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USAID Guyana Democratic Consolidation and Conflict Resolution (GDCCR) Project

**Final Report on Redrafting and
Modernizing the Electoral Laws of Guyana**

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This publication was produced for review by the United States Agency for International Development. It was prepared by RTI International and Carl W. Dundas, Election Legal Consultant.

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Final Report on Redrafting and Modernizing the Electoral Laws of Guyana

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Abbreviations

CEC	Central Election Commission
DNE	Director of Elections
EAC	Election Assistance Commission
EMB	electoral management body
FEC	Federal Election Committee
GECOM	Guyana Elections Commission
IEC	Independent Electoral Commission
IFES	International Foundation for Election Systems
INEC	Independent National Electoral Commission
ONEL	National Election Observatory
SCER	Supreme Commission for Elections and Referenda
TSE	Special Education Tribunal
USAID	U.S. Agency for International Development

Executive Summary

1. The so-called Carter-Price formula for the appointment of the Chairman and members of the Elections Commission was introduced as a consensus measure for the multiparty democratic elections in 1992. That formula has no doubt served the purpose for which it was constructed, but has since failed to consolidate the necessary confidence that stakeholders need to have in the Guyana Elections Commission (GECOM). The formula is considered flawed mainly because it consistently fails to foster consensual or even majority decisions without the Chairman voting with one or other side. In essence, the formula entailed the appointment of three of the seven members of the Commission by the ruling political party and three by the parliamentary opposition parties and the seventh member, a somewhat neutral person, as Chairman.
2. The majority of the primary stakeholders, as well as election observers, donors, and election commentators, have expressed the view that the Carter-Price formula should be reviewed and replaced by an independent elections commission. The *Manual of the Laws Guyana Relating to GECOM*, produced pursuant to Phase 1 of the U.S. Agency for International Development (USAID) Project, supported the view that the foregoing formula has outlived its usefulness and should be replaced.
3. The present report examined the attributes of independent elections commissions and researched several formulae to appoint the chairperson and members of such bodies. The independent elections commissions differ from the Carter-Price formula in so far as the Chairman and other members are nominated by neutral entities or individuals and not by political parties. The potential of an independent elections commission to generate confidence amongst stakeholders is considerably greater than a commission established under the Carter-Price formula.
4. The task of constructing a formula for an independent elections commission to meet the needs of Guyana is a challenging one, but it is conceivable. The approach adopted is to draw on the trend of popular participation to nominate suitable candidates, who are then screened by a panel of four prominent and politically nonpartisan Guyanese nationals. The panel then submits a short list of names, nominated through advertisement or other means by political parties, civil society organisations, professional bodies, the Judicial Services Commission, and individuals, within a stipulated time to a Select Committee of all-party members from each party represented in the National Assembly in proportion to their representation in that House. The Select Committee considers the list of names submitted to it and forwards, within a stipulated time, as many names as there are vacancies to be filled to the National Assembly, which will approve each name by two-thirds majority vote. The approved names are then submitted to the President for formal appointment.
5. Immediately upon appointment, the Chairman and Vice Chairman shall be selected by secret ballot by the members of the Commission from among themselves. Each member would be appointed for a term of seven years and renewable once, provided that no member of the Commission shall serve

beyond the age of 70 years. The Chairman and Vice Chairman shall serve as full-time members of the Commission.

6. To ensure the required high standard to which the Chairman and other members of the Commission must adhere, they must commit to serve impartially, and independently perform their functions in good faith and without fear or favour.
7. The draft provisions, which take the form of recommended amendments to the Constitution, stipulate certain “dos” and “don’ts,” including a strict regime for the disclosure by any member of the Commission of any conflict of financial or other interests in any matters that come up for discussion in any meeting of the Commission.
8. Matters relating to the Permanent Secretariat, staff development, and remuneration have been discussed in the report, as well as the funding and extended mandate of the Commission.
9. The main recommendations take the form of draft instruments amending the Constitution to accommodate a reconstitution of GECOM, as set out in **Annex 2** hereto; amendments to the *Representation of the People Act*, Chapter 1:03, Section 4 to deal with an elaboration of the mandate of GECOM as provided for in Article 162 of the Constitution; and to include the insertion therein of sections 4B and 4C, which deal with the obligations of Commissioners. Further recommended amendments are as follows:
 - Amendment to the Third Schedule of the Constitution to include the GECOM therein;
 - A new Section 113A has been inserted in the *Representation of the People Act* regarding GECOM’s reporting requirements;
 - Addition of two new sections, 120A and 120B, to the *Representation of the People Act* dealing with the election expenses of political parties and the disclosure of contributions by political parties; and
 - Amendment to Section 3 of the *Election Laws (Amendment) Act* dealing with residency qualification of Guyanese for registration.
 - The draft of an illustrative instrument of each of the following is included in the report:
 - A *Memorandum of Understanding* on financial disbursement; and
 - A Code of Conduct for GECOM and staff.

Commencement of Project

The project of redrafting and modernization of the electoral laws of Guyana began with a visit to Guyana from 16–26 July 2005. A report on that visit is attached as **Annex 13**.

Terms of Reference

The terms of reference and scope of work are set out in **Annex 1**.

Method of Work

On the initial visit to Guyana, the basic approach to this assignment was developed. Discussions were held with officers of USAID and RTI International, the Chairman of the GECOM, and senior staff members. Reports and legal instruments, as well as the laws of Guyana, were collected for detailed perusal. Extensive research was carried out into good practice and international standards in organizing multiparty elections. A report was prepared on the initial visit to Guyana in July 2005, prior to the development of the draft report on the assignment. A second visit to Guyana took place in November 2005, when the draft report was presented to GECOM, and discussed with USAID and RTI. A courtesy call was paid to His Excellency Ambassador Bullen of the United States in Guyana on 23 November 2005.

Phase 1 of the Project

Phase 1 was undertaken by a group of three consultants and consisted of a compilation of all relevant laws of Guyana pertaining to elections conducted by GECOM. The output of Phase 1 was the *Manual of the Laws Guyana Relating to GECOM*, as of May 2005. Of particular relevance to Phase 2 of the Project is a list of 16 issues identified as weaknesses in the legislative framework, relating to election organization in Guyana, brought about through deficiencies in the Constitutional and legislative provisions which apply to elections. A summary of the issues identified for review and modernization were the following:

- The formula for appointment of the Chairman and members of GECOM;
- The respective term of office of the Chairman and members of GECOM;
- The remuneration packages of Chairman and Commissioners of GECOM;
- The reporting requirement of GECOM to the National Assembly and to the Executive;
- Procedures with respect to the preparation and approval of GECOM's budget;
- Financing of GECOM's current and capital expenditure;
- Accountability of GECOM for finances expended;
- The organisational structure of the Secretariat of GECOM;
- The regime for the remuneration packages for the staff of the Secretariat;
- Access to information from GECOM, with particular reference to the electorate, as gleaned in the process of national registration;
- Reporting on the financing of political parties and the use of resources of the State for election activities;
- The processing of claims and objections to inclusion on the list of voters;
- The application of the concepts of "residence" and of "domicile" in the matter of requirements to be satisfied by potential voters;
- "Overseas" voting; and
- The use of computer and other relevant technology in GECOM's work.

Appointment of Chairman and Members of GECOM

The formula for appointing GECOM's Chairman and members has been described as the Carter-Price formula in the *Manual* produced pursuant to Phase 1 of the Project. That formula entailed that three members of the GECOM are nominated by the ruling political party; another three are nominated by the opposition political parties represented in Parliament, presided over by a Chairman who is not one of the six nominees of any political party. Perhaps there may be jurisdictions in which such a formula for the appointment of members of an electoral management body (EMB) might function satisfactorily, but this has not been the case in Guyana thus far. The Carter Center itself had this to say about the foregoing formula in 2001: "*Parliament and political parties should consider alternative models of election administration. The so-called 'Carter formula,' which has been followed since 1992, provides for an election commission with balanced representation of ruling and opposition parties. While the adoption of this model was critical to the success of the breakthrough transitional elections in 1992, in subsequent elections it has allowed party interests to interfere with effective election administration. As a part of election reform efforts, Guyana should give careful consideration to alternative models, possibly reducing or eliminating political party representation and increasing the role of independent members of civil society and professional experts.*"¹

The experience of several countries, with a formula for appointing members of their EMB not dissimilar to that of Guyana, has failed to display sustained positive results in good practice in election organisation. These countries include Jamaica, Malawi, and Mozambique. Malta, whose formula for appointing the members of its Electoral Commission includes the nonvoting nominees of political parties, has met with greater success than the foregoing mentioned countries.² These models were fashioned with the aim of fostering confidence-building measures among the primary stakeholders in the organization of national elections, but the failure to achieve that goal has militated against widespread adoption of that approach in election administration. Instead, preference has been shown by new and emerging democracies for the independent EMB, which is guided by the principles of impartiality, neutrality and nonpartisanship in dealing with stakeholders, and especially with the primary stakeholders as political parties.

Attributes of an Independent Electoral Commission

The term *independent*, which is used to characterise some EMBs, is not preferred by some emerging democracies. They prefer the notions of nonpartisan or neutral management bodies. The difficulty lies in the inability of some new democracies to foster and maintain a healthy relationship between the executive (cabinet) and other Constitutionally autonomous entities, like an EMB. Failure to manage this relationship well often results in unwelcome consequences for the EMB, as was seen

¹ See *The Carter Center, Special Report Series, Observing the 2001 Guyana Elections*, p.48.

² See *Compendium of Election Laws, Practices and Cases of Selected Commonwealth Countries*, Vol. 1, Part 1 and 2, Carl W Dundas, Commonwealth Secretariat, 1998.

in India and Malawi in 1995 and 1998, respectively.³ The term *independent* when used to describe an EMB means freedom from the influence of any outside individual, authority, or political party, particularly the ruling party. Where an EMB is perceived to be friendlier towards the Government of the day and the ruling party, as is the case of the National Election Observatory of Cameroon, its independent status may be placed in jeopardy. The case study of the multiple Constitutional bodies, which constitute the EMBs of Peru, revealed that they have not been considered to be independent of the governing party; indeed they were believed to be designed to support the then ruling party. The Central Electoral Commission of Russia suffers from the perception that it lacks independence because of its close relationship with and the influence of the Executive and the ruling party. The EMB functions in Senegal are split between the National Director of Elections (DNE), which controlled by the Interior Ministry, and the independent but temporary National Elections Observatory (ONEL). A recent case study indicated that stakeholders favoured a single, independent EMB. Another recent case study of the EMBs of Zimbabwe indicated that they appeared to be primarily accountable to the ruling party.

Financial Resources

In order for an EMB to perform its tasks in a timely and effective manner, it must be adequately financed. One of the frequent problems encountered in emerging democracies is the failure to fund major election processes in a timely manner. New and better ways are being attempted to ensure that the core budget for an EMB is charged to the consolidated fund after approval by the Parliament concerned. However, there may be Constitutional implications to sort out before such an approach can be implemented. The procedure for submitting the election budget to the Parliament should be clearly set out so that the EMB is able to transmit the budget through the Speaker of the Assembly; one of the Assembly's committees could initially review the budget. A few emerging democracies and some established ones follow this general procedure. Such an approach avoids adverse effects of foot-dragging tactics by incumbent governments which are not enthusiastic about properly conducted elections. A growing number of emerging democracies are relying too heavily on foreign donor assistance to fund the core election budget; that is by no means an ideal position. The electoral process is too important to the stability of a nation to depend on foreign funding. In this context, greater efforts should be made at the national, regional, and international levels to find more cost-effective ways of organising elections.

There should be transparency in preparation, justification, and approval of an election budget. These stages should be open to public scrutiny without prejudice to the timely completion of the budget. The EMB must be fully accountable to the public through the Parliament. There should be regular auditing the electoral administration's accounts, and proper procedures should be implemented to regulate contracts for

³ The Supreme Court of India upheld the right of the President of India over legal protest by the Chief Election Commissioner to increase the size of the Election Commission from a single- to a multimember (three member) Commission. In Malawi in 1998, under dubious circumstances, the Government dismissed the Chairperson and members of the Commission.

services and election materials. In addition, patronage in the awarding of technology and service contracts should be subject to scrutiny by an oversight committee of the Parliament.

