

Recommendation 1.1:

Establish, maintain and strengthen the systems of government hiring of public servants, when applicable, that assure the openness, equity and efficiency of such systems.

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

Adopt, through the appropriate legislative and/or administrative procedures, provisions that explicitly provide that government hiring into the Public Service is to be based on the principle of merit and set out criteria upon which the evaluation will be made.

⁷ Available at: http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

⁸ Available at: http://www.oas.org/juridico/english/mesicic3_guy_rep.pdf

[15] In its Response to the Questionnaire,⁹ the country under review provided the following information regarding the above measure:

[16] - *“Recruitment in the public service is open to all Guyanese. The system of recruitment and appointment is premised on the basis of merit where suitably qualified persons are selected for the filling of vacancies in accordance to the Job Description / Specification. The (PSC) Public Service Commission has the authority to recruit and make appointments. This was instituted under Article 201 (1) of the Constitution of the Cooperative Republic of Guyana.”*

[17] The Committee notes that the above information provided by the country under review in its Response to the Questionnaire had already been analyzed by the Committee in the Report of the Second Round of Review for Guyana.¹⁰ Furthermore, during the on-site visit, the country under review did not provide any additional and relevant information on the subject.

[18] In light of the above information, the Committee takes note of the need for the country under review to pay further attention to implementation of measure (a) of the recommendation made in Section 1.1.3 of Chapter II of this report. The Committee considers it worth reframing this recommendation so as to make it clearer. (see Recommendations 1.1.3.1 and 1.1.3.2 of Section 1.1.3 of Chapter II of this Report)

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

Consider the necessity of making examinations and/or interviews a mandatory requirement for all or some of the posts in the public service and also to establish mechanisms that provide clearly defined criteria on the manner in which these examinations and interviews would be carried out.

[19] In its Response to the Questionnaire,¹¹ the country under review provided the following information regarding the above measure:

[20] - *“It is statutory that the Commission will meet to conduct interviews. The PSC rule requires the implementation of a Competency Test. However, this is not widely practiced and is only done for certain categories of workers (vocational and Technical). This activity is supervised by the Senior Officers, who thereafter analyze the results”.*

[21] - *“The public service rule A5(1) provides for the selection of permanent appointment that the PSC may specify from time to time for candidates to take written competitive examinations, attend interviews and do practical tests, where necessary”.*

[22] The Committee notes that the previous information provided by the country under review in its Response to the Questionnaire had already been analyzed by the Committee in the Report of the

⁹ See Response of the Cooperative Republic of Guyana to the Questionnaire for the Fifth Round of Review, pg. 9, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

¹⁰ See Report on the Cooperative Republic of Guyana from the Second Round, pg. 2, http://www.oas.org/juridico/spanish/mesicic_II_inf_guy_sp.pdf

¹¹ See Response of the Cooperative Republic of Guyana to the Questionnaire for the Fifth Round of Review, pg. 12, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

Second Round of Review for Guyana.¹² On the other hand, during the on-site visit, the country under review did not provide additional and pertinent information in this regard.

[23] The Committee likewise wishes to recall the reasons for the foregoing recommendation adduced in the Report of the Second Round,¹³ which stated that:

[24] – *“As stated in Section 1.1.1., Rule A05 of the PSR provides that, besides having to satisfy the basic qualifications for the job, candidates may also be required to take written competitive examinations, attend interviews and take practical tests, where necessary. The Committee notes that the use of written competitive examinations and interviews is optional and that there is no further provision regulating the manner in which those selection procedures are to be carried out. Additionally, the PSR does not make it explicitly clear that selection into the Public Service is based on merit. In order to properly assure the openness, equity and efficiency of the government hiring system, the Committee believes that the legislation in place should explicitly state that selection is made on merit and should also set out the criteria which would be taken into account in making that determination, such as written competitive examinations, interviews and practical tests.”*

[25] With respect to the above information, the Committee takes note of the need for the country under review to pay further attention to implementation of measure (b) of the recommendation made in Section 1.1.3 of Chapter II of this report. The Committee considers worth reframing this recommendation as to make it clearer. (see Recommendations 1.1.3.3 and 1.1.3.4 of Section 1.1.3 of Chapter II of this Report)

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

Adopt, through the appropriate legislative and/or administrative procedures, provisions that set out clear parameters on the conditions for the use of temporary appointments, including definitions of the terms “temporary or seasonal nature” and the term “urgent”; provide limits to their duration and require written reasons for the decision.

[26] In its Response to the Questionnaire,¹⁴ the country under review provided the following information with respect to the above measure:

[27] – *“The Public Service Rule A7 (1) outlines the conditions pertaining to the request for temporary employment, which must be accompanied by the adequate supporting reasons. This is rarely practiced. Cabinet decisions may dictate employment of temporary project staff”.*

[28] The Committee notes that the above information provided by the country under review in its Response to the Questionnaire had already been analyzed by the Committee in the Report of the Second Round of Review for Guyana.¹⁵ Furthermore, during the on-site visit, the country under review did not provide any additional and relevant information on the subject.

¹² See Report on the Cooperative Republic of Guyana from the Second Round, pg. 4, http://www.oas.org/juridico/spanish/mesicic_II_inf_guy_sp.pdf

¹³ Ibid.

¹⁴ See Response of the Cooperative Republic of Guyana to the questionnaire for the Fifth Round of Review, pg. 15, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

¹⁵ See Report on the Cooperative Republic of Guyana from the Second Round, pg. 4, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

[29] The Committee likewise wishes to recall the reasons for the foregoing recommendation adduced in the Report of the Second Round, which stated that:¹⁶

[30] *“In addition, the Committee notes that Rule A07 of the PSR provides that requests for temporary appointments should only be made in instances where the work is of a temporary or seasonal nature or so urgent that it is necessary to employ additional staff temporarily. The Committee notes that this provision that allows for temporary appointments could be open to abuse as there is no definition of “temporary or seasonal nature” or of the term “urgent” and there is no express limit on the duration of such appointments. Although there are provisions which require that requests for permission to employ temporary staff be accompanied by adequate supporting reasons and addressed to the Permanent Secretary of the Public Service Ministry (or the Secretary of the Public Service Commission), written reasons for the decision are not currently required by the legislation or rules. The Co-Operative Republic of Guyana should consider providing in the Public Service Rules, limits to the duration of the temporary appointment as well as parameters that define ‘temporary or seasonal nature’ and ‘urgent’ and require that written reasons be provided for the decision of the Permanent Secretary or the Secretary of the Public Service Commission”..*

[31] With respect to the above information, the Committee takes note of the need for the country under review to pay further attention to implementation of measure (c) of the recommendation made in Section 1.1.3 of Chapter II of this report. The Committee considers worth reframing this recommendation as to make it clearer. (see Recommendations 1.1.3.5 and 1.1.3.6 of Section 1.1.3 of Chapter II of this Report)

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

Adopt, through the appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for the advertisement of hiring opportunities for vacancies within the public service, and ensuring that use is made of the mass media (e.g. newspapers or websites) when advertising outside the Public Service.

[32] In its Response to the Questionnaire,¹⁷ the country under review provides the following information with respect to the above measure. In that regard, the Committee notes the following as a step that contributes to progress in its implementation:

[33] -*“The PSC has utilized the use of the mass media for the publishing of vacancies outside of the internal circulars published across the public service. Ministries have been authorized to advertise for the filling of vacancies and the applications received are forwarded to the PSC for resolution. “...”*

[34] -*“The PSC, Ministries and Departments have resorted to the use of Social Media (Facebook, image messaging) to promote the vacancies and circulars. Internet access is limited for some of the Ministries, Regional Administrations and Departments. The Ministry of Public Telecommunication through the e-Government Unit is working with the Governmental Agencies to have their websites developed and functional.”*

¹⁶ Ibid.

¹⁷ See Response of the Cooperative Republic of Guyana to the questionnaire for the Fifth Round of Review, pg. 16, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

[35] The Committee likewise wishes to recall the reasons for the foregoing recommendation adduced in the Report of the Second Round,¹⁸ which stated that:

[36] –“ *The Committee notes that there are general provisions in the PSR requiring the advertising of existing vacancies in the public service, both internally and externally. The Committee notes, however, that there are no other regulations which provide clearly defined criteria on the advertisement of hiring opportunities in the public service or of vacancies or positions to be filled, including their content and form, as well as providing a timeframe for publication, along with the requirements for candidates, the dates the selection process will begin and the procedures to be followed to take part in the process. The Committee also notes that the mass media (e.g. newspapers or websites) should be used when advertising outside of the Public Service.*”

[37] Considering the information provided by the country under review in its Response to the Questionnaire, the Committee acknowledges its efforts to move ahead with implementation of measure (d) of the recommendation contained in section 1.1.3 of Chapter II of this report and also takes note of the need for the country under review to continue to address this recommendation, bearing in mind that there are no rules establishing clearly defined criteria regarding the advertising of employment opportunities in the Public Administration. The Committee deems it worth reframing this recommendation so as to make it clearer. (see Recommendations 1.1.3.7 and 1.1.3.8 of Section 1.1.3 of Chapter II of this Report)

[38] At the same time, bearing in mind that the country under review also lacks rules regarding requirements candidates must meet, the dates on which the selection process is to begin, and the procedures to be followed in order to take part in that process, the Committee will make a recommendation in that regard. (see Recommendation 1.1.3.9 in Section 1.1.3 of Chapter II of this Report)

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

Adopt, through the appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for challenging the substantive aspects of the hiring process.

[39] Regarding this measure, in its Response to the Questionnaire,¹⁹ the country under review provides the following information which it considers germane to the above measure:

[40] –“*On the basis of challenging any substantive aspect of the hiring process, these situations can be confronted on the basis of Article 149A of the Constitution, which speaks to the right to work where “no person shall be hindered in the enjoyment of his or her right to work, that is to say, the right to free choice of employment”.*”

[41] The Committee observes that the above information provided by the country under review in its Response to the Questionnaire bears no relation to implementation of measure (e) of the Recommendation in Section 1.1.3 of Chapter II of this report. Furthermore, during the on-site visit, the country under review did not provide any additional and relevant information on the subject.

¹⁸ See Report on the Cooperative Republic of Guyana from the Second Round, pgs. 4-5, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

¹⁹ See Response of the Cooperative Republic of Guyana to the questionnaire for the Fifth Round of Review, pg. 17, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

[42] The Committee likewise wishes to recall the reasons for the foregoing recommendation adduced in the Report of the Second Round, which stated that:²⁰

[43] –*“With respect to the existence of provisions for challenging the substantive aspects of the hiring process under the purview of the Public Service Commission and the Judicial Service Commission, the Committee observes the lack of detailed regulations in this regard. Thus, the Committee suggests the adoption of provisions regulating the challenge mechanisms, based on the principles of due process and natural justice, and which can be pursued through the administrative route. This mechanism should ensure the openness, equity, and efficiency of the process.”*

[44] In light of the above information, the Committee reiterates the need for the country under review to pay further attention to implementation of measure (e) of the recommendation made in Section 1.1.3 of Chapter II of this report. (see Recommendation 1.1.3.10 in Section 1.1.3 of Chapter II of this Report)

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

Adopt, through the appropriate legislative and/or administrative procedures, provisions that regulate the hiring of judicial and legal officers, based on the principles of merit and equality, setting out the criteria upon which the evaluation will be made and provide clearly defined criteria on the manner for the advertisement of posts.

