

Committee of Experts

Guyana

PROGRESS REPORT ON THE RECOMMENDATIONS OF THE FIRST AND SECOND ROUND REVIEWS, September 16, 2009

SECTION I. PROGRESS IN THE IMPLEMENTATION OF THE RECOMMENDATIONS

A FIRST ROUND REVIEW

Guyana submitted a progress report to the Committee of Experts on the Follow Up to the Implementation of the Recommendations in the First Round Review on June 27, 2008 at the 13th meeting of the MESICIC. The response below provides an update to the 2008 report where applicable. Some areas of the June 2008 report have been repeated as the latter was not published.

1.1 Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms

- I. **RECOMMENDATION 1.1:** In the light of the comments made in this section, the Committee recommends that the State under review consider strengthening the implementation of the provisions on conflicts of interest, and ensure that the laws on this matter are applicable to all public officials and employees, so as to permit the practical and effective application of a public ethics system.

Measures Suggested by the Committee: see 1. a, b, c, d, e, f

The Cooperative Republic of Guyana wishes to reaffirm the position taken in the June 2008 progress report that the Procurement Act 2003 and Regulations 2003 (in particular Sections 55 and 60 which refers to conflict of interest and offences), the Fiscal Management and Accountability Act 2003 (sections 10, 11, 49 and 85) hold the Minister and all public servants accountable even after the person/s cease/s to hold office), and the Audit Act 2004 (section 6 refers to conflict of interest in relation to the person who holds the office of the Auditor General) does address these recommendations at 1 a, d, e and f, Furthermore, the Auditor General must declare to the Parliamentary Public Accounts Committee all pecuniary interests and whether they are conflict of interest issues or not.

In relation 1, b and c, Guyana advises that in relation to these recommendations the Public Service Ministry and the Public Service Commission continue to make efforts to ensure that appointments are done in compliance with the Public Service Rules (1987) and the Public Service Commission' Rules (1998). (The latter was handed over on September 16, 2009). The Committee is asked to note that the Government drafted new Public Service Rules, however, the trade union movement has not accepted these despite efforts to reach consensus.

Guyana's Integrity Commission Act and the Code of Conduct contained in the said Act in Schedule 11 have established the legal framework for a public ethics system. All persons in public life whether elected (at the national, regional, local government levels including the President and all members of the Cabinet and all Members of Parliament) or appointed public officers including constitutional post holders (the Chancellor, the Speaker of the National Assembly, the judiciary, permanent secretaries, Regional Executive Officers, the heads of agencies, the heads of the Disciplined Services) are included.

ADOPTED MEASURES:

As Guyana reported in June 2008 that "the implementation of the Procurement Act, the Fiscal Management and Accountability Act and the Audit Act coupled with the introduction and establishment of the expanded committee system in Parliament allowing for scrutiny and oversight of every sphere of government, through an empowered the Public Accounts Committee and the four sectoral committees (economics, social services, natural resources and foreign relations), has improved fiduciary oversight." These measures continue to function.

As reported previously the Audit Office of Guyana and the Auditor General report directly to Parliament instead of through the Ministry of Finance and are under the "general supervision of the Public Accounts Committee" as proscribed in the constitution.

The Standing Orders of the Parliament of Guyana were comprehensively revised by a Special Select Committee (2006) which provides for Ministers and Public servants to be summoned to appear before the sectoral committees. In addition it proscribes Members of Parliament from having a pecuniary interest on a matter before the Parliament and prohibits receiving monies for services for a person appearing before a Parliamentary Committee. Since the introduction and implementation of these revised Standing Orders in the 9th Parliament several Ministers including the Prime Minister have been called to appear before the 4 sectoral committees to answer issues relating to policy and performance of their sectors.

In addition the meetings of the Public Accounts Committee and the 4 sectoral committees are open to the public and the media.

Guyana is committed to strengthening the Integrity Commission Act and the functioning of the Integrity Commission are under review. The Committee is asked to note that the Guyana constitution provides for the appointment of the chairman and members of this Commission after consultations between the President (Head of State) and the Leader of the Opposition.

