

COUNTRIES AT THE CROSSROADS



COUNTRIES AT THE CROSSROADS 2011: GUYANA

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INTRODUCTION

Guyana is situated on the northern coast of South America, with a land mass of approximately 215,000 square kilometers. According to the Guyana Bureau of Statistics, the country's estimated population at mid-year 2008 was 766,183 people, with 90 percent living on the narrow coastal plain bordering the Atlantic Ocean. The country's population is diverse, consisting of descendants of immigrants from India (43.4 percent), the largest of six ethnic groups, followed by the descendants of African slaves, who comprise about 30.2 percent of the population. Among the other ethnic groups, 16.7 percent identify as being of mixed race, and native Amerindians represent 9.2 percent of the population. The population growth rate has remained marginal in recent years, increasing by only 0.1 percent between 2007 and 2009, a probable result of increasing net emigration and an almost stagnant crude birth rate.¹

Guyana's economic activity is concentrated primarily in the mining and agricultural sectors, as reflected in its exports, 82.8 percent of which in 2010 were comprised of gold (34.1 percent), rice (16.4 percent), bauxite (15.8 percent), sugar (10.1 percent), and timber (6.4 percent).² In 2009, per capita gross domestic product was \$2,309.³

After centuries of colonial rule, Guyana gained its independence from Britain in 1966 and became a cooperative republic in 1970. The country shares a common history and culture with the English-speaking Caribbean, but is unique in the impact that racial divisions have had on the political process, as well as their corrosive influence on democratic governance and social stability. The East Indian population-based People's Progressive Party/Civic (PPP/C) has ruled the country since 1992, when it won control of the government from the People's National Congress (PNC), which is rooted in the Afro-Guyanese population, in national elections.

As it prepares for elections in 2011, the country is facing significant challenges in the security sector, increasing ethnic polarization, and charges of marginalization by Guyanese of African descent. Opposition parties have for several years emphasized support for the concept of shared governance, understood as a government of national unity that will formally include non-PPP/C members within the ministries and ensure pluralism in policymaking. Viewed as a necessary step toward postelection consensus-building, the concept has not yet been endorsed by

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the incumbent PPP/C government, nor has any other strategy emerged from the contenders for political power for resolving the grievances that promote alienation and suspicion in this ethnically diverse, plural society. The history of election disturbances and the deteriorating security situation, however, mandate that urgent, collaborative efforts be made to promote national unity, representative democracy, and adherence to the rule of law.

ACCOUNTABILITY AND PUBLIC VOICE

Guyana is a parliamentary democracy based on the Westminster model, where the party obtaining the most electoral votes occupies the majority of seats in parliament and controls the executive branch of government under the leadership of a president, who is both head of state and commander-in-chief of the armed forces. The electoral framework provides for free and fair elections to be held every 5 years, as established by the constitution.

Independent international election monitors have been regularly accepted since 1992, although the implementation of electoral laws has not always been perfect. Indeed, there have been challenges to electoral outcomes by opposition parties in the past. Postelection protests against election results by supporters of opposition parties in 1992 and 1997 resulted in public demonstrations and disorder as well as targeted political violence. In the case of the 1997 elections, there was also a temporary boycott of parliament by the major opposition People's National Congress Reform (PNCR) party, followed by two peace agreements brokered by the Caribbean Community (CARICOM).⁴ Lack of confidence in the electoral process also resulted in disruptions after the 2001 elections.⁵ In response, the UN Development Programme (UNDP) implemented several multifaceted electoral initiatives during the intervening years,⁶ and the results of the 2006 national elections were accepted by the political opposition. In the 2006 balloting, the PPP/C garnered 54.6 percent of the votes, giving the party 36 seats, while the People's National Congress Reform/One Guyana (PNCR/1G), the leading opposition party, obtained 34 percent of the votes and 22 seats, followed by the Alliance for Change (AFC) with 8.4 percent of the votes and 5 seats. The presidency therefore remained in the hands of Bharrat Jagdeo, who originally took office in 1999 following the resignation of Janet Jagan and was first elected in 2001.

Elections are constitutionally due to be held in 2011. Calls by the political opposition for shared governance have not been endorsed by the ruling PPP/C administration headed by President Jagdeo; with its consistent absolute majority in parliament, the PPP/C has had little incentive to agree to share power, but the idea may be gathering momentum as a major rallying point in the forthcoming elections.