Criteria for Appointment of Chairpersons and Members

The appointment of chairpersons and members in a multimember EMB should be based on nonpartisanship and efficiency. However, nonpartisanship is not always the main goal; the appointment of some management bodies focuses more on confidence-building considerations. This approach has led to political party nominees being appointed as members of EMBs. In some cases, appointees are active politicians, even party officials and members of Parliament. In these cases, the question of nonpartisanship or neutrality in respect of such appointees remains a moot one. Perhaps, in these cases it is still possible for the EMB to strive to achieve impartiality. Such posturing may be punctured when party nominees follow party instructions to walk out or boycott sittings of the management body. Representatives of political parties find the temptation to secure advantages for their party more attractive than displaying open loyalty to the goal of the management body, which is to deliver free and fair elections.

In cases where the political party representatives hold the balance of voting power on the management body, the decision-making machinery is often deadlocked. A particular weakness in having political party nominees on an EMB is the danger allowing the nominees to be privy to decisions relating to confidential information—such as the security marks on the ballot paper or the serial number sequence on ballot boxes—will cause them to divulge such information, either intentionally or inadvertently, to party functionaries or activists. Countries which have opted for the confidence-building approach in preference to a management body that is independent of political parties included Malawi and Mozambique, both of which first adopted the system for their general elections in 1994 during the transition from a one-party to a multiparty system of Government and subsequently continued it. Other examples included Jamaica and Guyana. The Corte Electoral of Uruguay has five politically independent members and four representatives, one from each of the leading political parties. The five independent members are elected by two-thirds majority of the National Assembly and the four party representatives are elected by proportional vote of the National Assembly. The Electoral Judges of the Supreme Electoral Tribunal of Costa Rica are appointed by two-thirds of the members of the Supreme Court Judges and are subject to the same immunities and responsibilities as the Supreme Court Judges.

Malta adopted an approach that sought to combine independence with confidence-building elements. The President—acting in accordance the advice of the Prime Minister, given after he had consulted the Leader of the Opposition—appointed the members of the EMB (Electoral Commission).⁴ *General Election Act 1991* stipulates that every political party represented in Parliament had the right to nominate two party delegates to the Electoral Commission. These party delegates had full and free

⁴See Section 60 of the Constitution of Malta.

right of access to the Electoral Office and to all records kept therein, as well as to check, verify, and obtain any information regarding the work of the Electoral Office. The Commission had the right to nominate one of its officials to accompany such delegates at all times. Party delegates had the right to seek and obtain from the Commissioners—as well as from any other officials connected with the running, supervising or security of the elections—information showing whether or not such persons were taking adequate measures to comply with the law. The Commissioners or such other persons were required to furnish the information promptly. Party delegates had no right to be made aware, prior to polling day, of security features relating to ballot papers, voting documents, and the official mark used by the Commission on ballot papers.⁵

There are many identifiable formulae for appointing the chairperson and members of EMBs. The appointment procedure also varies; for example, in some cases the Head of State or of Government in his or her sole discretion, as in Zambia and Kenya, makes the appointment. The Head of State, on the advice of the Head of Government, after consultation with the Leader of the Opposition, makes the appointment in Barbados and Belize. In Ghana, the Head of State in consultation with members of the executive makes the appointment. A council advises the Head of State in Malaysia, and an independent authority, namely, the Public Services Commission, makes the appointment in the Solomon Islands.

Persons chosen for appointment to an EMB should be of proven integrity and high standing in the community. No particular method of appointment can ever guarantee the successful performance by a management body. However, in the case of appointments which are made by a head of State or Government, who is head of the governing party, without consultation, the likelihood of accusation of partiality of the management body in favour of that party increases.

Size of Management Body

There is no evidence to suggest that the size of an EMB impacts its efficiency in a positive or negative way. EMBs examined ranged in size—22 members in Kenya; 21 in Mozambique, for the transitional elections in 1994; one in Canada; one in India, until 1995; and one in Botswana, until 1998. Both India and Botswana have found it necessary to introduce multimember EMBs to bolster the confidence of political parties in the electoral process. The Indian experience has shed some light on the arguments for and against a single-member EMB. The Constitution of India provided for a multimember Election Commission whenever the President deemed it necessary to make the appointments. Initially, however, the management body started off with a single member, the Chief Election Commissioner. That arrangement continued until 1995, when the Supreme Court of India upheld the appointments of two additional members to the Commission. In an earlier case on the same issue, the Court said: “[T]here is no doubt that two heads are better than one, and particularly when an institution like the Election Commission is entrusted with vital functions, and is armed

⁵ See Section 10 of the General Elections Act 1991.

with exclusive uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual, however all-wise he may be."⁶

In the 1995 judgment in *T.N. Seshan, Chief Election Commissioner of India v Union of India et al.*, the Court criticised the Chief Election Commissioner for his style of management and personal behaviour, which triggered the appointment of the two additional Commissioners. The Court said, "[S]ome of his.... decisions were so unsustainable that he could not sustain them when tested in Court. His public utterances at times were so abrasive that this Court had to caution him to exercise restraint on more occasions than one. This gave the impression that he was keen to project his own image."⁷

The Electoral Commission of the United Kingdom has between five and nine members who are part-time Commissioners and 135 staff members.

Principles of Operation

Good Practice

If the best practice in election organisation could be easily identified, it would be the goal that electoral management bodies should strive to achieve. It is perhaps more realistic to aim to achieve targeted elements of good practice in election organisation and conduct, since it is a more measurable approach and attracts more analytical benchmarks for meaningful comparisons. Good practice in election management has the potential to straddle the barriers of the differences in electoral systems and attempts at election manipulation and still achieve the delivery of free and fair elections. An EMB must ensure that all its election personnel are trained to apply good practices in all their election activities; by doing so, they develop an institutional culture of good election practices. Stealing elections, whether by stealth or otherwise, will neither be aided nor condoned by good election practices.

Accountability

A significant component of an independent EMB modernisation is the requirement to display full accountability for all its activities relating to election management. The scope of this accountability includes budgeting, oversight of election expenses, and performance (i.e., conduct of election processes). An EMB should be accountable to the people, the National Assembly, and the electorate under the Constitution or statute law. Accountability is a vital requirement to ensure that EMBs give an account of their stewardship periodically to the public and to the representatives of the people, as well as to the authorities that manage the public funds, since EMBs are generally funded by public funds. Proper accountability has a number of positive effects on the structure and operations of EMBs. It aids the transparency of EMBs in their performance and their funding and expenditures. Sometimes the lack of proper accountability mechanisms leads to the accusation of poor operational transparency,

⁶ *S.S. Dhanoa v Union of India et al. (1991)*, 3 SCC 567, par. 26.

⁷ "T. N. Seshan, Chief Elections Commissioner v Union of India et al. (1995)," ed. Carl W. Dundas *Compendium of Election Laws, Practices and Cases of Selected Countries*, Vol. 2 Part 1 p.5–26.

as in the case of Costa Rica. It assists EMBs to gain the confidence of the public and important stakeholders, particularly political parties and Government ministries. It positively influences the general perception of independence and nonpartisanship attitude of EMBs.

Characteristics of Accountability

Performance accountability is manifested in annual (or periodic) reporting to the National Assembly, and the submission of a report on each election. Reporting should be backed up by oversight mechanisms, within or preferably outside the EMB, whose task is to monitor and initiate corrective measures, with respect to procedural errors, and to ensure that election processes are properly executed.

Financial, like performance, accountability may be provided for in the election legislative scheme, but many EMBs treat the statutory requirement as the minimum, and offer more regular financial reporting than is formally required. In addition, financial reporting should be internally backed by strict auditing procedures, and periodically by external auditors. Audit reports are usually published for general information. Further, the budget and expenditure are at times subject to oversight mechanisms, such as a finance and audit committee, which may be an outside body or a body with some external members. Some EMBs have good accountability credentials with respect to performance and financial requirements, as is the case of Lesotho, and the Central Election Commission (CEC) of Russia. The two EMBs of Senegal have limited accountability requirements, the ONEL reports on each election process to the President, and the DNE reports to the Ministry of the Interior.

Performance Accountability

EMBs are responsible for the development of policy decisions to give effect to their mandates, and they oversee the implementation of those decisions. They are responsible for election administration and how that administration functions. EMBs are accountable for their compliance with all laws and regulations and for having developed adequate systems to monitor compliance, as well as delivering good quality election service to voters and other stakeholders. The CEC of Georgia, for example, is generally accountable to Parliament and to a parliamentary commission, which reviews the activities of the CEC and its subordinate commissions. Some EMBs have statutory obligation to report to the National Assembly on performance, but like Nigeria, have weak or even nonexistent mechanisms for accountability with respect to financial expenditure. The Electoral Commission of the United Kingdom has a three-dimensional approach to accountability, namely, submission of an annual corporate plan to the oversight body of the Speaker's Committee, submission of reports on electoral pilot schemes to the Deputy Prime Minister, and submission of reports on reviews of electoral laws to the Secretary State at the Department for Constitutional Affairs. In the United States, the EMBs are accountable on two levels: 1) the Federal bodies, the Election Assistance Commission (EAC), and the Federal Election Commission (FEC) are accountable to the Congress, and 2) the Executive Branch and the courts and the local authorities are accountable to their communities, state officials, and the courts.

An election audit is a method of assessing all aspects of an EMB's structure and performance. The type of audit to be conducted depends on the objectives of the audit. It can be a performance audit to assess the performance of election authorities, or it can be a financial audit to examine the accounting books to see how the funds were used. It can also be a combination of the two, or it can have a specific purpose, such as looking at internal control mechanisms.

The Purpose of an Audit

An election audit should

- Identify the strengths and weaknesses of the EMB's management of the main election processes;
- Identify strength and weaknesses of the individual election processes;
- Identify the constraints that may have impinged on the smooth implementation of the main processes, particularly with regard to administrative and financial arrangements and make recommendations to improve those in the future; and
- Propose priority measures that might be undertaken by the EMB in the future to ensure long-term viability and sustainability of the democratic process in the given jurisdiction.

Methodology of an Audit

The criteria governing an audit should be the following:

- Importance of the elections to the democratic welfare of the State;
- Preparation and design—the logic and completeness of the planning process for the preparation and conduct of the elections;
- Efficiency—the cost, speed, and management efficiency with which inputs and activities were converted into results, and the quality of the results achieved;
- Effectiveness—an assessment of the contribution made by results to achieve the objectives, which was the delivery of free and fair elections;
- Impact—the effect of the project on its wider environment, and its contribution to the democratic development of the State and to its stability; and
- Sustainability—the likelihood of a continuation in the stream of benefits produced by the conduct of the elections, and the positive results flowing there from.

The scope of the audit will dependent on the mandate of the EMB, but in general it should be designed to include

- Principal stakeholders, namely, political parties, civil society organizations, media organizations, and relevant Government ministries and departments;
- Joint consultations, in appropriate cases, with stakeholders through workshops and seminars;

- Perusal of relevant EMB’s reports, documents, legal instruments, Constitutional instruments, electoral laws, regulations, manuals, guidelines, and codes of conduct;
- The election processes—in-depth examinations of the main processes leading up to polling, that is to say, delimitation of constituency boundaries; registration of political parties; registration of voters; registration of candidates and parties to contest the elections; election logistics; fixing election dates; and issues of election writs, polling, counting of the votes, and announcement of results;
- The cause of inefficiencies or uneconomical practices;
- Whether the organization has complied with laws and regulations on matters of economy and efficiency;
- Training programmes for election officers;
- Programmes for voter and election awareness (including voter registration);
- Use of up-to-date election technology;
- The impact of the performance of the electoral system or systems in place for the election in question;
- An examination of the EMB, its management structure, strategic plan, policy decisions, and the implementation of those decisions;
- Interviews with EMB members and senior staff;
- Interviews with media on the election campaign;
- Policy (if any) concerning the treatment of election information, in particular the voters’ roll; and
- Parties’ and candidates’ expenses, disclosure of information about contributions, limits on expenditure, and the nature of oversight powers.

Publication of Audit Report

Audit reports are usually made public. This helps increase the transparency of election management and its oversight. It also increases accountability through the wide dissemination of information to the stakeholders and the general public.

Performance Audit

A performance audit is an objective and systematic examination of evidence to provide an independent assessment of the performance of the election management.

Performance audits provide information on how the election processes are working, identify weaknesses or areas of noncompliance, and make recommendations on how to improve each process. The facts uncovered by an audit, and the audits’ evaluation and recommendations on integrity issues, can help direct election managers to correct their problems and to make the processes more effective.

