

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

FINAL REPORT

(Adopted at the March 31, 2006 plenary session)



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

**FINAL REPORT ON IMPLEMENTATION IN GUYANA OF THE CONVENTION
PROVISIONS SELECTED FOR REVIEW IN THE FRAMEWORK OF THE FIRST
ROUND¹**

INTRODUCTION

1. Legal-Institutional framework²

The Republic of Guyana obtained full independence from the United Kingdom on May 26, 1966 and became a Republic within the Commonwealth on February 23, 1970. Guyana has a parliamentary system of government with a President as Head of State.

In 1970, the Constitution of Guyana amended its system of government from a Monarchy to a Republic and the Head of State ceased to be a representative of the Queen of England.

The Constitution of Guyana is the supreme law of the land and all branches and organs of the State must act in accordance with its provisions. The Constitution provides for a structure consisting of three branches of government: the Executive, the Legislative and the Judiciary, each with its own characteristics.

The President is elected directly by the people and holds office for a five-year term, acting as Head of State, the Executive Authority and the Commander-in-Chief of the Armed Forces.

The Cabinet is made up of the President, the Prime Minister and such ministers as the President may appoint to it. The President supervises the work of the Cabinet.

Guyana is divided into ten (10) regions, each of which is governed by a Regional Democratic Council presided over by a President. The local communities are governed by village or city councils.

The Attorney General is constitutionally responsible for the administration of legal affairs in Guyana and is the legal representative of the State in judicial and administrative matters. The Attorney General is also responsible for presenting legislative initiatives to Parliament.

The Director of Public Prosecutions is constitutionally responsible for instituting and undertaking criminal proceedings against any person through any court in respect of any offence against the laws of Guyana.

The legislative power of Guyana is exercised by the Parliament, which, pursuant to Article 51 of the Constitution, is made up of the President and the National Assembly. The unicameral National Assembly is made up of sixty-five members. Fifty-three of its members are elected directly through a

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on March 31, 2006, at its ninth meeting, held at OAS Headquarters in Washington D.C., United States, March 27 to April 1, 2006.

² Guyana's response to the questionnaire, Introduction, pp. 3 and 4.

proportional representation system, ten members are elected by the Regional Democratic Councils (local legislative bodies for each region) and two members come from the Supreme Congress of the People) (a special national level advisory group). The National Assembly is empowered to pass bills and constitutional amendments.

The 1980 Constitution of Guyana provides that the leader of the Opposition shall be elected at a meeting of the members of the National Assembly. In practice, the leader of the second largest political party in the country is elected as the Leader of the Opposition.

Parliament is empowered under section 65 of the Constitution to make laws for the peace, order and good government of Guyana.

The Supreme Court of Justice is composed of the Court of Appeal and the High Court. The first of these is made up of the Chancellor of the Judiciary, which has general responsibility for the administration of justice in Guyana and the Chief Justice of the Court; the second is composed of the Chief Justice of the court, as well as the number of judges that the Parliament determined in each instance. The Chancellor of the Judiciary and the Chief Justice of the Court are appointed by the President, following consultation with the Leader of the Opposition. The Caribbean Court of Justice is the highest court in the Guyanese judicial system.

The President appoints judges acting upon the advice of the Judicial Service Commission. This Commission is composed of the Chancellor of the Judiciary, who serves as the Chairman, the President of the High Court, and the Chairman of the Public Service Commission, as well as the other members appointed or designated by the President. Pursuant to Article 199 of the Constitution, the Judicial Service Commission has power to appoint as well as to discipline and remove judges and other officers connected with the courts. The President appoints judges in accordance with the advice of the Judicial Service Commission.

The Judiciary is made up of one Magistrates Court for each of the ten regions. To complement the constitutional provisions, the statutory provisions establish a court hierarchy which safeguards the citizens' civil and political rights. The lower courts, known as the magistrate's courts, have jurisdiction in criminal cases and civil suits involving small claims. The Supreme Court has general jurisdiction in both civil and criminal matters and the Court of Appeals hears appeals.

2. Ratification of the Convention and adherence to the Mechanism

According to the official register of the OAS General Secretariat, Guyana ratified the Inter-American Convention against Corruption on December 11, 2000 and deposited its instrument of ratification on February 15 of that year. As noted in the OAS General Secretariat's register, Guyana formulated a reservation with respect to actions of seizure.³

In addition, Guyana signed the Declaration on the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption on June 4, 2002.

³ Guyana's reservation states that: "*The Cooperative Republic of Guyana does not consider itself bound to extend the actions of seizure under Article XV of the present Convention to the extent that such actions violate the provisions of Article 142(1) of the Constitution of the Cooperative Republic of Guyana.*" Article 142(1) of the Constitution provides in pertinent part that "No property of any description shall be compulsory taken possession of, and no interest in or right over property of any description shall be compulsory acquired, except by or under the authority of a written law-"guarantees protection against the seizure of property as a fundamental right and it specifically protects property and all related interests or rights against compulsory seizure, except as authorized by written law.