The constitution allows for equal campaigning opportunities for all parties and guarantees the possibility of periodic rotation among a range of contending political parties through national elections. However, because of entrenched voting patterns along ethnic lines, an ethnic-based party can hold on to power indefinitely if it is affiliated with the majority ethnic group and maintains its appeal to ethnic loyalties. Thus, since 1992 the PPP/C, which is affiliated with the majority population of East Indian descent, has dominated the political system and state power. Opposition parties also remain rooted in ethnic constituencies, especially the PNCR with its Afro-Guyanese base, which hinders the ability to strip away support from the PPP/C. The rise of

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the multiracial AFC signaled a potential shift in the rigidity of ethnic voting, but the party remains a distant third in popular support.

There are currently no effective campaign finance regulations in the country. The relevant provisions under the Representation of the People Act, Cap 1:03, section 120(1)-(5) are Dated and unenforced by the Guyanese Electoral Commission (GECOM). A significant proportion of the financing for the various political parties comes from supporters in the Guyanese diaspora in developed countries. Generally, however, the PPP/C possesses an advantage over other parties because it has greater access to state resources for campaign purposes. In the case of the 2011 elections, critics have objected to the participation of Donald Ramotar, the party's presidential candidate, in governmental outreach to various regions of the country as these activities utilize public funds in a way that puts other contenders within and outside the party at an unfair disadvantage.⁷

Checks and balances in the exercise of powers remain underdeveloped. Despite the fact that independence and fiscal autonomy of the judiciary are constitutionally mandated, the judiciary is plagued by operational problems and challenges, public mistrust, and criticism and derision of some of its decisions by the executive.⁸ Separation of powers between the executive and the legislature, while difficult to clearly define given the legacy of the Westminster parliamentary model, is also called into question by the dominant influence of the executive over the deliberations of the parliament, which functions almost exclusively as a means for legislative implementation of the executive's agenda. Although the president does not sit in parliament, he may attend, address, or send messages; summon, prorogue, or dissolve parliament; and otherwise exert influence through the ruling party's majority control. No steps have been taken in recent years to limit the overwhelming influence of the executive over the parliament.

Although by and large civil servants are selected in open competition and based on merit, in some cases claims have been made that political criteria are used for promotions and dismissals. The case of a senior school administrator, Genevieve Whyte-Nedd, exemplifies this problem. As part of a lengthy public service career, Whyte-Nedd has served in the position of chief education officer for several years, but no action was ever taken to confirm her in the position. Despite public protests and the intervention of the Public Service Union and the Guyana Teachers' Union, the Public Service Commission refused confirmation on July 6, 2010. The PNCR accused the government of political interference and discrimination in public service decision making.⁹ Protestors led by the Guyana Trade Union Congress picketed the Ministry of Education, and Whyte-Nedd has since sought redress from the High Court.¹⁰

There are few obstacles to the registration or operation of nongovernmental organizations (NGOs) in Guyana. The government supports and works collaboratively with NGOs whose mandates fall within national objectives such as domestic violence prevention and youth development, but has been known to be selective in the award of state funding and enforcement of tax laws, in particular with reference to the funding of legal aid. For instance, the Linden Legal Aid Centre, a nonprofit organization incorporated in 2007 to provide free and largely subsidized legal services to economically challenged citizens in the predominantly Afro-Guyanese town of Linden and surrounding communities, has been denied state funding as well as tax-exempt status.

Civic groups and NGOs in Guyana have ample opportunity to comment on government policy and legislation, mainly through the press. The media also maintain a presence in parliament and comment freely on its deliberations, but that does not necessarily translate into

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influencing government policies and legislation. Opposition parties frequently raise issues and concerns in parliamentary debates on legislation, but are invariably outvoted by governing party legislators.

The constitution of Guyana guarantees freedom of expression, including freedom to hold opinions and to receive and communicate ideas and information (Article 146). Several independent daily newspapers operate freely, including *Stabroek News*, *Kaieteur News*, and the more recently established *Guyana Times*. The other main newspaper with nationwide circulation, the *Guyana Chronicle*, is government-owned. The Government Information Agency (GINA) provides a conduit for the steady flow of information to the public through press releases and its website.