Performance audits can include economy and efficiency, and programme audits, which determine whether the EMB or other related agencies are acquiring, protecting,

and using their resources economically and efficiently. This is an important mechanism in combating corruption and mismanagement.

Performance audits may be extended to specific programmes and operations, and may include the following:

- Examination of the concept of operations subscribed to by the EMB;
- Determination if the procedures, interpretation, and application of the legislative scheme are facilitating the smooth organisation of the elections;
- Assessment of the adequacy of the management control systems for measuring and monitoring programme effectiveness;
- Measurement and determination of compliance with the laws, regulations, guidelines, and manuals applicable to the programme and the elections;
- Assessment of whether the objectives of an ongoing program are appropriate and are being met;
- Determination of the extent to which a programme achieves the stipulated programme results, and identification of constraints on performance;
- Determination of whether management considered options that could provide the expected results more efficiently or more cost-effectively;
- Determination of whether the programme complements, duplicates, or conflicts with other related programmes; and
- Identification of ways of improving the election programmes.

Financial Audits

Some EMBs' are required to submit annual audited accounts, which are linked to achievements and activities based on the annual plan of work. The report may reflect the level of contribution by the State and by external sources, where appropriate, and the expenditure of such funds. Elections generate considerable financial transactions through acquisition of election supplies, materials, and equipment. Lucrative contracts for purchases and consultancies are entered into, sometimes without tender procedures, by EMBs' staff. Collectively and individually, the management body and its members should be removable from office for cause. Similarly, collectively and individually, the management body and its members should uphold the tenets of nonpartisanship, neutrality, and independence in respect of all arms of Government, all political parties, candidates, interest groups, and all other outside entities.

Accountability extends to, and is of particular importance in, the management body's administration of an election budget; proper and transparent procedures should be laid down in awarding contracts for purchasing technology and other election equipment and materials. An EMB owes it to the electorate to deliver good-quality election services on polling day. Voters—especially disadvantaged voters, whether they are disabled, illiterate, or ill—should be provided with reasonable facilities to meet their special needs at polling stations.

Level Playing Field

In operational terms, an EMB should embrace the concept of a level playing field, which is aimed at establishing fairness to all political parties contesting an election. The lack of a level playing field manifested itself in an extreme form during elections that marked the transition from one-party or military regimes to multiparty elections during the 1990s, and still lingers in countries like Kenya, Malawi, Nigeria, and Zambia, where the publicly owned media is believed to favour the ruling party of the day. One aim of election modernisation is to ensure that a level playing field is achieved for all political parties contesting any election.

The quality of nonpartisanship and the ability to create a level playing field are pillars on which good election organisations can be built. Some emerging democracies find the concept of ‘a level playing field’ unfamiliar. The traditional Westminster model, by which elections are influenced, does not exhibit a good example since it vests the governing party with an in-built advantage, which is the ability to fix a general election date without consultation with opposition parties. The Westminster approach can be contrasted with situations where election dates are fixed by law, the EMB, or are triggered by an event, such as a no-confidence motion. The effects of the absence of a level playing field manifested themselves, as stated above, in the most extreme form in transitional, multiparty elections from a single party or a military regime to a democratic system. New political parties often experienced grave difficulty gaining fair access to the publicly owned media and thus could not convey their policies and programmes across to the voters. The ruling party had not only a huge advantage with the publicly owned media, but often had the use of public resources, including longstanding loyal public servants.

Even in situations different from the transitional ones mentioned above, the use of public resources for political party purposes during an election campaign continues to pose a serious challenge to election managers. Some EMBs, such as those of India and Bangladesh, have taken steps to limit the unfair advantage which an incumbent party may have by issuing a code of conduct to govern use of public resources by ministers of Government. In India, the Code of Conduct for a party in power, either at the Centre or in a State, prohibits it from using its official position for its election campaign. Ministers cannot combine official visits with electioneering and must not make use of official machinery or personnel during electioneering work. Government transport must not be used for furthering the interest of the party in power; public places for holding election meetings shall be available to opposition parties on the same terms as for the party in power. The party in power is forbidden to issue advertisements at the cost of the public exchequer in the newspapers and other media. It is also forbidden to misuse the official mass media during the election period for partisan coverage of political news and publicity regarding achievements with a view to furthering the prospects of the party in power. Ministers and other authorities must not sanction grants or payments out of discretionary funds from the time elections are announced. Ministers and other authorities must not, from the time the elections are announced by the Commission, announce any financial grants in any form or promises thereof; lay foundation stones of projects or schemes of any kind; make any

promise of road construction or provision of drinking water facilities; or make any ad-hoc appointments in Government or public undertakings, which may have the effect of influencing the voters in favour of the party in power.

Bangladesh provides an example of extreme measures that may be adopted to ensure a level playing field is provided to political parties contesting elections. The measures were aimed at reducing the influence of the governing political party on the election process. In order to do this, the Constitution was amended in 1996 to provide for a nonparty Caretaker Government to govern for a 90-day period after the dissolution of each Parliament while elections are being organised and conducted. The Caretaker Government's primary function is to give the Election Commission all possible aid and assistance that may be required for holding the general election of members of parliament peacefully, fairly, and impartially.

Integrity of the Election Process

An EMB is the ultimate guarantor of the integrity and purity of the election process. Upholding the purity of the electoral processes is a characteristic of good practice in election management. In this respect, the “buck” starts and stops with the management body. Partisan, inefficient, or corrupt election officials must be weeded out of the system at the earliest opportunity. Electoral processes such as the delimitation of electoral districts' boundaries or voter registration, in cases where they are not wholly within the control of the EMB, must be closely monitored to ensure that flaws are identified and the responsibility is placed where it belongs. To the extent possible, the management body should ensure that breaches of the election laws, rules, and codes of conduct are visited by appropriate sanction that is commensurate with the seriousness of the breach.

Transparency

Transparency has been one of the attributes of election modernisation. It accords with good practice in election organisation and should pervade all spheres of election planning and organisation. The absence of transparency in election organisation will be readily detectable. Good practice in election organisation and conduct requires transparency at all stages of planning and preparation. The absence of transparency in the processes invariably leads to the suspicion of fraudulent activities taking place. The International Foundation for Election Systems (IFES), in its report on the 1995 Tanzanian elections, stated: “[I]nadequate administration, inappropriate secrecy, and general inefficiency marred the process and cast doubt and mistrust over much of the outcome.”⁸ The Commonwealth Observer Group that witnessed the Zanzibar elections, which were held a few days ahead of the Union elections in Tanzania, found: “[T]he delays experienced in the count and the tally, and the length of time the ZEC [Zanzibar Electoral Commission] took to announce the election results, led to suspicions and allegations of fraud. This was compounded by the fact that the results

⁸ IFES Observation Report: *Republic in Transition: 1995 Elections in Tanzania and Zanzibar*, Washington D.C. December 1995.

were very close.”⁹ Further, in a very concerned tone, the Commonwealth Observer Group to the general and regional elections in Guyana in 1997 commented that “urgent consideration should be given to ensuring that mechanisms are put in place for transparent and expeditious verification of results.”¹⁰

Efficiency

The fundamental goal of the modernisation of elections is the improvement of efficiency of the electoral system as a whole, but especially that of the EMB concerned. The absence of efficiency—that is, incompetence or inefficiency—usually translates into election fraud or partisanship in election organisation.

A successful EMB is one that has displayed competence and efficiency. These qualities help to generate confidence in the election processes by the political parties and the general public. Inefficiency in election organisation is often confused with corrupt and fraudulent behaviour. Sometimes members of an EMB may be unfamiliar with election practices and procedures and unaware of the depth of the capacity required to absorb and handle election details. Matters relating to election time frames, various aspects of logistics management, and timely recruitment and training of election officers are what cause the greatest problems for many management bodies.

Weakness of the Existing GECOM Appointment Formula

The so-called Carter-Price formula has perhaps served its usefulness and is in need of a new approach that can that can arrest the slippage of confidence in the electoral process by the principal stakeholders. There is a clear trend towards the establishment of an independent EMB in new and emerging democracies. The erosion of confidence in GECOM is in part due to the failure of the Carter-Price formula to enable decisions to be taken on a timely basis and with a measure of consensus. Indeed, the Chairman of GECOM indicated that the procedures would require him to use a casting vote rather frequently in order for the Commission to make timely decisions. This position is unfair to the Chairman and does not cast the Commission members in a nonpartisan role. Thus the Carter-Price formula, which was aimed at building confidence among the primary stakeholders and the general public, is no longer able to perform that role.

Justification for the Establishment of an Independent EMB

The recent track record of the independent EMB has been positive whenever the attributes discussed above are adhered to by the election management. Successful EMBs can be found in all regions of the world. For example, the CEC of Russia is the principal EMB and is independent of the organs of power. It has 15 Commissioners appointed for four years. Candidates and political parties are entitled to appoint nonvoting members of the CEC. The United Kingdom established an independent national EMB only in 2000, which has a limited mandate and between five and nine

⁹ See the *Union Presidential and Parliamentary Elections in Tanzania*, p.43, 29 October 1995, Commonwealth Secretariat.

¹⁰ *The Report of the Commonwealth Group*, 15 December 1997 p.30. Commonwealth Secretariat.

members, who are part-time Commissioners, and 135 staff members. The principal EMB of Uruguay, the Corte Electoral, is an independent body with nine members. Other independent EMBs that are performing satisfactorily are found in Botswana, Lesotho, Namibia, and South Africa.

Consideration of a Formula for an Independent EMB for Guyana

Based on the characteristics discussed above, and taking account of the local circumstances in Guyana, the approach proposed in **Annex 2** draws on a number of formulae in use in several countries, including Botswana, Namibia, and South Africa. The approach is to construct a formula that avoids party nominees as Commissioners and instead opts for a participatory format that entails three levels of screening before the names of independent individuals are submitted to the President for formal appointment. Some of the issues, such as the term of Commissioners, raised in the Phase 1 *Manual* have been dealt with in the draft. The essence of the approach is to constitute, by Constitutional amendment, a panel of four eminent, independent Guyanese citizens of highest integrity to receive nominations through advertisement (or otherwise), within a stipulated period of 6 weeks, from political parties, professional bodies, civil society organisations, private-sector commercial bodies, trade unions, the Judicial Services Commission, and individuals. The panel members proposed would include the Chancellor of the Judiciary, the Chairperson of the Human Rights Commission, the Chairperson of the Ethnic Relations Commission, and the Head of the Women and Gender Equality Commission. The panel would select not more than seven names from the list of nominations and submit them to a committee of the National Assembly, constituted by representatives of political parties in proportion to the number of seats held in the House. The Committee would consider the matter and submit three or five names to the National Assembly for approval of each name by two-thirds majority; then those names would be submitted to the President for formal approval.

Before submitting any name to the Committee, the panel would ascertain the person's willingness to serve.

Mandate of GECOM

The broad mandate of GECOM is set out in Article 162 of the Constitution, and clarified in Section 4 of the *Representation of the People Act*, Chapter 1:03, Section 16 of the *National Registration Act*, Chapter 9:08, and Section 16 of *Election Laws (Amendment) Act*, No. 15 of 2000. However there is still need to spell out in greater detail the mandate of an independent elections commission to strengthen the perception and appreciation of the full scope of GECOM's authority. The proposed amendment to the law, that is, to the *Representation of the People Act*, is set out in **Annex 3**.

Financing and Budget

The following three issues, identified in the Phase 1 report for review and modernization, are considered together herein:

1. Procedures with respect to the preparation and approval of GECOM's budget;
2. Financing of GECOM's current and capital expenditure; and
3. Accountability of GECOM for finances expended.

In order for an EMB to perform its tasks in a timely and effective manner, it must be adequately financed. One of the frequent problems encountered in emerging democracies is the failure to fund major election processes in a timely manner. New and better ways are being attempted to ensure that the core budget for an EMB is charged to the consolidated fund after approval by the Parliament concerned. However, there may be Constitutional implications to be sorted out before such an approach can be implemented. The procedure for submitting the election budget to the Parliament should be clearly set out so that the EMB is able to transmit the budget through the Speaker of the Assembly; one of the Assembly's committee could initially review the budget. A few emerging democracies and some established ones follow this general procedure. Such an approach avoids adverse effects of foot-dragging tactics by incumbent governments that are not enthusiastic about properly conducted elections—for example, complaints by opposition parties and some other stakeholders in Nigeria about the post-election preparation 1999–2003. There should be transparency in preparation, justification, and approval of an election budget. These stages should be open to public scrutiny without prejudice to the timely completion of the budget. The EMB must be fully accountable to the public through the Parliament, such as the ONEL in Cameroon. There should be regular auditing of the electoral administration's accounts and proper procedures should be implemented to regulate contracts for services and election materials. In addition, patronage in the awarding of technology and service contracts should be subject to scrutiny by an oversight committee of the Parliament.