I. SUMMARY OF INFORMATION RECEIVED

The Committee wishes to acknowledge the cooperation of Guyana, and the Office of the Attorney General in particular, throughout the review process, which was evident, *inter alia*, in its response to the questionnaire and its willingness to clarify or complete the information contained in its response. Furthermore, together with its response, Guyana sent the relevant provisions and documents, listed in the appendix of this report.

For its review the Committee took into consideration the information provided by Guyana up to August 20, 2005, which had been requested by the Secretariat and the members of the Review Subgroup, in order for it to be able to fulfill its functions, in accordance with the Committee's Rules of Procedure.

No documents were received from civil society pursuant to Article 33(b) of the Rules of Procedure and Other Provisions of the Committee.

II. REVIEW OF THE IMPLEMENTATION BY GUYANA OF THE SELECTED PROVISIONS

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

1.1. CONFLICTS OF INTEREST

1.1.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

Guyana has a set of standards of conduct which are contained in the Integrity Commission Act, including a Code of Conduct applicable to anyone in public office.

Schedule 1 of that Law specifically lists those officials who, for the purposes of its enforcement, are considered public officials. A public official is defined as a person in public life who holds a public office, whether or not it is listed in Schedule I (Section 2 (i) of the Integrity Commission Act).

Section 27(1) of the Integrity Commission Act also establishes a comprehensive Code of Conduct which indicates different situations involving conflicts of interest. These include the ban on holding public office for personal benefit or in order to influence a decision; requesting or accepting personally or for a third party, in exchange for taking or failing to take action or omitting to exercise his or her duties, any bonus, asset, benefit or favor in violation of the provisions in force; accepting for him or herself or for any third party, gifts, benefits or personal advantages; allowing private interests to enter into conflict or interfere with the proper exercise of his or her public obligations; improperly using government information; using his or her official influence to support plans or promote contracts or propose contracts or any other matter related to any interest; using for his or her advantage, benefit or personal gain, or communicating to third parties or making available to the public, the contents of any document, information or matter while exercising his or her public duties; and using public property, equipment supplies or services, or allowing them to be used, for any purpose other than those officially approved.

Lastly, section 27(2) of the Integrity Commission Act stipulates that a person in public life who is in breach of any provision of the Code of Conduct shall be liable on summary conviction to a maximum fine of twenty-five thousand dollars (GYD\$25,000.00)⁴ and to imprisonment for a period of not less than six months nor more than one year.

1.1.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms

The legal provisions on conflicts of interest and mechanisms for enforcing them which have been examined by the Committee are relevant for the promotion of the Convention's objectives.

In this respect, it is pertinent to note the scope of the definition of a public official under Section 2 (i) of the Integrity Commission Act, which denotes the progress made in implementing the Convention. However, the Committee deems it appropriate to express the following considerations on the advisability of complementing some of the legal provisions to which these standards refer.

The Committee observes the existence of general standards and principles applicable to all public officials governing the ethical behavior that should distinguish public offices and are intended to ensure that the principles established in the Convention are attained. Notwithstanding, there does not appear to be any specific legislation which, in keeping with the organic structure of the State, regulates the criteria governing the general standards in force on specific aspects, rank and the particular requirements of each of the public administration entities, as well as the mechanisms for enforcing them. The Committee will formulate a recommendation in this regard (See recommendation 1.1.a in Chapter III of this Report).

The Committee found no substantial rules in the information provided regarding requirements for entering public administration, including obligations prohibiting a person from receiving two or more salaries paid by the State, and in general, which contemplate provisions designed to resolve cases in which private interests conflict with the public interest. Given the importance of such standards, this should be dealt with more specifically and in further detail. The Committee will formulate a recommendation in order to address this matter (See recommendation 1.1.b in Chapter III of this Report).

It would also be advisable to consider complementing these standards with provisions that strengthen the relevant bodies in order to improve their ability to ensure compliance with the requisites defined for the position and seeking to ensure that no individual is appointed to public office in breach of the regulations in force on prohibitions and incompatibility. The Committee will formulate a recommendation in this regard (See recommendation 1.1.c in Chapter III of this Report).

The Committee also considers it important for the standards regulating this matter be complemented by other mechanisms which, subsequent to the appointment of the public official, would enable causes arising during the exercise of the public function and giving rise to possible conflicts of interest, to be detected and identified. The Committee will formulate a recommendation on this matter (See recommendation 1.1.d in Chapter III of this Report).

Similarly, the Committee acknowledges the absence of regulations on the activities undertaken by public officials after leaving office. It is therefore advisable that there be provisions in place, such as a ban on public servants participating in the management of official matters that were known to them previously or handled with entities with which they had a recent and close involvement. In addition,

⁴ Approximately USD\$126.00.

it would be important to consider situations that might lead to undue advantage being derived from a situation due to the involvement of someone who was formerly a public servant. The Committee will formulate a recommendation on this matter (See recommendation 1.1.e in Chapter III of this Report).

With respect to the Integrity Commission, which is charged with ensuring compliance with the provisions in force on this matter, and its independence, please see the comments contained in Section 3 of this report regarding oversight bodies.

