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

Committee of Experts

PROGRESS REPORT OF THE COOPERATIVE REPUBLIC OF GUYANA

FOR THE REPORTING PERIOD MARCH 8, 2021 TO FEBRUARY 25, 2022

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INTRODUCTION:

The President of Guyana was declared on August 2, 2020, after a 5 month delay, which included a total recount of all the votes, many recourses to the judiciary, including Guyana’s apex court, the Caribbean Court of Justice, and, the unflinching support of the United Nations, the Commonwealth, the OAS, the CARICOM, and over 100 countries across the globe who defended the right of the Guyanese people to choose their government at the freely and fairly conducted General and Regional Elections on March 2, 2020.

Between the successful No confidence Motion of December 21, 2018 and the holding of these elections, the Caribbean Court ruled that the then government should comply with the constitution and hold elections within three months and in the interim it was a caretaker government with restricted legal authority. From December 21, 2018 to August 2, 2020 the country was in limbo.

The new Government, as part of the global community recognises the importance of reporting on its treaty obligations. In this regard, in June, 2021 the newly created Ministry of Parliamentary Affairs and Governance (September 2020) established a National Coordinating Committee (NCC) to allow for a more structured approach to Guyana’s reporting under the United Nations Convention against Corruption, the Inter-American Convention against Corruption (IACAC), the Lima Commitment, and the United Nations General Assembly’s Political Declaration Commitment on Corruption.

The first meeting of the NCC was held on June 8, 2021. The NCC meets regularly and currently has sixteen (16) agencies represented on the Committee. The agencies are: the Ministry of Parliamentary Affairs and Governance, the Ministry of Legal Affairs, the Guyana Revenue Authority (GRA), the Public/Police Service Commission, the Ministry of Public Service, the National Procurement and Tender Administration Board (NPTAB), the Ministry of Finance, the Office of the Auditor General, the Judicial Service Commission, the Integrity Commission, the Office of the Director of Public Prosecutions (DPP), the Financial Intelligence Unit (FIU), the Bank of Guyana, the Ministry of Home Affairs, the Guyana Police Force, and the Special Organized Crime Unit (SOCU) of the Guyana Police Force. The NCC is chaired by the Minister of Parliamentary Affairs and Governance who is also the designated Expert for Guyana on the MESICIC.

The National Coordinating Committee (NCC) is intended to encourage greater inclusiveness and participation in the reporting process, while ensuring a consistent quality in the state party reporting
submissions. It also allows for a coordinated approach to the monitoring and follow-up on the recommendations emanating from the reporting process.

In this period, the NCC has been focusing on drafting its 2\textsuperscript{nd}Self-assessment to the UN Convention against Corruption with support from the UNODC with a 3 day training programme for the members of the NCC and members of civil society in September 2021.

SECTION I. PROGRESS IN THE IMPLEMENTATION OF THE RECOMMENDATIONS

A. FIRST ROUND OF REVIEW:

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

1.1 Standards of conduct to prevent conflicts of interest and mechanisms to enforce them

Recommendation:

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

Suggested Measures:

a) Formulate specific standards, when appropriate, to limit the actions of public servants in specific situations, in accordance with the functions and activities of each institutions and the specific nature and importance of the different offices, and mechanisms for enforcing them.

As reflected in the 4\textsuperscript{th} review report of Guyana dated 2014, para 291-298, provide information of the provisions of such by the Audit Office of Guyana under the Audit Act and Manual (2006) adopted by the Legislature; the National Procurement and Tender Administration (NPTAB) and the Public Procurement Commission under the Procurement Act; the Public Service Commission Rules1998, the Judicial Service Commission Rules 2010; and, The Standing Orders of the National Assembly of Guyana.

Omitted in the 2014 Guyana submission was information pertaining to the Guyana Police Force (GPF). Members of the GPF must seek consent from the Commissioner of Police to engage in any trade or business. If they fail to get such approval, they may be discharged from duty. This is referenced in the Police Act Cap 16.01, Section 31 (1) and (2).

Guyana Police Force Standing Order No. 5 Section 6, forbids officers from Holding Certain Investments. Officers of the Guyana Police Force are prohibited from directly or indirectly holding any local investment or being connected with any occupation or undertaking which might bring their private interest in real or apparent conflict with their official duties or in any way influence them in the discharge of their duties.