I.2 Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanism

Recommendation 1.2

In light of the comments made in that section, the Committee recommends that the State under review perform an analysis on the enforcement and the efficiency of the standards of conduct for the conservation and proper use of the public resources as well as of the mechanisms that exist in Guyana to ensure compliance with these standards as instruments for the prevention of corruption.

As a result of the review, the country under review could consider the adoption of measures to promote, facilitate, consolidate or ensure the application of these instruments for that end.

ADOPTED MEASURES:

In addition to what was reported in June 2008, Guyana is benefitting from support from the Millennium Challenge Corporation (MCC) Threshold Programme since 2008 with a view to being considered “Compact Eligible” by end 2009.

The Programme is progressing well in strengthening Guyana’s capacity for improved tax administration, greater fiscal oversight and faster more efficient business start up/registration. Programme outcomes will include a restructured Revenue Authority; reorganized more effective tax, customs and VAT revenue systems; more strategic economic forecasting capacity; enhanced fiscal policy analytical capability; modernized Parliamentary fiduciary oversight, public accounts and library research capacity; upgraded procurement systems/procedures; and simplified, streamlined business registration process. Guyana’s indicators can be found on the MCC website on World Wide Country Indicators 2009

As reported in June 2008, the Rules, Policies and Procedures Manual 2006 of the Audit Office are in operation. Under the MCC Programme outlined above the National Procurement and Tender Administration has revised the standard bidding documents and standard evaluation criteria, updated the website (see <http://nptaguyana.org/procurement> where there has been an improvement in the data being posted: minutes posted are up to September 1: and awards by sector can be accessed; laws and regulations-- answer many of the issues asked in the recommendations of the 2nd Round review). These initiatives are part of an ongoing process to improve transparency and accountability.

The Audit Act 2004 allows under section 22 gives the Auditor General the power to inspect any bank account where moneys suspected or belonging to a public entity have been fraudulently or wrongfully paid into a person’s bank account and under this Act to take corrective measures.

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

Recommendation 1.3

In light of the comments made in that section, the Committee suggests that the State under review consider strengthening the existing mechanisms that require public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware to the appropriate authorities.

Measures suggested by the Committee:

a. Establish measures and systems that require all public servants to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, and facilitate compliance with this obligation through whatever measures are considered appropriate.

b. Adopt and implement protection measures for public servants to encourage them to report acts of corruption in good faith.

c. Review the application of the provision contained in section 28(3) of the Integrity Commission Act, in order to ensure that it does not become an impediment to, or inhibit, discourage, or intimidate public officials from reporting acts of corruption in the performance of public functions of which they are aware.

Guyana has nothing further to report concerning (a) and (b). The recommendation at (c) is under review by the Attorney General's Chambers.

d. Implement adequate measures, including training for public servants on how to report acts of corruption, and the requisites for reporting them, and on protection mechanisms for those who report such cases in good faith.

Adopted Measures:

Under the MCC Threshold Programme, over 500 members of the Guyana Revenue Authority have undergone various training programmes to improve the efficiency and transparency of the operations of the various departments, including the Customs Department, income tax and corporate tax departments, and the VAT unit.

Training is on-going and constant throughout the public service to improve the efficiency and effectiveness of delivery of services and thus reduce the opportunities and areas for corruption.

2. SYSTEMS FOR REGISTERING INCOME, ASSET AND LIABILITIES (ARTICLE 111.PARA 4 OF THE CONVENTION)

Recommendation 2

In light of the comments made in that section, the Committee recommends that the State under review consider strengthening the systems for declaring income, assets and liabilities.

