

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

FINAL REPORT

(Adopted at the June 27, 2008 plenary session)

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

**REPORT ON IMPLEMENTATION IN THE CO-OPERATIVE REPUBLIC OF GUYANA  
OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE SECOND  
ROUND, AND ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO  
THAT COUNTRY IN THE FIRST ROUND<sup>1</sup>**

**INTRODUCTION**

**1. Contents of the Report**

This Report presents, first, a review of implementation in the Co-Operative Republic of Guyana of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the second round: Article III, paragraphs 5 and 8, and Article VI.

Second, the Report will examine follow-up to the recommendations that were formulated to the Co-Operative Republic of Guyana by the MESICIC Committee of Experts in the first round, which are contained in the Report on that country adopted by the Committee at its Seventh meeting, and published at the following web page: [http://www.oas.org/juridico/english/mec\\_rep\\_guy.pdf](http://www.oas.org/juridico/english/mec_rep_guy.pdf)

**2. Ratification of the Convention and adherence to the Mechanism**

According to the official register of the OAS General Secretariat, the Co-Operative Republic of Guyana ratified the Inter-American Convention against Corruption on December 11, 2000 and deposited the instrument of ratification on March 15, 2001. As noted in the OAS General Secretariat's register, Guyana formulated a reservation with respect to actions of seizure.<sup>2</sup>

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

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<sup>1</sup> 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 June 27, 2008, at its Thirteenth meeting, held at OAS Headquarters, June 23-27, 2008.

<sup>2</sup> 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**

### **Response of the Co-Operative Republic of Guyana**

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Co-Operative Republic of Guyana, and in particular from the Attorney General's Chambers, which was evidenced, *inter alia*, in the Response to the Questionnaire.

For its review, the Committee took into account the information provided by the Co-Operative Republic of Guyana up to November 2, 2007, and that requested by the Secretariat, to carry out its functions in keeping with its Rules of Procedure and Other Provisions.

## **II. REVIEW OF IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND**

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

#### **1.1 SYSTEMS OF GOVERNMENT HIRING**

##### **1.1.1. Existence of provisions in the legal framework and/or other measures**

The Co-Operative Republic of Guyana has a set of provisions related to the above systems, among which the following provisions related to the principal systems should be noted:

- Constitutional provisions, such as those that establish the Judicial Service Commission (Article 134) and the Public Service Commission (Article 135) as independent bodies, vested with the power to appoint persons to hold or to act in the relevant offices. The Judicial Service Commission is responsible for appointing judicial and legal officers such as magistrates and state counsel in accordance with Article 199(1) of the Constitution.<sup>i</sup> Pursuant to Articles 201 (1) and (7) of the Constitution, the Public Service Commission is responsible for appointment to all public offices except those within the jurisdiction of the Judicial Service Commission, the Police Service Commission or the Teaching Service Commission, as well as the following offices: Auditor General, Solicitor General, Permanent Secretary, the Cabinet, Ambassador, High Commissioner or other principal representative of Guyana in any other country or accredited to any international organization. Additionally, Articles 199(2) and 201(2) provide, respectively, that the Judicial Service Commission and the Public Service Commission may delegate in writing, any of their powers to make appointments to the persons established therein.<sup>ii</sup>

- Administrative provisions, such as the Public Service Rules 1987 (2004 Edition) (PSR), which provide important regulations that govern the Public Service and which are applicable to those who fall under the Public Service Commission. Among those to be highlighted are:

- Provisions which provide that the Secretary of the Public Service Commission shall, upon receipt of requests from Permanent Secretaries/Heads of Departments, Regional Executive Officers or with the approval of the Permanent Secretary/Public Service Ministry, publicly advertise existing vacancies in Ministries/Departments/Regions (Rule A15). If the vacancy is filled under delegated authority, the entity concerned shall arrange for the vacancy to be

advertised by “Staff Vacancy” circular or public notice, whichever is appropriate. “Promotional posts”, however, are not advertised (Rule A17).

- Provisions that require the approval of the Job Description and Job Specification before any vacant post can be filled (Rule B03).
- Provisions which provide that suitably qualified persons from outside the Public Service may, on application in response to vacancy advertisements, be eligible for consideration in the case of posts where service in the grade below is not a prerequisite for appointment (Rule A18).
- Provisions stating that whenever in the opinion of the Public Service Commission, it is possible and in the best interest of the specific entity within the Public Service to do so, appointments to vacancies shall be made from within such entity [Rule A22(1)]. If the Commission deems otherwise after considering any recommendations of a Permanent Secretary/Head of Department/Regional Executive Officer, the Commission may, with or without competition, appoint a person from within the Public Service who is in the opinion of the Commission the most suitable and best qualified [Rule A22(2)].
- Provisions which provide that apart from the requirements of satisfying the basic qualifications for the job as the Public Service Commission may specify, candidates may also be required to take written competitive examinations, attend interviews and take practical tests, where necessary (Rule A05).
- Provisions that limit the employment of temporary staff to instances where the work is of a temporary or seasonal nature or so urgent that it is necessary to employ additional staff temporarily [Rule A07(1)]. Additionally, those provisions require that requests for permissions to employ temporary staff be accompanied by adequate supporting reasons and addressed to the Permanent Secretary of the Public Service Ministry [Rule A07(1)] except that in the case of temporary appointments against substantive vacancies, the request must be sent to the Secretary of the Public Service Commission for consideration and approval [Rule A07(2)].
- Provisions which provide that probationary periods usually apply to first appointment and are normally of one year’s duration, which may be extended upon recommendation of the relevant Permanent Secretary/Head of Department/Regional Executive Officer (Rule A12).
- Provisions allowing Public Servants in professional and certain other categories to opt for contract appointment [Rule A08(1)], once the Permanent Secretary of the Public Service Ministry has been consulted and has agreed to the proposed terms and conditions of the contract [Rule A08(4)].

With respect to challenge and appeal mechanisms, Article 202 of the Constitution and Rule A02(3) of the PSR provide that any person may appeal to the Commission from the decision of the person exercising the power delegated under Article 202 (1) of the Constitution. The Decision of the Commission is final, unless otherwise determined by the Public Service Appellate Tribunal.<sup>iii</sup>

### **1.1.2. Adequacy of the legal framework and/or other measures**

With respect to the constitutional and legal provisions that refer to the systems of government hiring that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention.

Notwithstanding, the Committee considers it appropriate to make a number of observations on the advisability of developing and complementing certain legal provisions that refer to those systems.

As stated in Section 1.1.1., Rule A05 of the PSR provides that, besides having to satisfy the basic qualifications for the job, candidates may also be required to take written competitive examinations, attend interviews and take practical tests, where necessary. The Committee notes that the use of written competitive examinations and interviews is optional and that there is no further provision regulating the manner in which those selection procedures are to be carried out. Additionally, the PSR does not make it explicitly clear that selection into the Public Service is based on merit. In order to properly assure the openness, equity and efficiency of the government hiring system, the Committee believes that the legislation in place should explicitly state that selection is made on merit and should also set out the criteria which would be taken into account in making that determination, such as written competitive examinations, interviews and practical tests. In this regard, the Committee will formulate recommendations (see Recommendations 1.1(a) and (b) in Section 1 of Chapter III of this Report).

In addition, the Committee notes that Rule A07 of the PSR provides that requests for temporary appointments should only be made in instances where the work is of a temporary or seasonal nature or so urgent that it is necessary to employ additional staff temporarily. The Committee notes that this provision that allows for temporary appointments could be open to abuse as there is no definition of “temporary or seasonal nature” or of the term “urgent” and there is no express limit on the duration of such appointments. Although there are provisions which require that requests for permission to employ temporary staff be accompanied by adequate supporting reasons and addressed to the Permanent Secretary of the Public Service Ministry (or the Secretary of the Public Service Commission), written reasons for the decision are not currently required by the legislation or rules. The Co-Operative Republic of Guyana should consider providing in the Public Service Rules, limits to the duration of the temporary appointment as well as parameters that define ‘temporary or seasonal nature’ and ‘urgent’ and require that written reasons be provided for the decision of the Permanent Secretary or the Secretary of the Public Service Commission. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(c) in Section 1 of Chapter III of this Report).