With regard to the mechanisms that guarantee the applicability of these standards and the system of sanctions provided for in Section 27 (2) of the Integrity Commission Act, the Committee considers that Guyana could benefit from the inclusion of other types of administrative sanctions. Similarly, it could consider including other types of punishment and conduct, for instance suspension from office, dismissal, relinquishing the specific interests in conflict or invalidating or nullifying decisions adopted under these circumstances. The Committee will formulate a recommendation in this regard (See Chapter III, recommendation 1.1.f of this Report).

1.1.3. Results of the legal framework and/or other measures and enforcement mechanisms

Guyana's response to the questionnaire does not provide information on the results of the legal framework and/or other measures, nor of the enforcement mechanisms.⁵

This absence of information does not allow the Committee to assess the results in this field. Taking this circumstance into account, the Committee will formulate the corresponding recommendations. (See general recommendations 7.2 and 7.3 in Chapter III of this report).

1.2. STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PROPER CONSERVATION AND USE OF RESOURCES ENTRUSTED TO GOVERNMENT OFFICIALS

1.2.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

Guyana has a set of standards of conduct on the proper conservation and proper use of resources entrusted to government officials in the exercise of their official functions, including the following:

The Integrity Commission Act provides that public officials must see that public property is used appropriately, including public funds, equipment, supplies and services, and stipulates that they should not be used for any purposes other than those officially envisaged (Integrity Commission Act, Appendix II (h)).

Appendix II of the Integrity Commission Act bans officials from accepting gifts, benefits or advantages, other than those of a personal nature which are not given for the purpose of, or in reward for, performing or failing to perform any of their functions. This Law also regulates the procedure to be followed in cases where the gifts received exceed \$10,000 Guyanese dollars.

The Integrity Commission Act bans officials from using their influence to plan or promote contracts or any other matter where the official may have some interest and from using to his advantage, or for his or her benefit or personal gain, the contents of documents or information that is not available to

⁵ Response of Guyana to the questionnaire, p. 9.

the public (Integrity Commission Act Section 32 and Appendix II (c) (f) (g)).

Under Guyanese law, unlawful enrichment is a criminal offence (Integrity Commission Act, Sections 41 and 42).

Section 27(2) of the Integrity Commission Act sets out the sanctions applicable to public officials who infringe the provisions of the Act, as noted above in Section 1.1.1 of this report.

1.2.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms

The standards and mechanisms on the adequate use of public funds that have been examined by the Committee, based on the information available, are contribute to the achievement of the purposes of the Convention.

The Committee notes that the provisions in force regarding the conservation and proper use of resources entrusted to public officials could be strengthened and suggests that the country 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 this review, the country under review could consider the adoption of measure to promote, facilitate, consolidate or ensure the application of these instruments for that end. (See the recommendation in section 1.2 of Chapter III of this report).

1.2.3. Results of the legal framework and/or other measures and enforcement mechanisms

Guyana's response to the questionnaire does not provide information on the results of the legal framework or other measures, nor of enforcement mechanisms.⁶ This absence of information does not allow the Committee to assess the results in this field. Taking this circumstance into account, the Committee will formulate the corresponding recommendations. (See recommendations 7.2 and 7.3. in Chapter III of this report).

1.3. 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

1.3.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

In its response to the questionnaire, Guyana notes that there are no specific standards or provisions requiring public officials to report acts of corruption in the performance of public functions of which they are aware, and as a result, no mechanisms that ensure compliance with that obligation.⁷ However, Guyana's response does note that Section 28(1) of the Integrity Commission Act envisages the possibility of anyone, and not just public officials, voluntarily reporting any infringement of the provisions of the Code of Conduct by an official.⁸

Section 28 (3) of the Integrity Commission Act states that anyone who files a complaint frivolously,

⁶ Response of Guyana to the questionnaire, p. 9.

⁷ Response of Guyana to the questionnaire, p. 10.

⁸ Response of Guyana to the questionnaire, p. 10.

maliciously or out of spite, shall be subject to criminal proceedings and sanctioned with two (2) months imprisonment, fined twenty-five thousand dollars (GYD\$25,000.00), and be required to pay for the publication of the nature of the complaint in a daily newspaper.

1.3.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms

The provisions described in the preceding section that have been examined by the Committee based on the available information, contribute to accomplishing the purposes of the Convention.

The Committee believes that Guyana could consider the possibility of adopting provisions, including 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. This regime could include provisions which facilitate reporting to the appropriate authorities, as well as providing effective protection against reprisals or other negative consequences against a public servants as a result of complying with this obligation. Taking the foregoing into account, the Committee will formulate recommendations in this regard. (See recommendations 1.3(a), (b) and (c) in Chapter III of this report).

The State under review could also examine the application of the provision contained in Section 28 (3) of the Integrity Commission Act mentioned in the previous section, in order to ensure that there is an adequate balance between the need to sanction the presentation of complaints in bad faith and the importance of not inhibiting, discouraging or intimidating public officials from reporting acts of corruption in public service of which they are aware. The Committee will formulate a recommendation in this regard (See recommendation 1.3 (d) in Chapter III of this report).