Measures suggested by the Committee:

a. Maximize the use of systems to study the contents of the declarations of income, assets and liabilities, and to adopt suitable measures to detect and prevent conflicts of interest and cases of illicit enrichment, using modern technologies, whenever possible, to expedite their presentation and improve systems, analysis or investigation of cases.

b. consider the possibility of making adjustments or legal reforms to the power granted by the Integrity Commission Act to the Commission or the President, whichever is applicable, in order to impose the appropriate administrative sanctions without the authorization of another organ or official.

c. Consider adjustments or legal reform of the existing system of sanctions, including other conducts, such as the late presentation of declaration or other types of sanctions.

d. Review the possibility of extending the five-year term established in section 23 (b) of the Integrity Commission Act as a limit for instituting legal proceedings in respect of such unlawful acts committed by an official who no longer performs public functions.

e. Consider the advisability of granting to a body or official other than the President the administration, verification and application of the system for declaring assets and liability in respect of members of the Integrity Commission.

f. regulate the conditions, procedures and other relevant aspects as regards making disclosures of income, assets, and liabilities public, as appropriate, in accordance with the fundamental principles of the domestic legal system.

ADOPTED MEASURES:

In relation to 2 a, c, and f

Guyana's Report of June 2008 advises that GRA has improved the Income Tax Department and established a VAT system with a fully staffed and operational Department. Working persons and companies are issued TIN numbers and certificates. This new system coupled with the computerization of the GRA linked with the National Insurance Scheme and the Deeds Registry for registration of companies has enhanced the effectivity of the GRA and improved its investigative capacity. With the assistance of technical and financial support from the Millennium Challenge Corporation these efforts will be further strengthened.

The new Anti-Money Laundering and Countering Financing of Terrorism Act, Act No. 13 of 2009, enacted on August 14, 2009 and the Money Transfer Agencies (Licensing) Agencies Act 2009, Act No. 20 of 2009 also enacted on August 14, 2009 will further strengthen the capacity of the State to address these recommendations.

Guyana is not convinced that the recommendation at (d) is necessary at the moment but it will continue to keep it under review. In relation (b) and (e) these continue to be under review.

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

Recommendation 3:

Taking into account the considerations stated in that section, the Committee suggests that the State under review consider strengthening or creating oversight bodies to enforce compliance with the provisions of Chapter III, paragraphs 1, 2, 4 and 11 of the Convention, providing them with the resources needed to carry out their functions in full and establishing the mechanisms necessary for the institutional coordination of their actions and their periodic evaluation and follow-up.

ADOPTED MEASURES:

Guyana's report of June 2008 advises on the various oversight bodies and efforts being made to strengthen them. The GOG/IDB Citizen Security Programme and the Justice Sector Reform

Programme are both in operation and changes are being implemented which are in accord with this recommendation.

In keeping with Chapter 111, paragraphs 1, 2, 4, Guyana is in compliance -- it has enshrined in the Constitution, legislation and administratively Parliamentary and extra-parliamentary mechanisms for oversight, these have been highlighted earlier in the progress report on the First Round in June 2008.

In keeping with paragraph 11, through the assistance of citizens and public servants as well as greater transparency and accountability, Guyana has been able to bring more persons involved in corrupt activities before the courts.

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

4.1 General participation mechanisms

Recommendation 4.1:

Given the recommendations formulated with respect to each of the following mechanisms, consider the need for Guyana to reassess and strengthen its general approach for encouraging the participation of civil society and non governmental organizations in efforts to prevent corruption.

As reported in June 2008 Guyana has developed layers of citizen participation and involvement including the establishment of a Guyana Chapter of Crime Stoppers, a broad-based National Commission on Law and Order, the inclusion on state boards representatives of the business community, labour movement, religious bodies, and representatives of the parliamentary political parties, etc.,. Those measures continue to be in operation.

4.2 Mechanisms for access to information

Recommendation 4.2:

The Committee believes that Guyana should consider preparing and approving legal provisions supporting access to information.

Measures suggested by the Committee:

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

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

As reported in June 2008, every initiative of the government is subjected to scrutiny by the relevant civil society bodies whether thru sectoral Ministries, state agencies or led by the Head of State himself. These extend into the 10 administrative regions and communities throughout Guyana.