The government continues to own and control the only radio station in the country, which broadcasts on three frequencies. However, in December 2008 Chief Justice of the High Court Ian Chang ruled that excessive delay by the government in considering applications for the issue of licenses to operate a radio and television network in Region 10 amounted to a violation of the applicants' fundamental right to freedom of expression; he ordered the government to consider the applications immediately.¹¹ This was followed by a similar ruling by the Guyana Court of Appeal in October 2009 concerning the failure of the state-owned National Frequency Management Unit (NFMU) to consider an application for a radio license to Veira Communications Limited (VCT), a local television company. In delivering the unanimous decision, Chancellor Carl Singh affirmed the appellant's contention that the fundamental rights to freedom of expression and to receive and communicate ideas and information had been violated, declared the government's monopoly and control of broadcast communications to be inconsistent with democratic principles, and ordered NFMU to consider VCT's application for a radio license.¹² However, the courts limited themselves to a ruling only on the government's duty to consider the applications, and the government has yet to take any action to end the monopoly.

Apart from the government's National Communications Network Television, there are several privately owned television stations. The long awaited Broadcast Bill, first compiled and presented by the AFC in 2006, was recently passed by parliament with few amendments, but without the support of the PNCR.¹³

Official advertisements are an important source of revenue for the independent print media, and the government uses this power to influence coverage. Between January 2007 and April 2008, government agencies and state-owned enterprises pulled notices from the independent *Stabroek News*, a move that was decried by various international press watchdog groups despite government claims that it was merely a response to declining circulation of the newspaper. On August 9, 2010, the office of the president announced that henceforth state advertisements would appear on a government website established primarily for the placement of official notices, advertisements, and the conduct of the procurement process for goods and services.¹⁴

The president holds the portfolio of minister of information. President Jagdeo's increasingly contentious relationship with the independent media has resulted in frequent condemnatory outbursts, in which he accuses them of distorting his utterances and, on one occasion, of becoming the "new opposition."¹⁵ In April 2008, the president suspended the television license of opposition party leader C. N. Sharma, allegedly due to the airing of broadcast material that amounted to an incitement to crime. In both July 2008 and August 2010, journalists were arbitrarily denied entry to cover events at the office of the president.

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Journalists may face civil lawsuits for the publication of allegedly erroneous information in their newspapers. In July 2010 a US\$50,000 civil lawsuit was filed by President Jagdeo against *Kaieteur News* and its columnist Frederick Kissoon, editor Adam Harris, and the National Media and Publishing Company Ltd. for an allegedly libelous newspaper article accusing the president of practicing racism and discriminating against Guyanese of African descent.¹⁶ In November, agriculture minister Robert Persaud filed suit against a television station on similar charges. Preliminary injunctions against republication or rebroadcasting of the allegedly libelous material were issued in both cases, but neither trial was under way by early 2011. There are no restrictions on internet access or content in Guyana.

CIVIL LIBERTIES

Guyana's constitution specifically prohibits torture or other inhumane or degrading treatment by the state (Article 141(1)). In addition, during the period of constitutional amendments and democratic reforms (1999–2003), a new provision was added incorporating several international human rights treaties into national law, including the 1985 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Despite these protections, a disturbing record of allegations of the use of torture as an interrogation technique by the security services has emerged during the past three years, with the brutal torture of a 15-year old boy in October 2009 serving as a particularly stark example.¹⁷ Although the government has condemned the use of torture and promised investigations, calls for an international inquiry into incidents of torture and other grave rights abuses—notably, hundreds of extrajudicial executions (see below)—have been ignored.¹⁸

The most serious issue involving state violence is the use of deadly force by the Guyana Police Force (GPF). The so-called fleeing-felon rule, a historical anachronism, is still in effect, allowing the police to use deadly force against unarmed, fleeing suspects. The Police Complaints Authority (PCA), a civilian oversight body that functions mainly in an advisory capacity, receives complaints from the public on police misconduct, including the use of unnecessary violence, and reported an increase in complaints during the past three years. The most recent statistics released by the Office of Professional Responsibility of the GPF, which is charged with investigating abuses including those referred to it by the PCA, indicated an 85.7 percent increase in complaints against members of the GPF during the first six months of 2008 as compared with the same period the previous year.¹⁹ The U.S. State Department reported that the PCA received over 400 complaints in 2010, of which 13 were for allegedly unlawful killings by police.²⁰ Prosecutions do sometimes occur: several members of the security services have been prosecuted for an array of criminal offences, including murder and assault.²¹ However, cases sometimes result in dismissals as in the case of the 15-year old torture victim, or drag on for an extended period, and the perception of impunity creates friction between Guyanese citizens and the GPF.