[45] In its Response to the Questionnaire,²¹ the country under review provides the following information with respect to the above measure:

[46] –*“Article 198 of the Constitution dictates the hiring of the Judicial and Legal Officers and such hiring is done by the Judicial Service Commission (JSC).”*

[47] The Committee notes that, neither in its Response to the Questionnaire nor during the on-site visit did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[48] The Committee likewise wishes to recall the reasons for the foregoing recommendation formulated in the Report of the Second Round, which stated that:²²

[49] –*“With respect to the Judiciary, while Article 199(1) of the Constitution provides that the Judicial Service Commission has the power to make appointments of judicial and legal officers, the Committee notes that there appears to be an absence of legislation regarding the manner in which those positions are appointed, with the exception of the appointment of the Director of Public Prosecutions, which is set forth in Article 203 of the Constitution. The Committee considers that the apparent lack of laws or regulations on the manner to conduct recruitment for these posts as well as*

²⁰ See Report on the Cooperative Republic of Guyana from the Second Round, pg. 5, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

²¹ See Response of the Cooperative Republic of Guyana to the questionnaire for the Fifth Round of Review, pg. 19, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

²² See Report on the Cooperative Republic of Guyana from the Second Round, pg. 5, http://www.oas.org/juridico/spanish/mesicic_II_inf_guy_sp.pdf

for their advertisement, may not properly assure the openness, equity and efficiency of the government hiring system.”

[50] In light of the above information, the Committee reiterates the need for the country under review to pay further attention to implementation of measure (f) of the recommendation made in Section 1.1.3 of Chapter II of this report. (see Recommendation 1.1.3.11 in Section 1.1.3 of Chapter II of this Report)

Measure g) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Adopt, through the appropriate legislative and/or administrative procedures, provisions that regulate the hiring of public servants serving in the offices of the Auditor General, based on the principles of merit and equality, providing clearly defined criteria on the manner for carrying out examinations and the advertisement of posts.

[51] In its Response to the Questionnaire,²³ the country under review provides the following information with respect to the above measure:

[52] - *“This is being addressed by the Public Accounts Committee (PAC) of the Parliament of Guyana, the body overseeing the Auditor General’s Office.”*

[53] At the same time, during the on-site visit, the country under review alluded to Audit Law No. 5 of 2004, Sections 15(a) and (b) of which provide as follows:

[54] - *“The Rules, Policies and Procedures Manual and all other laws shall be administer to ensure that: (a) there is fair and equal treatment of individuals applying for or offered appointments; and (b) appointment and promotion decisions are made on the qualification and merit of every individual eligible for consideration.”*

[55] Apart from the above, the country under review pointed out that Section 12.9 of the Rules, Policies, and Procedures Manual of the Guyana Audit Office,²⁴ provides as follows:

[56] - *“The HR Manager shall designate the selecting official(s) who shall review applications and select or promote the person to fill the position. It is the Committee’s responsibility to ensure that a decision is made on the basis of merit and in accordance with an open and fair selection process.”*

[57] - *“In the merit-based system, a selection shall be made on the basis of the experience, qualifications, and demonstrated past performance of the candidates relative to the job requirements for the available position. The greatest weight shall be given to performance. Candidates may be required to provide samples of prior work products, copies of performance appraisals, and other information to support their application.”*

²³ See Response of the Cooperative Republic of Guyana to the questionnaire for the Fifth Round of Review, pg. 20, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

²⁴ See Rules, Policies, and Procedures Manual of the Guyana Audit Office, pg. 107, <http://www.audit.org.gy/pubs/RPPM.pdf>

[58] Regarding the principle of equality in the hiring of public servants for the Audit Office of Guyana, the Committee notes that Section 15.6 of the Rules, Policies, and Procedures Manual of the Guyana Audit Office provides as follows:

[59] -*“The policy of the Auditor General is to treat each potential Staff and Staff Members with equal consideration. The Office shall always seek to promote equal opportunity and treatment in respect of employment and occupation so as to foster non-discrimination within the work-place. Discrimination in this connection is defined as any distinction or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”*

[60] In addition, the Committee notes that Section 11.1 of the Rules, Policies, and Procedures Manual of the Guyana Audit Office²⁵ provides as follows:

[61] -*“Advertisements for all positions should be done internally and externally. 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.”*

[62] It is worth bearing in mind, with respect to the publication of vacancies in the Audit Office of Guyana, that, according to that Office's representative, vacancies are being posted at the following link: <http://www.audit.org.gy/announcements.html>

[63] Finally, during the on-site visit, the representative of the Audit Office of Guyana pointed out that the Office's laws or standards and the Rules, Policies, and Procedures Manual are available over the following link: <http://www.audit.org.gy/about.html>

[64] The Committee takes note of the steps taken by the country under review to move ahead with implementation of measure (g) of the Recommendation contained in Section 1.1.3 of Chapter II of this report. However, bearing in mind that, despite provisions in both the Audit Law and the Rules, Policies, and Procedures Manual of the Audit Office of Guyana regarding the merit and equality principle, the country under review still lacks provisions establishing clearly defined criteria regarding the way to conduct exams and publish vacancies in the Audit Office of Guyana, the Committee reiterates the need for the country under review to continue addressing this recommendation, which it deems worth reframing for the sake of greater clarity. (see Recommendation 1.1.3.12 in Section 1.1.3 of Chapter II of this Report)

[65] In addition, the Committee notes that the last paragraph of Section 11.1 of the Rules, Policies, and Procedures Manual of the Guyana Audit Office provides as follows: “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”. The Committee considers that the provision cited above leaves it totally up to the Auditor-General's discretion to make employment offers that are not subject to the principles of openness, equity, and efficiency required under the Inter-American Convention against Corruption. In light of the above information, the Committee thinks that the country under review should consider deleting the last paragraph of Section 11.1 of the Rules,

²⁵ Ibid. pg. 87.

Policies, and Procedures Manual of the Audit Office of Guyana, and will make a recommendation to that effect. (see Recommendation 1.1.3.13 in Section 1.1.3 of Chapter II of this Report)

1.1.2. New developments in respect of the Convention provision on civil servant hiring systems

1.1.2.1. New developments in the regulatory framework

[66] In its Response to the Questionnaire, the country under review made no reference at all to any new developments in respect of its regulatory framework in this area.

[67] Nevertheless, during the on-site visit, through the Secretariat of the Public Service Commission, the country under review informed the Committee that said Commission has not been operating since August 31, 2017.²⁶

[68] Regarding the above, the Committee considers it worth pointing out that Article 201 (1) of the Constitution of the Cooperative Republic of Guyana states:

[69] - *“Subject to the provisions of this Constitution, the power to make appointments to public offices and remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Public Service Commission”.*

[70] Bearing in mind that, based on information provided during the on-site visit, the Commission that under Article 201 (1) of the Constitution of the Cooperative Republic of Guyana is responsible for making appointments is currently not installed, the Committee will recommend to the country under review to consider establishing and endowing it with the human and financial resources it needs, within available resources, in order to fulfill the functions assigned to it in the aforementioned provision of the Constitution. (see Recommendation 1.1.3.14 in Section 1.1.3 of Chapter II of this Report)

1.1.2.2. New developments with respect to technological aspects

[71] In its Response to the Questionnaire,²⁷ the country under review provided information regarding the technological development cited below:

[72] - *“The Ministry of Public Telecommunication through the e-Government Unit is working with the Governmental Agencies to have their websites developed and functional.”*

[73] The Committee takes note of the aforementioned technological development reported by the country under review in connection with public servant hiring systems. Given the importance of developing and implementing websites for all government agencies in the Cooperative Republic of Guyana and bearing in mind that they will be useful for advertising procedures relating to the hiring

²⁶ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_guy_gov_anex1.pdf, slide 7.

²⁷ See Response of the Cooperative Republic of Guyana to the questionnaire for the Fifth Round of Review, pg. 17, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

of public servants, the Committee will make a recommendation in that regard to the country under review²⁸. (see Recommendation 1.1.3.15 in Section 1.1.3 of Chapter II of this Report)

[74] Furthermore, during the on-site visit, through the Secretariat of the Public Service Commission, the country under review informed the Committee of the need to purchase a database system to register hiring's of public servants, given that currently the Public Service Commission lacks an integrated database system in respect of its employees. Given that having such a database would help the aforementioned Commission provide more efficient public service, the Committee will make a recommendation in that regard to the country under review. (see Recommendation 1.1.3.16 in Section 1.1.3 of Chapter II of this Report)

1.1.2.3. Results

[75] Neither in its Response to the Questionnaire nor during the on-site visit did the country under review provide information regarding the hiring of public servants. In light of the above information, the Committee will make a recommendation in that regard to the country under review. (see Recommendation 1.1.3.17 in Section 1.1.3 of Chapter II of this Report)

1.1.3. Recommendations

[76] In light of the comments made in Sections 1.1.1 and 1.1.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

- 1.1.3.1 Adopt, through appropriate legislative and/or administrative procedures, provisions that explicitly provide that government hiring into Public Service must, as general rule, be based on the principle of merit. (see paragraph 18 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.2 Establish, through appropriate legislative and/or administrative procedures, criteria governing the way that evaluations for entry into public service are conducted and ensuring that they are based on the principles of openness, equity, and efficiency required under the Convention. (see paragraph 18 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.3 Arrange for examinations and/or interviews a mandatory requirement for filling public service vacancies to be selected through merit system. (see paragraph 25 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.4 Establish mechanisms based on clearly defined criteria on the manner in which these examinations and/or interviews would be carried out, ensuring the application of the principles of openness, equity, and efficiency required under the Convention. (see paragraph 25 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.5 Adopt, through the appropriate legislative and/or administrative procedures, provisions that set out clear parameters on the conditions for the use of temporary appointments, including definitions of the terms "temporary or seasonal nature" and "urgent" used in the law. (see paragraph 31 in Section 1.1.1 of Chapter II of this Report)

²⁸ In its comments document on the draft preliminary report of February 8, 2018, the State under review offered the following comment: "Some Government websites and Facebook pages advertise vacancies. From our research at least 5 Ministries have advertisements on their websites."