Funding is perhaps the most sensitive issue for electoral commissions because their independence could be compromised by the fact that they are all financed from public money, which must be allocated to them by the Government. It is easy to see how control over financial provision could be seen as a constraint to the independence of a commission. Many independent electoral bodies have been compromised by inadequate funding and untimely disbursements. This has damaged confidence in some EMBs, simply because such bodies do not appear to be in charge of their own affairs, schedules, and target dates.

Various financial arrangements are used in different countries. The funding mechanism of the UK Electoral Commission (it may be relevant that it was established only recently, in 2000) uniquely insulates them from Government influence, because their funding is via a Speaker's Committee, i.e., a cross-party committee of Parliament. In Canada, annual budgets consist of two components: a recurrent budget and an election preparation and management budget. The latter is charged on the Consolidated Fund and cannot be altered by the government of the day. Other independent commissions get their money from finance ministries, or sometimes as part of a justice ministry vote. Despite their misgivings, these commissions tend to state that up to now, they have not been restricted financially by the Government. In return, there is clear accountability of the commissions for their

spending. The EMB of Georgia, the CEC, has an unusual procedure to ensure timely disbursement of funds by the Government; it can bring a claim before the Supreme Court of Georgia if funds are not disbursed in a timely manner.

In Lesotho, the structure of the financial provision is similar to that of many other countries in that, under the Constitution, expenses of the Commission are charged on the Consolidated Fund, under Section 66D(2) of the Constitution, as amended. Furthermore, the Government is seen as generally having been helpful in making appropriate provisions to run elections. The case of Costa Rica, the Special Electoral Tribunal (TSE) is guaranteed funding under the Constitution, and the budget cannot be rejected or changed by the Legislative Assembly. In Nigeria, the Independent National Electoral Commission's (INEC's) funding is precarious and the disbursements patchy, which in part places that EMB in the unenviable position of being perceived as short on transparency and lacking in the courage to pressure Government. The CEC of Russia enjoys good funding with timely disbursements. In Senegal, the DNE is funded through the Interior Ministry, while the ONEL's budget is voted by Parliament. The Supreme Commission for Elections and Referenda (SCER) of Yemen is funded by Government, but is dependent on donors' support for acquisition of new technology, building capacity, and public awareness programs.

The considerable problem with the funding of some EMBs is not so much the financial provision made, but that the financial autonomy of the commissions concerned, and the spending process and cash flow, is controlled by the Ministry of Finance. This regularly affects the commissions' decisions and also causes delays in payments with the consequence that, to suppliers and more casual observers, the EMBs are seen as part of Government. This is a perception potentially damaging to the EMBs' independence and credibility.

Significantly, it also has potentially serious implications for governments because by controlling the payments, they might be perceived as intervening in the daily operations of the Commission. It sometimes happens that a contrast with other public organisations within a particular jurisdiction reveals that despite the Constitutional independence of an EMB, it has less autonomy than some of the statutory bodies.

In addition to a sound Constitutional and or statutory framework, the disbursement procedures could be simplified and payments made on a timely basis to meet the payment schedule of the EMB concerned. The appropriate sums can be paid into the EMB's bank account for their use.

An EMB should be vested with the legal ability to conduct its own negotiations with the donor community, as is the case of Georgia and Lesotho. It may even have power to constitute its own tender board for procuring election materials, supplies, and equipment, including ballot papers, as does Lesotho. This procedure should reduce the delay of going through the central tender board, but it also ensures that responsibility stops with the EMB and that the Government cannot be held accountable for any delay. The same would be true if all payments were also under the control of the EMB.

All funding, including recurrent expenditure, should be paid quarterly into an EMB bank account, according to a planned profile of expenditure. This would go a long way in enabling the EMB to distance itself, and to be seen to be distanced, from the Government. In appropriate cases, it would be to the advantage of both EMB and the Government to conclude a *Memorandum of Understanding* governing the funding and disbursement arrangements.

An EMB may strengthen its finance function with the appointment of a Finance Manager and provide timely accounting data to the Government on a monthly basis. In the case of a small EMB, it may be cost-effective to use the Government payroll service at the outset, even where the terms and conditions of its staff are determined by the EMB. In the future, the EMB would be free to consider taking its payroll service needs in-house or outsourcing it to another provider.

Nature of GECOM's Funding

Subclause 4 of Article 222 of the Constitution lists the members of the Elections Commission among those office holders whose salaries and allowances are charged to the Consolidated Fund. The Third Schedule pursuant to Article 222A of the Constitution lists seven entities, including five commissions, but not the Elections Commission, whose expenditure is financed as a direct charge on the Consolidated Fund. It is proposed that the Commission be included in the Third Schedule (see **Annex 4**).

Section 163 of the *Representation of the People Act*, Chapter 1:03 provides that the expenses of carrying out that Act shall be defrayed from moneys provided by Parliament, except in so far as any such expenses may otherwise lawfully be paid out of the Consolidated Fund. A similar provision is contained in respect of the implementation of the *National Registration Act*, Chapter 19:08, in Section 18. The *Fiscal Management and Accountability Act 2003* classifies the Elections Commission as a Budget Agency in the Schedule to the Act. The import of the Act is to provide for the proper regulation and use of public funds, but it also, in the process, treats all the scheduled agencies as Government ministries or departments. It is not appropriate for an independent EMB, such as GECOM, to be treated or perceived as another Government agency. In order to correct of the effect of the Act in this regard, it is proposed that the Act be amended to exempt the application of Parts II and III to the Elections Commission. In addition to the amendments proposed in the **Annex 5** below, it is recommended that GECOM enters into a *Memorandum of Understanding* with the relevant Ministry of the Government, indicating the practical administrative steps to be followed in disbursements of the approved budget to the Commission. To summarise, the following amendments are set out in **Annexes 4, 5, 6, and 7** aimed at enhancing the independence of GECOM and strengthening transparency with respect to funding election processes:

- An amendment (**Annex 4**) to the Constitution, Article 222A, the Schedule relating thereto to include the Elections Commission. This would enable the Commission to be wholly funded out of the Consolidated Fund and allow for

the timely improvement of the operations of GECOM, particularly with respect to the acquisition of new election technologies;

- An amendment (**Annex 5**) to the *Fiscal Management and Accountability Act* to exempt the GECOM from complying with Parts II and III of the Act;
- Steps should be taken to apply the Tender Board Law to ensure that GECOM can carry out timely procurement for elections; and
- A draft (**Annex 6**) specimen of the *Memorandum of Understanding* (accompanied by a specimen Code of Conduct for Commissioners and staff [**Annex 7**]) between GECOM and the Government (the Ministry of Finance), respecting administrative procedures relating to disbursements pursuant to the approved budget.

GECOM's Reporting Requirements

At present, GECOM's reporting requirements are inadequate. Section 113 of the *Representation of the People Act* (Chapter 1:03) deals with a report on a general election. The *Fiscal Management and Accountability Act*, Part X provides for reporting by each budget agency (one of which is GECOM); Section 72 of Part X of the Act also requires a programme performance statement. In addition to the reporting required under the *Fiscal Management and Accountability Act*, the *Memorandum of Understanding* proposed in this report would provide for additional financial reporting, which might be requested by the Auditor General in return for the enhanced facilitation of disbursement of budget funds regularly (i.e., quarterly) to GECOM's account. It is recommended that provision for performance reporting be strengthened by adding a new Section—113A—to the *Representation of the People Act* as set out in **Annex 8**.

Remuneration Packages of Commissioners and of Chairman of GECOM

The *Constitutional Offices (Remuneration of Holders) Act* deals with the remuneration of the Chairman and members of the Elections Commission. It is also noted that the salaries of Commissioners are charged on the Consolidated Fund (see Article 222[4] of the Constitution). In general, the salaries and allowances are set in accordance with local circumstance. Frequently, the Chairperson's salary and allowances are set in line with the highest levels in the local judiciary scales; members of the Commission enjoy salaries and allowances in line with those of High Court Judges. There are variations to this somewhat general rule, for example, the Chief Electoral Officer of Canada enjoys salary and allowances at the level of that of a Federal Court Judge; in South Africa, remuneration, allowances, and other benefits of the Election Commissioners are determined by the President after consultation with the Commission on Remuneration of Representatives. A distinction is made in the South African case between Commissioners appointed in a full-time and part-time capacity. In the case of Guyana, the level of salaries set out in the Schedule to the *Constitutional Offices (Remuneration of Holders) Act* may be revised pursuant to Section 5 of the Act.

Procurement Arrangements

The procurement arrangements for expeditious acquisition of election supplies have been an issue which could adversely affect the ability of an EMB to deliver free and fair elections according to the published election calendar. As a consequence, some EMBs, for example, Lesotho's, secured the authority to organise and conduct their own tenders through their own constituted tender board. In the case of GECOM, Section 24 of the *Procurement Act* (Chapter 73:05), provides that waiver of the provisions of the Act is possible with the approval of the National Tender Board. Subsection 1 of Section 24 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 Board, conduct procurement according to their own rules or regulations, except that to the extent that such rules and regulations conflict with this Act or the regulations, this Act and the regulations shall prevail.*" If this provision can properly be extended to GECOM, there would be less concern that this Act might compromise the independence of the Elections Commission.

Organisational Structure of the Secretariat of GECOM

Two organograms of GECOM were examined. The graphic captioned "Final Version" of GECOM'S organogram has been the subject of these comments. The structure represented in the organogram is capable of delivering free and fair elections, but could be made more functional, efficient, and cost-effective. This could be achieved by the creation of the three distinct departments with emphasis placed more on the suitability of personnel for the tasks to be carried out, rather than on hierarchical structure based on length of service or other criteria. Having regard to the relatively small size of the Guyanese electorate, a lean and well-trained staff should enhance the quality of election services delivered to the electorate. The organogram referred to above could be simplified by the establishment of an External Relations Department, which would deal with civic and voter education, and public information and the media. This division would also embrace a liaison office to deal with political parties and observers. The procurement and expeditor functions should be aligned with logistics in the Operations Department and removed from the Administrative Department, although a small procurement unit could remain in the Administrative Department to service GECOM's Headquarters. The Finance and Accounts Division could be placed within the Administrative Department. The Public Relations Officer should be in the External Relations Department; the Internal Audit and Legal Section should fall directly under the Commission.

GECOM's Secretariat's Staff Development and Remuneration

Article 161A of the Constitution established the Secretariat of the Commission. Section 17 of the Election Laws (Amendment) 2000 spelled out the purpose of the Permanent Secretariat to the Commission, namely, to ensure the institutional memory and capacity of the Commission and to be responsible for its efficient functioning. Section 165 of the *Representation of the People Act* requires that the Commission be consulted about the emoluments to be paid to election officers and other staff. The

Commission is responsible for the appointment and the terms and conditions thereunder of all staff. In some jurisdictions, notably Australia, the salaries of electoral staff may be set by a Remuneration Tribunal. Certain studies have been conducted, with respect to GECOM's salary structure, that took account of prevailing salary levels in private and public entities locally.¹¹ In general, that has been the approach followed by many EMBs.

In line with the Constitutional and legislative requirements for a permanent Secretariat, GECOM has the mandate to develop a cadre of professional staff. In developing such complement of staff, good practice points to taking account of the issues that follow.

Appointments

The appointment of the members of some EMBs is hugely controversial. The chief executive of some EMBs may also be controversial, because he or she is appointed by the head of State or Government instead of by the EMB, as in Botswana and Nigeria, where the INEC is not considered to be independent by many stakeholders. There is less controversy over who appoints the other categories of staff, as it is usually the EMB that may delegate the power to the Chief Executive or to a member of the EMB, as is the case in New Zealand. In a few instances, the power of appointment is vested in the Chief Executive, as in Botswana. Often, the appointment of temporary staff for voter registration and polling is carried out by the returning officer in each of the electoral districts or constituencies. Usually senior staff members, upon appointment, are required to take an oath of office and subscribe to a code of conduct (if any). The overriding consideration in making appointments to an EMB at all levels is a fair selection procedure, which militates against any kind of partisan approach.