Furthermore, the Committee notes that there are general provisions in the PSR requiring the advertising of existing vacancies in the public service, both internally and externally. The Committee notes, however, that there are no other regulations which provide clearly defined criteria on the advertisement of hiring opportunities in the public service or of vacancies or positions to be filled, including their content and form, as well as providing a timeframe for publication, along with the requirements for candidates, the dates the selection process will begin and the procedures to be followed to take part in the process. The Committee also notes that the mass media (e.g. newspapers or web pages) should be used when advertising outside of the Public Service. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1 (d) in Section 1 of Chapter III of this Report).

With respect to the existence of provisions for challenging the substantive aspects of the hiring process under the purview of the Public Service Commission and the Judicial Service Commission, the Committee observes the lack of detailed regulations in this regard. Thus, the Committee suggests the adoption of provisions regulating the challenge mechanisms, based on the principles of due process and natural justice, and which can be pursued through the administrative route.<sup>3</sup> This mechanism should ensure the openness, equity, and efficiency of the process. The Committee will formulate a recommendation in this regard (see Recommendation 1.1(e) in Section 1 of Chapter III of this Report).

With respect to the Judiciary, while Article 199(1) of the Constitution provides that the Judicial Service Commission has the power to make appointments of judicial and legal officers, the Committee notes that there appears to be an absence of legislation regarding the manner in which those positions are appointed, with the exception of the appointment of the Director of Public Prosecutions, which is set forth in Article 203 of the Constitution. The Committee considers that the apparent lack of laws or regulations on the manner to conduct recruitment for these posts as well as for their advertisement, may not properly assure the openness, equity and efficiency of the government hiring system. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(f) in Section 1 of Chapter III of this Report).

With regard to the hiring of servants of oversight bodies, the Committee notes, pursuant to Article 201(7) of the Constitution, the absence of laws or regulations on the recruitment of posts in the office of the Auditor General. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1 (g) in Section 1 of Chapter III of this Report).

#### **1.1.3. Results of the legal framework and/or other measures**

The Committee notes that the Co-Operative Republic of Guyana did not provide information on objective results, stating in its response, that it did not have any statistical data available in this area.

In addition to highlighting the importance of fully replying to the questions on results in the Questionnaire, The Committee does not have information other than that referred to above that might enable it to make a comprehensive evaluation of the results of this topic. In this regard, it will formulate a recommendation. (See Recommendation 4.2 in Chapter III of this Report)

### **1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES**

#### **1.2.1. Existence of provisions in the legal framework and/or other measures**

The Co-Operative Republic of Guyana has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- Constitutional provisions, such as those found in Article 212W of the Constitution, which provides for the establishment of an independent Public Procurement Commission for the purpose of monitoring public procurement and the procedures therefor in order to ensure that the procurement of goods, services and execution of works are conducted in a fair, equitable, transparent, competitive and cost effective manner. The functions of the Commission are set out in Article 212AA.

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<sup>3</sup> The country under review stated that persons may seek judicial review of a decision of the Commissions.

Additionally, Article 212DD provides that the Commission shall have the power to require any person, or any entity, including a ministry or government department, to provide it with information for the purposes of any investigation it is carrying out or proposes to carry out, and on the measures that have been or are being taken for the implementation of the decisions of, or compliance with any provision relating to, the Commission. Moreover, Article 212EE provides that Parliament may by law establish a Public Procurement Commission Tribunal. Pursuant to Article 212BB, that Tribunal shall have the power to review any decision of the Commission and the decisions of the Tribunal are subject to an appeal to the Court of Appeal.

- Statutory and other legal provisions applicable to all procuring entities, such as those contained in the Procurement Act 2003<sup>4</sup> and its Regulations,<sup>5</sup> which regulate the procurement of goods, services and the execution of works, in order to promote competition among suppliers and contractors and to promote fairness and transparency in the procurement process. Article 3(2) of the Procurement Act 2003 establishes that procurement involving national defense or security is excluded from the application of the Act.<sup>iv</sup> The following provisions are of particular significance:

- Articles 25, 26 and 27 of the Procurement Act 2003, which, respectively, establish the following methods of procurement of goods, constructions and services: a) Open (or Public) Tendering; b) Restricted Tendering;<sup>v</sup> and, c) Request for Quotations.<sup>vi</sup> In addition, Articles 28 and 29, respectively, exempt the methods of Single Source Procurement and Procurement through Community Participation from tender procedures.<sup>vii</sup> Alternatively, Articles 44 to 51 provide specific regulations for the procurement for consulting services.
- Article 25(1) of the Procurement Act 2003, which stipulates that public tendering is mandatory. Nonetheless, Article 5(2) provides that a procuring entity may decide to use another method of procurement in accordance with the requirements of Articles 26 to 29, in which case the procuring entity shall record a statement of the grounds and circumstances upon which it relied to justify the use of that particular method of procurement, in the record of the procurement proceedings established by Article 10 of the Act.
- Article 24(1), which provides that public corporations and other bodies in which the controlling interest is vested in the State may, subject to the approval of the National Procurement and Tender Administration Board, conduct procurement according to their own rules or regulations, except that to the extent that such rules and regulations conflict with the Procurement Act (or its Regulations), the latter shall prevail. Article 24(2) further stipulates that if funds are received from the Treasury for a specific procurement, then the corporation is obliged to follow the rules contained in the Procurement Act and the Regulations.
- Article 14 of the Procurement Act 2003, which prohibits a procuring entity from splitting or causing to split contracts or divide or cause to divide its procurement into separate contracts where the sole purpose for doing so is to avoid the application of any provision of the Procurement Act 2003 or its Regulations.
- Article 16 of the Procurement Act 2003, which establishes the National Procurement and Tender Administration Board (hereinafter “*National Board*”) as an agency responsible for the administration of procurement and tenders the value of which exceeds such an amount prescribed by the regulations. Pursuant to Article 16(1), the National Board reports to the

<sup>4</sup> <http://nptaguyana.org/procurement>

<sup>5</sup> *Ibid.*

Minister of Finance. Additionally, Article 17(1) sets out its ordinary functions<sup>viii</sup> while Article 17(2) sets out its extraordinary functions, pending the establishment of the Public Procurement Commission.<sup>ix</sup>

- Article 19 of the Procurement Act 2003, which provides that the National Board shall create within each administrative region a Regional Tender Board (hereinafter “*Regional Board*”), with jurisdiction over procurement by the relevant regional administration, the value of which is less than such an amount prescribed by regulations. The functions of the Regional Boards are set forth in Article 20.<sup>x</sup> In addition, Article 21 empowers the National Board, at its discretion, to create District Tender Boards for procurement by Neighborhood Democratic Councils.
- Article 22 of the Procurement Act 2003, which provides that each Ministry, Department or Agency that engages in procurement, the value of which is less than such an amount prescribed by regulations, shall create a Tender Board with jurisdiction over procurement by the relevant Ministry, Department or Agency. Article 23 sets out the functions of these Tender Boards.<sup>xi</sup>
- Article 4(1) of the Regulations to the Procurement Act 2003, which provides for the creation of an Internet Website<sup>6</sup> for the purpose of publicizing contract awards and to otherwise disseminate information about public procurement. Article 4(2) and (3) further provides that within five days of dispatching notice concerning the award of any contract exceeding G.\$200,000 in value, the procuring entity shall provide a report<sup>xii</sup> to the Administration. This report shall be published on the Website within two days of its receipt. Pursuant to Article 4(4), the information contained on the Website shall be freely available to the general public.
- Articles 6(1)(a) and 30, which stipulate, respectively, that the invitations to prequalify or the invitation to tender must be published in newspapers of wide circulation and posted in public places. Article 30 (1) further stipulates that the invitation to tender or to prequalify, as applicable, shall contain a brief description of the goods or construction to be procured and shall state the deadline for submission and where the solicitation documents and additional information regarding the tender may be obtained.
- Article 39 of the Procurement Act 2003, which establishes the rules regarding the examination and evaluation of tenders. Pursuant to Article 39(6)(a), all evaluation criteria for the procurement of goods, works or services in addition to price, will be quantified in monetary terms and the tender will be awarded to the lowest evaluated tender.
- Article 5 of the Procurement Act 2003, which sets out the qualification requirements for suppliers or contractors who want to participate in procurement proceedings. Among the requirements is that the supplier or contractor (including its directors or officers), must not have been convicted of any criminal offence related to its professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of ten years preceding the commencement of the procurement proceedings, nor have been otherwise disqualified pursuant to administrative suspension or debarment proceedings in any jurisdiction over the last three years.
- Article 12 of the Procurement Act 2003, which prohibits those suppliers or contractors that submit offers in a tender process from giving or agreeing to give, to any current or former

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<sup>6</sup> <http://nptaguyana.org/>

officer or employer of the procuring entity or other government authority, directly or indirectly, including through a family member, a gratuity in any form, an offer of employment, or any other thing or service of value, as an inducement with respect to an act or decision of, or procedure followed by, such appropriate board in connection with the procurement proceedings. Article 12 further stipulates that, in those cases, the appropriate board shall reject a tender or proposal and that such rejection and the reasons therefor shall be recorded in the record of the procurement proceedings and promptly communicated to the supplier or contractor.