- 1.1.3.6 Establish, through appropriate legislative and/or administrative procedures, limits on the duration of temporary appointments and require written reasons for the decision. (see paragraph 31 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.7 Adopt, through the appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for the advertisement of hiring opportunities for vacancies within the public service. (see paragraph 37 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.8 Ensure that mass media (e.g. newspapers or websites) are used when advertising outside the Public Service through external competition. (see paragraph 37 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.9 Adopt, through the appropriate legislative and/or administrative procedures, rules regarding requirements candidates must meet to take part in competitions, the dates on which the selection process is to begin, and the procedures to be followed in order to take part in that process. (see paragraph 38 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.10 Consider adopting, through appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for challenging the substantive aspects of the selection process. (see paragraph 44 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.11 Consider adopting, through the appropriate legislative and/or administrative procedures, provisions that regulate the hiring of judicial and legal officers, based on the principles of merit, as a general rule, and setting out the criteria upon which the evaluations will be made and provide clearly defined criteria on the manner for the advertisement of posts in the Public Service, in such a way as to guarantee enforcement of the principles of openness, equity, and efficiency required under the Convention. (see paragraph 50 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.12 Adopt clearly defined criteria on the manner for carrying out examinations and advertisement of posts in the Audit Office of Guyana. (see paragraph 64 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.13 Consider deleting the last paragraph of Section 11.1 of the Rules, Policies, and Procedures Manual of the Audit Office of Guyana, which provides as follows: “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”. (see paragraph 65 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.14 Adopt the necessary measures to establish the Public Service Commission and endow it with the human and financial resources it needs, within available resources, to fulfill the function assigned to it under Article 201 (1) of the Constitution of appointing public servants. (see paragraph 70 in Section 1.1.1 of Chapter II of this Report)

- 1.1.3.15 Adopt, through the competent authority, the measures needed to develop and implement websites for all government agencies that will, inter alia, publicize procedures relating to the hiring of public servants. (see paragraph 73 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.16 Provide the Public Service Commission with the resources needed to purchase a database system for registering the hiring of public servants, subject to the availability of funds. (see paragraph 74 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.17 Compile detailed annual statistics on the results of the selection processes for public servants, in such a way as to show clearly the number and percentage of public servants hired through competitive merit-based processes, temporary or provisional appointments, exceptional appointments, discretionary appointments, the use of professional services rendered in a personal capacity, such as advisory services and consultant's contracts, and the number of appeals filed against resolutions handed down in selection processes and against the outcomes of those processes, so that challenges can be identified and, where necessary, corrective measures recommended. (see paragraph 75 in Section 1.1.1 of Chapter II of this Report)

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

1.2.1. Follow up on Implementation of the Recommendations Formulated in the Second Round

Recommendation 1.2.1 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Promote the adoption of provisions, in the government systems for the procurement of goods and services, which ensure the principles of openness, equity and efficiency under the Convention.

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

Develop and implement provisions that punish public officials in cases of non-compliance with the public procurement rules, without prejudice to any other laws under the existing system.

[77] In its Response to the Questionnaire,²⁹ the country under review provided the following information regarding the above measure:

[78] - "Section 55 (1) of the Procurement Act 2003 which states as follows: "It shall be an offence for the national Board, a Regional board, a District Board, a Departmental board, an Agency board, an Evaluation Committee (each herein in this Part to referred to as a Body), or a person concerned with the administration of this Act, not to regard as secret and confidential all documents, information and things disclosed to them in the execution of any provision of this Act or to divulge such information or the contents of any document to any person except to the extent necessary to

²⁹ See Response of the Cooperative Republic of Guyana to the Questionnaire for the Fifth Round of Review, pgs. 24-25, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

discharge its or his function under the Act or any other written law or for the purpose of prosecution for any offence or other legal proceedings". "... "

[79] The Committee notes that the above information provided by the country under review in its Response to the Questionnaire had already been analyzed by the Committee in the Report of the Third Round of Review for Guyana.³⁰ Furthermore, during the on-site visit, the country under review did not provide any additional and relevant information on the subject.

[80] In light of the above information, the Committee reiterates the need for the country under review to pay further attention to implementation of measure (a) of the recommendation made in Section 1.2.4 of Chapter II of this report.³¹ (see Recommendation 1.2.4.1 in Section 1.2.4 of Chapter II of this Report)

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

Establish the Public Procurement Commission or another independent body responsible for monitoring public procurements and procedures, in order to ensure that the procurement of goods and services and the execution of works are done in a fair, transparent, competitive and cost-effective manner.

[81] In its Response to the Questionnaire,³² and during the on-site visit the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes as steps that indicate satisfactory consideration of the measure:

[82] - “1) *The Government of Guyana enacted a Procurement Act in November 2004 (Act No. 8 of 2003) and Procurement (Amendment) Act 2010. The Act is supplemented by the Procurement Regulations (No. 9 of 2004) and Amending Procurement Regulations (No. 10 of 2004). Procurement is also addressed in Article 212W of the Guyanese Constitution;*

[83] - “2) *Article 212W of the Constitution requires the formation of a Public Procurement Commission (PPC) with its members recommended by the Public Accounts Committee (PAC), appointed by the President, and approved by the National Assembly. The PPC would be supported by a Secretariat for its daily operations;*

- In accordance with Article 212W of the Constitution, the PPC shall:

- a) monitor and review the functioning of all public procurement systems to ensure that they are in accordance with law and such policy guidelines as may be determined by the National Assembly;*
- b) promote awareness of the rules, procedures and special requirements of the procurement process among suppliers, contractors and public bodies;*

³⁰ See Report on the Cooperative Republic of Guyana from the Third Round, pg. 46, http://www.oas.org/juridico/english/mesicic3_guy_rep.pdf

³¹ In its comments document on the draft preliminary report of February 8, 2018, the State under review offered the following comment: “This is addressed by s.85 FMAA (Fiscal Management and Accountability Act)”

³² See Response of the Cooperative Republic of Guyana to the Questionnaire for the Fifth Round of Review, pgs. 26-27, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

- c) *safeguard the national interest in public procurement matters, having due regard to any international obligations;*
- d) *monitor the performance of procurement bodies with respect to adherence to regulations and efficiency in procuring goods and services and execution of works;*
- e) *approve procedures for public procurement, disseminate rules and procedures for public procurement and recommend modifications thereto to the public procurement entities;*
- f) *monitor and review all legislation, policies and measures for compliance with the objects and matters under its purview and report the need for any legislation to the National Assembly;*
- g) *monitor and review the procurement procedures of the ministerial, regional, and national procurement entities as well as those of project execution units;*
- h) *investigate complaints from suppliers, contractors and public entities and propose remedial action;*
- i) *investigate cases of irregularity and mismanagement, and propose remedial action;*
- j) *initiate investigations to facilitate effective functioning of public procurement systems;*
- k) *enlist the aid of such persons, as may be necessary, to assist the Commission with expert advice;*
- l) *liaise with and refer matters to the police and the Auditor General; and*
- m) *do all other acts and things as may be necessary to facilitate the efficient discharge of the functions of the Commission.”*

[84] At the same time, during the on-site visit, the country under review referred to the establishment of the Public Procurement Commission (PPC) and said it had been constituted 14 years after promulgation of the Procurement Act in 2003. That Commission was installed on October 29, 2016 with five Commissioners. The Commission is a body for supervising the procurement of goods, works, and services and ensuring that the process is fair, equitable, transparent, and competitive.

[85] In light of the above information, the Committee takes note of the satisfactory consideration given by the country under review to measure b) of the recommendation contained in Section 1.2.1 of Chapter II of this report.

[86] However, bearing in mind that, as reported during the on-site visit, the Chair of the Public Procurement Commission had highlighted the problems that the members of the Commission had encountered in finding suitable premises in which to perform their functions, and that the Chair of the Commission had also told the Committee about the challenges they had faced in hiring personnel, due to financial constraints. The Committee deems it appropriate that the country under review consider strengthening the Public Procurement Commission and ensuring that it has the human, financial, and technological resources, within available resources, it needs for the proper performance of its functions. To that end, the Committee will formulate a recommendation. (see Recommendation 1.2.4.2 in Section 1.2.4 of Chapter II of this Report)

[87] The Committee further notes that during the on-site visit, the Chair of the Public Procurement Commission,³³ pointed out that the Commission was reviewing laws and regulations governing the procurement of goods and services in order to identify any inconsistencies and contradictions that might need amending. The Commission planned to hire experts to help with that task in 2018. In light of the above information, the Committee will make a recommendation in this regard to the country under review. (see Recommendation 1.2.4.3 in Section 1.2.4 of Chapter II of this Report)

[88] Finally, bearing in mind that the Public Procurement Commission lacks rules of procedure spelling out its functions and spheres of competence in greater detail, the Committee will recommend to the country under review that it consider regulating the functions of that Commission pursuant to Article 212W of the Constitution of the Cooperative Republic of Guyana³⁴. (see Recommendation 1.2.4.4 in Section 1.2.4 of Chapter II of this Report)

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

Establish a national registry of contractors of works, goods or services, mandatory to all State bodies, which contemplate the possibility of ensuring that the registry also includes a list of sanctioned contractors, in order to foster the principles of openness, equity and efficiency provided for in the Convention.

[89] In its Response to the Questionnaire,³⁵ the country under review provided the following information regarding the above measure:

[90] -“1) There is no provision under the Procurement Act 2003 for the establishment of such a registry.

[91] -2) The NPTA's website (npta.gov.gy) provides for the listing of sanction contractors.”

[92] The Committee notes that matter referred to under item 1) of the above information provided by the country under review in its Response to the Questionnaire had already been analyzed by the Committee in the Second Round of Review for Guyana.³⁶ The Committee likewise noted that the website (npta.gov.gy) mentioned under item 2) of the Response to the Questionnaire by the country under review does not contain a current list of sanctioned contractors³⁷. Moreover, during the on-site visit, the country under review did not provide any additional and relevant information on the subject.

[93] The Committee wishes to recall the reasons for the foregoing recommendation adduced in the Second Round Report, which stated that:³⁸

³³ Available at: http://www.oas.org/juridico/PDFs/mesicic5_guy_gov_anex12.pdf, slide 11.

³⁴ Available at: http://www.oas.org/juridico/spanish/mesicic2_guy_constitution.pdf, pg. 170.

³⁵ See Response of the Cooperative Republic of Guyana to the Questionnaire for the Fifth Round of Review, pg. 28, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

³⁶ See Report on the Cooperative Republic of Guyana from the Third Round, pg. 9, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

³⁷ On November 7, 2017, the Technical Secretariat of the Committee attempted to access the list of sanctioned contractors in the website: (npta.gov.gy), but could not find it and instead received the following message : error 405 – “The page cannot be displayed”

³⁸ See Report on the Cooperative Republic of Guyana from the Second Round, pg. 9, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

[94] *–“The Committee observes that there is no public registry of providers. Therefore, the Committee urges the Co-Operative Republic of Guyana to consider establishing a national public registry of providers using, for example, computer technology to set it up, update it, and consult it. This registry could contain data on contractors’ record of performance or nonperformance; area of work and/or specialty; technical and economic capacity; type of firm; and other information considered relevant. All State bodies should be required to use the Registry, its purpose being to foster the principles of openness, equity and efficiency provided for in the Convention. It would also be useful to allow for the exclusion and/or sanctioning of any contractor, for a certain period of time, from the proposed registry, as circumstances may warrant. A list of excluded and/or sanctioned contractors and information regarding reasons for the exclusion and/or sanctioning could be contained in the Registry.”*

[95] In light of the above information, the Committee reiterates the need for the country under review to pay further attention to implementation of measure (c) of the recommendation made in Section 1.2.1 of Chapter II of this report. (see Recommendation 1.2.4.5 in Section 1.2.4 of Chapter II of this Report)

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

Implement a mechanism, through legislative and/or administrative means, to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons.