The Committee also considers that Guyana could benefit from the implementation of appropriate measures, including training programs for public servants on the form and requirements for reporting corrupt acts as well as on the protections available for those who make complaints in good faith. The Committee will formulate a recommendation in this regard (See recommendation 1.3 (d) in Chapter III of this report).

1.3.3 Results of the legal framework and/or other measures and enforcement mechanisms

Guyana's response to the questionnaire does not provide information on the results of the legal framework and/ or other measures, nor of enforcement mechanisms.⁹ This absence of information does not allow the Committee to assess the results in this field. Taking this circumstance into account, the Committee will formulate the corresponding recommendations. (See general recommendations 7.2 and 7.3. in Chapter III of this report).

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

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

Guyana has a set of provisions regarding systems for declaring assets and liabilities, among which the following should be noted:

⁹ Response of Guyana to the questionnaire, p. 13

The duty of officials to declare their income, assets and liabilities is currently regulated by Chapter III, sections 13 to 24 of the Integrity Commission Act.

With regard to the subjective aspect of the duty or obligation to declare, Section 13 (1) requires “*all persons in public life*” to comply with this obligation.

Declarations of income, assets and liabilities that are submitted to the Integrity Commission and those of its members are submitted to the President. The Integrity Commission or the President (Executive), whichever is applicable, receives, reviews and keeps the declarations and documents on file and conducts any investigations that may be necessary to check or determine the accuracy of the financial information presented in them (Section 17 of the Integrity Commission Act).

The criteria for evaluating these disclosures are also envisaged. The Integrity Commission or the President, whichever is applicable, may ask a declarant to submit in writing, additional details on his or her financial statements, in order to review or examine the information presented (Section 17 of the Integrity Commission Act).

Guyanese legislation establishes three occasions when such disclosures should be made: an initial declaration thirty days after taking office; an annual update, at the latest by June 30; and a final declaration thirty days after ceasing to hold public office (Section 13 (1) and (2)).

According to Section 13 (3) of the Integrity Commission Act, the contents of the declaration must disclose the complete, true and comprehensive data of the declarer’s assets and liabilities and of the declarant’s spouse and children, as well as any assets and liabilities that were acquired, owned or contracted by any other person as an agent or on behalf of all or any such persons. Section 16 of the Integrity Commission Act also contains regulations on blind trusts and Schedule III contains the form to be used when filing declarations.

In the case of declarations that must be presented by members of the Integrity Commission and when in the opinion of the President it is necessary to request further information, in consultation with the Minority Leader, a tribunal may be appointed to conduct the investigation, when necessary, and to check the contents of the information (Sections 18 to 21).

The Integrity Commission Act imposes sanctions on officials for failing to present such declarations, or for making declarations which are incomplete or which contain false information or documents. Sanctions are also applicable in the case of members of the Integrity Commission, for failure to comply with requests made by the respective court or failure to attend hearings scheduled to deal with such cases.

The sanctions foreseen are equivalent to \$25,000.00 Guyanese dollars and imprisonment from six months to one year. If the behavior involves failing to declare or excluding assets that should have been included, the person shall be granted a period of time in which to amend the situation. If the person still fails to comply, a fine equivalent to \$10,000.00 Guyanese dollars for each day this behavior continues is imposed. None of the sanctions can be imposed without written consent from the Director of Public Prosecutions or five years after ceasing to hold public office (Section 23).

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

The standards and mechanisms on systems for declaring income, assets and liabilities under Article III, paragraph 4 of the Convention, examined by the Committee based on the information available to it, are pertinent for promoting the purposes of the Convention.

Regarding the subjective aspect of this instrument's application, there appears to be a broad list that includes all public officials.

The Committee notes with satisfaction the existence of provisions regarding the offense of illicit enrichment in Section VII of the Integrity Commission Act which creates this new crime within the Guyanese legal system. However, the information available to the Committee does not make it clear whether in practice the Integrity Commission or the President, whichever is applicable, constantly check declarations, and whether the declarations serve as an instrument in preventing and detecting conflicts of interest, illicit enrichment or other unlawful acts or activities. The Committee will formulate a recommendation on the basis of these considerations (See recommendation 2 a), Chapter III of this report).

The Committee makes the following comments with regard to the system of sanctions described in the previous section. In the first place, the Committee is concerned that the Integrity Commission cannot impose administrative sanctions without the written consent of the Director of Public Prosecutions. The Committee feels that a communication to the Director of Public Prosecutions may be an important factor in cases where which an official's behavior also breaches criminal legislation on the matter. However, conditioning the administrative sanctions that the Integrity Commission may impose on the consent by an official outside the Commission may limit the powers entrusted to the Commission as a body responsible for enforcing the system for declaring income, assets and liabilities. It would therefore be advisable for Guyana to consider reviewing that provision and strengthen the powers granted in that respect by the Integrity Commission Act to the Commission or the President, whichever is applicable, so that they can impose any legally applicable administrative sanctions without the consent of another body or official. (See recommendation 2 b. in Chapter III of this report).