The Code of Conduct for public officials -Schedule II of the Integrity Commission Act provides for a Code of Conduct for public officials. The Code was revised and published in the Gazette on 13 June 2017. Included with the Code are eleven articles relating to: (i) soliciting/acceptance of bribes;
(ii) discrimination; (iii) acceptance of gifts; (iv) conflict of interest; (v) use of official influence; (vi) handling of classified or proprietary information; (vii) use of public property; (viii) sexual misconduct; (ix) acceptance of entertainment; (x) use of office in an improper manner; and (xi) outside employment. It also states that the declarant shall have a basic responsibility to take decisions only in the national interest void of any forms of personal gain, or other material benefits for themselves, their family or their friends.

For the purpose of the Code, a conflict of interest arises where a public official makes or participates in the making of a decision in the execution of his or her office and at the same time knows or ought to have known, that in the making of that decision, there is a material beneficial opportunity either directly or indirectly to further his or her private interests or that of a member of his or her family or any other person or entity.

The recently enacted the Local Content Act 2021 and the Natural Resources Fund Act 2021, include conflict of interest.

As a Commonwealth country, definitions of “conflict of interest” in jurisprudence are used.

In 2017-2019, there were 3 instances of conflict of interest with a Minister of Government. No action was taken to correct the situation. No charges were made.

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

This is being done by the Integrity Commission which provides guidance to declarants on such matters on a case by case basis.

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.

Efforts are being made to ensure this is the case.

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.

The main agencies to apply this are the Auditor General in regards to examination of government expenditure, the Public Service Ministry and the Public Service, Judicial Service and Police Service Commissions, the Judiciary, the Integrity Commission, the National Procurement and Tender Administration and the Public Procurement Commission.

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.

No action taken on this measure.
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.

There are rules as pointed out (a) above. The main issue many times is re-enforcement of this at all levels with all those holding elected positions as well as public servants and public officers in state agencies.

There are several recent cases before the courts involving former public officials and former Ministers which involve corruption, abuse of power, sale of national assets which involve some aspect of conflict of interest.

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

Recommendation:

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

A number of issues have been found to contribute to overpayment of staff, such as the cut-off date when payroll is prepared and persons leave the job following the cut off date during which the IFMIS enters the employee’s data. This is particularly an issue in the 10 Administrative Regions especially due to communication difficulties due to geography and lack of connectivity.

The issue of contractors being overpaid is in breach of the Procurement Act and Regulations and is an offense. The main culprits appear to be engineers who sign off for works being satisfactorily completed when the work is not finished and the Principal Accounting Officers proceeding to pay. Some contractors make restitution, most do not. The courts have also being used to bring some of these contractors to the court. The Government has indicated that it is considering surcharging the public servants who are responsible for having effected such payment.

The Ministry of Finance, the Ministry of Legal Affairs, the Auditor General’s Office and the Public Accounts Committee of the National Assembly are working to stop the overpayment of contractors and reduce the overpayment of staff.

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

Suggested Measures:

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

No action taken

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

Guyana has promulgated the Protected Disclosures (Whistleblowers) Act, Act No. 5 of 2018, and the Witness Protection Act, Act No. 7 of 2018, to address issues of promoting and facilitating anonymous reporting of instances of corruption, and, where necessary, providing protection for persons who report corruption. These Acts have not yet been operationalized. These will be addressed by the Government in its legislative agenda for this Parliament.

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.

The Integrity Commission has reported in its annual reports the number of complaints it received from the public and action taken.

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.

This is a necessary and outstanding component of the anti-corruption framework of Guyana.

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

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

Suggested Measures:
a) Maximize the use of systems to study the contents of the declarations of income, assets and liabilities, and adopt suitable measures to detect and prevent conflicts of interest and cases of illicit enrichment, using modern technologies, whenever possible, to expedite their presentation and improve systems, analysis or investigation of cases, bearing in mind the pertinent articles of the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”
b) Consider the possibility of making adjustments or legal reforms to the power granted by the Integrity Commission Act to the Commission or the Chairman, whichever is applicable, in order to impose the appropriate administrative sanctions without the authorization of another organ or official.

The present legislation provides for the Commission to call in the Commissioner of Police and the Office of the Director of Public Prosecutions to investigate with a view to bring charges. The Commission does not need the authorization of another organ or official.

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

Under consideration.

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

In 2019, the Integrity Commission for the first time published the list of Members of Parliament who were outstanding in making their annual declarations. In accordance with section 11 (6) of the Integrity in Public Life Act, Chapter 22:01, the Integrity Commission published the names of persons in public life who had failed to file declarations of income, assets and liabilities and statements of registerable interests for the years ended December 31, 2017, 2018, 2019 and 2020 of listed persons in public life.