[96] In its Response to the Questionnaire,³⁹ the country under review provides the following information with respect to the above measure. In that regard, the Committee notes the following as a step that contributes to progress in its implementation:

[97] *–“1) Debarment - Although the Procurement Act 2003 provides for debarment proceedings to be adjudicated by the Public Procurement Commission/National Procurement and Tender Administration Board, there is no formal procedure/ mechanism in the Act and its Regulations to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons.*

[98] *-2) It is recommended that the Regulations should include:*

- *an exhaustive listing of the grounds on which debarment should be imposed;*
- *authority to debar (e.g. the appointment of a Committee including a nominee of the business community which will have the power to suspend or debar a Bidder or Supplier from participation in public procurement proceedings in the country); and*
- *procedures for suspension and debarment.*

[99] *-3) In order to facilitate this establishment of this mechanism, the consultancy firm, Centre for Policy Analysis & Institutional Development was contracted to draft Debarment Regulations. They completed the draft which covers the following areas:*

³⁹ See Response of the Cooperative Republic of Guyana to the Questionnaire for the Fifth Round of Review, pgs. 30-31: http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

- *Grounds for debarment*
- *Exercise of Debarment (Authority National Tender Board)*
- *Debarment Application*
- *Notice of Proposed Debarment*
- *Response of Supplier/ Contractor*
- *Hearing Procedure*
- *Suspension*
- *Debarment Decision*
- *Debarment Period*
- *Notice of Debarment*
- *Scope of Debarment or Suspension Order*
- *Implementation of Existing Contracts*
- *Restrictions on Subcontracting*
- *Reduction or Termination of Debarment Period*
- *Judicial Appeal*
- *Publication of Decision*
- *Excluded Parties Registry*
- *Record of Debarment Proceedings*
- *Notices*

[100] - 4) *Attached, is a copy of the Draft Regulations on Suspension and Debarment from Participation in Public Procurement.*

[101] -5) *Provision has been made under the IDB's Technical Cooperation Agreement for Public Procurement Modernization, to establish a process for debarment and reporting complaints in compliance with the regulation and internationally accepted standards."*

[102] The Committee wishes to recall the reasons for the foregoing recommendation adduced in the Second Round Report, which stated that:⁴⁰

[103] –*"It would also be useful to allow for the exclusion and/or sanctioning of any contractor, for a certain period of time, from the proposed registry, as circumstances may warrant. A list of excluded and/or sanctioned contractors and information regarding reasons for the exclusion and/or sanctioning could be contained in the Registry."*

[104] In considering the information provided by the country under review in its Response to the Questionnaire, the Committee acknowledges its efforts to move ahead with implementation of measure (d) of the recommendation contained in section 1.2.1 of Chapter II of this report and also reiterates the need for the country under review to continue to address this recommendation, bearing in mind that, as noted in the Response to the Questionnaire, the country under review mentioned the hiring of a firm of consultants to produce draft regulations for excluding and/or sanctioning contractors, but that so far this is just a project, with no results as yet. (see Recommendation 1.2.4.6 in Section 1.2.4 of Chapter II of this Report)

⁴⁰ See Report on the Cooperative Republic of Guyana from the Second Round, pg. 9, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

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

Develop and implement provisions that establish the ineligibility of bidders or contractors who have ties to the procuring entity or who are directly involved in the determination of needs or specifications, appraisal of bids, selection of alternatives, or approval of purchases or payments.

[105] The Committee notes that, neither in its Response to the Questionnaire nor during the on-site visit, did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[106] In light of the above information, the Committee reiterates the need for the country under review to pay further attention to implementation of measure (e) of the recommendation made in Section 1.2.1 of Chapter II of this report. (see Recommendation 1.2.4.7 in Section 1.2.4 of Chapter II of this Report)

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

Implement provisions that require prior planning sufficiently in advance of the launch of procurement process, such as preparing studies, designs and technical evaluations, and to assess the appropriateness and timeliness of the purchase.

[107] The Committee notes that, neither in its Response to the Questionnaire nor during the on-site visit, did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[108] In light of the above information, the Committee reiterates the need for the country under review to pay further attention to implementation of measure (f) of the recommendation made in Section 1.2.1 of Chapter II of this report. (see Recommendation 1.2.4.8 in Section 1.2.4 of Chapter II of this Report)

Measure g) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implement provisions that establish minimum time limits for the publication of tendering opportunities in appropriate media.

[109] The Committee notes that, neither in its Response to the Questionnaire nor during the on-site visit, did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[110] In light of the above information, the Committee reiterates the need for the country under review to pay further attention to implementation of measure (g) of the recommendation made in Section 1.2.1 of Chapter II of this report. (see Recommendation 1.2.4.9 in Section 1.2.4 of Chapter II of this Report)

Measure h) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Strengthen and increase the scope of use of electronic forms of communications, such as the internet, for publicizing the tender opportunities, status of bids and awards and the progress in the execution of major projects.

[111] Measure (h) of this recommendation received satisfactory consideration under the terms contemplated in the Third Round report and therefore needs no further attention.

Measure i) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means.

[112] The Committee notes that, neither in its Response to the Questionnaire nor during the on-site visit, did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[113] In light of the above information, the Committee reiterates the need for the country under review to pay further attention to implementation of measure (i) of the recommendation made in Section 1.2.1 of Chapter II of this report. (see Recommendation 1.2.4.10 in Section 1.2.4 of Chapter II of this Report)

Measure j) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implement provisions that provide for objective selection factors or criteria in the evaluation of bids, including those for public works.

[114] Measure j) of this recommendation received satisfactory consideration under the terms contemplated in the Third Round report and therefore needs no further attention.

Measure k) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implement provisions that require that the outcome of a bid evaluation be clearly and accurately substantiated, when applicable.

[115] The Committee notes that, neither in its Response to the Questionnaire nor during the on-site visit, did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[116] In light of the above information, the Committee reiterates the need for the country under review to pay further attention to implementation of measure (k) of the recommendation made in Section 1.2.1 of Chapter II of this report. (see Recommendation 1.2.4.11 in Section 1.2.4 of Chapter II of this Report)

Measure l) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implement provisions that facilitate the participation of citizen oversight mechanisms in monitoring the execution of contracts where their nature, importance or magnitude so warrants, in particular public works contracts.

[117] The Committee notes that, neither in its Response to the Questionnaire nor during the on-site visit, did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[118] In light of the above information, the Committee reiterates the need for the country under review to pay further attention to implementation of measure (l) of the recommendation made in Section 1.2.1 of Chapter II of this report. (see Recommendation 1.2.4.12 in Section 1.2.4 of Chapter II of this Report)

Measure m) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Harmonize the provisions contained in the Procurement Act and in the Regulations which allow challenges to the procurement process at the administrative level.

[119] The Committee notes that, neither in its Response to the Questionnaire nor during the on-site visit, did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[120] In light of the above information, the Committee reiterates the need for the country under review to pay further attention to implementation of measure (m) of the recommendation made in Section 1.2.1 of Chapter II of this report. (see Recommendation 1.2.4.13 in Section 1.2.4 of Chapter II of this Report)

Measure n) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Maintain and publish statistics that reflect the nature of contracts awarded, the proportion that is by public tender, the proportion that is by restricted tendering, request for quotations and single source procurement.

[121] The Committee notes that, neither in its Response to the Questionnaire nor during the on-site visit, did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[122] In light of the above information, the Committee reiterates the need for the country under review to pay further attention to implementation of measure (n) of the recommendation made in Section 1.2.1 of Chapter II of this report. (see Recommendation 1.2.4.14 in Section 1.2.4 of Chapter II of this Report)

1.2.2. New developments in respect of the Convention provision on government systems for the procurement of goods and services

1.2.2.1. New developments with Respect to the Legal Framework

[123] In its Response to the Questionnaire,⁴¹ the country under review provided information regarding the new developments with regards to the legal framework cited below:

[124] -*“A five (5) member Public Procurement Commission was established on October 29, 2016.”*

[125] -*“(1) The National Procurement and Tender Administration (NPTA) is currently benefitting from a Public Procurement Modernization initiative, for which funding has been provided by the Inter-American Development Bank, under a Non-reimbursable Technical Cooperation Agreement: Public Procurement Modernization and Financial Management Strengthening in Guyana;*

[126] -*2) Under the Public Procurement Modernization Component of the Agreement, support will be provided to improve efficiency and value for money in public procurement, through strategic planning and introduction of e-GP, and includes the following activities: i) strategic planning for e-GP ii) proposal for the Procurement Act and Regulations update iii) establishment of a complaints mechanism and debarment procedures; iv) training in modern procurement operations and tools Consultancy services will be provided under the above-referenced Technical Cooperation Agreement to facilitate a review of the Procurement Act 2003 and its Regulations, and it can be utilised to have provision made under the Act/Regulation for a national registry of contractors.”*

[127] Regarding the information that “A five (5) member Public Procurement Commission was established on October 29, 2016”, the Committee already took note thereof in Section 1.2.1 of Chapter II of this Report.

[128] Regarding items 1) and 2) of the above information provided by the country under review in its Response to the Questionnaire,⁴² the Committee notes that it refers to an initiative aimed at modernizing government procurement in the Cooperative Republic of Guyana that has not yet been adopted, so that analysis at this point would not be warranted.

[129] The Committee further notes that during the on-site visit, the Chair of the Public Procurement Commission,⁴³ pointed out that there was a lack of coordination between the National Procurement and Tenders Administration and the Public Procurement Commission in formalizing the changeover of functions. The Committee therefore considers that it would be best, as a matter of priority, for the aforementioned authorities to agree on a plan for the transfer of functions, so as to avoid gaps in this process and ensure a smooth transition.

[130] Regarding the above, the Committee considers that it is worth bearing in mind that the Section 17(3) of the 2003 Procurement Act provides as follows:

[131] -*“When the Public Procurement Commission is established, the responsibilities of the National Board shall be limited to those provided for in subsection (1), and all other responsibilities listed in this section shall be the responsibility of the Public Procurement Commission.”*

⁴¹ See Response of the Cooperative Republic of Guyana to the Questionnaire for the Fifth Round of Review, pgs. 28-29: http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

⁴² Ibid. pg. 29.

⁴³ Available at: http://www.oas.org/juridico/PDFs/mesicic5_guy_gov_anex12.pdf_slide_14.