- Articles 6(4) and 48(1) of the Procurement Act 2003, which, respectively, permit suppliers or contractors to submit queries for the clarification of the prequalification documents or of the request for proposals, within a reasonable time prior to the deadline for the submission of applications to prequalify. These Articles also provide, respectively, that responses to said queries shall be given within a reasonable time so as to enable the supplier or contractor to make a timely submission of its application to prequalify and that, without identifying the source of the query, they have to be communicated to all suppliers or contractors to which the procuring entity provided prequalification documents or the request for proposals, as applicable.
- Articles 52 to 54 of the Procurement Act 2003 (Articles 10 to 15 of the Regulations), which regulate proceedings for administrative review of the procurement process. These provisions allow suppliers or contractors who have suffered or who may suffer loss or damage due to a breach of a duty imposed on a procuring entity by the Act, to formulate complaints for consideration by the procuring entity. The procuring entity shall issue, within five working days of receipt of the complaint, a written decision to the complainant, stating the reasons for the rejection of the complaint or advising on the corrective action that has been taken. In that connection, Article 11(2) of the Regulations provides that if the complainant is not satisfied with the decision of the procuring entity, or if the procuring entity fails to issue the decision within the five-day period, he/she may seek review by the Bid Protest Committee,<sup>xiii</sup> within three working days. The Bid Protest Committee has twenty working days to reach an award decision, which is not open to administrative review. Finally, Article 14 of the Regulations establishes the conditions for the suspension of procurement proceedings.

### **1.2.2. Adequacy of the legal framework and/or other measures**

With respect to the legal provisions governing public procurement systems that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention.

Nonetheless, the Committee deems it appropriate to express some comments for the country under review to consider in supplementing, developing or adapting the legal framework and the government procurement measures now in force, in light of the following:

- First, as regards control mechanisms, the Committee notes an absence of provisions establishing sanctions for government servants and employees who fail to fulfill or infringe upon the public procurement rules. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(a) in Section 1 of Chapter III of this Report).

- Second, the Committee observes that Article 17(2) of the Procurement Act 2003 temporally assigns certain functions of the Public Procurement Commission to the National Board, until the former is established. The Committee notes, however, that the National Board does not possess the same level of independence constitutionally provided for the Public Procurement Commission in order to carry out those functions. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(b) in Section 1 of Chapter III of this Report).
- Third, the Committee observes that there is no public registry of providers. Therefore, the Committee urges the Co-Operative Republic of Guyana to consider establishing a national public registry of providers using, for example, computer technology to set it up, update it, and consult it. This registry could contain data on contractors' record of performance or non-performance; area of work and/or specialty; technical and economic capacity; type of firm; and other information considered relevant. All State bodies should be required to use the Registry, its purpose being to foster the principles of openness, equity and efficiency provided for in the Convention. It would also be useful to allow for the exclusion and/or sanctioning of any contractor, for a certain period of time, from the proposed registry, as circumstances may warrant. A list of excluded and/or sanctioned contractors and information regarding reasons for the exclusion and/or sanctioning could be contained in the Registry. In this regard, the Committee will formulate recommendations. (See Recommendations 1.2(c) and (d) in Section 1 of Chapter III of this Report).
- Fourth, the Committee notes that the legislation in place does not provide for the ineligibility of those 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. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(e) in Section 1 of Chapter III of this Report).
- Fifth, the Committee observes that there are no provisions in place within the legislative regime that require prior planning sufficiently in advance of the launch of procurement process, such as preparing studies, designs and technical evaluations, or assessing the appropriateness and timeliness of the purchase. The Committee believes that adopting provisions that require prior planning would assure the openness, equity and efficiency of the system in place for the procurement of goods and services. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(f) in Section 1 of Chapter III of this Report).
- Sixth, the Committee observes that neither the Procurement Act 2003 nor its Regulations prescribe minimum time limits for the publication of tendering opportunities. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(g) in Section 1 of Chapter III of this Report).
- Seventh, the Committee notes that access to tender notices and contracts awarded is available via the link on the website of the National Board. However, it appears that the information regarding contracts awarded is not updated on a regular basis. The Committee believes that further use of electronic means to provide information regarding procurement, including the status of bids and awards and the progress of major projects would be beneficial. Use of an

electronic procurement system or electronic bidding in order to carry out the contracting needs of the State would be advantageous. In this regard, the Committee will formulate recommendations. (See Recommendations 1.2(h) and 1.2(i) in Section 1 of Chapter III of this Report).

- Eighth, with respect to the criteria to be used in the evaluation of bids, including those of public works, the Committee takes note of the absence of such norms in the legislative regime. There appears to be no evaluation guidelines that provide objective selection factors or criteria. The only criteria is found in Article 39 (6)(a) of the Procurement Act, which states that all evaluation criteria for the procurement of goods, works or services in addition to price, will be quantified in monetary terms and the tender will be awarded to the lowest evaluated tender.<sup>7</sup> The Committee further notes that the legislation does not expressly regulate the power to award contracts nor does it require that the outcome of a bid evaluation be substantiated clearly and accurately, especially when the procuring entity does not agree with the Evaluation Committee's determination of the lowest evaluated bidder [Article 39(3)]. Given the above circumstances, the Committee believes that this does not provide the necessary guarantees to ensure impartiality, transparency and equality of opportunity. The Committee believes that adoption of objective criteria for the evaluation of bids that are reflected in legislation or formulated in an administrative document would assist in providing those guarantees. In this regard, the Committee will formulate recommendations. (See Recommendations 1.2(j) and (k) in Section 1 of Chapter III of this Report).
- Ninth, the Committee has no information regarding provisions that allow for the establishment of citizen oversight mechanisms to monitor the execution of contracts where their nature, importance or magnitude so warrants, in particular public works contracts. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(l) in Section 1 of Chapter III of this Report).<sup>8</sup>
- Finally, the Committee notes inconsistencies between the Procurement Act 2003 and its Regulations in relation to the procedural rules and time frames in the administrative review system established therein. The Committee believes that these inconsistencies make it confusing for bidders to make an effective protest against a bid outcome. In this regard, the

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<sup>7</sup> Guyana's National Procurement and Tender Administration (NPTA) has prepared and published in its website (<http://nptaguyana.org/sbds>) the following standard bidding contract and other procurement documents:

a) **Consultancy** – 1) Model Evaluation Report for the Selection of Consultants, 2) Prequalification Document for Procurement of Consulting Services; and 3) Standard Request for Proposals for the Selection of Consultants.

b) **Goods** – 1) Bid Evaluation Report Format for the Procurement of Goods by International Competitive Bidding; 2) Standard Bidding Document for the Procurement of Goods by National Competitive Bidding for use in the procurement of goods of small value; 3) Standard Bidding Document for Procurement of Goods by International Competitive Bidding; and 4) Procurement of Goods under Shopping Procedures (Invitation for Quotations).

c) **Works** – 1) Standard Bidding Document for the Procurement of Works by International Competitive Bidding; 2) Bid Evaluation Report Format for the Procurement of Works, 3) Prequalification Evaluation Report for the Procurement of Works; 4) Prequalification Document for the Procurement of Works; and 5) Standard Bidding Document for the Procurement of Works by National Competitive Bidding (Smaller Contracts).