Noteworthy is that several members of the Judiciary do not agree that the IC Act applies to them as they are constitutional post holders.

c) 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.

There is no statute of limitation on criminal offences. Therefore S 23 does not impose a limit on legal proceedings.

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

No action taken on this.
g) Regulate the conditions, procedures and other relevant aspects as regards making disclosures of income, assets, and liabilities public, as appropriate, in accordance with the fundamental principles of the domestic legal system.

For further consideration.

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

Recommendation:

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

As a matter of principle and good governance, all oversight bodies have benefitted from increases in budgetary allocations in 2021 and 2022. Since October 2020 a series of institutional coordination mechanisms have been established between oversight, investigative and enforcement bodies to enhance their capabilities and successes.

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

4.1. General participation mechanisms

Recommendation:

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

4.2. Mechanisms for access to information

Recommendation:

Strengthen the mechanisms for ensuring public access to information.

Suggested Measures:

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

Between the years 2015-2020, The Office of the Commissioner of Information was denuded of financial, human and technical support. The Chairman learnt of his termination from the Prime Minister during the 2018 Budget debate. He subsequently approached the court. In 2021 he was re-instated as the Commissioner of Information and budgetary allocation was provided in the 2022 budget.

b) Give special consideration to the implementation of Section 45 of the Access to Information Act regarding programs to educate the public on the importance of access public information and on how to exercise their rights under the Act.
This is vital and will be implemented. In the interim, the Government is in process of establishing websites for all Ministries, state agencies, and constitutional bodies to ensure that the public is well informed. Facebook and other social media are also being used.

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

*This will be considered in the Government’s Legislative Agenda for the 12th Parliament.*

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

*As connectivity and data collection and retrieval improves sectorally and across government, this measure will become easier to implement.*

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

*Now that the Commissioner has been re-installed, this will be included in his responsibilities.*

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

*Now that the Commissioner has been re-installed, this will be included in his responsibilities.*

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

*This is vital and is being implemented from 2021 to present. In the interim, the Government is in process of establishing websites for Ministries, state agencies, oversight and constitutional bodies to ensure that public is well informed. Facebook and other social media are also being used.*

### 4.3. Mechanisms for consultation

**Recommendation 4.3.1:**

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

*Article 13 of the Guyana Constitution requires that citizens are informed and participate in decision making in matters that affect their lives.*
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.

This is on-going. Citizens are kept informed in the last two years of government policies and programmes and there are multiple and simultaneously held consultations being carried out on local, regional, sectoral and national issues.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)
Recommendation 5.1:
Ensure that both the mutual assistance treaties signed and the Convention are applied in specific cases of corruption.

Based on available information, these are applied in a number of cases, but more particularly anti-money laundering and countering the financing of terrorism.

Recommendation 5.2:
Promote the adoption and effective application of the Mutual Assistance in Criminal Matters Act.

This Act was enacted on June 9, 2010 and is being used by Guyana bilaterally in the Region.

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.

In progress.

7. GENERAL RECOMMENDATIONS

Recommendations 7.1, 7.2, 7.3:

Through the National Coordination Committee established in 2021, the country believes that this National Mechanism for Reporting and Follow up will enhance Guyana the follow up of recommendations and implementation.

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.

This is a work in progress with uneven development across several oversight bodies.

B. SECOND ROUND OF REVIEW:

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

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

Following the Fifth Round Review, the Committee suggested the following recommendations:

1.1.3.1 Adopt, through appropriate legislative and/or administrative procedures, provisions that explicitly provide that government hiring into Public Service must, as general rule, be based on the principle of merit.

The Constitution is highest law in the country and dictates that human rights, fairness, transparency are followed.

The Government has restored the earlier policy prior to 2015 that persons being recruited into the public service can chose to be placed on contract or on fixed pensionable establishment. All positions in the public service have to be approved by the Public Service Ministry (PSM). Each position has a Job Specification and a Job Description which include qualifications for the position, terms of reference of position, reporting mechanisms, whether it is desk oriented or entails traveling, the scale of the salary, etc. This is used to guide applicants responding to public advertisements, in-service advertisement, or voluntarily applying for a job in the public service. The PSM operates under the Public Service Rules which are enacted as subsidiary legislation with circulars issued from time to time to the public servants.

The PSM also sets the bands for the scales of the salaries in the public service (Scale 1-13) (low, medium and high) for each position created and approved. The allocation of a public servant to a scale for their position depends on the qualifications and experience for each position required in the JD.