[132] In light of the above information, the Committee will make a recommendation in that regard to the country under review. (see Recommendation 1.2.4.15 in Section 1.2.4 of Chapter II of this Report)

1.2.2.2. New Developments with Respect to Technology

[133] In its Response to the Questionnaire, the country under review made no reference to technology in this area.

[134] Nevertheless, during the on-site visit, the Chair of the Public Procurement Commission told the Committee, on behalf of the country under review, that work is being done on developing the Commission's website.

[135] Regarding the above-mentioned information, and given the importance of strengthening the Public Procurement Commission by providing it with the resources needed not only to finish developing its website but also to maintain and update it so as to be able to fulfill its functions as best it can given the available resources, the Committee will make a recommendation in this regard. (see Recommendation 1.2.4.16 in Section 1.2.4 of Chapter II of this Report)

[136] During the on-site visit, the representative of the National Procurement and Tender Administration,⁴⁴ also pointed out that in Guyana, tenders/calls for bids are also published on the following website: www.e-procure.gov.gy

[137] The Committee,⁴⁵ observed that the website www.e-procure.gov.gy is not active. Bearing in mind the need for greater dissemination of tenders and that the website is useful in that respect, the Committee will formulate a recommendation in that regard to the country under review. (see Recommendation 1.2.4.17 in Section 1.2.4 of Chapter II of this Report.)

[138] Finally, in its Response to the Questionnaire,⁴⁶ and during the on-site visit, the representative of the National Procurement and Tender Administration,⁴⁷ pointed out, on behalf of the country under review, that in Guyana, the minutes corresponding to the opening of tender documents are generally published on the following website www.npta.gov.gy within 48 hours of the opening of bids.

[139] Regarding the above information, the Committee notes that the website www.npta.gov.gy is not up-to-date and that it is difficult for citizens to access information on the minutes for the opening of tenders. Nor is information available for the following: awards of contracts in public procurement processes; an updated list of challenges to those awards/processes, the decisions of the Bid Protest Committee, and an updated list of firms disqualified due to fraud and corruption. In light of the above, the Committee will make a recommendation in that regard to the country under review. (see Recommendation 1.2.4.18 in Section 1.2.4 of Chapter II of this Report)

1.2.3. Results

⁴⁴ Available at: http://www.oas.org/juridico/PDFs/mesicic5_guy_gov_anex19.pdf, slide 3.

⁴⁵ On November 14, 2017, the Technical Secretariat of the Committee attempted to access the website www.e-procure.gov.gy, but was not able to. Instead it received the following message: _error 405 – “The page cannot be displayed”.

⁴⁶ See Response of the Cooperative Republic of Guyana to the Questionnaire for the Fifth Round of Review, pg. 22: http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

⁴⁷ Available at: http://www.oas.org/juridico/PDFs/mesicic5_guy_gov_anex19.pdf, slide 6.

[140] Bearing in mind that the country under review did not provide information regarding results in relation to systems for the procurement of goods and services, and considering that it would be useful, for identifying challenges and recommending corrective measures, that the country under review could consider compiling detailed annual statistics on outcomes of those systems, in respect of such aspects as procurement procedures used, the number and value amount of contracts awarded through competitive and noncompetitive processes, the total number of contracts per year for the past five years, sanctions imposed for infringing procurement rules, and the number of contracts awarded through public tender, restricted tendering, requests for quotations, and single source procurement. The Committee will make a recommendation in that regard to the country under review. (see Recommendation 1.2.4.19 in Section 1.2.4 of Chapter II of this Report)

1.2.4. Recommendations

[141] In light of the comments made in Sections 1.2.1 and 1.2.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 1.2.4.1. Develop and implement provisions that punish public officials in cases of non-compliance with the public procurement rules, without prejudice to any other laws under the existing system. (see paragraph 80 in Section 1.2.1 of Chapter II of this Report)
- 1.2.4.2. Adopt the necessary measures to ensure that the Public Procurement Commission has the human, financial, and technological resources it needs for the proper performance of its functions, bearing in mind the availability of resources. (see paragraph 86 in Section 1.2.1 of Chapter II of this Report)
- 1.2.4.3. Conduct an exhaustive analysis of the laws and regulations on public procurement in the Cooperative Republic of Guyana so as to identify inconsistencies and contradictions and recommend any appropriate corrective measures, in keeping with the principles of openness, equity, and efficiency provided for in the Convention. (see paragraph 87 in Section 1.2.1 of Chapter II of this Report)
- 1.2.4.4. Adopt the Rules of Procedure of the Public Procurement Commission so as to clearly define its functions and spheres of competence, pursuant to Article 212W of the Constitution of the Cooperative Republic of Guyana. (see paragraph 88 in Section 1.2.1 of Chapter II of this Report)
- 1.2.4.5. Establish a national registry of contractors of works, goods or services, mandatory to all State bodies, which contemplate the possibility of ensuring that the registry also includes a list of sanctioned contractors, in order to foster the principles of openness, equity and efficiency provided for in the Convention. (see paragraph 95 in Section 1.2.1 of Chapter II of this Report)
- 1.2.4.6. Implement a mechanism, through legislative and/or administrative means, to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons. (see paragraph 104 in Section 1.2.1 of Chapter II of this Report)
- 1.2.4.7. Develop and implement provisions that establish the ineligibility of bidders or contractors who have ties to the procuring entity or who are directly involved in the determination of

needs or specifications, appraisal of bids, selection of alternatives, or approval of purchases or payments. (see paragraph 106 in Section 1.2.1 of Chapter II of this Report)

- 1.2.4.8. Implement provisions that require prior planning sufficiently in advance of the launch of procurement process, such as preparing studies, designs and technical evaluations, and to assess the appropriateness and timeliness of the purchase. (see paragraph 108 in Section 1.2.1 of Chapter II of this Report)
- 1.2.4.9. Implement provisions that establish minimum time limits for the publication of tendering opportunities in appropriate media. (see paragraph 110 in Section 1.2.1 of Chapter II of this Report)
- 1.2.4.10. Develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means. (see paragraph 113 in Section 1.2.1 of Chapter II of this Report)
- 1.2.4.11. Implement provisions that require that the outcome of a bid evaluation be clearly and accurately substantiated, when applicable. (see paragraph 116 in Section 1.2.1 of Chapter II of this Report)
- 1.2.4.12. Implement provisions that facilitate the participation of citizen oversight mechanisms in monitoring the execution of contracts where their nature, importance or magnitude so warrants, in particular public works contracts. (see paragraph 118 in Section 1.2.1 of Chapter II of this Report)
- 1.2.4.13. Harmonize the provisions contained in the Procurement Act and in the Regulations which allow challenges to the procurement process at the administrative level. (see paragraph 120 in Section 1.2.1 of Chapter II of this Report)
- 1.2.4.14. Maintain and publish statistics that reflect the nature of contracts awarded, the proportion that is by public tender, the proportion that is by restricted tendering, request for quotations and single source procurement. (see paragraph 122 in Section 1.2.1 of Chapter II of this Report)
- 1.2.4.15. Develop a plan between the National Procurement and Tender Administration and the Public Procurement Commission for the transition of functions contemplated in Section 17(3) of the Procurement Act of 2003, so that those functions can be performed in a coordinated and appropriate manner. (see paragraph 132 in Section 1.2.2 of Chapter II of this Report)
- 1.2.4.16. Endow the Public Procurement Commission with the resources it needs to complete and maintain its website so that it can perform its functions appropriately, bearing in mind the availability of resources. (see paragraph 135 in Section 1.2.2 of Chapter II of this Report)
- 1.2.4.17. Endow the National Procurement and Tender Administration with the resources it needs to reactivate the www.e-procure.gov.gy website and thereby ensure more widespread dissemination of invitations to bid, bearing in mind the availability of resources. (see paragraph 137 in Section 1.2.2 of Chapter II of this Report)
- 1.2.4.18. Adopt the necessary measures to ensure that the National Procurement and Tender Administration has the resources it needs to update the www.npta.gov.gy website and ensure

that it is kept up to date in such a way that the general public can access information regarding minutes of the opening of tenders, awards of contracts in public procurement processes; an updated list of challenges to those awards/processes, the decisions of the Bid Protest Committee, and an updated list of firms disqualified due to fraud and corruption, so as to be able to perform its functions appropriately, bearing in mind the availability of resources. (see paragraph 139 in Section 1.2.2 of Chapter II of this Report)

- 1.2.4.19. Compile detailed annual statistics on the results of public procurement systems, in terms, for instance, of sanctions imposed for infringing procurement rules, the procurement procedures used, indicating, for instance, the number of contracts awarded through public tender, restricted tendering, requests for quotations, and single source procurement, in such a way as to permit a comprehensive assessment of results in this area, so as to identify challenges and recommend corrective measures, where necessary. (see paragraph 140 in Section 1.2.3 of Chapter II of this Report)

2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)

2.1. Follow-up on implementation of the recommendations formulated in the Second Round

Recommendation suggested by the Committee that requires additional attention within the Framework of the Third Round:

Adopt a comprehensive legal and regulatory framework that provides protection for public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with its Constitution and the basic principles of its domestic legal system.

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

Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings.

[142] In its Response to the Questionnaire,⁴⁸ the country under review presented information and new developments with respect to the above recommendation and its measure (a). In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[143] - *“There is no current legislation to provide for the protection of whistleblowers. However, a draft Bill has been prepared to address this issue. The Protected Disclosures Bill 2016 was drafted, as stated in its Explanatory Memorandum, as an effort to bring Guyana in compliance with the Inter American Convention against Corruption, particularly Article III (8). While the Bill has not been passed by the National Assembly as yet, its passage will provide a legislative mechanism under which*

⁴⁸ See Response of the Cooperative Republic of Guyana to the Questionnaire for the Fifth Round of Review, pg. 44: http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

persons (public servants and private citizens) may report acts of corruption, such reports may be investigated and protection will be offered to whistleblowers as necessary.

[144] *-The Bill can be accessed at the Ministry of Legal Affairs' website at: <http://mola.gov.gy/images/pdf/PROTECTEDDISCLOSURBILL2016.pdf> ”*

[145] Upon referring to difficulties in implementing measure (a), the country under review mentioned in its Response to the Questionnaire⁴⁹ that the implementation of this measure is delayed due to the fact that the Bill has not been passed by the National Assembly.

[146] With respect to the above information, the Committee takes note of the step taken by the country under review to move ahead with implementation of measure (a) of the recommendation contained in Section 2.1 of Chapter II of this report, and it reiterates the need for the country under review to continue to address this recommendation, since, although a bill exists, a comprehensive legal and regulatory framework has not yet been adopted that provides protection for people who, in good faith, report acts of corruption, including, inter alia, protection for those who report acts of corruption subject to investigation in administrative or judicial proceedings, as measure (a) of the recommendation envisages. In addition, the Committee believes that it would be beneficial for the country under review to consider taking as a guide for that purpose the “*Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses*”, adopted by the Committee,⁵⁰ and therefore it considers it appropriate to reformulate the above recommendation.⁵¹ (see Recommendation 2.3.1 in Section 2.3 of Chapter II of this Report)

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

Protection of whistleblowers and their families, not only in relation to their physical integrity but also as it concerns the workplace, especially when the person is a public official and the acts of corruption involve superiors or co-workers.