As the country's connectivity expands and improves a vast array of government information is posted on ministries/ state agencies' websites for information etc. Examples of key ministries/ agencies that have websites and recently expanded and improved them – the Guyana Revenue Authority, the National Procurement and Tender Administration, the Guyana Information Agency, Ministry of Tourism, Industry and Commerce, Go-Invest ,etc..

The Government is also at present actively considering draft legislation in relation to Access to Information and hopes to introduce same in the next parliamentary session.

4.3 Mechanisms for consultation

Recommendation 4.3.1:

Develop standards and procedures capable of supporting consultation mechanisms to encourage civil society organizations and citizens to provide opinions and proposals to be taken into account.

Recommendation 4.3.2:

Design and implement programs to publicize consultation mechanisms, and when appropriate, provide civil society, nongovernmental organizations and public officials and employees with the training and instruments necessary for effective implementation of those mechanisms.

ADOPTED MEASURES:

The policy of the government is grounded in the philosophy of consultation with the citizens through civil society organizations at the national, regional and community based organizations as well as community meetings at the grass roots in keeping with Article 13 of the constitution.

The constitution also enshrines the participation of civil society through a consensual parliamentary mechanism in the appointment of members to the Judicial, Police and Public Service Commissions and the 4 Human rights Commissions – the Rights of the Child Commission, the Women and Gender Equality Commission, the Indigenous Peoples Commission and the Ethnic Relations Commission. The Ethnic Relations Commission is functioning and the first Women and Gender Equality Commission and the Rights of the Child Commission were recently appointed and will commence operations. It is anticipated that the IPC will be appointed by the end of 2009 having completed the parliamentary consultation process.

4.4 Mechanisms to encourage participation in public administration

Recommendation 4.4:

The Committee considers it useful to formulate recommendations 4.3.1 and 4.3.2 of this section with respect to the mechanisms to encourage participation in the public administration.

ADOPTED MEASURES:

See Response to 4.3

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendation 5.1:

Ensure that both the mutual assistance treaties signed and the Convention are applied in specific cases of corruption.

Guyana has signed and ratified the Inter-American Convention on Mutual Assistance in Criminal Matters as well as the UN Convention on Corruption and the CARICOM Cooperation Treaty on Matters of Mutual Criminal Matters. In accordance with the Guyana Constitution the executive, judiciary are guided by the international treaties Guyana has acceded to even where there is no statute providing for those matters.

Recommendation 5.2:

Promote the adoption and effective application of the Mutual Assistance in Criminal Matters Bill.

This is under consideration.

Recommendation 5.3:

Determine and prioritize specific areas where technical cooperation by other States party might be useful in strengthening their capacities for preventing, detecting, investigating and punishing acts of corruption.

This matter is under constant review between Guyana and its bilateral partners and multi-lateral partners.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation 6.1, 6.2, 6.3:

Guyana is in compliance with these recommendations

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

Design and implement, as appropriate, training programs for public officials responsible for applying the systems, standards, measures and mechanisms considered in this report, to guarantee that they are properly understood, handled and applied.

This is on-going

Recommendation 7.2:

Select and develop procedures and indicators, as appropriate, for verifying follow-up of the recommendations contained in this report, and notify the Committee accordingly through the Technical Secretariat. For said purposes, Guyana could take into account the list of broader indicators applicable to the inter-American system that were available for selection, as necessary, by the State under review, and which have been published by the Technical Secretariat of the Committee on the OAS Internet website. The State under review could also take into account any information arising from the review of mechanisms developed pursuant to recommendation 7.3 below.

Guyana will seek to do so when required.

Recommendation 7.3:

Implement the recommendations contained in this report and develop, as appropriate and where none exist, procedures to review the mechanisms mentioned herein.

Recommendation 7.4:

Optimize the general statistical records of the oversight bodies so as to allow objective review of the results of the legal framework and other measures that are adopted.

ADOPTED MEASURES:

Guyana is making efforts to be in compliance with these recommendations. With improved reporting from the oversight bodies, greater capacity being built within state agencies, use of modern information-based technology and information-management systems, changes in policy making and efforts to rectify weaknesses of a systemic or administrative nature are easier and more effectively addressed. The legislative agenda includes new interventions the efficiency of the system.