The formalities to be completed upon appointment should be in accordance with good practice and include instrument of appointment, setting out the terms and conditions of the appointment and the job description attached to each post. Other important related information to the appointment instrument includes to whom he or she reports and to whom he or she should consult for assistance, if necessary. Information may also be given at this time concerning security and identification documents. The appointment instrument may require that the prospective appointee forwards a letter of acceptance within a stipulated date. The prospective appointee may be informed of circumstances under which he or she may be dismissed from the post concerned.

Training

One of the pillars of professionalism in election organisation is proper training of each category of staff. However, the training of permanent staff has a wider dimension than training to do the current tasks, and takes account of the potential for career development.

¹¹ Report by S.V. Jones Associates.

Training Internally

Training of new staff by an EMB may begin with the familiarisation with the nature and scope of its mandate, its Mission Statement (if any) and Vision Statement (if any). An overview of the attributes the EMB and performance record should be discussed in full. In general terms, the training of permanent staff will vary in substance and content according to the task of the department concerned. For example, the training for a member of the information technology team would be different from that of a member of the field operations team. However, the common thread running throughout the training programme should be the thorough training of each staff member to do their respective tasks.

Cascade Training

There are several approaches to the training of large numbers of election workers for voter registration and polling. One frequently used methodology is the cascade approach, which entails senior members of the EMB being trained first, who then train the next level of senior staff; they in turn train next the level, and so on, until the entire complement is trained. Each level of staff to be trained is usually rather larger than the previous level. Since each individual staff member will eventually be a trainer of many other staff members, such individuals need to fully understand the contents of the training sessions in order to accurately impart the contents of the training. Any failure in this regard could create vulnerability in the training programme. Despite this obvious weakness in the cascade approach, its relative cost-effectiveness and ability to train large numbers of people in a short period of time commend its use to many emerging democracies.

Orientation Seminars

Seminars for orientation and problem-solving purposes are often held for new election commissioners. These seminars are usually held on weekends at retreat-like venues, which provide an informal working environment, unlike that of a usual conference. The participants are new commissioners, election advisors, and experienced commissioners from other selected EMBs.

Staff Meetings, Briefings, and Reviews

The headquarters' staff may be updated on aspects of their tasks through regular exchanges at staff meetings, briefings, and reviews. Problems can be highlighted and solutions discussed at these meetings.

Instructions

Written instructions have long been used to complement cascade training for some tiers of election staff—for example, peace officers at polling stations, polling assistants, and counting assistants. However, today there may also be instructions that can be provided by electronic means in some jurisdictions.

Simulations

Other popular methods of training include simulations of registration of voters and polling exercises. Many trainers find simulations or test processes valuable in exposing election workers to the closest experience to the real operations. They tend to lift the confidence levels of new staff.

Training Tools

Manuals that are accurate, well written, and easy to interpret and apply are indispensable as a training aide. The use of videos and graphics to repeat and illustrate training texts and messages and to make presentations to smaller groups is growing in popularity with trainers.

External Training Assistance

The growth and popularity of the internalisation of election organisation has made it possible to access various types of electoral training assistance, regionally and internationally. Various regional election associations facilitate the exchange of information, the lending of election materials, and the secondment and training of election staff. At the international level, through the support of bilateral assistance from friendly governments or international institutions or nongovernmental organisations, many EMBs have been able to send their staff to observe election organisations in other countries or on secondment to other EMBs for training and exposure to different election organisations. This is a quick and relatively inexpensive way of gaining new ideas and exposure to good practices in other election organisations.

Regional and International Training Courses

Regional or international training courses in election administration and management are useful in bringing election officials from different types of EMBs together to discuss similar, if not common, problems in election organisation. These courses serve to facilitate exposure to new ideas and current developments in election practices. Automation in election organisation, electronic voting, and counting are matters of current interest to many election officers. The private sector offers a variety of election services and supplies, which are often on display at international election courses, seminars, and workshops, and which add a useful dimension to development in the electoral landscape.

International Election Advisers and Consultants

International advisers and consultants sometimes play a useful role in training the local trainers of EMBs. Their wide experiences in given cases have the potential to solve difficult specific problems and to ensure that the training programmes accord with international standards. Advisers and consultants are usually specialists in particular fields and may have wide experience in solving problems occurring in such areas.

Staff Development and Retention

Staff development is necessary to improve skills and enhance efficiency. Programmes aimed at the development of the permanent staff of an EMB may be considered as an extension of training programmes. There should be programmes aimed at lifting the basic level of performance for every election task. However, before any staff development programme is settled, the areas in which staff development would be provided and the participants should be identified and the staff members informed. In line with the structure of particular EMBs, some departments—such as information technology, operations, and legal—may require specialised programmes, and even advanced professional training to meet a particular EMB's needs. In particular cases, individuals may be identified for certain advanced training, where in-depth appraisal and performance interviews demonstrate that such individuals show promise and commitment to improved election services.

In the cases of temporary or very small EMBs, only limited staff development may be feasible, usually either because staff are part-time workers or there lacks a core of permanent staff available for advanced training. Sometimes staff development may be hindered by lack of resources. Where an EMB relies mainly on co-opting civil servants to organise polling, the scope for staff development may be reduced significantly.

The case for election staff becoming professional and being perceived in that manner is a strong one. It is being strengthened by more institutions of higher learning offering courses on aspects of governance and election administration. The growth of professionalism in election organisation will undoubtedly enhance the career prospects of election staff, many of whom look for career advancement at present outside the EMB, usually in civil service or in the private sector. The retention of staff by EMBs will vary according to the ability of particular EMBs to offer career prospects to staff. Temporary or very small EMBs have very limited scope to offer career prospects, and the financial and other considerations that go with career opportunities, to their staff—hence the dependency on the civil service to provide personnel to organise elections.

Staff Pension

Many EMBs link their staff pension to that of the civil service. This is perhaps naturally so, where the electoral staff are or were civil servants. In such cases, it is cost-effective and convenient for the EMBs to maintain the pension link to the civil service, although it often detracts from the independent status of the EMBs concerned. However, there are cases, such as Elections Canada, where the EMB's pension is linked by law to the civil service pension, without compromising its independence. On the other hand, in Lesotho, the fact that staff employed by the Independent Electoral Commission (IEC) and who were never in the civil service, have their pension linked to the civil service serves to reinforce the perception that the IEC is not independent of the Government. Some EMBs, even a small one, like Botswana's, have their own pension scheme.

Reporting on Financing Political Parties and Incumbency

The *Representation of the People Act* does not provide for a developed framework for reporting on political party campaign financing. Part XIII of the Act deals with election expenses as they relate to candidates and not political parties. GECOM could issue appropriate regulations under Section 164 of the Act, but to remove any doubts legally, it is proposed that the Act be amended to limit the campaign expenditure and to require full and timely disclosure, as set out in **Annex 9**.

Incumbency

The issue of incumbency has often been discussed in the context of the need to have a level playing field (see the Level Playing Field section above) in election management. It is also a significant factor in the quest to limit the use of public resources for political party campaign purposes. Good practice in election organisation in line with generally accepted international standards requires that the unfair advantages that often attend incumbency be diminished to the irreducible minimum level. The accepted principle is that public resources must not be used to serve party political objectives; this principle should be publicised and observed by all political parties, particularly the ruling party of the day. This principle has found a place in codes of conduct for political parties in countries, such as Ghana and Nigeria, and even in the Constitution of Uganda.¹² Unfair advantages of incumbency can be curbed by applying a combination of measures including the following: setting a time limit on election campaigning, limiting campaign expenditures, ensuring impartiality of civil servants, placing prohibition on the use of official facilities for personal or party campaign activities, and applying stiff sanctions for any breach of relevant laws.

Access to Information from GECOM Concerning National Registration

The practice of keeping stakeholders informed about the process of voters' registration should be governed by transparency. Periodic update on the progress of the registration exercise should be released by GECOM to stakeholders. This has been successfully conducted in many jurisdictions, most recently in the voters' registration exercise in Liberia in July 2005. The practice of giving access to information regarding inspection of the voters' register varies, but the trend is to keep the register open to inspection during office hours at the request of members of the public. There is also a growing practice to post the register of voters on the Internet, subject to certain safeguards. Some EMBs distribute a stipulated amount of copies of the official list of voters to each candidate who is contesting an election. For example, Jamaica allows 10 copies of the official lists of electors in force for the election.¹³ New Zealand's EMB has the flexibility to loan, free of charge, computer-compiled lists on computer tape, disk, or diskette containing specified information to local authorities. Where specified information from the voters' roll is requested from the Chief Registrar for a by-election, prescribed fees are chargeable. A candidate or a political

¹² See paper on *Tackling the Problem of Incumbency*, Tim Sheehy at Conference of Commonwealth Chief Election Officers, New Delhi, 2005.

¹³ See Section 18 of the *Representation of the People Act*.

party may obtain a copy of a computer-compiled list containing the names, residences, and occupations of the persons on the dormant file for an electoral district, or a computer tape, disk, or diskette containing similar information. Only a candidate or a political party can obtain this information. Under New Zealand's legislative scheme, if the Chief Registrar is satisfied that the publication of a person's name would be prejudicial to the personal safety of that person or his or her family, the Chief Registrar may direct that the name, residence, and occupation of that person shall not be published in any main or subsidiary roll, or in any list or index that may be available for inspection by the public. Further, the name and particulars of that person shall not be available for inspection.¹⁴ In the context of the foregoing and in the interest of transparency and the autonomy of GECOM, Section 17 of the National Registration Act, Chapter 19:08 should be amended to remove the reference to the Minister from those provisions, as set out in **Annex 10** herein. It is arguable that even without an amendment to Section 17, it is the GECOM that now holds the power of the Minister under that Section, as a result of the amendments to Section 16 of the Act placing supervision of registration of persons under GECOM.

Residential Qualification for Registration of Guyanese

The *Manual* of Phase 1 raised the issue that Guyanese citizens living abroad can return to the country to register as a voter and subsequently return to vote. This appears to be an unsatisfactory position to some stakeholders in Guyana.¹⁵ It is therefore proposed that the law be amended to introduce a requirement of 90 days continuous residence in the registration division where the person seeks to register. The amendment to Section 3 of the Election Laws (Amendment) Act 2000 is set out in **Annex 11**.

Summary of Findings, Recommendations, and Draft Legislation

Summary of Findings

The foregoing examination of the issues highlighted in Phase 1 of this project has addressed a number of weaknesses in the Constitutional provisions relating to elections and in the various laws which constitute the election legislative scheme. The major findings are as follows:

- The Carter-Price formula has been discredited in so far as it was intended to foster confidence-building measures amongst the primary stakeholders. The examination cited several formulae used in the search for the establishment of independent EMBs throughout the world.
- In light of the experience with democratic multiparty elections since 1992, when the Carter-Price formula was introduced to appoint Commissioners, a

¹⁴ See Section 115 of the *Electoral Act 1993*.

¹⁵ It may be noted that in the United Kingdom, under the present Labour Administration, the tendency is to extend the scope of registration of nationals living abroad.

truly independent Elections Commission seems to be the best option available to be used in Guyana to deliver free and fair elections.

- The procedure for identifying, screening, interviewing, and nominating persons for appointment as independent commissioners requires much careful thought, bearing in mind the competitive nature of Guyanese politics.
- It is proposed that a panel of at least four distinguished and nonpartisan Guyanese—such as the Chancellor of the Judiciary, the Chairperson of the Human Rights Commission, the Head of the Women and Gender Equality Commission, and the Chairman of the Ethnic Relations Commission—would secure applications for nominations of Guyanese nationals through advertisements or other means from a wide cross-section of the society.
- The panel would then submit a stipulated number of names to a Select Committee of the National Assembly composed of members drawn from each political party represented in the Assembly, in the proportion in which they have seats therein.
- The Select Committee of the Assembly would consider the matter and submit the number of names required to fill the vacancies on the Commission.
- Each person would require the approval of the National Assembly by two-thirds majority vote before his or her name could be submitted to the President for appointment.
- Where a nominee failed to secure approval by two-thirds majority vote in the National Assembly, the panel would be asked to submit other nominees.
- The President would formally appoint the Chairperson as selected by the appointed members by secret ballot.
- The proposed time frame for nominations would be as follows: 4 weeks for the panel to receive nominations, 4 weeks to compile a shortlist for submission to the Select Committee of the Assembly, 2 weeks for the Select Committee's consideration; and 4 weeks for consideration by the National Assembly.
- The term of appointment would be for a period of seven years and could be renewed for another term of seven years, with the approval by two-thirds vote in the National Assembly.
- The examination discusses various attributes of an independent EMB, such as proper funding mechanisms, transparency in organising election processes, efficiency, and impartiality and ability to create a level playing field for all parties contesting an election.
- The mandate of the GECOM should be spelled out to include a number of implied activities (as set out in **Annex 3**), all of which would be consistent with Article 162 of the Constitution.
- The remuneration of the Chairman and Commissioners has been generally considered in light of the Constitutional and other provisions applicable to the Guyana situation.