Secondly, it would also be advisable for Guyana to consider implementing administrative sanctions, such as the late presentation of declarations, and consider other types of penalties such as the ban on reentry in cases where the declaring official left office without submitting a final disclosure; and ensuring that the penalties in force are sufficiently dissuasive. Additionally, the amount of fines should be revised periodically. The Committee will formulate a recommendation in this regard. (See recommendation 2 c. in Chapter III of this report).

Thirdly, the utility of using sworn statements in determining unlawful acts could be considered, as could the advisability 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. This is particularly so, considering the importance of sanctioning damage to public property resulting from acts of corruption that could have been carried out by public servants, and the slow nature that could characterize these type of investigations and processes. The Committee will formulate a recommendation in this regard. (See recommendation 2 (d) of Chapter III of this Report).

With respect to the provision charging the President with the administration of declarations submitted by members of the Integrity Commission, the Committee acknowledges that it would be beneficial for this function to be performed by a separate body or official, independent of the Commission. However, the complexity and multiplicity of a President's functions would seem to favor appointing a different body or official to be in charge of administering, checking and applying the system for declaring assets and liabilities of members of the Integrity Commission. The Committee will formulate a recommendation in this regard. (See recommendation 2 e. in Chapter III of this Report).

The Committee also considers that Guyana could benefit from the adoption of the decisions that are considered necessary in order to promote increased collaboration between the Integrity Commission

and the President, as appropriate, and other sectors, such as those related to finance and tax, in order to facilitate the exchange of information aimed at reviewing and examining the content of these declarations.

The Committee notes that the Integrity Commission Act makes no mention of making these disclosures public. The Committee believes that the State under review might consider the advantages of introducing provisions to regulate the conditions, procedures and other aspects connected with making these disclosures public, as applicable, in accordance with the fundamental principles of its legal system. The Committee will formulate a recommendation based on these considerations. (See recommendation 2 f. in Chapter III of this Report).

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

The response of Guyana notes that “... *persons in public life have been making declarations annually of their assets, liabilities and income annually in accordance with section 13 of the Act.*”¹⁰ The lack of additional information prevents this Committee from fully evaluating results in this area. Taking the foregoing into account, the Committee will formulate the appropriate recommendations. (See general recommendations 7.2 and 7.3 in Chapter III of this report).

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

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

Guyana has oversight bodies charged with responsibility for ensuring compliance with the provisions stated in paragraphs 1, 2 and 4 of Article III of the Convention.

In its response, the State under review referred to the work being undertaken by the Integrity Commission with regard to compliance with the standards contained in the Code of Conduct of Public Servants regarding conflicts of interest, conservation and adequate use of public resources and those related to systems for declaring assets and liabilities, in accordance with the provisions of sections 1.1, 1.2, 1.3 and 2 of this report.

The Committee also notes the provision in Guyanese legislation of other oversight bodies, including in particular the Supreme Court of Justice, the Ombudsman, the Director of Public Prosecutions and the Attorney General as noted in Section 1 of this report.

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

The set of provisions that Guyana has governing the oversight bodies in charge of ensuring compliance with the provisions contained in paragraphs 1, 2 and 4 of Article III of the Convention, cover those provisions, particularly considering that there are bodies of this nature with general or specific responsibility for enforcing compliance, which denotes progress in this area.

In relation to the afore-mentioned bodies (in charge of ensuring compliance with the provisions of paragraphs 1, 2 and 4 of Article III of the Convention), the Committee urges the State under review to continue strengthening them so that they have the resources necessary to ensure full compliance with the functions undertaken with respect to those provisions, as well as mechanisms that allow the effective coordination of their actions and their ongoing evaluation and follow-up. Similarly, the

¹⁰ Response of Guyana to the questionnaire, p. 14.

Committee notes that the provisions contained in paragraph 11 of Article III of the Convention are not included in the oversight exercised by the bodies referred to above. Taking the foregoing into account, the Committee will formulate a recommendation (See recommendation in Section 3 of Chapter III of this report).

Furthermore, regarding the power of the Integrity Commission to impose administrative sanctions with the approval of the Director of Public Prosecutions or any other body or official, the Committee refers to the comments made in section 2.2 of this report. (See recommendation 2(b) of this report)

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

Guyana stated the following in response to the questionnaire: *“Statistical information is unavailable. However, the Integrity Commission has received, to date, a small number of complaints from member of the public, and these have been investigated. Additionally, persons in public life have been making declarations in respect of their assets, liabilities and income annually, in accordance with section 13 of the Act.”*¹¹

The absence of more detailed information does not allow the Committee to assess the objective results in this field. Taking this circumstance into account, the Committee will formulate the corresponding recommendations. (See recommendations in numbers 7.2 and 7.3 in Chapter III of this report).

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

4.1. GENERAL PARTICIPATION MECHANISMS

4.1.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

Although in the response to the questionnaire the country under review states: *“there is no statutory mechanism specifically encouraging participation by civil society and nongovernmental organizations in efforts to prevent corruption,”*¹² the Committee notes that Guyana has a series of general standards concerning these mechanisms, among which the following constitutional and legal provisions should be highlighted.