The introduction of TRIPS (Tax Revenue Integrated Processing System) and IFMAS (the Integrated Financial Management and Accounting System) across all ten administrative regions and government agencies have vastly strengthened revenue collection, more efficient management of financial resources, improved budget forecasting, planning and implementation.

B. SECOND REVIEW

I. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE 111 (5) OF THE CONVENTION)

1.1 Systems of Government Hiring

In light of the comments made in the above-noted section, the Committee suggests that The Cooperative Republic of Guyana consider the following recommendation:

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

In meeting this recommendation, the Co-operative Republic of Guyana could take the following measures into account:

a) 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.

Guyana's Public Service Rules 1987 and the Public Service Commission Rules 1998 in relation to other public sector entities require that the system is fair, transparent and based on merit.

b) 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.

Guyana has already indicated that the PSC Rules 1998 provide for this and where applicable this is done for senior positions when required but it does not agree that this should be instituted across the board. As a developing country one would many times have to hire someone with less than the required qualifications as there is either no such skills in the country or where the salary offered in the public sector may be unattractive to what is offered by foreign funded projects.

c) 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.

. The PSC no longer hires temporary staff, although the present PSC Rules (1998) allow for such appointments. Rules #22 (1-7) and #23 (1-2) adequately satisfy all the requirements recommended at (c). In 2007 the PSC delegated its authority as provided for in the constitution to Permanent Secretaries, Heads and Regional Executive Officers as Chief Accounting Officers, to appoint certain categories of officers on the GS 1 and GS 2 salary scales by way of contract/gratuity. This will cater for certain urgent category of officers such as sluice gate operators/attendants, etc. The probationary period for the first appointment into the service is still in force.

The present Public Service Commission has completed its revision of the 1998 Rules based on country wide consultation held under the GOG/IDB Public Management and Modernization Programme (concluded 2008). The Attorney General Chamber's have been fully involved in the revision exercise.

Guyana has developed administrative guidelines which all Permanent Secretaries and Heads of Department are fully au fait with and must comply. There have been a number of cases recently that Permanent Secretaries/project managers have been surcharged.

- d) 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 web pages) when advertising outside the Public Service.

As stated in its report to the review in the Second Round, Guyana is in compliance with this. In addition, since August 2008 the Public Service Commission, and the Police and Teachers' Service Commissions, place full page ads in all the newspapers declaring all the new appointees for each of the posts, promotions, dismissals, transfers. This allows for the public being better informed and in the case of any dissatisfaction people can make complaints.

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

Guyana advises that provisions are in place in the Public Service Commission Rules(1998), the Public Service Appellate Tribunal, and under the Anti- Discrimination Act, the Equal Opportunity Act and the Constitution through a recourse to the courts

- f) 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.

A consultant was hired under the GOG/IDB Justice Improvement Programme in 2008 to develop appropriate procedures as recommended in (f). The consultant was required to propose an organizational structure, budget, etc for the establishment of a Secretariat for the Judicial Service Commission, rules to inform appointments, transfers, etc and develop a draft Code of Conduct for Judicial officers. These drafts have been completed and are under consideration.

- g) 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 merit and equality, providing clearly defined criteria on the manner for carrying out examinations and the advertisement of posts.

The Audit Act, No. 5 of 2004, Section 6 addresses the issue of the appointment and removal of the Auditor General as proscribed in Article 225 of the Guyana Constitution with the approval of the Parliamentary oversight body, the Public Accounts Committee which is chaired by the Opposition. Section 13 addresses the issue of the employment of officers and employees of the Audit Office under the Rules, Policies and Procedures Manual, posted on the Audit Office of Guyana website. Filling of Senior Offices posts in the AOG are subject to the approval of the Parliamentary Public Accounts Committee. Section 15, explicitly states

that employment must be based on merit, fair and equitable treatment. The complaints mechanism of a disgruntled employee or an applicant is the Public Service Commission.