The Public Service Commission then reviews the applicants both in service and responses to advertisements and persons who voluntarily wrote for a job which may be eligible for the position advertised. There is usually a panel drawn from the members of the Commission as well as high level public servants in the Ministries and the public service union who will interview the applicants. The PSC then issues a letter of appointment (copied to the PSM) to the applicant or person being promoted or disciplined. The PSC has rules that it operates under in keeping with the Constitution and relevant laws (eg labour laws).

The PSC was appointed in 2018 and expired on August 9, 2021, the nomination process for the new Commissioners are presently before the Parliamentary Committee of Appointments. In the interim the Secretariat in accordance with the constitution carries out the day to day functions of the Commission, advertising and interviewing. However the appointments are done when the Chairperson and Commission are appointed and sworn in by the President.

1.1.3.2 Establish, through appropriate legislative and/or administrative procedures, criteria governing the way that evaluations for entry into public service are conducted and ensuring that they are based on the principles of openness, equity, and efficiency required under the Convention.
As described above, there is a legal framework in place in accordance with the Constitution (which includes the appointment of the Public Service Commission with nominees from the National Assembly and the Leader of the Opposition), and its human rights section including a specific anti-discrimination article), relevant laws, particularly labour laws, and subsidiary legislation such as Rules for both the Public Service Ministry and the Public Service Commission.

Regrettably between 2015-2020 despite this constitutional and legal safeguards, several thousands of public servants were terminated with no cause and several thousands hired based on political party affiliation and ethnicity in violation of these laws. Some persons approached the courts for wrongful dismissal, the courts in some cases have ordered compensation.

1.1.3.3 Arrange for examinations and/or interviews a mandatory requirement for filling public service vacancies to be selected through merit system.

As described above, there are Job Descriptions for every position in the public service as well as a process for interviews are in place.

1.1.3.4 Establish mechanisms based on clearly defined criteria on the manner in which these examinations and/or interviews would be carried out, ensuring the application of the principles of openness, equity, and efficiency required under the Convention.

In the interview process, each examiner has a standard score sheet which is used. These are then used to determine the suitability of the applicant.

Competency tests are done for certain category of applicants such as those in the technical and vocational positions. These exams are supervised by senior educational officers. For other positions produce certificates from accredited institutions with their qualifications.

1.1.3.5 Adopt, through the appropriate legislative and/or administrative procedures, provisions that set out clear parameters on the conditions for the use of temporary appointments, including definitions of the terms "temporary or seasonal nature" and "urgent" used in the law.

Temporary workers may be required for a specific job for a specified time, or part-time work based on certain exigencies, such as in a flood or natural disaster persons are recruited usually at scale 1 or 2 to assist in certain jobs in the public service. One would find this practiced in the 10 Administrative Regions were there may be gaps with shortage of skilled staff until the position is filled by the PSC or by the Region. This has not been found to be an area of abuse in the Annual Auditor General’s reports of Government and state agencies.

1.1.3.7 Adopt, through the appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for the advertisement of hiring opportunities for vacancies within the public service.

There are administrative procedures to provide for advertisements of vacancies in the public service positions, usually unless otherwise specified, applicants have two (2) weeks to apply with requisite documents. The advertisements are standardised with requisite information.
1.1.3.8 Ensure that mass media (e.g. newspapers or websites) are used when advertising outside the Public Service through external competition.

As connectivity improves throughout the country, newspapers, radio, websites of requesting agency, and, social media including facebook, are used.

1.1.3.9 Adopt, through the appropriate legislative and/or administrative procedures, rules regarding requirements candidates must meet to take part in competitions, the dates on which the selection process is to begin, and the procedures to be followed in order to take part in that process.

There are administrative measures to ensure the applicants are aware of these.

1.1.3.10 Consider adopting, through appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for challenging the substantive aspects of the selection process.

The applicant can approach the PSC for a review, or, now that the Public Service Appellate Tribunal is place since November 2020 or directly to the courts for redress.

1.1.3.11 Consider adopting, through the appropriate legislative and/or administrative procedures, provisions that regulate the hiring of judicial and legal officers, based on the principles of merit, as a general rule, and setting out the criteria upon which the evaluations will be made and provide clearly defined criteria on the manner for the advertisement of posts in the Public Service, in such a way as to guarantee enforcement of the principles of openness, equity, and efficiency required under the Convention.

This is pending the appointment of the Judicial Service Commission for its consideration.

1.1.3.12 Adopt clearly defined criteria on the manner for carrying out examinations and advertisement of posts in the Audit Office of Guyana.