The Constitution of Guyana, which contains general principles, including section 13, which states that the principal objective of the political system of the State is to extend democracy by giving citizens more opportunities to become involved in public administration and decision-making; section 11, which states that one of the principles and basis of the political, economic and social system, the right of cooperatives, chambers of commerce and national socioeconomic organizations to participate in the decision-making processes of States; sections 71 to 81, which refer to some of these bodies, including the National Democratic Council and the National Congress of Local Democratic Organs; and section 192, which provides that the Ombudsman has authority to investigate administrative actions taken by any government department, ministry or authority.

¹¹ Response of Guyana to the questionnaire, p. 14.

¹² Response of Guyana to the questionnaire, p. 15.

At the legal level, Guyana has established the Integrity Commission, the powers and responsibilities of which are described in previous sections of this report.

The Committee also notes the draft bill that will soon be presented before Parliament on access to public information.

4.1.2. Adequacy with the legal framework and/or other measures

The constitutional provisions on the subject under review are characteristic of a Government of Law in which the Constitution adopts a democratic, representative, participatory and pluralistic system, and are pertinent to the accomplishment of the purposes of the Convention.

With regard to the existing legal provisions, the Committee considers that even though they denote that progress has been made in implementing the provisions of the Convention regarding participation, and might also be useful in achieving its purposes, they reflect the partial development of a legal framework on the matter, conceived more broadly by the aforesaid constitutional provisions. However, the Committee observes that these provisions are general and have not been regulated. For this reason, the Committee feels that it would not be pertinent to analyze separately the implementation of each of the four categories of participation mechanisms envisaged in the methodology for reviewing implementation of Article III, paragraph 11 of the Convention.¹³

The Committee will formulate specific recommendations on the matter, taking into account the foregoing considerations and in accordance with the classification of participation mechanisms provided for in the aforementioned methodology for review (See the recommendations in Sections 4.2 to 4.5 of Chapter III of this report).

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

Guyana did not provide information on the subject in reply to the questionnaire. The absence of information does not allow a comprehensive assessment of the results in this area. Taking this circumstance into account, the Committee will formulate the appropriate recommendations. (See general recommendations 7.2 and 7.3 in Chapter III of this report).

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

5.1. MUTUAL ASSISTANCE

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

In its response to the questionnaire, the country under review points out that a foreign state or body can ask Guyana for help in gathering criminal evidence through two separate routes. The first refers to treaty and convention requests, and the second to non-treaty requests. The fullest assistance can be provided in the first case, whereas assistance is more limited in the case of non-treaty requests.¹⁴

The Committee notes that the Government of Guyana signed the Inter-American Convention on Mutual Assistance in Criminal Matters on February 28, 2006.

¹³ Methodology for the review of the implementation of the Convention provisions selected for review in the framework of the first round of analysis, Chapter V, D (SG/MESICIC/doc. 21/02).

¹⁴ Response of Guyana to the questionnaire, p. 18.

The Committee also notes that Guyana refers in its questionnaire to the existence of a *Mutual Assistance in Criminal Matters Bill*. Guyana indicates that this would only apply, under Guyanese legislation for the application of mutual assistance treaties on criminal matters. This bill can only be applied as a result of a request being made to Guyana under a treaty, bilateral convention or special agreement and “gives the courts the power to issue compulsory measures in Guyana to gather evidence for criminal investigation or prosecution in a foreign state or entity to locate a person who is suspected of having committed an offence on the basis of a request made under a treaty, convention, special arrangement or designation. The legislation permits assistance to be rendered at any stage of a criminal matter, from investigation to appeal.”¹⁵

According to the information provided, this bill also establishes the procedure for analyzing and implementing requests for judicial cooperation and provides for assistance to be provided in matters such as the receipt testimony and statements by witnesses; inspecting, seizing or confiscating property in Guyana.¹⁶

5.1.2. Adequacy with the legal framework and/or other measures

The above mentioned by provisions and measures may contribute to accomplishing the purposes of the Convention with respect to promoting and facilitating mutual assistance among States Parties; and could serve the specific aims of the Convention in relation to the investigation and prosecution of acts of corruption, if used for that purpose

The State under review notes the following in its response to the questionnaire: “the Government, depending on the nature of the requests and the intensity of the investigation required, answers mutual assistance requests.”¹⁷ The Committee underscores the importance of applying the mutual assistance treaties signed by the State under review, as well as the Convention, to specific cases of corruption. Therefore, based on the foregoing, the Committee will formulate a recommendation.

Lastly, taking into account the importance of a *Mutual Assistance in Criminal Matters Bill* with respect to investigating and prosecuting acts of corruption, as noted by the State under review, the Committee encourages Guyana to further promote the adoption and subsequent enforcement of this bill. In this regard, the Committee will formulate a recommendation (See recommendation 5.2 of this Report).

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

Guyana has not provided information on results in this area, and therefore a full assessment in this regard is not possible. Consequently, the Committee will formulate the appropriate recommendations. (See recommendations in Chapter III, sections 7.2 and 7.3 of this report).