- The Permanent Secretariat of GECOM has been discussed. The organisational structure was examined together with two differing organograms. The view has been put forward that the structure of the GECOM should be made more functional through strengthening the field operations by placing procurement activities thereunder, and by creating a division for external relations to deal with the media and information, political parties and observers, local and international.
- The remuneration packages of the Secretariat's staff should be competitive with local salaries and allowances. A report on the matter was cited as satisfactory in so far as it had taken account of a number of local salary and allowances levels, both from the public and private sectors, and arrived at an average salary level.
- Professionalism on the part of the staff of the Permanent Secretariat was seen as a priority area to be tackled; some patterns of good practice in appointment, training, staff development have been discussed.
- Issues of GECOM's reporting and the strengthening of transparency of its actions have been dealt with and appropriate provisions inserted into the *Representation of the People Act* and the proposed amended Constitutional and legislative framework for GECOM.
- A discussion of current practice regarding the treatment of access to registration data is set out in this report.
- The disclosure and reporting on campaign financing by political parties, as well as limits on campaign expenses, attracted discussion and an appropriate draft legislation for consideration.
- Residential qualification in a registration division of not less than 90 days has been proposed as an approach to "overseas" voting and the lack of a firm residential rule governing the place of registration.

Recommendations and Draft Legislation

- The recommendations are based on issues and deficiencies identified in the *Manual* of Phase 1 of the USAID Project. The draft amending clauses of the Constitution and the several pieces of election legislation have been informed by considerable research into EMBs and election laws worldwide. The principal recommendations in the report are those dealing with the draft amendment of the Constitution with respect to the reconstitution of GECOM.
- The main features of the draft are as follows:
 - An amendment to the Constitution;
 - A new formula for the appointment of Commissioners of GECOM;
 - Reduction of the size of GECOM;
 - The aim to create a truly autonomous Constitutional body to organise and conduct elections;

- Establishment on a definite term of years that a Commissioner can serve; and
- An elaboration of the mandate of GECOM.
- The funding of GECOM has been strengthened by proposing a Constitutional amendment to ensure that election expenses are charged on the Consolidated Fund. At the same time much greater financial reporting (i.e., accountability) will be required of GECOM, as well as the introduction of practical measures in the form of a *Memorandum of Understanding* between the Government and GECOM to facilitate smooth disbursements of funds from approved budgets.
- The other amendments to the election laws recommended for consideration are
 - New sections 4A, 4B, and 4C, respectively dealing with other functions of the Elections Commission, conduct of Commissioners, and disclosure of conflicts of interests, have been added to the *Representation of the People Act*, Chapter 1:03, to elaborate on the mandate of GECOM;
 - Amendment to the Third Schedule of the Constitution to include the GECOM therein;
 - A new Section 113A has been inserted in the *Representation of the People Act* regarding GECOM’s reporting requirements;
 - Addition of two new sections, 120A and 120B, to the *Representation of the People Act*, dealing with the election expenses of political parties and the disclosure of contributions by political parties; and
 - Amendment to Section 3 of the *Election Laws (Amendment) Act* dealing with residency qualification of Guyanese for registration.
- The draft of an illustrative instrument of each of the following is included in the report:
 - A *Memorandum of Understanding* on financial disbursement; and
 - A Code of Conduct for GECOM and staff.

Documents and References

The documents and references used by are listed in **Annex 12**.

Annex 1: Proposed Scope of Work/Terms of Reference

1. Title of Consultant(s): Mr. Carl Dundas
2. Purpose of Assignment: To redraft and modernize the elections laws of Guyana.
3. Assessment: Completion of the exercise would result in modernized election laws, which will be transparent and accessible to all political parties, civil society, and other stakeholders in Guyana.
4. Design: 1) review Phase 1 Report; 2) study good practice and international standards in electoral legislative designs; 3) review regional and international legislative schemes; 4) recommend inputs to relevant stakeholders; and 5) draft modernized law.
5. Implementation:
 - Consultant to meet with the Ambassador, USAID, and relevant staff of the Mission.
 - Consultant to meet with the Chairman of GECOM and other stakeholders recommended by him.
 - To liaise with the staff of the GDCCR Project throughout the exercise.
 - Consultant to meet all senior staff members of the Guyana Elections Commission.
 - To meet with all Commissioners.
 - Review documents produced by Phase 1 consultancy.
 - Review the *Reference Manual* prepared by the consultants engaged to conduct Phase I which focused on reviewing and consolidating of the electoral laws of Guyana.
 - Review requirements of GECOM (prepared by GECOM).
 - Review all laws and Acts related to elections in Guyana.
 - Study good practices and international standards in electoral legislative designs; discuss information with GECOM.
 - Conduct comparative analysis of regional and international electoral legislative schemes; discuss with GECOM.
 - Redraft existing legislation and introduce new legislation to fill the gaps, clarify ambiguities, and eliminate contradictions in the existing laws (special emphasis should be placed on the section of the aforementioned manual related to identification of the lacunae, ambiguities, contradictions, and general deficiencies existing in the current legislation).
 - Liaise, *inter alia*, with the Phase I Consultancy Group, stakeholders, the Attorney General's Office, and the Chief Parliamentary Counsel.

Annex 2: Independent Elections Commission

Article 161 of the Constitution is amended by the deletion of the Article and the substitution there for the following:

Article 161

1. (1) There shall be an Elections Commission for Guyana, which is independent and subject only to this Constitution and the law.

(2) The Commission shall be impartial and shall exercise its powers and perform its functions without fear, favour or prejudice.

2. (1) The Commission shall consist of not less than 3 or more than 5 members appointed by the President in accordance with the provisions of this Article.

(2) No person shall be appointed as a member of the Commission unless he or she

(a) is a Guyanese citizen;

(b) has not within the past seven years actively engaged in party politics;

(c) has been recommended by the National Assembly by two-thirds majority vote of the members of that Assembly; and

(d) has been nominated by a Select Committee of the National Assembly, proportionally composed of members of all parties represented in that Assembly, from a list of recommended candidates submitted to the Committee by the panel referred in Subclause 3 of this Article.

(3) If a candidate fails to secure two-thirds majority vote in the National Assembly, the panel, referred to in Subclause 3 below, shall submit other nominees to the Select Committee for consideration.

3. (1) The panel shall, subject to Subclause 4, consist of

(a) The Chancellor appointed pursuant to Article 127 of the Constitution, as Chairman;

(b) The Chairman of the Human Rights Commission, established by Article 212N of the Constitution;

(c) The Head of the Women and Gender Equality Commission, established by Article 212Q of the Constitution; and

(d) The Chairman of the Ethnic Relations Commission, established by Article 212B of the Constitution.

(2) The panel shall, within 4 weeks of the receipt of nominations, submit a list of seven recommended candidates to the Select Committee of the National Assembly referred in Subclause 2(d).

(3) The panel shall secure nomination of candidates, each of whom is

(a) willing and able to serve;

- (b) a fit and proper person to hold office of commissioner;
 - (c) of unquestionable personal integrity; and
 - (d) has an established record of nonpartisanship and impartiality politically, through advertisement or otherwise from political parties, civil society organisations, professional bodies, trade unions, the Judicial Services Commission, or individuals before making its recommendations under Subclause 4 within 4 weeks of the closing date for receiving nominations.
- (4) The panel shall make its recommendations with due regard to a person's suitability, qualifications, and experience, and shall at all times act in accordance with the principles of transparency and openness.
- (5) If any of the persons referred to in Subclause 3(b) to (d) should for any reason not be available to serve on the panel, the Chairman shall, after consultation with the remaining members of the panel, designate any other person as a member of the panel.
- (6) Subject to the provisions of Subclause 3, the panel shall decide on its rules of procedure.
4. (1) Immediately upon appointment, the Chairman and Vice Chairman shall be selected by secret ballot by the members of the Commission from themselves.
- (2) In the absence of the Chairman and Vice Chairman, the remaining members shall elect an acting chairman from their number.
5. (1) The term of office of a member of the Commission shall be seven years unless he or she resigns or dies at an earlier date, or is removed from office in terms of Subclause 6, and may be renewed once. No member of the Commission shall serve beyond age 70 years.¹⁶
- (2) The provisions of this Article shall apply in relation to the appointment of a temporary member of the Elections Commission and to a temporary member appointed in accordance with this Article, as they apply in relation to the other member of the Elections Commission in whose place he is appointed:
- Provided that his appointment shall have effect only for the period ending when the person in whose place he has been appointed resumes his functions and he ceases to be a member of the Commission.
6. The provisions of Article 225 (which relate to removal from office) shall apply to the office of the Chairman and other members of the Elections Commission.

¹⁶ Examples of the current practice are the Chief Electoral Officer of Canada serves until age 65 years, the Chairman of the Electoral Commission of Malaysia also services until 65 years, and so does the Chairman of the Australian Commission. The Chairman of the Ghanaian Electoral Commission serves until age 70 years. Many chairmen and members of EMBs serve for a stipulated period, renewable once or twice—Botswana, Costa Rica, Lesotho, Kenya, and South Africa are examples. In Australia, the Electoral Commissioner, who is the chief executive officer of the Commission, may be appointed for a term of up to seven years and the appointment may be renewed. In Canada, the Chief Electoral Officer holds office until he is 65 years old and is removable only for cause by the Governor General on address of the Senate and House of Commons.

(Please note that if the size of the Commission is reduced as recommended, subclause 5 of Article 226 of the Constitution [Quorum of the Commission] would require amendment.)

Annex 3: Amendment to the *Representation of the People Act*, Chapter 1:03

Section 4 of the *Representation of the People Act* is amended by adding new sections 4A, 4B, and 4C as follows:

Section 4A *Other Functions of Elections Commission*

Subject to Article 162 of the Constitution, the mandate of the Elections Commission shall be to

- (1) Ensure that the electoral processes meet internationally recognised democratic electoral practice;
- (2) Promote conditions conducive to the conduct of open and fair elections;
- (3) Promote knowledge of sound democratic election processes;
- (4) Demarcate electoral boundaries for national, state, and local government elections;
- (5) Establish and maintain liaison and cooperation with political parties, civil society organisations, and the media;
- (6) Provide advice to the National Assembly on electoral legislation and propose changes to election legislation for the enhancement of the electoral system;
- (7) Introduce the use of new technologies in any election process as the Commission sees fit, including pilot schemes in selected areas for the trial use of any such technologies;
- (8) Undertake research into electoral matters;
- (9) Have the primary responsibility to promote election, voter, and civic education relating to elections;
- (10) Encourage independent monitoring and observation;
- (11) Promote cooperation with and among persons, institutions, governments, and organizations;
- (12) Publish materials on matters relating to its functions;
- (13) Promote public awareness of electoral and National Assembly matters by means of the conduct of education and information programs and other means that relate to its functions;
- (14) Adjourn, postpone, or order fresh elections, if scheduled elections are disrupted by natural disaster, violence, or acts of civil disobedience, and where necessary, for whatever cause, extend the voting hours in a particular location or region;
- (15) Adjudicate disputes which may arise from organisation, administration, or conducting of elections and which are of an administrative nature;
- (16) Provide, in cases approved by the Minister of Foreign Affairs, assistance in matters relating to elections (including the secondment of personnel and the supply or loan of material) to authorities of CARICOM countries or to organizations within CARICOM;
- (17) Subject to the Constitution, have power to request the Head of State to make available to the Commission or to a regional representative such nonemergency

- vehicles, as may be necessary for the discharge of the functions of preparation of the voters' register and the conduct of elections;
- (18) Prescribe the qualification and terms of service for the appointment of all officers of the Commission;
 - (19) Prepare annually a rolling three-year budget for consideration and approval of a Joint Select Committee of the National Assembly;
 - (20) Make arrangements with international donors with respect to funding and technical assistance;
 - (21) Organise its own tender board under principles similar to those that govern the National Tender Board; and
 - (22) Undertake oversight tasks with respect to stakeholders, particularly political parties.