The Auditor General’s Office is a constitutional body. Its staffing positions are approved by the Parliamentary Public Accounts Committee, and can be updated and adopted in the Legislature as was The Rules, Policies and Procedures Manual. The Office must act in accordance with the Constitution, the Audit Act 2004 and other laws.

The Audit Office advertises and hires staff up to the level of its Directors. The process for appointing the Directors of the Audit Office must go through a process approved by the Parliamentary Public Accounts Committee, which would include advertisement and a standard process of scoring and interview process approved by the said PAC.

1.1.3.13 Consider deleting the last paragraph of Section 11.1 of the Rules, Policies, and Procedures Manual of the Audit Office of Guyana, which provides as follows: “There may, however, be situations where the Audit Office receives applications that are not in response to a public advertisement. To the extent that there are vacancies and the applicant has met the job requirement, the Auditor General may make an offer of employment”.

In the light of shortage of skills required by the Audit Office and, the return of scholarship students with required qualifications, and others, one does not wish to interfere with the independence of the Audit Office to hire staff needed for to carry out its critical mandate.

1.1.3.14 Adopt the necessary measures to establish the Public Service Commission and endow it with the human and financial resources it needs, within available resources, to fulfill the function assigned to it under Article 201 (1) of the Constitution of appointing public servants.

As stated earlier, the PSC was appointed in August 2017 and expired in August 2021. The process for nominations to the Public Service Commission has begun at the level of the Parliamentary Committee of Appointments. The annual budget is approved by the National Assembly and due to amendments to the Fiscal Management and Accountability Act (2015, 2020 and 2021) they receive their budget as a lump sum within a month of its approval in the National Assembly. Since 2020-2021 the PSC has received what it requested. The PSC Secretariat manages its own budget.

1.1.3.15 Adopt, through the competent authority, the measures needed to develop and implement websites for all government agencies that will, inter alia, publicize procedures relating to the hiring of public servants.

With the establishment of a modern information based governance structure and greater connectivity using ICT, this is in progress. Most Ministries, state agencies, and constitutional bodies have their own websites and some have face book.

1.1.3.16 Provide the Public Service Commission with the resources needed to purchase a database system for registering the hiring of public servants, subject to the availability of funds.

The PSC is free to include in its annual budget a request for such resources to purchase a database system for registering the hiring of public servants.

1.1.3.17 Compile detailed annual statistics on the results of the selection processes for public servants, in such a way as to show clearly the number and percentage of public servants hired through competitive merit-based processes, temporary or provisional appointments, exceptional appointments, discretionary appointments, the use of professional services rendered in a personal capacity, such as advisory services and consultant’s contracts, and the number of appeals filed against resolutions handed down in selection processes and against the outcomes of those processes, so that challenges can be identified and, where necessary, corrective measures recommended.

This recommendation will be brought to the newly appointed PSC’s attention for action. The PSC prepares an annual report which is tabled in the National Assembly which includes basic data on hiring, promotions and disciplinary matters it has addressed in the year.

GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES
1.2.1. Follow up on Implementation of the Recommendations Formulated in the Second Round

Following the Fifth Round Review, the Committee suggested the following recommendations:

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.

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

The recourse to the courts have been used to punish public officials in cases of non-compliance with procurement rules. There are several such cases before the courts in 2021. Under other laws sale of state assets without authority covered by other laws and have led to prosecution of public officials.

1.2.4.2. Adopt the necessary measures to ensure that the Public Procurement Commission has the human, financial, and technological resources it needs for the proper performance of its functions, bearing in mind the availability of resources.

The PPC has from the inception been given the financial resources it requires. From 2016 to the present, its requests to National Assembly have been approved. As a constitutional body it manages its own budget subject to the procurement and financial laws, and all other laws. The outgoing chair and members of this Commission are the highest paid of all the constitutional bodies. Their remuneration is based on the approval of the Parliamentary Public Accounts Committee.

1.2.4.3. Conduct an exhaustive analysis of the laws and regulations on public procurement in the Cooperative Republic of Guyana so as to identify inconsistencies and contradictions and recommend any appropriate corrective measures, in keeping with the principles of openness, equity, and efficiency provided for in the Convention.

The newly appointed Law Revision Commission of 2021 will be asked to examine this recommendation.

1.2.4.4 Adopt the Rules of Procedure of the Public Procurement Commission so as to clearly define its functions and spheres of competence, pursuant to Article 212W of the Constitution of the Cooperative Republic of Guyana.

This will be done after its review by the Law Revision Commission, the Attorney General’s Office and the Cabinet.

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

This recommendation is in progress.