<sup>8</sup> The state under review reported that the Audit Office, the Parliamentary Standing Committee on the Public Accounts, the Parliamentary Sectoral Committees, the Ethnic Relations Commission, the use of Questions to Ministers through Notice or not, oral or written, in the National Assembly, provide some oversight mechanisms to raise these issues. Furthermore, the frequency and visibility of elected officials, in particular Ministers of the Government, with the public in outreaches to the communities allows for the citizens to raise their concerns, questions re contracts, awards of tenders and the quality of work and value for money. These forums its population vigorously utilizes.

Committee will formulate a recommendation (See Recommendation 1.2(m) in Section 1 of Chapter III of this Report).

### **1.2.3. Results of the legal framework and/or other measures**

With respect to results, the Committee notes that the Co-Operative Republic of Guyana provided the following information regarding the number of contracts awarded in 2006:<sup>9</sup>

*"There has been outstanding results obtained in the number of contracts awarded through public tender in Guyana in the year 2006, for example, in the area of Agriculture there have been six (6) public tender contracts awarded; Tourism one (1) public tender contract awarded; Health six (6) public tender contracts have been awarded; Guyana water incorporated two (2) public tender contracts have been awarded; Housing and Water thirty two (32) public tender contracts have been awarded; Linden Economic Advancement Program two (2) public tender contracts have been awarded; Local Government five (5) public tender contracts have been awarded; Ministry of Finance one (1) public tender contract awarded; Office of the Prime Minister one (1) public tender contract awarded; Public Works and Communication twenty one (21) public tender contracts have been awarded; (...)"*

*"There is no available data on any sanctions which may have been imposed on contractors, however for further detailed information on the award of public tenders in Guyana, information is provided on the web site of the National Tender Board in Guyana, see [www.nptaguyana.org](http://www.nptaguyana.org)."*

It would be useful for the Co-Operative Republic of Guyana to have contract statistics that reflect the nature of contracts awarded, the proportions that are by public tender and those that are by the other procurement methods such as restricted tendering, request for quotations and single source procurement. In this regard, the Committee will formulate a recommendation (see Recommendation 1.2(n) in Section 1 of Chapter III of this report).

Considering that the Committee does not have additional information other than that referred to above that might enable it to make a comprehensive evaluation of the results of this topic, it will formulate a recommendation to the National Board in this regard. (See Recommendation 4.2 in Chapter III of this Report).

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

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

Regarding the existence of systems for protecting public servants and private citizens who, in good faith, report acts of corruption, in its response the Co-Operative Republic of Guyana indicates<sup>10</sup> that:

*"They (sic) are no measures and/or laws establishing systems for protecting public servants and private citizens who, in good faith report acts of corruption, including protection of their identities."*

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<sup>9</sup> Response to the Questionnaire, pg. 8, [http://www.oas.org/juridico/spanish/mesicic2\\_guy\\_resp\\_en.doc](http://www.oas.org/juridico/spanish/mesicic2_guy_resp_en.doc)

<sup>10</sup> Response of the Co-Operative Republic of Guyana to the second round questionnaire, p. 9.

Nevertheless, the Co-Operative Republic of Guyana also indicates that Section 28 of the Integrity Commission Act No. 20 of 1997 makes provision for members of the public to lodge written complaints with the Integrity Commission for breach of any provision of the code of conduct established under the Schedule II of the Act.<sup>11</sup>

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

Taking into account the previous section, it is not appropriate to make observations in this regard as there is no formal legislative regime in place for the protection of public servants and private citizens who, in good faith, report acts of corruption. Though citizens can report acts of corruption to the Integrity Commission, the mechanism in place is inadequate for promoting the purposes of the Convention. As such, the Committee will formulate the recommendations that it deems advisable for the Co-Operative Republic of Guyana to consider, in accordance with Article III(8) of the Convention. (See recommendation 2 in Section 2 of Chapter III of this Report).<sup>12</sup>

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

Considering that the Committee does not have additional information other than that referred to above that might enable it to make a comprehensive evaluation of the results of this topic, it will make a recommendation in this regard. (See Recommendation 4.2 in Chapter III of this Report)

# **3. ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)**

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

The Co-Operative Republic of Guyana has a set of provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention, among which the following should be noted:

a. With regard to paragraph (a) of Article VI(1):

- Section 338 (2) (a) of the Criminal Law Offences Act Cap 8:01, which provides: "*If any person being an agent, corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person,<sup>13</sup> any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the enactment of this section done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; he shall be guilty of a misdemeanour and liable on conviction on indictment to a fine of six thousand dollars and to imprisonment for two years, or, where the matter or transaction in relation to which the offence was committed was a contract with the State, or any government department or public body, or subcontract to execute any work comprised in such a contract, to imprisonment for seven years.*"

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<sup>11</sup> Response of the Co-Operative Republic of Guyana to the second round questionnaire, pp. 9-10.

<sup>12</sup> The state under review reported that Guyana has agreed to draft legislation to protect whistle blowers and that the CARICOM Heads of State and Security Ministers have also recently agreed to draft witness protection legislation.

<sup>13</sup> The Interpretation and General Clauses Act includes in the definition of "person" any body of persons corporate or unincorporated [Section 5(1)].

The Act defines ‘agent’ as “any person employed by or acting for another and includes a person serving under the State or under any corporation, municipal council, council of a local government district, established under the Municipal and District Councils Act, board of guardians, or any local authority under the Local Government Act”. It also defines ‘principal’ to include “an employer”. Additionally, “consideration” is defined as “valuable consideration of any kind”.

- Section 338 (3) of the Criminal Law Offences Act Cap 8:01, which provides: “*Where in any proceedings under this section it is proved that any money, gift, or other consideration, has been paid or given to or received by a person in the employment of the state or any government department or public body, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as the inducement or reward mentioned in this section unless the contrary is proved.*”

b. With regard to paragraph (b) of Article VI(1):

- Section 338 (2) (b) of the Criminal Law Offences Act Cap 8:01, which provides: “*If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or for forbearing to do, or for having after the enactment of this section done or forborne to do, any act in relation to his principal’s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; he shall be guilty of a misdemeanour and liable on conviction on indictment to a fine of six thousand dollars and to imprisonment for two years, or, where the matter or transaction in relation to which the offence was committed was a contract with the State, or any government department or public body, or sub-contract to execute any work comprised in such a contract, to imprisonment for seven years.*”

- Section 338 (3) of the Criminal Law Offences Act Cap 8:01, which provides: “*Where in any proceedings under this section it is proved that any money, gift, or other consideration, has been paid or given to or received by a person in the employment of the state or any government department or public body, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as the inducement or reward mentioned in this section unless the contrary is proved.*”

- Article 55(4) of the Procurement Act 2003, which provides: “*Any person who, with the intention of gaining any advantage or concession for himself or any other person, offers-*  
(a) *a member of a Body*<sup>14</sup> *or an officer thereof, or*  
(b) *a person referred to in subsection (1)*<sup>15</sup>  
*a gift of money or other thing with respect to a matter that is expected to come before the Body or person commits an offence and shall, in addition to being disqualified from being awarded a contract, be liable to a fine of five hundred thousand dollars and to imprisonment for six months.*”

c. With regard to paragraph (c) of Article VI(1):

- Section 334 of the Criminal Law Offences Act Cap 8:01, which provides: “*Everyone who, being or expecting to be a public servant,<sup>xiv</sup> accepts, or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, whether pecuniary*

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<sup>14</sup> Pursuant to Article 55(1), the term “Body” comprises the National Board, a Ministerial Board, a Regional Board, a District Board, a Departmental Board, an Agency Board or an Evaluation Committee.

<sup>15</sup> Pursuant to Article 55(1), “A person concerned with the administration of the [Procurement] Act [2003]”.