4B Conduct of Commissioners

- (1) Every member of the Commission shall
 - (a) serve impartially and independently and perform his or her functions as such in good faith and without fear, favour, or prejudice;
 - (b) if appointed as full-time members, serve to the exclusion of any other duty or obligation arising out of any other employment or occupation or holding of any other office.
- (2) No member of the Commission shall
 - (a) during his or her term of office be eligible for appointment or nomination to any political office;
 - (b) whether directly or indirectly, in any manner give support to, or oppose, any party or candidate participating in an election, or any of the issues in contention between the parties or candidates;
 - (c) by his or her membership, association, statement, conduct, or in any other manner place in jeopardy his or her perceived independence, or in any other manner harm the credibility, impartiality, independence, or integrity of the Commission;
 - (d) make private use of or profit from any confidential information gained as a result of his or her appointment and functions as such member;
 - (e) divulge any such information to any third party, except in the course and scope of his or her official functions; and
 - (f) during his or her term of office be eligible to serve as a member of the National Assembly or a local Government body.

4C Disclosure of Conflict of Interests

- (1) Subject to Subsection 2 a member shall not be present or cast a vote or in any other manner participate in the proceedings at any meeting of the Commission during the discussion of any matter before such meeting, with respect to which he or she has

any financial or other interest that might prevent him or her from performing his or her functions in a fair, impartial, and proper manner.

(2) If at any stage during the course of any proceedings before the Commission it appears that any member has or may have an interest that may give rise to such a conflict of interests on his or her part

(a) such member shall immediately fully disclose the nature of his or her interest and leave the meeting, so as to enable the remaining members to discuss the matter and determine whether such member is precluded from participating in such meeting by reason of a conflict of interests; and

(b) such disclosure and the decision taken by the remaining members with respect to such determination shall be recorded in the minutes of the meeting.

(3) If any member fails to disclose any interest as required by Subsection 2 or, subject to that Section, is present at a meeting of the Commission or in any manner participates in the proceedings of the Commission in relation to such matter, such proceedings may be reviewed and varied or set aside by the Commission.

Annex 4: Amendment of the Third Schedule to Article 222A of the Constitution

The Third Schedule to the Constitution is amended by inserting “the Elections Commission” therein.

Annex 5: Amendment of the *Fiscal Management and Accountability Act 2003*

The *Fiscal Management and Accountability Act* is amended by inserting a new Section as Section 83A as follows:

Section 83A

Exemptions with respect to the Elections Commission

Parts II and III of the Act shall not apply to the Elections Commission.

Annex 6: Specimen Memorandum of Understanding

The parties to this *Memorandum of Understanding* are

The Minister of Finance on behalf of the Government of Guyana

and

The Guyana Elections Commission

Background

The parties acknowledge that the main functions of the Commission are to carry out such duties as are prescribed in the Constitution (Section 162), the *Representation of the People Act*, Chapter 1:03, and the *Elections Law (Amendment) Act of 2000* as follows, *inter alia*:

- to ensure that elections to the National Assembly and local authorities are held regularly and that every election held is free and fair;
- to organise, conduct, and supervise, in an impartial and independent manner, elections to the National Assembly under the provisions of the Constitution and any other law;
- to supervise and control the registration of electors;
- to compile a general register of electors and constituency registers of electors for the several constituencies, and to maintain such register or registers up to date;
- to promote knowledge of sound democratic electoral processes;
- to ascertain, publish, and declare the results of elections;
- to adjudicate complaints of alleged irregularities in any aspect of the electoral process at any stage other than in an election petition; and
- to perform such other functions as may be prescribed by or under any law enacted by Parliament.

The parties note that the expenses of the Commission are charged to the Consolidated Fund and that estimates of expenditure are tabled before Parliament.

The Minister acknowledges that the Commission is required to carry out its Constitution and statutory functions independently and should not “be subject to the direction or control of any person or authority” (Article 226 of the Constitution). The Commission shall not be responsible to the Minister or any other Minister, but shall act independently

There are, however, a number of administrative matters, which could be seen to cast doubt on the relationship with Government. The parties seek to clarify them, so as to remove any doubts, and to further strengthen the Commission’s independence.

Purpose of this Memorandum

The purpose of this *Memorandum of Understanding* is to enhance the standing of the Commission as an independent Constitutional body, by agreeing on administrative practices between the Government of Guyana and the Commission, which provide for greater efficiency, operational freedom, and improved accountability of the Commission to taxpayers and Parliament. These affect

- the Commission's funding arrangements; and
- the Commission's accountability and governance.

Funding

The Government will provide such finance as is required by the Commission to carry out its statutory duties, on the basis of the plans submitted by the Commission. The parties will consult on action to be taken if they at any time consider the amounts are insufficient to enable the Commission to meet its statutory obligations.

Commission expenditure is charged on the Consolidated Fund, but public perception of the Commission's independence, and of the reputation of the Government, can be affected if control of the flow of expenditure is exercised by the Government rather than the Commission. In future, therefore, amounts charged against the Consolidated Fund for the Commission's funding will be paid in quarterly instalments into a Commission bank account, in accordance with a profile of planned expenditure provided by the Commission. The Commission shall be responsible and accountable for all spending.

The Commission shall also be free to make all procurement decisions through its own Tender Board.

The Commission may enter into funding and technical assistance arrangements with donors.

Accountability and Governance

The parties agree that the increased facilitation granted to the Commission by these arrangements should be accompanied by a strengthening of the Commission's accountability and corporate governance. Accordingly, the Commission, without prejudice to the requirements of Part X of the *Fiscal Management and Accountability Act 2003*, shall

- undertake to observe a Code of Conduct, which sets the highest ethical standards for the Commissioners and their staff. The Chairman shall include in the Commission's annual report his personal assessment of the quality of observance of the Code, the terms of which are attached to this Memorandum;
- produce a three-year strategy, with plans and priorities for the first year for which funding is agreed by the Government. This will be published and presented, through the Minister, to Parliament;
- publish an annual report and audited set of accounts, within six months of the end of the financial year. It will set out achievements and progress against the

annual plan, and include the Chairman's report on the Code of Conduct. It will be tabled before Parliament through the Minister; and

- create a sound internal financial management system, including a management accounting system to monitor and control expenditure, and report on a monthly basis to the Accountant General.

In addition, the Commission will strengthen its corporate governance by establishing a committee to manage new finance procedures and responsibilities.

A Finance and Audit Committee, chaired by a Commission, to oversee spending and provide assurance of regularity and propriety is established hereunder. Annual accounts will be subject to an external audit, and will be available to the Auditor General as required by him.

Duration of this Memorandum

This Memorandum shall apply from the date of signing and will continue indefinitely unless both parties agree otherwise.

Variations to this Memorandum

Amendments can be proposed by either party and adopted in writing by the agreement of both parties.

Dispute Resolution

The parties agree to resolve any dispute arising from meaning of the terms of this Memorandum through appointing a mutually acceptable mediator. Should mediation fail, the parties will then appoint an arbitrator whose decision will be binding on both parties.

Review of this Memorandum

This Memorandum shall be subject to a triennial review from the date of signing, unless both parties agree otherwise.

Annex 7: Specimen Code of Conduct for GECOM and Staff

(1) This code of conduct applies to the Commission and its employees (hereinafter referred to as ‘the Commission’).

(2) The Commission is mandated by the Constitution of Guyana to ensure that all the processes of elections to the National Assembly and local authorities are held regularly and that every election is conducted in a free and fair manner. The Commission, in the conduct of elections, shall not be influenced or controlled by any outside authority.

(3) In pursuance of this mandate, the Commission has an obligation to deliver acceptable, free, fair, transparent, and accessible elections, and enlist the support of all stakeholders in the Guyana elections.

(4) In furtherance of its mandate, the Commission

(a) shall at all times embrace a culture of fairness, neutrality, independence, and nonpartisanship in their dealings with any registered political party.

(b) shall create a user-friendly environment for the representatives and agents of registered political parties, through the facilitation of ready access to the offices and relevant documents of the Commission.

(c) affirms its commitment to the principle and practice of transparency in its activities.

(d) shall ensure that its officers apply the highest standards of professionalism and integrity in their work.

(5) every member and official of the Commission shall refrain from improper use or unauthorized release of information obtained in the course of their official duty with the Commission.

(6) The Commission

(a) shall extend the participation and access of stakeholders in relevant processes of election organisation on an equitable basis consistent with the law.

(b) shall uphold its integrity and that of the electoral processes, and actively encourage all stakeholders to do likewise.

(c) shall pay particular attention to the smooth and positive working relations with each registered political party on the basis of equitable treatment for all consistent with the law.

(d) shall establish positive working relationships with accredited civil society organisations, community-based organisations, and relevant donor agencies, through ready access and timely communication of relevant information on a nondiscriminatory basis.

(e) shall extend fair and nondiscriminatory access to media houses and, where feasible, offer assistance in election awareness programmes on an equitable basis consistent with the law.

(f) recognizes that its primary responsibility is to provide good quality election services to the electorate, and to that end it will

- offer a user-friendly environment for all persons utilizing electoral services, especially registration of voters and polling services;
- arrange suitable access and physical facilities at election processes centres, with particular reference to persons with disabilities;
- develop adequate and suitable election awareness programs, with dissemination schemes to ensure full national coverage;
- ensure that all qualified persons who wish to register as a voter are able to do so, and all voters who wish to vote are able to do so; and
- ensure that every vote is properly counted.

Annex 8: Further Reports

Amendment to the *Representation of the People Act*, Chapter 1:03
Section 113A

The *Representation of the People Act* is hereby amended by inserting a new Section 113A as follows:

113A. Further Reports

1. “The Commission shall prepare and furnish to the National Assembly, as soon as practicable after June 30 [December 31] in each year, a report on the operations of the Commission during the year that ended on June 30 [December 31].
2. The Commission shall furnish the President with such information and particulars as he or she may from time to time in writing require in connection with the activities of the Commission.
3. The Commission may, if it deems it necessary so to do, publish a report on the likelihood or otherwise that it will be able to ensure that any pending election will be free and fair.”

Annex 9: Reporting on Expenses of Political Parties

The *Representation of the People Act* is hereby amended as follows:

By the insertion of new Sections 120A and 120B

120A. Election Expenses of Political Parties

The maximum amount of election expenses to be incurred by a political party in respect of a constituency in which the party contests an election to the National Assembly shall be

- (1) (a) At a general election, calculated on the basis of the number of electors in that constituency, multiplied by a factor of the equivalent in Guyana dollars of US\$4.
- (b) In respect of seat allocation based on proportional representation the calculated shall be on the basis of the number of electors on the register in Guyana multiplied by a factor of the equivalent in Guyana dollars of US\$5.

A political party who acts in contravention of the Section is liable on conviction to a fine not exceeding the equivalent in Guyana dollars of US\$15,000.

120B. Disclosure by Political Parties

- (1) Every political party shall keep an account book into which shall be recorded
 - (a) all monetary and other forms of contribution received by the party for the purposes of the election campaign.
 - (b) the name and address of any person or entity that contributes any money or other thing which exceeds the equivalent in Guyana dollars of US\$30,000.
- (2) No political party shall accept any monetary or other contribution exceeding the equivalent of Guyana dollars of US\$20,000 unless it can identify the source of the money or other contribution to the Commission.
- (3) Every political party sponsoring a candidate to contest an election shall, within three months after the announcement of the results of the election, file a report of the contributions made by individuals and entities to the Commission.
- (4) Every political party shall grant to any officer authorized in writing by the Commission, access to examine the records and audited accounts kept by the political party in accordance with this Section, and, on request, shall give all such information as may be requested in relation to all contributions received by or on behalf of the party.
- (5) Every political party shall have its election expenses account audited, and it shall be submitted as a separate audited return to the Commission within three months after an election, which its sponsored candidate has contested. The return shall be signed by the party's auditors and countersigned by the Chairman of the party and shall be supported by a sworn affidavit by the signatories as to the correctness of its contents.

(6) The return referred to in Subsection 5 of this Section shall show the amount of money expended by or on behalf of the party on election expenses, the items of expenditure, commercial value of goods and services received for election purposes, and shall include the name, address, and occupation of contributors of the equivalent in Guyana dollars of US\$30,000 or more.