Due to the long gap in time between the 5th Round Report in 2018 and the new Government, this is an issue which will have to be followed up with the National Procurement and Tender Administration. The NPTAB website is being reconstructed and updated at nptab.gov.gy.

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

The amendment to the Procurement Regulations regarding Debarment were tabled but never debated and approved by the 11th Parliament and hence lapsed. These are under review by the NPTAB and the Ministry of Finance.

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

Bidders cannot be part of the appraisal, selection or approval of purchases and or payments. The Financial rules define clear separation of functions as well as declaration of interests in a bidding process.

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

Each budget agency entity is required to submit their budget requests with justifications and specify whether this is a multi-year programme or not, as well as if studies and design, consultancies etc of each are required. A procurement plan for each budget agency must be submitted to the Ministry of Finance after the annual Budget has been approved by the National Assembly.

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

Unless there is an emergency or natural disaster, and depending on the size of the contract to be awarded, the minimum time limit is normally two weeks.

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

The Committee is reminded that all of Guyana is not connected and in the interest of equitable and fair competition between bidders in some parts of the country bidders would be discriminated against if procurement was solely an electronic one. Guyana has a hybrid system the large and medium scale contractors must submit electronic versions of their bids; the small contractors by paper transactions.
Due to Covid 19 pandemic the opening of the bids at NPTAB were live streamed so the bidders and media could witness the opening of the bids.

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

The evaluation process of any bid must examine and substantiate the accuracy of the information provided. There are detailed information that each contractor must provide in addition to their bid.

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

Contracts awarded are made public on the nptab website and many times through the media; there are also public signing of contracts. The Government is implementing a policy that actual contracts must be made public in the communities where they are being executed.

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

The country is not familiar with exactly what is the issue here. This will be reviewed by the NPTAB, and the Attorney General’s Chambers. There is a Bid Review Committee which the Procurement Act provides for and there is the PPC which can investigate a complaint by any citizen with regards to a tender process or an award of a contract.

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

This is done annually by the NPTAB but not done publicly.

1.2.4.15. Develop a plan between the National Procurement and Tender Administration and the Public Procurement Commission for the transition of functions contemplated in Section 17(3) of the Procurement Act of 2003, so that those functions can be performed in a coordinated and appropriate manner.

Due to the time lag this has already been done.

1.2.4.16. Endow the Public Procurement Commission with the resources it needs to complete and maintain its website so that it can perform its functions appropriately, bearing in mind the availability of resources.

The Public Procurement Commission established in October 2016 expired in October 2019. Due to a successful no confidence motion on December 21, 2018 and the dissolution of the Parliament on December 31, 2019 there was no Parliamentary Public Accounts Committee in existence to nominate the new members as required by the Constitution and the Procurement Act.
The 12th Parliament was inaugurated on September 1, 2020 and the Public Accounts Committee was appointed in December 2020. The process of nominations for the 5 members of the PPC was concluded unanimously in the Committee on February 21, 2022 and it is expected that the members will receive the two-thirds majority in the National Assembly as required by the Constitution.

The PPC has had all of its budgetary requests granted from 2016-2021, there should have been no impediment to implementing this recommendation. It does have a website which needs further improvement and updating.

1.2.4.17. Endow the National Procurement and Tender Administration with the resources it needs to reactivate the www.e-procure.gov.gy website and thereby ensure more widespread dissemination of invitations to bid, bearing in mind the availability of resources.

The NPTAB has reviewed and amended its website making it more user-friendly and accessible in 2021. The re-establishment of the e-procure website is under review.

1.2.4.18. Adopt the necessary measures to ensure that the National Procurement and Tender Administration has the resources it needs to update the www.npta.gov.gy website and ensure that it is kept up to date in such a way that the general public can access information regarding minutes of the opening of tenders, awards of contracts in public procurement processes; an updated list of challenges to those awards/processes, the decisions of the Bid Protest Committee, and an updated list of firms disqualified due to fraud and corruption, so as to be able to perform its functions appropriately, bearing in mind the availability of resources.

See response to 1.2.4.17

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

This should be part of the mandate of the PPC and the NPTAB based on the Procurement Act

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

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

Following the Fifth Round Review, the Committee requires additional attention within the Framework of the Third Round:
2.3.1 Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings.

The Witness Protection Bill and the Protected Disclosures Bill were passed in the National Assembly in 2018, however, they have not been activated as yet. This is on the government legislative agenda for the 12th Parliament.

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

See response to 2.3.1

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

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

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

2.3.3 – 2.3.5 will need to be considered for further amendments to the Witness Protection Act and Public Disclosure Act once these Acts are activated.