5.2. MUTUAL TECHNICAL COOPERATION

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

In response to the questionnaire, the country under review notes that it has several informal mechanisms for mutual technical cooperation that would also be applied in relation to the provisions on the Convention.¹⁸

¹⁵ Response of Guyana to the questionnaire, p. 18.

¹⁶ Response of Guyana to the questionnaire, p. 18.

¹⁷ Response of Guyana to the questionnaire, p. 20.

¹⁸ Response of Guyana to the questionnaire p. 20.

5.2.2. Adequacy with the legal framework and/or other measures

The mechanisms related to mutual technical cooperation reviewed by the Committee, based on the information available to it, are relevant for promoting the purposes of the Convention.

In this regard, the Committee recommends that to help strengthen further its capacity to prevent, detect, investigate and sanction acts of corruption, the State under review consider determining and prioritizing specific areas where it could receive technical cooperation from other States and institutions or government agencies that are financially committed to international cooperation, and intensify its efforts to exchange technical cooperation with other States Party on the most effective ways and means of fulfilling the purposes of the Convention. The Committee will formulate recommendations in this regard. (See recommendations 5.1 and 5.2 in chapter III of this report).

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

The State under review did not provide information on the results of the legal framework to enable the Committee to make an overall evaluation of the matter. The Committee will therefore make the appropriate recommendations. (See recommendations Chapter III, Sections 7.2 and 7.3 of this report).

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

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

In its response to the questionnaire, the State under review notes that “*under the Mutual Assistance in Criminal Matters Bill of 2003, the Central Authority refers to any person appointed by the Minister as the Central Authority or in the absence of any person so appointed, the Minister of Foreign Affairs will be the Central Authority*”.¹⁹

The response also notes that “*when the Mutual Assistance in Criminal Matters Bill of 2003 has been tabled in Parliament, and acquires the force of law, then the provisions therein providing for the appointment of a Central Authority will be implemented*”²⁰

6.2. Adequacy with the legal framework and/or other measures

The standards and mechanisms governing central authorities as examined by the Committee, based on the information available to it, are relevant for promoting the purposes of the Convention.

The Committee notes, that in accordance with the records kept on the matter by the OAS General Secretariat, and as noted by the State under review, a central authority for the purposes of providing the international assistance and cooperation provided for in the Convention has not been designated.

In this regard, the Committee considers that Guyana might benefit from such an appointment, either through the approval of the provisions contained therein on the matter in the *Mutual Assistance in Criminal Matters Bill of 2003*, referred to in the response to the questionnaire, or by taking the appropriate administrative decisions. The Committee also suggests that the OAS General Secretariat be informed of this appointment, through the procedures and formalities foreseen for such purposes. (See recommendations 6.1 and 6.2 in Chapter III of this report).

¹⁹ Response of Guyana to the questionnaire, p. 22.

²⁰ Response of Guyana to the questionnaire, p. 22.

Similarly, the Committee proposes that once that authority is appointed, the State under review consider providing it with sufficient resources to enable it to undertake its functions. In view of the foregoing considerations, the Committee will formulate a recommendation. (See recommendation 6.3 in Chapter III of this report).

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

The lack of information on results in this area does not allow the Committee to make a comprehensive assessment of the results of the legal framework and other measures. In view of this, the Committee will formulate recommendations (See recommendations 7.2 and 7.3 in Chapter III of this report).

III. CONCLUSIONS AND RECOMMENDATIONS

Based on the review in Chapter II of this report, the Committee offers the following conclusions and recommendations regarding implementation by Guyana of the provisions of Article III, paragraphs 1 and 2 (standards of conduct and mechanisms to enforce them); Article III (4) (systems for registering income, assets, and liabilities); Article III (9) (oversight bodies, solely with respect to the exercise by such bodies of functions related to compliance with the provisions contained in Article III (1), (2), (4), and (11) of the Convention); III (11) (mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption); Article XIV (Assistance and Cooperation) and Article XVIII (Central Authorities) of the Convention, which were selected in the context of the first round.

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

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

Guyana has considered and adopted certain measures to establish, maintain, and strengthen standards of conduct designed to prevent conflicts of interest and mechanisms to enforce them, as noted in Chapter II, Section 1.1 of this report.

In light of the comments made in that 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. To comply with this recommendation, Guyana could consider the following measures:

- a. Formulate specific standards, when appropriate, to limit the actions of public servants in specific situations, in accordance with the functions and activities of each institutions and the specific nature and importance of the different offices, and mechanisms for enforcing them.
- b. Develop a system of admission to and retention in public service, incorporating measures that allow the resolution of cases in which private interests conflict with the public interest, including the strengthening of the bodies that regulate this area, and consider preventive mechanisms to ensure that no appointments are made which are contrary to the rules in force on incompatibility.

- c. Strengthen the relevant bodies, in order to improve their ability to ensure compliance with the requisites defined for the office and seek to ensure that no appointments are made in the public service that are contrary to the rules in force on ineligibility and incompatibility.
- d. Develop, when necessary, other mechanisms to identify or detect any causes that might occur in the course of the exercise of public functions and that might give rise to conflicts of interest, such as officials declaring their private interests.
- e. Develop, when necessary, provisions that restrict the participation of former public officials in situations that involve taking undue advantage of that condition, for a reasonable period of time.
- f. Consider strengthening the rules in force governing sanctions, incorporating other types of administrative sanctions other than those already envisaged, such as suspension, the relinquishment of the private interests in conflict, nullity of any decisions by a person in such a position; and withdrawal from official involvement in the matter.