*or otherwise, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person with the legislative or executive government of Guyana or with any public servant as a public servant, shall be guilty of a misdemeanour and liable to imprisonment for three years.”*

- Section 335 of the Criminal Law Offences Act Cap 8:01, which provides: “*Everyone who accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, whether pecuniary or otherwise, as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or, in the exercise of his official functions, to show favour or disfavour to any person or to render any service or disservice to any person with the National Assembly, or the executive government of Guyana, or with any public servant, as a public servant, shall be guilty of a misdemeanour and liable to imprisonment for three years.*”

d. With respect to paragraph (d) of Article VI(1):

- Section 3 of the Money Laundering (Prevention) Act, which provides: “*A person who engages in money laundering<sup>xv</sup> is guilty of an offence.*”

- Section 4 of the Money Laundering (Prevention) Act, which provides: “*Where an offence under the provisions of section 3 is committed by a body of persons, whether corporate or unincorporated, every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as director, manager, secretary or other similar officer, or was purporting to act in such capacity, is guilty of that offence, unless he adduces evidence to show that the offence was committed without his knowledge, consent or connivance and that he exercised all due diligence to prevent the commission of the offence.*”

- Section 6 of the Money Laundering (Prevention) Act, which provides: “*A person guilty of an offence under the provision of section 3,4,or 5 is liable on conviction to a fine of not less than two hundred thousand dollars or more than one million dollars, and to imprisonment for a term of seven years.*”

e. With respect to paragraph (e) of Article VI(1):

- Section 24 of the Criminal Law Offences Act Cap 8:01, which provides: “*Everyone who becomes an accessory before the fact to any felony, whether it is a felony at common law or by virtue of any written law for the time being in force, may be indicted, tried, convicted, and punished in all respects as if he were a principal felon.*”

- Section 25 of the Criminal Law Offences Act Cap 8:01, which provides: “*Everyone who counsels, procures, or commands any other person to commit any felony, whether it is a felony at common law or by virtue of any written law for the time being in force, shall be guilty of felony, and may be indicted and convicted, either as an accessory before the fact to the principal felony together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon has or has not been previously convicted, or is or is not amenable to justice, and may thereupon be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished.*”

- Section 26 of the Criminal Law Offences Act Cap 8:01, which provides: “*Everyone who becomes an accessory after the fact to any felony, whether it is a felony at common law or by virtue of any written law for the time being in force, may be indicted and convicted, either as an accessory after the fact to the principal felony together with the principal felon or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon has or has not been previously convicted, or is or is not amenable to justice, and may thereupon be punished in the same manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished.*”

- Section 27 of the Criminal Law Offences Act Cap 8:01, which provides: “*Every accessory after the fact to any felony (except where it is otherwise expressly enacted), whether the same is a felony at common law or by virtue of any written law for the time being in force, shall be liable to imprisonment for two years.*”

- Section 28 of the Criminal Law Offences Act Cap 8:01, which provides: “*Any number of accessories at different times to any felony, and any number of receivers at different times of property stolen at one time, may be charged with substantive felonies in the same indictment and may be tried together, notwithstanding that the principal felon is not included in the same indictment or is or is not in custody or amenable to justice.*”

- Section 29 of the Criminal Law Offences Act Cap 8:01, which provides: “*Where anyone becomes, within the Admiralty jurisdiction of the Court, an accessory to any felony cognizable by the Court, whether it is a felony at common law or by virtue of any written law for the time being in force, and whether the felony is committed within that jurisdiction or elsewhere, or is begun within that jurisdiction and completed elsewhere, or is begun elsewhere and completed within that jurisdiction, the offence of that person shall be felony, and in any indictment relating to the offence the venue in the margin shall be the same as if the offence had been committed in the county of Guyana in which it is tried, and it shall be averred to have been committed on the high seas:*”

*“Provided that nothing herein contained shall alter or affect any of the laws relating to the government of the Guyana Defence Force.”*

- Section 31 of the Criminal Law Offences Act Cap 8:01, which provides: “*Everyone who aids, abets, counsels, or procures the commission of any misdemeanour, whether it is a misdemeanour at common law or by virtue of any written law for the time being in force, may be indicted, tried, convicted, and punished in all respects as a principal offender.*”

- Section 33 of the Criminal Law Offences Act Cap 8:01, which provides: “*Everyone who, wherever no express provision is made by this Act, or by any other written law for the time being in force, for the punishment thereof, conspires with any other person to commit any felony not punishable with imprisonment for seven years or more, or any misdemeanour, or to do anything in any part of the world which, if done in Guyana, would be a felony not punishable with imprisonment as aforesaid, or a misdemeanour, shall be guilty of a misdemeanour and shall be liable to imprisonment for three years.*”

- Section 34 of the Criminal Law Offences Act Cap 8:01, which provides: “*Everyone who, in any case where no express provision is made by this Act, or by any other written law for the time being in force, for the punishment thereof, conspires with any other person to commit any felony punishable*

*with imprisonment for seven years or more, or to do anything in any part of the world which, if done in Guyana, would be a felony punishable with imprisonment as aforesaid, shall be guilty of felony and liable to imprisonment for seven years.”*

- Section 35 of the Criminal Law Offences Act Cap 8:01, which provides: “*Everyone who, in any case where no express provision is made by this Act, or by any other written law for the time being in force, for the punishment thereof, attempts to commit, or incites or attempts to incite any other person to commit, any felony not punishable with imprisonment for seven years or more, or any misdemeanour, under this Act shall be guilty of a misdemeanour and liable to imprisonment for one year.*”
- Section 36 of the Criminal Law Offences Act Cap 8:01, which provides: “*Everyone who, wherever no express provision is made by this Act, or by any other written law for the time being in force, for the punishment thereof, attempts to commit, or incites or attempts to incite any other person to commit, any felony punishable with imprisonment for seven years or more under this Act shall be guilty of a misdemeanour and liable to imprisonment for two years.*”
- Section 37 of the Criminal Law Offences Act Cap 8:01, which provides: “*Everyone who, in any case where no express provision is made by any written law for the time being in force for the punishment thereof, attempts to commit, or incites or attempts to incite any other person to commit, any indictable offence at common law or under any written law, other than this Act, for the time being in force, shall be guilty of a misdemeanour and liable to imprisonment for two years.*”
- Section 337 of the Criminal Law Offences Act Cap 8:01, which provides: “*Every person who, being a public servant in respect of whom either of the offences defined in the last two preceding sections<sup>16</sup> is committed, abets the offence, shall be guilty of misdemeanour and liable to imprisonment for three years.*”
- Article 55(5) of the Procurement Act 2003, which provides: “*Notwithstanding anything contained in any other written law, a person who -*
  - (a) *attempts to commit;*
  - (b) *conspires with any other person to commit;*
  - (c) *solicits, incites, aids, abets or counsels any other person to commit or;*
  - (d) *causes or procures or attempts to cause or procure the commission of, an offence under subsection (4)<sup>xvi</sup> shall, in addition to being disqualified from being awarded a contract, be liable to be charged, tried, convicted and punished in all respects as if he were principal offender.*”

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

With respect to provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention that have been examined by the Committee, based on the information made available to it, they constitute, as a whole, a set of provisions relevant to promoting the purposes of the Convention.

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<sup>16</sup> Section 335 – Taking a gratification in order, by corrupt or illegal means, to influence a public servant; Section 336 – Taking a gratification for the exercise of personal influence with a public servant.

Nonetheless, the Committee considers it appropriate to make certain observations regarding the advisability for the Co-Operative Republic of Guyana to consider complementing and implementing certain provisions in this area, taking into account the following:

- With respect to paragraph (a) of Article VI(1):

- The Committee believes that Section 338 (2) (a) of the Criminal Law Offences Act can be modified in order to better reflect the elements for this crime as set out in the Convention. While this provision does address the issue of when a public servant accepts a bribe, it is silent as to when this is carried out directly or indirectly. In addition, it does not contemplate the act of solicitation. In this regard, the Committee will formulate a recommendation. (See Recommendation 3.1 in Section 3 of Chapter III of this Report).