[147] In its Response to the Questionnaire,⁵² the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[148] *“Clause 7 of the Bill provides for disclosures of acts of corruption to be made to a Commission about an employer, a co-worker, a Government Official or any other person. The scope of the Bill is intended to cover a wide range of persons and no such person will be removed from the Commission’s reach. In addition, clauses 21, 22 and 23 of the Bill prohibits detrimental action to be taken against persons who make disclosures and provides recourse where such actions may occur. Link: <http://mola.gov.gy/images/pdf/PROTECTEDDISCLOSURBILL2016.pdf>”.*

[149] With respect to the above information, the Committee takes note of the steps taken by the country under review to move ahead with implementation of measure (b) of the recommendation

⁴⁹ Ibid.

⁵⁰ Available at: http://www.oas.org/juridico/PDFs/model_law_reporting.pdf

⁵¹ In its comments document on the draft preliminary report of February 8, 2018, the State under review offered the following comment: “This is now addressed by the recently passed Protected Disclosures Act 2018.”

⁵² See Response of the Cooperative Republic of Guyana to the questionnaire for the Fifth Round, pg. 44, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

contained in Section 2.1 of Chapter II of this report, and it reiterates the need for the country under review to continue to address this recommendation, since, although a bill exists, a law has not yet been promulgated that provides protection to whistleblowers and their families, especially when the person is a public official and the acts of corruption involve superiors or co-workers. (see Recommendation 2.3.2 in Section 2.3 of Chapter II of this Report)

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

Expand the existing mechanisms for reporting, such as anonymous reporting or protection of identity reporting, that guarantee the personal security and the confidentiality of the identity of public servants and private citizens who, in good faith, report acts of corruption

[150] In its Response to the Questionnaire,⁵³ the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[151] -“*Clause 8 of the Bill provides for persons to make disclosures anonymously to the Commission by virtue of a hotline number, ordinary mail or electronic mail. Clause 19 also prohibits the Commission from disclosing any information that identifies or that might lead to the identification of the person making the disclosure. Link: <http://mola.gov.gy/images/pdf/PROTECTEDDISCLOSUREBILL2016.pdf>”.*

[152] With respect to the above information, the Committee takes note of the steps taken by the country under review to move ahead with implementation of measure (c) of the recommendation contained in Section 2.1 of Chapter II of this report, and it reiterates the need for the country under review to continue to address this recommendation⁵⁴. (see Recommendation 2.3.3 in Section 2.3 of Chapter II of this Report)

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

Creation of mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it.

[153] In its Response to the Questionnaire,⁵⁵ the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[154] -“*Clause 20 of the Bill provides for protection to be given under the Witness Protection Act (currently in draft Bill format) to whistleblowers or to persons rendering assistance in an investigation. The Commission itself may recommend protection if in its opinion it appears to be necessary. The Commission has the power to issue directives to the appropriate authorities under the said Witness Protection legislation or any other written law to take necessary steps to provide protection to whistleblowers.*

53. Ibid, pg. 47.

⁵⁴ In its comments document on the draft preliminary report of February 8, 2018, the State under review offered the following comment: “This is now addressed by the recently passed Protected Disclosures Act 2018.”

55. Ibid. pg. 48.

[155] -Link: <http://mola.gov.gy/images/pdf/PROTECTEDDISCLOSUREBILL2016.pdf>

[156] -Link for Witness Protection Bill: <http://mola.gov.gy/images/pdf/TWP.pdf> .”

[157] Upon referring to difficulties in implementing measure (d), the country under review mentioned in its Response to the Questionnaire⁵⁶ that implementation of this measure had been delayed because the National Assembly had not yet passed the bill, therefore those mechanisms had yet to come into force. However, once both pieces of legislation had passed, the mechanisms would be made available to whistleblowers.

[158] With respect to the above information, the Committee takes note of the steps taken by the country under review to move ahead with implementation of measure (d) of the recommendation contained in Section 2.1 of Chapter II of this report, and it reiterates the need for the country under review to continue to address this recommendation⁵⁷. (see Recommendation 2.3.4 in Section 2.3 of Chapter II of this Report)

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

Witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens.

[159] In its Response to the Questionnaire,⁵⁸ the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as a step that contribute to progress in its implementation:

[160] -“*Under the Protected Disclosures Bill, protection will be offered to any whistleblower or any person rendering assistance in an investigation. There is no preferential treatment based on whether or not that person is a public or private citizen.*”

[161] Upon referring to difficulties in implementing measure (e), the country under review mentioned in its Response to the Questionnaire,⁵⁹ that implementation of this measure had been delayed because the Witness Protection Bill is still only a draft that had not been passed by the National Assembly, and therefore those mechanisms had yet to come into force.

[162] With respect to the above information, the Committee takes note of the steps taken by the country under review to move ahead with implementation of measure (e) of the recommendation contained in Section 2.1 of Chapter II of this report, and it reiterates the need for the country under review to continue giving this matter its attention, since, although a bill exists, a witness protection law has not yet been promulgated that provides them with the same guarantees as public officials and private citizens. (see Recommendation 2.3.5 in Section 2.3 of Chapter II of this Report)

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

⁵⁶ See Response of the Cooperative Republic of Guyana to the questionnaire for the Fifth Round, pg. 48, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

⁵⁷ In its comments document on the draft preliminary report of February 8, 2018, the State under review offered the following comment: “This is now addressed by the recently passed Protected Disclosures Act 2018.”

⁵⁸ Ibid, pg. 49.

⁵⁹ Ibid.

Mechanisms to facilitate international cooperation on the foregoing matters, when appropriate, including the technical assistance and cooperation provided for by the Convention, as well as the exchanges of experiences, training, and mutual assistance.

[163] In its Response to the Questionnaire,⁶⁰ the country under review provides the following information with respect to the above measure:

[164] -*“There are no such existing mechanisms to provide for international cooperation in the protection of whistleblowers.”*

[165] The Committee notes that, neither in its Response to the Questionnaire nor during the on-site visit, did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[166] In light of the foregoing, the Committee takes note of the need for the country under review to give additional attention to the implementation of measure (f) of the recommendation contained in Section 2.1 of Chapter II of this report⁶¹. (see Recommendation 2.3.6 in Section 2.3 of Chapter II of this Report)

Measure g) suggested by the Committee that requires additional attention within the Framework of the Third Round:

A simple whistleblower protection application process.

[167] In its Response to the Questionnaire,⁶² the country under review provides the following information with respect to the above measure:

[168] -*“Clause 20 of the draft Bill does not explicitly set out the application process in detail. However, it is clear that the application is made to the Commission and the Commission will determine whether the circumstances necessitate such protection.”*

[169] The Committee notes that, neither in its Response to the Questionnaire nor during the on-site visit, did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[170] In light of the foregoing, the Committee reiterates the need for the country under review to give additional attention to the implementation of measure (g) of the recommendation contained in Section 2.1 of Chapter II of this report⁶³. (see Recommendation 2.3.7 in Section 2.3 of Chapter II of this Report)

Measure h) suggested by the Committee that requires additional attention within the Framework of the Third Round:

⁶⁰ See Response of the Cooperative Republic of Guyana to the questionnaire for the Fifth Round, pg. 50, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

⁶¹ In its comments document on the draft preliminary report of February 8, 2018, the State under review offered the following comment: “This is now addressed by the recently passed Protected Disclosures Act 2018.”

⁶² Ibid, pg. 51.

⁶³ In its comments document on the draft preliminary report of February 8, 2018, the State under review offered the following comment: “This is now addressed by the recently passed Protected Disclosures Act 2018.”

Provisions which provide for administrative and criminal sanctions for the failure to observe the rules and/or duties relating to protection.

[171] In its Response to the Questionnaire,⁶⁴ the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[172] - *“No law at present which addresses this. However, such provisions have been included in the draft Protected Disclosures Bill (see: Clause 24, 24, 26 and 27) and the draft Witness Protection Bill (see Clause 20).”*

[173] In light of the foregoing, the Committee reiterates the need for the country under review to give additional attention to the implementation of measure (h) of the recommendation contained in Section 2.1 of Chapter II of this report⁶⁵. (see Recommendation 2.3.8 in Section 2.3 of Chapter II of this Report)

Measure i) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Provisions that clearly delineate the respective competence of judicial and administrative authorities with respect to this area.

[174] In its Response to the Questionnaire,⁶⁶ the country under review provides the following information with respect to the above measure:

[175] - *“There is no present law which clearly delineates the respective competence in the area of protection of witnesses and whistleblowers”.*

[176] In light of the foregoing, the Committee reiterates the need for the country under review to give additional attention to the implementation of measure (i) of the recommendation contained in Section 2.1 of Chapter II of this report⁶⁷. (see Recommendation 2.3.9 in Section 2.3 of Chapter II of this Report)

2.2. New developments regarding the provision in the Convention on systems for protecting public servants and private citizens who, in good faith, report acts of corruption

2.2.1. New developments with Respect to the Legal Framework

64. Ibid. pg. 52.

⁶⁵ In its comments document on the draft preliminary report of February 8, 2018, the State under review offered the following comment: “This is now addressed by the recently passed Protected Disclosures Act 2018.”

⁶⁶ See Response of the Cooperative Republic of Guyana to the questionnaire for the Fifth Round, pg. 53, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

⁶⁷ In its comments document on the draft preliminary report of February 8, 2018, the State under review offered the following comment: “This is now addressed by the recently passed Protected Disclosures Act 2018.”

[177] In its Response to the Questionnaire,⁶⁸ the country under review mentioned the existence of a Witness Protection Bill of which the Committee has already taken note in Section 2.1 of Chapter II of this Report.

2.2.2. New developments with respect to technological aspects

[178] No new developments were reported with respect to technological aspects. The country under review referred to the Bill alluded to in the preceding paragraph.

2.2.3. Results

[179] The Committee notes that neither in its Response to the Questionnaire nor during the on-site visit did the country under review provide any information about objective results in relation to systems for protecting public servants and private citizens who in good faith report acts of corruption because it has no such system.