1.2 Government Systems for the Procurement of Goods and Services

- 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.

In meeting this recommendation, the Co-operative Republic of Guyana could take the following measures into account:

- a) 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.

Permanent Secretaries are surcharged when there is breach of these rules: in the case of abuse or corruption, persons have been charged and brought before the courts. There are several cases in the courts mainly from the Customs dept. The Committee may wish to note that the Guyana Revenue Authority on its website www.revenuegy.org has an intelligence hotline to allow for anonymity of callers.

- b) 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.

The National Procurement and Tender Administration is the national authority provided for in law. Its website posts the laws by which it is governed, the minutes of the NPTA meetings, advertisements of upcoming tenders and awards made. Improvement in the timeliness of the postings is noted.

Guyana wishes to clarify that whilst the Constitution and the Procurement Act provide for a Public Procurement Commission which must be appointed by a parliamentary consensual mechanism by the Public Accounts Committee and which thus far has been unsuccessful, the Procurement Act establishes the National Procurement and Tender Administration as the national authority and even were the PPC to be appointed the NPTA would still carry out specific functions.

- c) 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 sanctioning contractors, in order to foster the principles of openness, equity and efficiency provided for in the Convention.

The Procurement Act 2003 and regulations do not make such provisions. Under Section 6, were a contractor to fail to fulfill those requirements of eligibility he would be rejected.

Guyana wishes to remind the Committee that as a new and emerging democracy the emphasis is on encouraging the creation of more entrepreneurs

throughout the country and to facilitate the development of their capacity to contribute to economic growth and generate economic activity. In this process, some will fail and others will grow.

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

This is provided for in the Procurement Act 2003, Section 5 stipulates the grounds for eligibility and ineligibility to for contractors or persons to bid .In other sections it stipulates the mechanisms for rejection of a bid and the complaints mechanisms.

- e) 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.

Section 60 (3) (4) of the Regulations to the Procurement Act 2003 addresses the issue of the conflict of interest and sanctions. Section 55 (1-6) addresses the issue of confidentiality of information attending the procurement process by public officers and members of procurement entities and the consequential sanctions.

Page 16 of the Second Round review of Guyana June 2008 advises on this matter.

- f) 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 timeline of the purchase.

Guyana answered this in its Second Round review and is satisfied that the supplementary answers given during the review have further clarified this issue.

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

Unless there is an emergency, the minimum period is two weeks.

- h) 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.

This is being done for large tenders in addition to advertisement in the media, but connectivity is still a challenge and Guyana holds to ensuring there is a competitive environment between bidders.

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

As pointed out during the 2nd round review, the entire country is not connected, the media, websites, are all used as well as public tenders in small communities through their means of communication.

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

As reported standard bidding documents have been developed for tenders at different levels and scope. These are posted on the NPTA website and other government agencies websites. Interested bidders also obtain standard bid documents by hand or through the website.

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

The process allows for the public opening of all the bids at the set time and date in the presence of all the bidders and there is a public check to ensure that all necessary documents are submitted with the bids. The criteria are identified to the bidders. The same holds for the outcome of a bid evaluation, the bidders that were not awarded are advised within 7 days of the award and the minutes are posted on the website. The awardees are publicly announced in the media on a weekly basis.

- l) 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.

On a weekly basis all the tenders which Cabinet has given a “No Objection” to in keeping with the Procurement Act 2003 are announced to the media and carried in the newspapers and on the air. The media and citizens can publicly bring to the NPTA or the given sector their concerns about the process of awarding the tender.

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

This is under review.

- n) 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.

The NPTA website posts the number of awards, the value of the award, the name of the contractor, etc., Guyana has not advanced to the level recommended in (n) but it is working towards it.

2. SYSTEM FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE 111 (8) OF THE CONVENTION)

The Co-operative Republic of Guyana does not have in place measures intended to establish, maintain and strengthen systems for protecting public servants and private citizens who, in good faith, report acts of corruption, as set out in Section 2 of Chapter 11 of the Report

In light of the comments made in the above-noted section, the Committee suggests that the Co-operative Republic of Guyana consider the following recommendations:

- 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.