- With respect to paragraph (b) of Article VI(1):

- The Committee believes that Section 338 (2) (b) of the Criminal Law Offences Act can be modified in order to better reflect the elements for this crime as set out in the Convention. While these provisions do address the issue of when a person offers or gives a public servant a bribe, it is silent as to when this is carried out directly or indirectly. In this regard, the Committee will formulate a recommendation. (See Recommendation 3.2 in Section 3 of Chapter III of this Report)

- With respect to paragraph (e) of Article VI(1):

- The Committee observes that Sections 24, 25, 26, 27, 28 and 29 of the Criminal Law Offences Act, which penalizes individuals who act as accessories after the fact, refer to the commission of a felony. With the exception of the money laundering offences found in the Money Laundering (Prevention) Act, the corruption offences prescribed by Sections 338(a) and (b), 334 and 335 of the Criminal Law Offences Act are characterized as misdemeanors. Thus, the Committee notes an absence of provisions criminalizing accessories after the fact with respect to corruption offenses, as required by Article VI(1)(e) of the Convention. The Committee will formulate a recommendation in this regard. (See recommendation 3.3 in Section 3 of Chapter III of this report).

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

The Co-Operative Republic of Guyana in its Response states that “*To date there have been no judicial proceedings undertaken in the last five years in relation to the above provisions.*”<sup>17</sup>

The Committee does not have any information other than that referred to above, which might enable it to make a comprehensive evaluation, such as an indication that no reports of corruption have been received, or that the reports that were received did not result in criminal investigations or subsequent judicial proceedings. As such, it will formulate a recommendation in this regard (See Recommendation 4.2 in Chapter III of this Report).

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<sup>17</sup> Response of the Co-Operative Republic of Guyana to the second round questionnaire, p. 13.

### **III. CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO THE IMPLEMENTATION OF THE PROVISIONS SELECTED IN THE FRAMEWORK OF THE SECOND ROUND**

Based on the review conducted in Chapter II of this Report, the Committee offers the following conclusions and recommendations regarding implementation by the Co-Operative Republic of Guyana of the provisions contained in Article III(5) (systems of government hiring and for the procurement of goods and services); Article III(8) (systems for protecting public servants and private citizens who, in good faith, report acts of corruption); and Article VI (acts of corruption) of the Convention, which were selected for review within the framework of the second round.

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

##### **1.1. Systems of Government Hiring**

**The Co-Operative Republic of Guyana has considered and adopted certain measures intended to establish, maintain and strengthen the systems of government hiring, as discussed in Section 1.1 of Chapter II 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:

- 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. (See Section 1.1.2. of Chapter II of this report);
- 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. (See Section 1.1.2. of Chapter II of this Report);
- 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. (See Section 1.1.2. of Chapter II of this Report);
- 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. (See Section 1.1.2. of Chapter II of this report);

- 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. (See Section 1.1.2. of Chapter II of this report);
- 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. (See Section 1.1.2. of Chapter II of this report);
- 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 of merit and equality, providing clearly defined criteria on the manner for carrying out examinations and the advertisement of posts. (See Section 1.1.2. of Chapter II of this report).

## **1.2. Government Systems for the Procurement of Goods and Services**

**The Co-Operative Republic of Guyana has considered and adopted certain measures intended to establish, maintain and strengthen the systems for government procurement of goods and services, as discussed in Section 1.2 of Chapter II 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:

- 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. (See Section 1.2.2. of Chapter II of this Report).
- 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. (See Section 1.2.2. of Chapter II of this Report).
- 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 sanctioned contractors, in order to foster the principles of openness, equity and efficiency provided for in the Convention. (See Section 1.2.2. of Chapter II of this Report).

- d) Implement a mechanism, through legislative and/or administrative means, to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons. (See Section 1.2.2. of Chapter II of this Report).
- 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. (See Section 1.2.2. of Chapter II of this Report).
- 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 timeliness of the purchase. (See Section 1.2.2. of Chapter II of this Report).
- g) Implement provisions that establish minimum time limits for the publication of tendering opportunities in appropriate media. (See Section 1.2.2. of Chapter II of this Report).
- 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. (See Section 1.2.2. of Chapter II of this Report)
- i) Develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means. (See Section 1.2.2. of Chapter II of this Report)
- j) Implement provisions that provide for objective selection factors or criteria in the evaluation of bids, including those for public works. (See Section 1.2.2. of Chapter II of this Report)
- k) Implement provisions that require that the outcome of a bid evaluation be clearly and accurately substantiated, when applicable. (See Section 1.2.2. of Chapter II of this Report)
- 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. (See Section 1.2.2. of Chapter II of this Report)
- m) Harmonize the provisions contained in the Procurement Act and in the Regulations which allow challenges to the procurement process at the administrative level (See Section 1.2.2. of Chapter II of this Report).
- 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. (See Section 1.2.3 of Chapter II of this Report).

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

**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 II 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:

- 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 (See section 2.2 in Chapter II of this Report).

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;
- 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;
- 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;
- 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;
- 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.
- g) A simple whistleblower protection application process.
- 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.

### **3. ACTS OF CORRUPTION (ARTICLE VI(1) OF THE CONVENTION)**

**The Co-Operative Republic of Guyana has adopted measures aimed at criminalizing the acts of corruption provided for by Article VI(1) of the Convention, as discussed in Section 3 of Chapter II 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(1)(a) of the Convention, by incorporating therein, the elements of directly or indirectly accepting a bribe by a public servant or soliciting it. (See Section 3.2. of Chapter II of this Report).
- 3.2. Modify Section 338 (2) (b) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(1)(b) of the Convention, by incorporating therein, the elements of directly or indirectly offering a bribe to a public servant. (See Section 3.2. of Chapter II of this Report).
- 3.3. Criminalize those who act as accessories after the fact with respect to corruption offenses, as required by Article VI(1)(e) of the Convention. (See Section 3 of Chapter II of this report).

### **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.
- 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 herein. (see Sections 1.1.3, 1.2.3, 2.3 and 3.3 of Chapter II of this Report)

### **5. FOLLOW-UP**

The Committee will consider the periodic update Reports submitted by the Co-Operative Republic of Guyana concerning progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with the provisions of Article 31 of the Rules of Procedure and Other Provisions.

Similarly, the Committee will review the progress in implementing the recommendations made in this Report, in accordance with the provisions of Article 29 of the Rules of Procedure.

#### **IV. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN THE FIRST ROUND**

Regarding the progress made in implementation of the recommendations issued in the report adopted during the first round of review, the text of which is annexed hereto,<sup>18/</sup> Guyana says that “to date, there have been no concrete steps taken to implement the above measures suggested by the Committee. Further, there is no Internet website where information in detail may be obtained on the abovementioned measures.” Guyana further notes that “to date, there is no available data on any difficulties that have been observed in the process of implementing the above recommendation” without adding any other information using the standard format adopted by the Committee for submissions of such information, as provided for in Article 29 of its Rules of Procedure.

In this connection, the Committee is concerned that the State undergoing review has not advanced in the implementation of the recommendations suggested in the First Round of Review. The Committee consequently offers the following remarks:

1. The Committee believes it should note the following background details regarding what the MESICIC State Parties agreed to with respect to following up on implementation of recommendations:
  - a. The Document of Buenos Aires – which created the MESICIC and which was signed by all of the Mechanism’s member states – establishes that one of its goals is “to follow up on the commitments made by the States Parties to the Convention and to study how they are being implemented.” It also states that its characteristics include ensuring “equal treatment among States Parties” and that it is “conducted on the basis of consensus and on the basis of the principle of cooperation among States Parties.”
  - b. Article 29 of the Rules of Procedure, adopted through the consensus of all the members of the Committee at its Eighth Regular Meeting (September 2005) provides that:

*“Article 29. Follow-up within the framework of future rounds. At the start of a new round, there shall be included within the questionnaire a section on “Follow-up on Recommendations” to enable the review of progress made in implementing the recommendations included in its country report adopted in previous rounds. To that end, each State Party shall submit the appropriate information in the standard format that the Committee shall provide as an Annex to the Questionnaire.”*

*“With respect to the implementation of recommendations, the State Party shall refer to any difficulties that may have arisen in the process. Should it deem it to be appropriate, the State Party may also identify the domestic agencies that have participated in implementing the recommendations, as well as identify specific technical assistance or other needs connected with the implementation of the recommendations.”*

*“During the second and subsequent rounds, the country report of each State Party shall address the steps taken to implement the recommendation adopted by the Committee in previous country reports. The country report shall note those recommendations that have*

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<sup>18/</sup> See annex to this Report, containing the recommendations extended to Guyana in the report of the first round of review.