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

As stated in Chapter II, Section 1.2 of this report, Guyana has considered and adopted a number of mechanisms to create, maintain and strengthen standards of conduct intended to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions.

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

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

Guyana has considered and adopted certain measures designed to create, maintain and strengthen standards of conduct and mechanisms regarding measures and systems that require government authorities to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, in accordance with Chapter II, section 1.3 of this report.

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. To comply with this recommendation, Guyana could take the following measures into account:

- a. Establish measures and systems that require all public servants to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, and facilitate compliance with this obligation through whatever measures are considered appropriate.
- b. Adopt and implement protection measures for public servants to encourage them to report acts of corruption in good faith.
- c. Review the application of the provision contained in section 28(3) of the Integrity Commission Act, in order to ensure that it does not become an impediment to, or inhibit, discourage, or intimidate public officials from reporting acts of corruption in the performance of public functions of which they are aware.
- d. Implement adequate measures, including training for public servants on how to report acts of corruption, and the requisites for reporting them, and on protection mechanisms for those who report such cases in good faith

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

Guyana has considered and adopted measures to create, maintain and strengthen systems for declaring income, assets and liabilities by persons performing public functions, in accordance with the provisions of Chapter II, section 2.1 of this report.

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. To comply with this recommendation, Guyana could take the following measures into account:

- 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 declarations 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 liabilities 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.

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

Guyana has considered and adopted certain measures to establish oversight bodies in accordance with Article III, paragraph 9 of the Convention.

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.

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

Guyana has adopted certain measures to establish, maintain and strengthen mechanisms to foster participation by civil society and nongovernmental organizations in efforts to prevent corruption in accordance with Chapter II, paragraph 4 of this report.

In light of the comments made in that section, the Committee suggests that Guyana consider the following recommendations:

4.1. General participation mechanisms

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.

4.2. Mechanisms for access to information

The Committee believes that Guyana should consider preparing and approving legal provisions supporting access to information. To comply with this recommendation, Guyana could take the following measures into account:

- 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 to 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.

4.3. Mechanisms for consultation

- 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.

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

4.4. Mechanisms to encourage participation in public administration

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.

4.5. Participation mechanisms for the follow-up of the public administration

The Committee considers it useful to formulate recommendations 4.3.1 and 4.3.2 of this section with respect to the mechanisms for the follow-up of the public administration.

Review whether the sanction for the malicious filing of false complaints established by Section 28(3) of the Integrity Commission Act is an impediment to the participation of civil society.

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

Guyana has adopted certain measures in the area of mutual assistance and mutual technical cooperation, in accordance with the provisions of Article XIV of the Convention, as noted and reviewed in Chapter II, Section 5 of this report.

In light of the comments made in that section, the Committee suggests that Guyana consider the following recommendations:

- 5.1. Ensure that both the mutual assistance treaties signed and the Convention are applied in specific cases of corruption.
- 5.2. Promote the adoption and effective application of the *Mutual Assistance in Criminal Matters Bill*.
- 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.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Guyana has not complied with the provisions of Article XVIII of the Convention regarding the appointment of the central authority for the purposes of international assistance and cooperation under the Convention, as indicated in Chapter II, section 6.1 of this report.

In light of the comments made in that section, the Committee suggests that Guyana consider the following recommendations:

- 6.1. Appoint the Central Authority provided for in Article XVIII of the Convention for the purposes of international assistance and cooperation foreseen therein, either through approval of the provisions in this area found in the *Mutual Assistance in Criminal Matters Bill* referred to in the response to the questionnaire, or by taking the appropriate administrative decisions.

- 6.2. Formally notify the General Secretariat of the OAS the appointment of the central authority, pursuant to the prescribed formalities.
- 6.3. Ensure that once the authority has been appointed it has the resources it needs to adequately fulfill its functions.

7. GENERAL RECOMMENDATIONS

Taking into account the comments made throughout this report, the Committee suggests that Guyana consider the following recommendations:

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

8. FOLLOW UP

The Committee will consider the periodic reports from Guyana on its progress in implementing the above recommendations in the framework of the Committee's plenary meetings, as prescribed in Article 30 of the Rules of Procedure.

In addition, the Committee will analyze the progress made in implementing the recommendations made in this Report, in accordance with the provisions of Article 31 and, whenever appropriate, pursuant to Article 32 of the Rules of Procedure.

ANNEX
TO THE FINAL REPORT ON THE IMPLEMENTATION IN GUYANA OF THE
PROVISIONS OF THE CONVENTION SELECTED FOR REVIEW IN THE FRAMEWORK
OF THE FIRST ROUND

Together with its response, Guyana sent the text of the Integrity Commission Act of 1997. Law No. 20 of 1997 and, additionally, the Technical Secretariat consulted the Constitution of Guyana.