(7) For the purposes of an election, “election expenses” means expenses incurred by a political party within the period from the date notice is given by the Commission to conduct an election up to and including the polling day in respect of a particular election.

(8) Any political party, which commits a breach of this Section is guilty of an offence and shall be liable on conviction to a fine not exceeding the equivalent in Guyana dollars of US\$10,000 and in the case of failure to submit an accurate audited return within the stipulated period, the court may impose a penalty not exceeding the equivalent in Guyana dollars of US\$2,000 a day on any party or organization for the period after the return was due until it is submitted to the Commission.

(9) The Commission shall make available for public inspection during regular business hours at its national and regional offices the audited returns of the political parties required by Subsection 5 of this Section.

Annex 10: Amendment to Section 17 of the *National Registration Act*

Section 17 is amended by deleting the Section and substituting there for the following:

“17. The Commission may cause any matters or particulars contained in any register established under Section 9 to be compiled and tabulated, or cause any such compilation or tabulation or abstracts therefrom to be published for statistical purposes.”

Annex 11: Amendment to Section 3 of the *Election Laws (Amendment) Act*

The *Election Laws (Amendment) Act 2000* is hereby amended by inserting the words “*not less than ninety (90) days continuously immediately prior to registration*” immediately after the word “division” in the last line but two from the end in Subsection 1 of Section 3.

Annex 12: Documents and References

Documents:

1. Draft Manual of Laws Related to the Guyana Elections Commission (GECOM) As of May 2005 (hard and electronic copies).
2. Act No. 15 of 2000, Election Laws (Amendment) Act 2000.
3. Collection of various laws of Guyana relating to elections.
4. The Constitution of the Co-operative Republic of Guyana (1980).
5. Act No. 20 of 2003, Fiscal Management and Accountability Act 2003.
6. Operations Manual for Continuous Registration in Guyana (Draft 4).
7. R 01–Registration Record form.
8. Revised Draft Amended *National Registration Act* and (Residents) Regulations Chapter 19:08.
9. The Organogram of the GECOM.
10. CD-ROM of the Laws of Guyana.
11. The Constitution of Guyana—What it will look like (by Haslyn Paris); and
12. Salary scales of the Secretariat staff of GECOM.

References:

Code of Conduct for Ethical and Professional Administration of Elections, International IDEA, 1997.

Code of Conduct on Political Parties Campaigning in Democratic Elections, International IDEA, 1999.

Compendium of Election Laws, Practices and Cases of Selected Commonwealth Countries—Volume 1, Parts 1 & 2, Volume 2, Parts 1 & 2, Carl W Dundas, Commonwealth Secretariat, 1996-98.

Dimensions of Free and Fair Elections, Carl W. Dundas, Commonwealth Secretariat, 1994.

Discussion of Election Issues in Commonwealth Africa, ed. Carl W Dundas, Commonwealth, 1998.

Electoral Management Bodies as Institutions of Governance, Professor Rafael Lopez-Pinto, Bureau for Development Policy, UNDP, 2000.

Electoral Management Bodies: Constitutive Instruments, Carl W Dundas, Commonwealth Secretariat, 1999.

Electoral Management Bodies' Case Studies on Nigeria and Lesotho, Carl W Dundas, 2004.

Electoral Reform in Commonwealth African Countries, ed. Carl W Dundas, Commonwealth Secretariat, 2001.

Electoral Systems, A Worldwide Comparative Study, Inter-Parliamentary Union, Geneva, 1993.

Electoral System Design, International IDEA, 2005.

Funding of Political Parties and Election Campaigns, International IDEA, 2003.

International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections, International IDEA, 2002.

Organising Free and Fair Elections at Cost-Effective Levels, Carl W Dundas, Commonwealth Secretariat, 1993.

Rules of Elections in Commonwealth Africa, ed. Carl W Dundas, Commonwealth Secretariat, 2000.

Paper titled “What do ‘impartiality,’ ‘independence,’ and ‘transparency’ mean—Some thoughts from Australia,” presented by Paul Dacey, Deputy Electoral Commissioner, Australian Electoral Commission, at the Commonwealth Chief Election Officers’ Conference, New Delhi, February 2005, Commonwealth Secretariat.

Paper titled “Democracy and the Election Commission of India,” presented by K.K. Venugopal, Senior Advocate, Supreme Court of India, at the Commonwealth Chief Elections Officers’ Conference, New Delhi, February 2005, Commonwealth Secretariat.

Annex 13: Report on Initial Trip to Guyana

REPORT ON VISIT TO GUYANA USAID GUYANA DEMOCRATIC CONSOLIDATION AND CONFLICT RESOLUTION (GDCCR) PROJECT 16–26 JULY 2005

1. The Consultant arrived in Guyana on the 16 July 2005 and was met at the airport by a driver attached to the GDCCR Project.
2. The Consultant was given a copy of the draft *Manual of Laws Related to the GECOM* as of May 2005, which was produced by consultants Mr. Haslyn Parris, Mr. Maurice Henry, and Ms. Priya Manickchand. The draft *Manual* is a compendium of the Constitutional provisions and the various legislative schemes that affect the organisation of elections in Guyana. The draft *Manual*, though voluminous, does not point to the specific provisions of these instruments that relate to the electoral process. However it usefully points out certain deficiencies in the existing electoral legislative scheme.
3. On the 18 July 2005, the Consultant paid visits to the U.S. Embassy, to the GECOM's Office, and to the office of RTI.
4. On 19 July, the Consultant held discussions with Dr Steve Surujbally, chairman of the Elections Commission of Guyana, and was introduced to members of GECOM. Dr. Surujbally pointed out the work done by a team of consultants who identified areas of the election legislative scheme that needed review and modernisation. He stressed that the formula for appointing commissioners needed urgent review and so did the funding arrangements for GECOM. Dr Surujbally indicated that he hoped to receive comments by Commissioners on the *Manual* produced pursuant to the first phase of the project and he would like the same to be taken into account by the Consultant.
5. On 20 July, the Consultant held further discussions with the Chairman of GECOM with respect to the scope and depth of the terms of reference for the Consultant's assignment. The Chairman offered his full support and assistance, and that of his staff, to the Consultant. In three lengthy sessions with Mr. Boodoo, the Chief Elections Officer (CEO) of GECOM, he elaborated on the areas of deficiencies in the legislative scheme and the attendant operative difficulties which required urgent attention. Like the Chairman, the CEO, expressed the view that a number of the areas identified in the Phase 1 should be examined and given effect in the draft legislation which the Consultant is producing. Extensive discussions were also held with the Legal Adviser of GECOM, Mrs. Octive-Hamilton on the state of the election laws and regulations, particularly with respect to voters' registration. The Legal Adviser and the CEO made available a number of legal instruments, including electronic copies to the Consultant, see **Annex 13–1** hereto.
6. Phase 1 of the Project identified several areas of the electoral legislative scheme that should be reviewed with a view to removing ambiguities in the law or to bridging lacunae therein. The issues listed for review in the *Manual* of Phase 1 are the following:
 - The formula for appointment of the Chairman and members of GECOM;

- The respective term of office of the Chairman and members of GECOM;
 - The remuneration packages of Chairman and Commissioners of GECOM;
 - The reporting requirement of GECOM to the National Assembly and to the Executive;
 - Procedures with respect to the procedures for the preparation and approval of GECOM's Budget;
 - Financing of GECOM's current and capital expenditure;
 - Accountability of GECOM for finances expended;
 - The organisational structure of the Secretariat of GECOM;
 - The regime for the remuneration packages for the staff of the Secretariat;
 - Access to information from GECOM, with particular reference to the electorate as gleaned in the process of national registration;
 - Reporting on the financing of political parties, the utilization of resources of the State, for election activities;
 - The processing of claims and objections to inclusion on the list of voters;
 - The application of the concepts of 'residence' and of 'domicile' in the matter of requirements to be satisfied by potential voters;
 - 'Overseas' voting; and
 - The use of computer and other relevant technology in GECOM's work.
7. The GECOM Chairman explained that the foregoing areas identified in Phase 1 for action under Phase 2 of the project had not been commented upon by the Commissioners. However, the Chairman indicated that he would forward any comments by Commissioners to the Consultant as soon as possible. He stated that the Consultant could proceed to deal with some of the identified issues, in particular those relating to the GECOM and its related matters.
8. In discussions with the senior staff of GECOM, concerns were expressed about a number of issues, including the following:
- The structure of the GECOM, its operational organisation and personnel levels of remuneration;
 - The independence of GECOM, the unsatisfactory operation of the so-called Carter-Price formula which governs the appointment of Commissioners;
 - The quality of the existing voter registration database;
 - The potential negative effect on its independence of the status of 'budget agency' conferred on the GECOM under the *Fiscal Management and Accountability Act 2003*; and
 - The potential dilatory effect of the *Procurement Act 2003* on GECOM's procurement efforts of election materials.
9. As presently informed, GECOM's state of preparation for the forthcoming general elections which are due in about a year's time, and the requirements to achieve full readiness there for, prompts the following observations for consideration:

- Confidence of the stakeholders in the electoral process and in GECOM's ability to deliver free and fair elections needs to be significantly strengthened;
 - In line with the upgrading of the general confidence in the GECOM, steps must be taken to reduce the perception of partisanship by Commissioners, and to enhance the politically neutral approach;
 - The so-called Carter-Price formula governing the appointment of the commissioners of GECOM will be reviewed and an upgrading to the formula recommended;
 - All related issues which impact on GECOM's independence (Article 226 of Constitution), including funding and staffing, will be reviewed;
 - The relationship of GECOM with the primary stakeholders in the electoral process, particularly the Executive and the National Assembly, will attract examination and proposals for strengthening; and
 - The important processes of voters' registration (by way of continuous registration) and polling preparation in the framework of election organisation will be examined against a background of good practice and international standards.
10. A list of the persons met is set out in **Annex 13-2**.

Annex 13-1 Legal Instruments Received

1. Draft Manual of Laws Related to the Guyana Elections Commission (GECOM) As of May 2005 (hard and electronic copies);
2. Act No. 15 of 2000, Election Laws (Amendment) Act 2000;
3. Collection of various laws of Guyana relating to elections;
4. The Constitution of the Co-operative Republic of Guyana (1980);
5. Act No. 20 of 2003, Fiscal Management and Accountability Act 2003;
6. Operations Manual for Continuous Registration in Guyana (Draft 4);
7. R 01 –Registration Record form;
8. Revised Draft Amended National Registration Act and (Residents) Regulations Chapter 19:08;
9. The Organogram of the GECOM;
10. CD-ROM of the Laws of Guyana;
11. The Constitution of Guyana–What it will look like (by Haslyn Paris); and
12. Salary scales of the Secretariat staff of GECOM.

Annex 13–2 **Persons Met**

1. Dr. Stephen Surujbally, Chairman of the Guyana Elections Commission;
2. Mrs. Hazel Octive-Hamilton, Legal Officer of GECOM;
3. Mr. G. Boodoo, Chief Election Officer, GECOM;
4. Mr. Calvin Benn, Deputy Chief Election Officer, GECOM;
5. Mr. Roy Mc Arthur, Human Resources Manager, GECOM;
6. Mr. Vishnu Persaud, Public Relations Officer, GECOM;
7. Dr. K. Afari-Gyan, Consultant funded by Commonwealth Secretariat;
8. Dr. Gary Bland, Director, Center for Democratic Governance, International Development Group;
9. Mr. C. David Esch, Chief of Party, USAID Guyana Democratic Consolidation and Conflict Resolution (GDCCR) Project;
10. Ms. Gloria Richard-Johnson, Deputy Chief of Party, Governance Specialist, GDCCR Project;
11. Ms. Coralie Simmons, Civil Society Specialist, GDCCR Project;
12. Ms. Shion Thomas, Administrative Assistant, GDCCR Project; and
13. Mr. C. Dhurjon, Chief Parliamentary Counsel.

The Consultant paid courtesy calls on the undermentioned Commissioners in the conference room at the Commission’s Headquarters

14. Dr. Keshav Mangal, Commissioner;
15. Mr. Moen Mc Doom, Commissioner;
16. Mr. Haslyn Parris, Commissioner;
17. Mr. Mohamood Shaw, Commissioner; and
18. Mr. Robert Williams, Commissioner.

The Consultant also paid a courtesy call on the Hon. Attorney General

19. Mr. D. Singh, Attorney General of Guyana.

Carl W. Dundas
Election Consultant