*been satisfactorily considered and those that need additional attention by the country under review.”*

- c. In accordance with the terms of Article 29 of the Rules of Procedure, the Committee adopted, by consensus and as a part of the second round questionnaire,<sup>19/</sup> the standard form to be used by the states to present information on the progress made with respect the recommendations extended during the first round. Similarly, the Committee adopted by consensus the methodology for review in the second round,<sup>20/</sup> which establishes all provisions and considerations regarding the scope of the follow-up that the Committee is to conduct with respect to the recommendations extended to each country in the first-round country reports.
2. The report adopted in connection with Guyana as a part of the first round of review, including the recommendations formulated for that State therein, was adopted with the consensus of Guyana as the country under review and in accordance with the procedure established in the Document of Buenos Aires and the Rules of Procedure.
3. Related to each of the recommendations set out in the country reports, the Committee includes, in each case and in accordance with the analysis carried out, a series of measures that it believes the country undergoing review could take into account in order to progress with the implementation of those recommendations.

In accordance with the consideration given to the recommendations, the country undergoing review can always progress with their implementation by adopting the measures suggested by the Committee or other alternative measures that it deems appropriate.

Consequently, the standard form adopted by the Committee for States to report their progress with implementing the first-round recommendations allows the State to indicate the measure or measures suggested by the Committee or the measure or measures taken by the State to implement the corresponding recommendation and to briefly describe the specific steps it has taken in connection with those measures.

4. In accordance with the provisions of Article 29 of the Rules of Procedure, this standard form allows the country undergoing review to set out the possible difficulties it sees in the implementation of the various recommendations and, in addition, to identify which of its domestic agencies have participated in the implementation of the corresponding recommendation and to identify specific needs (such as technical assistance or help in other areas) associated with its implementation.
5. The Committee would like to stress that in accordance with the decisions taken by the States Parties to the MESICIC, the information sought on each state's progress with implementing the recommendations and the standard form on which it is to be provided is intended, as one of its basic aims, to facilitate, promote, and strengthen cooperation among the States Parties, in compliance with the terms of the Convention, the Document of Buenos Aires, and the Rules of Procedure.

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<sup>19/</sup> See “Questionnaire” at: [http://www.oas.org/juridico/english/mesicic\\_quest\\_IIround.doc](http://www.oas.org/juridico/english/mesicic_quest_IIround.doc)

<sup>20/</sup> See “Methodology” at: [http://www.oas.org/juridico/english/mesicic\\_method\\_IIround.pdf](http://www.oas.org/juridico/english/mesicic_method_IIround.pdf)

Thus, Article 29 of the Rules of Procedure establishes that: “During the second and subsequent rounds, the country report of each State Party shall address the steps taken to implement the recommendations adopted by the Committee in previous country reports. The country report shall note those recommendations that have been satisfactorily considered and those that need additional attention by the country under review.”

6. The lack of concrete steps taken with respect to the implementation of the recommendations deeply concerns the Committee and it has the even more serious consequence of making it very difficult to pursue the basic goal of facilitating, promoting, and strengthening cooperation among the States Parties, in accordance with the terms of the Convention, the Document of Buenos Aires, and the Rules of Procedure. Thus, in the absence of relevant information on the difficulties experienced by the country undergoing review, it is not possible to facilitate international cooperation for the State in overcoming those problems.

Bearing in mind the considerations set out above, the Committee urges Guyana to take concrete steps in the implementation of the recommendations formulated to it in the First Round Report and to report on its progress at the forthcoming meetings of the Committee, in compliance with Article 31 of the Rules of Procedure.<sup>xvii</sup>

The Committee will continue to duly monitor the implementation of the recommendations it extended to Guyana, in accordance with the terms of its Rules of Procedure.

## ANNEX

### RECOMMENDATIONS FORMULATED TO THE CO-OPERATIVE REPUBLIC OF GUYANA IN THE FRAMEWORK OF THE FIRST ROUND OF REVIEW

#### 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

###### Recommendation 1.1:

*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.*

###### Measures suggested by the Committee:

- 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**

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 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**

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

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

Recommendation 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 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)**

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.*

**4. MECHANISMS TO PROMOTE THE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS 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.*

**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 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**

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.*

**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.*

#### **4.5. Mechanisms to encourage participation in the follow-up of public administration**

Recommendation 4.5:

*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)**

Recommendation 5.1:

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

Recommendation 5.2:

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

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.*

### **6. CENTRAL AUTHORITIES (ARTICLE XVIII)**

Recommendation 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.*

Recommendation 6.2:

*Formally notify the General Secretariat of the OAS the appointment of the central authority, pursuant to the prescribed formalities.*

Recommendation 6.3:

*Ensure that once the authority has been appointed it has the resources it needs to adequately fulfill its functions.*

## **7. GENERAL RECOMMENDATIONS**

### Recommendation 7.1:

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

### Recommendation 7.2:

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

### Recommendation 7.3:

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

### Recommendation 7.4:

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

## ENDNOTES

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<sup>i</sup> Article 199 applies to the office of Commissioner of Title, Magistrate, Director of Public Prosecution, Deputy Director of Public Prosecutions, Registrar of the High Court, Deputy Registrar of the High Court, Registrar of Deeds, Deputy Registrar of Deeds and to such other offices (not being offices in respect of which provision for making of appointments is made by any provision of this Constitution other than Article 201) connected with the courts of Guyana or for appointment to which legal qualifications are required as may be prescribed by Parliament.

<sup>ii</sup> Article 199(2) of the Constitution reads as follows: “*The Judicial Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under the preceding paragraph to any one or more of its members or to any person holding or acting in an office in respect of which power to make appointments is vested in the President acting in accordance with the advice of the Commission or to which this article applies.*”

Article 201(2) of the Constitution reads as follows: “*The Public Service Commission may, by directions in writing subject to such conditions as it thinks fit, delegate any of its powers under the preceding paragraph to any one or more members of the Commission or, with the consent of the Prime Minister, to any public officer, or, in relation to any office on the staff of the Clerk of the National Assembly, to the Clerk.*”

<sup>iii</sup> Pursuant to Section 9(1) of the Public Service Tribunal Appellate Act, the only appealable matters are the following: 1- Appointment by promotion of any person to public office and 2- Exercise of disciplinary control of any person holding, or acting in, any public office.

<sup>iv</sup> Pursuant to Article 3(2) and (3) of the Procurement Act 2003, the Act does not apply to procurement involving national defense or national security unless the procuring entity, subject to the approval of the National Board, expressly so declares to suppliers or contractors when first soliciting their participation in the procurement proceedings.

<sup>v</sup> Pursuant to Article 26(1)(a) of the Procurement Act 2003, the “restricted tendering” method of procurement can only be used if the goods, construction or services, by reason of their highly complex or specialized nature, are available only from a limited number of suppliers or contractors, in which case all such suppliers or contractors shall be invited to submit tenders. In addition, Article 26(1)(b) of the Procurement Act and the Schedule 2 of its Regulations establish the following maximum threshold for the use of this procurement method: G.\$ 1,000,000, in case of contracts for goods and services (other than consulting services) and G.\$ 5,000,000, in the case of contracts for construction. Article 26(2) further provides that when the “restricted tendering” procedure is used, only suppliers or contractors invited by the procuring entity due to their qualifications can submit tenders. All other steps and requirements applicable to open tendering contained in Articles 30 to 43, shall be complied with.

<sup>vi</sup> Pursuant to Article 27(1) of the Procurement Act 2003 and the Schedule 2 of its Regulations the maximum threshold for use of the “request for quotations” method is G.\$ 800,000. In addition, Article 27(2) of the Procurement Act 2003 stipulates that prior to awarding a contract under the “request for quotations” method of procurement; the procuring entity shall obtain and compare quotations from as many qualified suppliers or contractors as feasible, but not fewer than three. Moreover, Article 27(3) provides that the procuring entity shall make its best efforts to check prices on the Internet to ensure the reasonableness of quoted prices and shall publish the price of its most recent procurement at least once a quarter in a newspaper of national circulation.