2.3. Recommendations

[180] In light of the comments made in Section 2.1 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 2.3.1 Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings. (see paragraph 146 in Section 2.1 of Chapter II of this Report)
- 2.3.2 Protection of whistleblowers and their families, not only in relation to their physical integrity but also as it concerns the workplace, especially when the person is a public official and the acts of corruption involve superiors or co-workers. (see paragraph 149 in Section 2.1 of Chapter II of this Report)
- 2.3.3 Expand the existing mechanisms for reporting, such as anonymous reporting or protection of identity reporting, that guarantee the personal security and the confidentiality of the identity of public servants and private citizens who, in good faith, report acts of corruption. (see paragraph 152 in Section 2.1 of Chapter II of this Report).
- 2.3.4 Creation of mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it. (see paragraph 158 in Section 2.1 of Chapter II of this Report)
- 2.3.5 Witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens. (see paragraph 162 in Section 2.1 of Chapter II of this Report)
- 2.3.6 Mechanisms to facilitate international cooperation on the foregoing matters, when appropriate, including the technical assistance and cooperation provided for by the Convention, as well as the exchanges of experiences, training, and mutual assistance. (see paragraph 166 in Section 2.1 of Chapter II of this Report)

⁶⁸ Ibid, pg. 49.

- 2.3.7 A simple whistleblower protection application process. (see paragraph 170 in Section 2.1 of Chapter II of this Report)
- 2.3.8 Provisions which provide for administrative and criminal sanctions for the failure to observe the rules and/or duties relating to protection. (see paragraph 173 in Section 2.1 of Chapter II of this Report)
- 2.3.9 Provisions that clearly delineate the respective competence of judicial and administrative authorities with respect to this area. (see paragraph 176 in Section 2.1 of Chapter II of this Report)

3. ACTS OF CORRUPTION (ARTICLE VI, PARAGRAPH 1 OF THE CONVENTION)

3.1. Follow up on Implementation of the Recommendations Formulated in the Second Round

Recommendation 3.1:

Modify Section 338 (2) (a) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(1)(a) of the Convention, by incorporating therein, the elements of directly or indirectly accepting a bribe by a public servant or soliciting it.

Recommendation 3.2:

Modify Section 338 (2) (b) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(1)(b) of the Convention, by incorporating therein, the elements of directly or indirectly offering a bribe to a public servant.

Recommendation 3.3:

Criminalize those who act as accessories after the fact with respect to corruption offenses, as required by Article VI(1)(e) of the Convention.

[181] The Committee notes that, neither in its Response to the Questionnaire nor during the on-site visit, did the country under review provide new information illustrating progress with implementing the above recommendations.

[182] In view of the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementing the above recommendations. (see Recommendations 3.3.1 to 3.3.3 in Section 3.2 of Chapter II of this Report)

3.2. New developments in respect of the Convention provision on acts of corruption

3.2.1. New developments in the legal framework

[183] The Committee notes that neither in its Response to the Questionnaire nor during the on-site visit did the country under review provide any information on new developments in the legal framework in this area.

3.2.2. New developments with respect to technological aspects

[184] The country under review neither in its Response to the Questionnaire nor during the on-site visit did not provide information regarding these kinds of developments.

3.2.3. Results

[185] The Committee notes that neither in its Response to the Questionnaire nor during the on-site visit did the country under review provide any information about results in relation to acts of corruption recognized at Article VI(1) of the Convention. Accordingly, it will make recommendations to the country under review in that regard. (see Recommendations 3.3.4 and 3.3.5 in Section 3.3 of Chapter II of this Report)

3.3. Recommendations

[186] In light of the observations formulated in sections 3.1 and 3.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 3.3.1 Modify Section 338 (2) (a) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(1)(a) of the Convention, by incorporating therein, the elements of directly or indirectly accepting a bribe by a public servant or soliciting it. (see paragraphs 181 to 182 in Section 3.1 of Chapter II of this Report)
- 3.3.2 Modify Section 338 (2) (b) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(1)(b) of the Convention, by incorporating therein, the elements of directly or indirectly offering a bribe to a public servant. (see paragraphs 181 to 182 in Section 3.1 of Chapter II of this Report)
- 3.3.3 Criminalize those who act as accessories after the fact with respect to corruption offenses, as required by Article VI(1)(e) of the Convention. (see paragraphs 181 to 182 in Section 3.1 of Chapter II of this Report)
- 3.3.4 Compile annual statistics on investigations opened by the Department of Public Prosecution, so as to determine how many have been suspended, how many have prescribed, how many have been archived, how many are ongoing, and how many have been referred to the competent authority for a decision, in order to identify challenges and recommend corrective measures. (see paragraphs 181 to 182 in Section 3.1 of Chapter II of this Report)
- 3.3.5 Compile annual statistics on investigations opened by the courts into acts of corruption, so as to determine how many are ongoing, suspended, prescribed, archived without a decision adopted, ready for a decision, or have had a decision adopted on merits, and whether the decision was to acquit or convict, in order to identify challenges and recommend corrective measures. (see paragraphs 181 to 182 in Section 3.1 of Chapter II of this Report)

4. GENERAL RECOMMENDATIONS

Recommendation 4.1 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.

[187] In its Response to the Questionnaire,⁶⁹ the country under review provides the following information:

[188] *–“The Ministry of the Presidency through the Training Division of the Department of Public Service is tasked with the responsibility of staff development and training, which is ongoing.*

[189] *–The Bertram Collins College of the Public Service was developed and designed to train everyone entering the Public Service (through the cadet program) and to upgrade the skills of the existing public servants on an ongoing basis in keeping with the government priorities, national development goals and the demands of the Ministries, Regional Administration and Departments.”*

[190] The Committee, bearing in mind that sections 1, 2, and 3 of Chapter II of this report contain an up-to-date, detailed analysis both of the follow-up on the recommendations made to Cooperative Republic of Guyana in the Second Round and of the systems, standards, measures, and mechanisms to which the above recommendation refers, the Committee reaffirms the contents of those sections and, therefore, considers that this recommendation is redundant.

Recommendation 4.2 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein.

[191] In its Response to the Questionnaire,⁷⁰ the country under review provides the following information:

[192] *“Not compliant with this recommendation”.*

[193] The Committee, bearing in mind that sections 1, 2, and 3 of Chapter II of this report contain an up-to-date, detailed analysis both of the follow-up on the recommendations made to Cooperative Republic of Guyana in the Second Round of Review and of the systems, standards, measures, and mechanisms to which the above recommendation refers, the Committee reaffirms the contents of those sections and, therefore, considers that this recommendation is redundant.

⁶⁹ See Response of the Cooperative Republic of Guyana to the questionnaire for the Fifth Round, pg. 58, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

⁷⁰ See Response of the Cooperative Republic of Guyana to the questionnaire for the Fifth Round, pg. 59, http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

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

1. INSTRUCTIONS TO GOVERNMENT PERSONNEL TO ENSURE PROPER UNDERSTANDING OF THEIR RESPONSIBILITIES AND THE ETHICAL RULES GOVERNING THEIR ACTIVITIES (ARTICLE III, PARAGRAPH 3 OF THE CONVENTION)

[194] In accordance with the Methodology adopted by the Committee for the Fifth Round regarding the implementation of Article III, paragraph 3 of the Convention, which refer to measures that intended to establish, maintain and strengthen “*instruction[s] to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities,*” the country under review selected the Department of Public Service and the National Procurement and Tender Board Administration, based on their competencies and the fact that their personnel would be the most appropriate for the review.⁷¹

[195] The following is a brief description of the two bodies selected by the Cooperative Republic of Guyana that are to be examined in this section:

[196] - The Department of Public Service is in charge of implementing training (induction/orientation) for building capacities and ensuring organizational results in the Public Service.

[197] - The National Procurement and Tender Administration has as its mission to facilitate the establishment and implementation of regulatory environment conducive to transparency, economy, efficiency, openness, fairness and accountability in public sector procurement.

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

[198] The Committee observes that neither in its Response to the Questionnaire, nor during the on-site visit, did the country under review provide any information about provisions and/or measures on instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities.

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

[199] Bearing in mind the preceding paragraph, the Committee finds an absence of provisions and/or measures for providing instruction to personnel in the public-sector entities selected by the country under review to ensure proper understanding of their responsibilities and the ethical rules governing their activities.

[200] Bearing in mind the foregoing, the Committee believes that the country under review should consider adopting the necessary measures to ensure that the personnel of the Department of Public Service and of the National Procurement and Tender Administration have a proper understanding of their responsibilities and of the ethical rules governing their activities. (see Recommendation 1.4.1 in Section 1.4 of Chapter III of this Report)

⁷¹ Ibid, pg. 1.

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

[201] Neither in its Response to the Questionnaire, nor during the on-site visit, did the country under review provide any information about results of instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities. In light of the foregoing, the Committee will make recommendations in that regard to the country under review. (see Recommendation 1.4.2 in Section 1.4 of Chapter III of this Report)

1.4. Conclusions and recommendations

[202] On the basis of the analysis conducted in foregoing sections, the Committee suggests that the country under review consider the following recommendations in relation to its implementation of the provisions contained in Article III (3) of the Convention:

1.4.1. Adopt the necessary measures to ensure that the personnel of the Department of Public Service and of the National Procurement and Tender Administration have a proper understanding of their responsibilities and of the ethical rules governing their activities, which could include, *inter alia*, the following:

- a) The way in which said personnel are apprised of their responsibilities and functions and of the ethical rules that govern their activities. (See paragraph 200 in Section 1.2 of Chapter III of this Report)
- b) The occasions when personnel are supposed to be informed of their responsibilities and functions and of the ethical rules that govern their activities. (See paragraph 200 in Section 1.2 of Chapter III of this Report)
- c) Implementation of induction, training, or instruction programs and courses for said personnel on how to perform their responsibilities and functions properly, about the ethical rules governing their activities, and, in particular, for making them aware of the risks of corruption inherent in the performance of said functions. (See paragraph 200 in Section 1.2 of Chapter III of this Report)
- d) Utilization of modern communication technologies to apprise personnel about their official responsibilities and functions and about ethical rules governing their activities and to provide guidance in their proper fulfillment. (See paragraph 200 in Section 1.2 of Chapter III of this Report)
- e) Establishment or identification of bodies to which personnel can turn for information or to dispel doubts about how to perform their responsibilities and functions properly and about the ethical rules governing their activities. (See paragraph 200 in Section 1.2 of Chapter III of this Report)
- f) Establishment or identification of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to

be informed of their responsibilities and functions and of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures that govern such matters. (See paragraph 200 in Section 1.2 of Chapter III of this Report)

- 1.4.2. Compile detailed statistics on the results of instruction imparted to personnel of the Department of Public Service and the National Procurement and Tender Administration to ensure proper understanding of their responsibilities and the ethical rules governing their activities, covering such aspects as: number of induction, training, or instruction programs and courses for that purpose; periodicity or frequency with which they are imparted and the number of civil servants taking part; number of handbooks for civil servants on the proper performance of their functions and their ethical rules, and to alert them to the risks of corruption inherent in the performance of the functions; number of inquiries by civil servants on the proper performance of their duties and on the ethical rules governing their activities answered, and use of modern communication technologies for that purpose; number of activities undertaken to ascertain if the objective of ensuring that those ethical rules are understood has been achieved; and number of measures or adopted by the authorities or bodies responsible for seeing that instruction is provided fully and for ensuring compliance with provisions and/or measures adopted in that regard. The purpose of the foregoing is to identify obstacles and recommend corrective measures, as necessary. (See paragraph 201 in Section 1.2 of Chapter III of this Report)

2. STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE (ARTICLE 11, PARAGRAPH 12 OF THE CONVENTION)

2.1. STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE

[203] In its Response to the Questionnaire⁷², the country under review informs that no studies have been conducted on prevention measures that give due consideration to the relationship between equitable remuneration and probity in service.