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

This is of interest and a subject of collaboration at the international technical cooperation with UNODC.

2.3.7 A simple whistleblower protection application process

This will need to be considered for further amendments to the Witness Protection Act and Public Disclosure Act once activated or creation of regulations to these Acts.

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

See 2.3.1

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

See 2.3.1
ACTS OF CORRUPTION (ARTICLE VI, PARAGRAPH 1 OF THE CONVENTION)

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

Following the Fifth Round Review, the committee made the following recommendations:-

3.3.1 Modify Section 338 (2) (a) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(1)(a) of the Convention, by incorporating therein, the elements of directly or indirectly accepting a bribe by a public servant or soliciting it.
3.3.2 Modify Section 338 (2) (b) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(1)(b) of the Convention, by incorporating therein, the elements of directly or indirectly offering a bribe to a public servant.
3.3.3 Criminalize those who act as accessories after the fact with respect to corruption offenses, as required by Article VI(1)(e) of the Convention.

Recommendations 3.3.1, 3.3.2, and 3.3.3 will have to put before the newly appointed Law Revision Commission and the Attorney General’s Chambers for review.

3.3.4 Compile annual statistics on investigations opened by the Department of Public Prosecution, so as to determine how many have been suspended, how many have prescribed, how many have been archived, how many are ongoing, and how many have been referred to the competent authority for a decision, in order to identify challenges and recommend corrective measures.

The Office of the Director of Public Prosecutions does have a website where such information should be posted, regrettably it is not and this recommendation will be raised with that agency.

3.3.5 Compile annual statistics on investigations opened by the courts into acts of corruption, so as to determine how many are ongoing, suspended, prescribed, archived without a decision adopted, ready for a decision, or have had a decision adopted on merits, and whether the decision was to acquit or convict, in order to identify challenges and recommend corrective measures.

The court statistics do not include such information at this time. This recommendation will have to have concurrence of the judiciary.

4. GENERAL RECOMMENDATIONS

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.

The Ministry of the Public Service is no longer a department of the Ministry of the Presidency (now the Office of the President). It is a separate Ministry with responsibilities which include training of public servants. The Bertram Collins College of the Public Service no longer exists. The training programmes are being revamped and modernized starting in 2022.
The newly created National Coordinating Committee for the IACAC and UNCAC will now be the lead body to bring forward the recommendations of the MESICIC to the various Ministries, agencies and Cabinet for follow up and monitoring of implementation.

C. THIRD ROUND OF REVIEW:

Guyana has not been reviewed in the Sixth Round.

D. FOURTH ROUND OF REVIEW:

AUDIT OFFICE OF GUYANA:

RECOMMENDATIONS:

1.4.1 Strengthen the Audit Office, especially its Forensic Audit Unit, by ensuring that it has the human, financial and technological resources necessary for the proper performance of its functions, bearing in mind the availability of resources

The Audit Office of Guyana has received funds based on its budgetary requests approved by the Public Accounts Committee and passed in the National Assembly in the last 3 budgets from 2020-2022

1.4.2 Publish on the Audit Office website, all accountability documents and reports prepared by the Audit Office and presented to the Public Accounts Committee (PAC), such as its Three-year Strategic Plans and the annual updates thereof, as well as the independent auditor’s report to the members of PAC

Some documents have been posted on the AOG website such as the Three Year Strategic Plan but others have not been posted and the website needs to be updated with more current information.

1.4.3 Improve the Audit Office website, by advertising a specific hotline telephone number and/or a (secure) hotline for complaints in electronic form from those interested in presenting reports, complaints or allegations of fraud or corruption. Additionally, provide guidance on the website on how to present useful reports, complaints or allegations and on how the interested person can follow-up on its status

There is a provision for a person to make a complaint on the website. But the other aspects have not been implemented.

1.4.4 Promote awareness campaigns to the general public on how they can help the Audit Office in its functions, especially those of its Forensic Audit Unit, related to the uncovering and deterrence of fraud and corruption in Guyana.

There has not been enough attention to this issue of public awareness and education.
1.4.5 Provide support and incentives to its current staff to pursue and attain professional accounting qualifications recognized by the Institute of Chartered Accountants of Guyana and/or take these qualifications into consideration when selecting future staff.

*This is on-going by the AOG.*

1.4.6 Strengthen efforts to ensure the Audit Office participation in the peer-review program on audit quality assurance in the framework of the Caribbean Organization of Supreme Audit Institutions (CAROSAI)

*This is on-going. AOG has benefitted from the CAROSAI over this period of review.*

1.4.7 Continue strengthening the internal audit departments in the various Ministries/Departments/Agencies of the Government of Guyana and consider gradually increasing their staff.