<sup>vii</sup> Article 28 of the Procurement Act 2003 states: “*The procuring entity may engage in single-source procurement when - (a) the goods or construction are available only from a particular supplier or contractor, or a particular supplier or contractor has exclusive rights with respect to the goods or construction, and no reasonable alternative or substitute exists; (b) the services, by reason of their highly complex or specialized nature, are available from only one source; (c) owing to a catastrophic event, there is an urgent need for the goods, services or construction, making it impractical to use other methods of procurement because of the time involved in using those methods; (d) the procuring entity, having procured goods, services, equipment or technology from a supplier or contractor, determines that additional supplies must be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, services, equipment or technology, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods in*

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question; or (e) the procuring entity applies section 3 (2), to procurement involving national defense or national security and determines, as a result of national security concerns, that single-source procurement is the most appropriate method of procurement.”

Article 29 of the Procurement Act 2003 states: “In circumstances where procurement is conducted in poor remote communities, where the competitive procedures described in this Act are not feasible, goods, works and services the value of which does not exceed such an amount as may be prescribed by regulations (G.\$ 1,500,000), may be procured, either - (a) in accordance with procedures that promote efficiency through participation of community organizations; or (b) through single source procurement from direct contracting of suppliers or contractors located near the community.”

<sup>viii</sup> Article 17(1) of the Procurement Act 2003 provides that “the National Board shall be responsible for exercising jurisdiction over tenders the value of which exceeds such an amount prescribed by regulations, appointing a pool of evaluators for such period as it may determine, and maintaining efficient record keeping and quality assurances systems”.

<sup>ix</sup> Article 17(2) of the Procurement Act 2003 provides that “In addition, pending the establishment of the Public Procurement Commission, the National Board shall be responsible for -

- (a) making regulations governing procurement to carry out the provisions of this Act;
- (b) determining the forms of documents for procurement including, but not limited to -
  - (i) standard bidding documents;
  - (ii) prequalification documents;
  - (iii) contracts;
  - (iv) evaluation forms; and
  - (v) procurement manuals, guidelines, and procedures.
- (c) organizing training seminars regarding procurements;
- (d) reporting annually to the Minister on the effectiveness of the procurement processes, and recommending therein any amendment to this Act that may be necessary to improve the effectiveness of the procurement process;
- (e) as provided for in section 53, upon request, reviewing decisions by the procuring entities;
- (f) adjudicating debarment proceedings.”.

<sup>x</sup> Article 20 of the Procurement Act 2003 establishes, *inter alia*, the following functions to the Regional Boards:

- (1) Each Regional Board shall nominate for consideration by the National Board qualified individuals to serve on an Evaluation Committee;
- (2) Each Regional Board shall in accordance with the Procurement Act and the regulations oversee the administration of procurement in its respective administrative region;
- (3) Each Regional Board shall prepare, using such standardized forms and criteria as have been prepared by the National Board, solicitation documents for tenders subject to its jurisdiction. A Regional Board may, with the approval of the National Board, make such minor alterations or modifications to such forms and criteria as are deemed necessary on a case-by-case basis;
- (4) Each Regional Board shall determine whether suppliers or contractors satisfy such qualification requirements as may be imposed under Article 5(1);
- (5) For each procurement subject to its jurisdiction, a Regional Board shall select from the pool of evaluators appointed by the National Board under Article 17, three evaluators with expertise, to serve as members of the Evaluation Committee for such procurement;
- (6) In selecting evaluators to serve on an Evaluation Committee, a Regional Board is not restricted to selecting individuals from its administrative region;
- (7) The Evaluation Committee shall evaluate the tenders pursuant to Article 39.

<sup>xi</sup> Article 23 of the Procurement Act 2003 establishes the following functions to the Ministerial, Departmental or Agency Tender Boards:

- (1) Each Ministerial, Departmental and Agency Tender Board shall nominate for consideration by the National Board qualified evaluators to serve on Evaluation Committees;
- (2) Each such Tender Board shall, in accordance with the Procurement Act and the regulations, oversee the administration of procurement for its respective Ministry, Department, or Agency;

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(3) Each such Tender Board shall prepare, using such standardized forms and criteria as have been prepared by the National Board, solicitation documents for tenders subject to its jurisdiction; and may, with the approval of the National Board, make such minor alterations or modifications to the forms and criteria as are deemed necessary on a case-by-case basis;

(4) Each such Tender Board shall determine whether suppliers or contractors satisfy the qualification requirements in accordance with Article 39 (8).

(5) For each procurement subject to its jurisdiction, each such Tender Board shall select from the pool of evaluators appointed by the National Board under Article 17, three evaluators with expertise, to serve as members of the Evaluation Committee for such procurement.

(6) Each such Tender Board shall transmit to the Evaluation Committee, in a timely manner, all tenders timely received from contractors or suppliers pursuant to Article 35.

(7) The Evaluation Committee shall evaluate the tenders pursuant to Article 39.

<sup>xii</sup> Pursuant to Article 4(2) of the Regulations to the Procurement Act 2003, this report must contain the following information about the contract: (a) name of the procuring entity; (b) date of award; (c) name of the party to whom the contract was awarded; (d) object of the contract (short description and classification); (e) amount and currency of the contract; (f) procurement method used; (g) number of tenders, proposals and quotations received; and (h) contract identification number/letter.

<sup>xiii</sup> The Bid Protest Committee is established under regulation 12 of the Procurement Regulations 2004. It has the power to review any decision, act or omission by a procuring entity upon written request by a supplier or contractor, pursuant to the procedure established under regulation 13.

<sup>xiv</sup> Section 334 of the Criminal Law Offences Act states: “*Public servant denotes a person falling under any of the following descriptions, namely,*

- (a) the President;*
- (b) every member of the Cabinet;*
- (c) every person holding an office of emolument in a civil capacity in the service of the Government;*
- (d) every commissioned officer in the Guyana Defence Force;*
- (e) every judge, magistrate, or justice of the peace;*
- (f) every officer of a court of justice whose duty it is as that officer to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the court, and every person specially authorised by a court of justice to perform any of those duties;*
- (g) every jurymen;*
- (h) every arbitrator or other person to whom any cause or matter has been referred for decision or report;*
- (i) every person who holds an office by virtue of which he is empowered to place or keep any person in confinement;*
- (j) every officer of Government whose duty it is, as that officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience;*
- (k) every officer whose duty it is, as that officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to investigate or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty;*
- (l) every officer whose official duty it is to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any common purpose of any village, town or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town or district;*

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(m) every member of, and every person employed by, a local authority under the Local Government or by a council; (as defined in the Municipal and District Councils Act);

(n) Every person, other than a person falling under any of the descriptions in the preceding subparagraphs, who holds an office listed in Schedule I of the Integrity Commission Act.”

<sup>xv</sup> Pursuant to Section 2 (j) of the Money Laundering (Prevention) Act, “money laundering” means (i) engaging directly or indirectly, in a transaction that involves property that is the proceeds of crime, knowing or believing the same to be the proceeds of crime, or (ii) receiving, possessing, managing, investing, concealing, disguising, disposing of or bringing into or removing from Guyana any property that is the proceeds of crime, knowing or believing the same to be the proceeds of crime.

Additionally, Section 2(m) provides that “proceeds of crime” means any property derived or obtained directly or indirectly, through the commission of a prescribed offence, whether committed in Guyana or elsewhere; and includes any property which is knowingly mingled with property that is so derived or obtained. Bribery is included in the list of prescribed offences.

<sup>xvi</sup> “Any person who, with the intention of gaining any advantage or concession for himself or any other person, offers- (a) a member of a Body or an officer thereof, or (b) a person referred to in subsection (1) a gift of money or other thing with respect to a matter that is expected to come before the Body or person commits an offence and shall, in addition to being disqualified from being awarded a contract, be liable to a fine of five hundred thousand dollars and to imprisonment for six months”.

<sup>xvii</sup> The progress report referred to in Article 31 of the “Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC” and presented by the Co-Operative Republic of Guyana in the framework of the Thirteenth Meeting of the Committee of Experts, provided information with respect to the recommendations put forward in the country report adopted by the Committee in the first review round, the text of which is available for consultation at: [http://www.oas.org/juridico/spanish/mec\\_avance\\_guyXIII.pdf](http://www.oas.org/juridico/spanish/mec_avance_guyXIII.pdf)