In meeting this recommendation, the Co-operative Republic of Guyana could take into account the following measures:

- a) Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings;

Guyana does offer protection to the best of its ability and in keeping with available resources. The Guyana Chapter of the Crime Stoppers and the GRA intelligence hotline provide anonymity to the callers who provide valuable information on fighting crime and in particular corruption.

- b) 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;

Guyana is exploring different models of a simplified witness protection system and whistleblower legislation.

- c) 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 answer to (a) above

- d) 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;
- e) Witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens;

In response to (d) and (e), Guyana enacted the Evidence (Amendment) Act 2008, Act No. 19 Of 2008, to allow for the use of and provision of facilities for audio-links in the court room in order to protect the identity of the witness, to reduce intimidation or fear of appearing in

the court with the perpetrator. Whilst this legislation is not designed exclusively for whistle blowers it provides one more layer of protection that did not exist in June 2008.

The Director of Public Prosecutions can apply to the courts for a protection order etc and the Police must comply.

- f) 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.

Guyana has a number of bilateral and regional agreements in place such as the CARICOM Treaty on Cooperation in Mutual Criminal Matters, the CARICOM Treaty on Witness Protection, and the OAS Cooperation in Mutual Criminal Matters, as well as multi-lateral cooperation with agencies such as UNODC/CICAD. Guyana has benefitted from training and technical cooperation. Guyana also is a member of the Regional Security Directorate in CARICOM on crime fighting.

- g) A simple whistleblower protection application process.

See (b)

- h) Provisions which provide for administrative and criminal sanctions for the failure to observe the rules and/or duties relating to protection.
- i) Provisions that clearly delineate the respective competence of judicial and administrative authorities with respect to this area.

Guyana has nothing to report on (h) and (i) at this time

3. ACTS OF CORRUPTION (ARTICLE VI(I) OF THE CONVENTION)

The Co-operative Republic of Guyana has adopted measures aimed at criminalizing the acts of corruption provided for by Article VI(I) of the Convention, as discussed in Section .3, of Chapter 2 of this Report.

In light of the comments made in the above-noted section, the Committee suggests that the Co-operative Republic of Guyana consider the following 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(I)(a) of the Convention, by incorporating therein, the elements of directly or indirectly accepting a bribe by a public servant or soliciting it.
- 3.2. modify Section 338 (2) (b) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(I)(b) of the Convention, by incorporating therein, the elements of directly or indirectly offering a bribe to a public servant.
- 3.3. Criminalize those who act as accessories after the fact with respect to corruption offenses, as required by Article VI(I)(e) of the Convention.

Guyana has reviewed the recommendations at 3.1, 3.2, 3.3 and is of the view that the Criminal Law Offences Act, Sections 338, 333, 334, 335, and Sections 24, 26, 27, 31 and 33 are in compliance.

The new Anti-Money Laundering and Countering of Financing of Terrorism enacted in August 009 strengthens the legislative framework on acts of corruption.

4. GENERAL RECOMMENDATIONS

Based on the review and contributions made throughout this Report, the Committee suggests that the Co-operative Republic of Guyana consider the following recommendations:

- 4.1 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.

On going

- 4.2 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 therein.

Through the Millennium Challenge Threshold Programme advances are being made in creating computerized data collection and data analysis systems.

SECTION II: DIFFICULTIES IN THE IMPLEMENTATION OF THE RECOMMENDATIONS (ONLY RESPOND TO THIS SECTION IF YOUR COUNTRY CONSIDERS IT NECESSARY)

A. FIRST ROUND AND SECOND REVIEWS:

AS the country strives to implement improved systems of transparency and accountability within the human, physical and financial resources available, there are always challenges and competition between and for limited resources- human, financial and technical. The constitutional and parliamentary reform process while establishing a modern progressive model of inclusive governance also causes delays as on key and critical issues and decisions there must be political consensus between the government and the opposition.