2.2. ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT GUIDELINES FOR DETERMINING CIVIL SERVANT REMUNERATIONS

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

[204] The Committee notes that, neither in its Response to the Questionnaire nor during the on-site visit, did the country under review provide information about the establishment of objective and transparent criteria to determine compensation for public servants⁷³.

⁷² See Response of the Cooperative Republic of Guyana to the questionnaire for the Fifth Round, p. 7. Available at: http://www.oas.org/juridico/PDFs/mesicic5_guy_answquest_updated.pdf

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

[205] Bearing in mind the preceding paragraph, the Committee observes an absence in the country under review of a legal framework for establishing objective and transparent criteria to determine compensation for public servants in the entire Public Administration.

[206] In light of the foregoing, the Committee believes that the country under review should consider establishing a legal framework with respect to remuneration policy that establishes objective and transparent criteria to determine fair compensation for public servants in the entire Public Administration. Such a legal framework could include the designation or establishment of a governing body to supervise compensation. The Committee will formulate a recommendation in that regard. (see Recommendation 2.2.3.1. in Chapter III of this Report)

2.2.3. Conclusions and recommendations

[207] On the basis of the analysis conducted in foregoing sections, the Committee offers the following recommendation with respect to implementation in the Cooperative Republic of Guyana of Article III (12) of the Convention:

- 2.2.3.1. Consider establishing a legal framework with respect to remuneration policy that establishes objective and transparent criteria to determine fair compensation for public servants in the entire Public Administration, which could include the designation or establishment of a governing body to supervise compensation. (see paragraph 206 in Section 2.2 of Chapter III of this Report)

IV. BEST PRACTICES

[208] The country under review did not present best practices related to the Convention provisions selected for the Second and Fifth Rounds of Review.

⁷³ Ibid.

ANNEX

AGENDA FOR THE ON-SITE VISIT TO THE COOPERATIVE REPUBLIC OF GUYANA

<u>Monday, September 25, 2017</u>	
3:00 pm – 3:30 pm <i>Cara Lodge Hotel</i>	Coordination meeting between the representatives of the member states of the Subgroup and the Technical Secretariat
3:30 pm – 4:00 pm <i>Cara Lodge Hotel</i>	Coordination meeting between the representatives of the country under review, the member states of the Subgroup, and the Technical Secretariat
<u>Tuesday, September 26, 2017</u>	
8:00 am – 12:15 pm <i>Bank of Guyana Address: 1 Avenue of the Republic, Georgetown</i>	Meetings with civil society organizations and/or, inter alia, private sector organizations, professional associations, academics or researchers
8:00 am – 9:15 am	<u>Topic 1:</u> <ul style="list-style-type: none"> • Government hiring systems, training and remuneration of government officers
	<u>Participants:</u> <ul style="list-style-type: none"> - Transparency Institute of Guyana (TIGI) Mr. Swatantra A. Goolsarran TIGI Member - Guyana Public Service Union Ms. Don Gardner and Mr. Mortimer
9:30 am – 10:45 am	<u>Topic 2:</u> <ul style="list-style-type: none"> • Systems for protecting whistleblowers who report acts of corruption
	<u>Participants:</u> <ul style="list-style-type: none"> - Transparency Institute of Guyana (TIGI) Dr. Swatantra A. Goolsarran TIGI Member - Guyana Association of Women Lawyers (GAWL)

11:00 am – 12:15 pm	<p>Topic 3:</p> <ul style="list-style-type: none"> • Systems for government procurement of goods and services
	<p><u>Participants:</u></p> <ul style="list-style-type: none"> - Transparency Institute of Guyana (TIGI) Dr. Swatantra A. Goolsarran TIGI Member
12:30 pm – 2:00 pm	Lunch
2:00 pm – 5:30 pm	Meetings with public authorities: Government hiring systems and training and remuneration of government officers
2:00 pm – 5:30 pm	<p>Panel 1</p> <ul style="list-style-type: none"> • Follow-up of the Second Round recommendations on government hiring systems: <ul style="list-style-type: none"> - Progress and new developments with the implementation of those recommendations pending compliance - Systems for filing challenges - Results - Difficulties encountered and technical cooperation needs <p><u>Participants:</u></p> <p>Officials with direct and practical knowledge of the topics identified for consideration at each meeting from:</p> <ul style="list-style-type: none"> - The Public Service Commission (PSC) Ms. Marvalyn Stephens Secretary - The Public Service Appellate Tribunal Mr. W. Brown and Ms. A Kingston - The Audit Office of Guyana Mr. Lakeram Ramkoomar Audit Director - The Public Accounts Committee (PAC) of the Parliament Mr. Irfaan Ali Chairman, Public Accounts Committee
5:30 pm	Informal meeting⁷⁴ between the representatives of the Subgroup member states and the Technical Secretariat.

⁷⁴. 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

Wednesday, September 27, 2017	
8:30 am – 12:00 pm <i>Bank of Guyana 1 Avenue of the Republic, Georgetown</i>	Meetings with public authorities: Preventive measures that take into account the relationship between equitable compensation and probity in public service, and instructions given to the personnel of public agencies to assist them in understanding their responsibilities and the ethical rules governing them
8:30 am – 10:15 am	<p><u>Panel 2:</u></p> <ul style="list-style-type: none"> • Preventive measures that take into account the relationship between equitable compensation and probity in public service <p><i>The Public Service Commission</i></p> <ul style="list-style-type: none"> - Criteria currently used to determine pay for the personnel under the purview of the Public Service Commission - Study/studies conducted - Objective and transparent criteria for setting public servants' salary levels - Difficulties encountered and technical cooperation needs - Results <p><i>The Judicial Service Commission (JSC)</i></p> <ul style="list-style-type: none"> - Criteria currently used to determine pay for the personnel under the purview of the Judicial Service Commission - Study/studies conducted - Difficulties encountered and technical cooperation needs - Results <p><u>Participants:</u></p> <p>Officials with direct and practical knowledge of the topics identified for consideration at each meeting from:</p> <ul style="list-style-type: none"> - The Public Service Commission Ms. Marvalyn Stephens Secretary - The Ministry of Finance F.S Hector Butts Finance Ministry's -Finance Secretary
10:15 am –12:15 pm	<p><u>Panel 3:</u></p> <ul style="list-style-type: none"> - Instructions given to the personnel of public agencies to assist them in understanding their responsibilities and the ethical rules

meeting with the members of the Subgroup, to exchange preliminary points of view on the topics addressed at those meetings...”

	<p>governing them:</p> <ul style="list-style-type: none"> - Legal framework, programs, competent agencies, and use of technology - Results - Difficulties encountered and technical cooperation needs <hr/> <p><u>Participants:</u></p> <p>Officials with direct and practical knowledge of the topics identified for consideration at each meeting from:</p> <ul style="list-style-type: none"> - Department of Public Service (DPS) Mr. Grant Principal Personnel Officer - National Procurement and Tender Administration Mr. Donald De Clou Chief Executive Officer - Public Service Commission Ms. Marvalyn Stephens Secretary - Bertram Collins College of Public Service Mr. Griffith Proffesor - The Integrity Commission Ms. Amanda Jaisingh Secretary
12:00 pm – 2:00 pm	Lunch
2:00 pm – 5:30 pm	Meetings with public authorities: Systems for government procurement of goods and services
	<p><u>Panel 4:</u></p> <ul style="list-style-type: none"> - Follow-up on the Second Round recommendations: Systems for government procurement of goods and services: <ul style="list-style-type: none"> - Progress and new developments with the implementation of those recommendations pending compliance - Results - Difficulties encountered in the implementation processes - Technical cooperation needs <hr/> <p><u>Participants:</u></p> <p>Officials with direct and practical knowledge of the topics identified for consideration at each meeting from:</p> <ul style="list-style-type: none"> - Public Procurement Commission Ms. Carol Corbin

	Chairman
5:30 pm	Informal meeting ⁷⁵ between the representatives of the Subgroup member states and the Technical Secretariat
Thursday, September 28, 2017	
8:30 am – 12:00 pm <i>Bank of Guyana 1 Avenue of the Republic, Georgetown</i>	Meetings with public authorities: Systems for protecting whistleblowers and criminalization of acts of corruption
8:30 am – 9:45 am	<p><u>Panel 5:</u></p> <ul style="list-style-type: none"> - Follow-up of the Second Round recommendations: Systems for protecting whistleblowers who report acts of corruption <ul style="list-style-type: none"> - Progress, new developments, and the results thereof in the implementation of those recommendations pending compliance - Results - Difficulties encountered in the implementation processes - Technical cooperation needs and good practices
	<p><u>Participants:</u></p> <p>Officials with direct and practical knowledge of the topics identified for consideration at each meeting from:</p> <ul style="list-style-type: none"> - Department of Public Prosecution (DPP) Ms. Diana O'Brien Assistant DPP
10:00 am – 11:30 am	<p><u>Panel 6:</u></p> <ul style="list-style-type: none"> - Follow-up of the Second Round recommendations: Criminalization of acts of corruption <ul style="list-style-type: none"> - Difficulties encountered in the implementation process - Results
	<p><u>Participants:</u></p> <p>Officials with direct and practical knowledge of the topics identified for consideration at each meeting from:</p>

⁷⁵. 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...”

	- Department of the Public Prosecution (DPP) Ms. Diana O'Brien Assistant DPP
12:00 am – 12:30 am	Informal meeting between the representatives of the Subgroup member states and the Technical Secretariat
12:30 pm – 13:00 pm	Final meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat

**OFFICIALS WHO ACTED AS CONTACTS IN THE COUNTRY UNDER REVIEW IN
COORDINATING THE ON-SITE VISIT, AS WELL AS REPRESENTATIVES OF THE
MEMBER STATES OF THE SUBGROUP AND OF THE MESICIC TECHNICAL
SECRETARIAT WHO TOOK PART IN THE VISIT**

COUNTRY UNDER REVIEW:

COOPERATIVE REPUBLIC OF GUYANA

Aubrey Heath-Retemyer

Chief Executive Officer, State Asset Recovery Agency and Lead Expert of the Committee of
Experts of the MESICIC

MEMBER STATES OF THE REVIEW SUBGROUP:

BELIZE

Stacy Martinez

Crown Counsel, International Legal Affairs, Attorney General's Ministry and Alternate
Expert of the Committee of Experts of the MESICIC

THE BAHAMAS

Kirkland Mackey

Counsel, Office of the Attorney - General & Ministry of Legal Affairs

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Principal Legal Officer, Department of Legal Cooperation
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