*More internal audit departments have been installed in more Ministries and the objective to ensure that all of the large Ministries and all 10 Administrative Regions have internal audit units.*

1.4.8 Prepare statistics on the amount ordered to be paid back to the State in cases of fraud, theft, losses and overpayments and the amounts actually recovered, in order to identify challenges and recommend corrective measures (See Section 1.3 of Chapter II of this Report).

*This recommendation requires an inter-agency effort and coordination as several bodies would have to contribute to the collection of this data.*

1.4.9 Prepare comprehensive statistics on the outcomes of disciplinary investigative proceedings within the Audit Office showing how many investigations are under way, how many have been shelved, and with respect to how many the statute of limitations have expired, in order to identify challenges and recommend corrective measures (See Section 1.3 of Chapter II of this Report).

*This recommendation requires an inter-agency effort and coordination as several bodies would have to contribute to the collection of this data.*

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

The Recommendations are still pending.

**SERVICE COMMISSIONS IN PARTICULAR THE JUDICIAL SERVICE AND PUBLIC SERVICE COMMISSIONS**

**RECOMMENDATIONS:**
3.4.1 Strengthen the Judicial Service Commission by providing it with the budgetary and human resources needed for the proper performance of its functions, including the preparation and implementation of training programs for magistrates/judges, judicial and legal officers, within available resources.

The appointment of the Judicial Service Commission is still pending since September 2017. Efforts are being made to have it appointed.

However training programmes for Judges/magistrates, judicial and legal officers are being held through collaboration between the Chancellor of the Judiciary and the Attorney General’s Chambers. The GoG/IDB Modernization of the Justice System has provided valuable assistance in this area.

3.4.4 Re-establish the Public Service Appellate Tribunal and providing it with the budgetary and human resources needed for the proper performance of its functions, within available resources.

The Public Service Appellate Tribunal was appointed in November 2020 and it has received its annual budgetary requests as approved by the National Assembly for the years 2020 November to 2022.

3.4.7 Consider establishing the legal obligation for the Service Commissions, particularly the Public Service Commission and the Judicial Service Commission, to render accounts and to publish annual reports, disclosing its activities and the results achieved, as well as the institution’s in-house performance, goals, and achievements.

The Public Service Commission presents an annual report for submission to the National Assembly. The Judicial Commission does not do so.

3.4.8 Establish and maintain updated websites for the Public Service Commission and the Judicial Service Commission, in order to allow easy access to the public of the information related to the work of the respective Commission. Ensure that the respective websites contain, among others, the annual reports referred to in the previous recommendation, relevant legislation, application forms and job descriptions/specifications for posts.

This has not been implemented

3.4.9 Ensure that the Public Service Commission promptly receives the funds approved in its annual budget, in order to ensure that delays in releasing funds do not interfere with the ability of the Commission to carry out its work.

The Public Service Commission has received its requests in the annual budgets 2020, 2021 and 2022. There have been no recent reports of delays as they receive their funds as a lump sum in keeping with the amendments to the Fiscal Management and Accountability Act 2015, 2020, and 2022.
NATIONAL PROCUREMENT AND TENDER ADMINISTRATION

RECOMMENDATIONS

4.4.1 Issue new regulations to the Procurement Act 2003 in order to establish clear, fair and efficient debarment procedures and mechanisms, including pecuniary sanctions, particularly for companies found to have paid bribes to any Guyanese government official or public servant, while ensuring that safeguards against the abusive or unjustified application of the debarment penalty are in place.

As reported earlier in this report this is on the Government’s legislative agenda. Hence recommendation 4.4.2 cannot be implemented.

4.4.4 Consider requiring that members of procurement boards as well as officials who are responsible for procurement present an annually-updated statement of disclosure of interest, as well as the establishment of a mechanism to ensure its compliance.

This is a requirement.

4.4.5 Examine amending Section 60(4) Procurement Act 2003 in order to establish that the fine for those who violate the disclosure requirements established therein take into account the amount of the procurement/contract in question

Under consideration

SECTION 11: DIFFICULTIES IN THE IMPLEMENTATION OF THE RECOMMENDATIONS

E. FIFTH ROUND OF REVIEW:

The gap between the implementation of the recommendations between the Fourth and Fifth Round due to lack of follow up and monitoring will hopefully be rectified with the creation of a National Follow up Mechanism in the creation of the National Coordinating Committee to the IACAC and the UNCAC.