Many of the recommendations for prison system reform that have been made during the past decade by various commissions of inquiry are yet to be fully implemented. In May 2004, for example, the *Report of the Disciplined Services Commission*, which contained 28 recommendations for improvement of the prison system, was presented to the speaker of parliament, but it was only approved by the legislature in June 2010. Apart from the problem of overcrowding, which has persisted for decades and is exacerbated by the fact that 41 percent of

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prisoners are in pretrial detention, there is a need for concerted efforts to comply with basic international standards.²² Juveniles continue to be exposed to victimization in police lock-ups while awaiting trial, and offenders above 16 years of age are incarcerated in adult prisons.

The constitution protects against arbitrary arrest and detention without trial and provides for access to counsel and pretrial release, as well as the right to compensation for unlawful arrest or detention. Persons who are arrested are usually brought to court within 72 hours, failing which the police are required to release the suspect or apply to the High Court for an extension. However, attorneys frequently complain of violations of this rule in practice. In light of the large number of pretrial detainees, the High Court has in recent years been enforcing the right to trial within a reasonable time by granting bail to murder defendants who have spent an inordinately long period in detention awaiting trial.²³

There is no persistent problem of targeting of opposition activists for arbitrary arrest or imprisonment. However, prominent trade union leader Lincoln Lewis, in 2008, and well-known social critic, journalist, and college professor Frederick Kissoon, in May 2010, each have publicly complained of acts of harassment and intimidation by unknown assailants that they believe are linked to their criticism of the government and other powerful actors. The attack on Kissoon was condemned by the media, political parties, and the government.²⁴

The inability of the government to provide public safety and security has remained a matter of grave concern in recent years. A steadily rising murder rate, together with increased levels of domestic and interpersonal violence, armed robberies, home invasions, and other forms of gang and gun violence associated with drug trafficking and piracy, have resulted in the enactment of a plethora of measures. For example, the Hijacking and Piracy Act of 2008 makes special provision for the punishment of armed robbery, hijacking, and piracy, including the imposition of the death penalty for homicides occurring during the commission of these crimes; the Telecommunications (Amendment) Act of 2008 requires providers of cellular phones and their accessories to maintain records that may aid the police in conducting investigations; the Prevention of Crimes (Amendment) Act of 2008 mandates varying periods of police supervision for certain classes of convicted offenders; the Firearms (Amendment) Act of 2008 increased penalties for the possession of unlicensed firearms and made such possession into a nonbailable offence; the Criminal Law Procedure (Amendment) Act of 2008 dispensed with the preliminary inquiry phase for certain indictable offenses; the Interception of Communications Act of 2008 allows for warrants to be issued by a judge for the monitoring of transmissions made by the internet, fiber-optic cable, or other forms of electromagnetic communications; and the Sexual Offences Act of 2009, which came into force in May 2010, modernized sexual offenses legislation while imposing harsh penalties for sexual violence against children. However, none of these have so far produced noteworthy improvements in the crime situation.

In 2008, three instances of gang-related mass killings opened a new chapter in the homicidal violence plaguing the country. The first occurred in Lusignan on January 26, when 11 people, including five children, were attacked and killed in their homes. On February 17, in the town of Bartica, 12 people were murdered execution style, including three police officers. On June 21, at Lindo Creek, a remote mining camp in the interior of the country, eight miners were killed and their bodies burnt. Although several alleged perpetrators were subsequently arrested, the failure to capture and bring to justice the ringleaders responsible for the planning and execution of these crimes, and to shed light on their true motives, has inhibited the search for solutions to prevent further incidents of extreme violence in the future.

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Crime statistics are published in the GPF's annual reports, but these tend to be dated by the time they are released to the public. The media is often the only readily available source of current crime data. Crime statistics released by the Organization of American States indicate a significant (37 percent) increase in homicide in 2008 when compared to 2007.²⁵

Although murder rates declined in 2009, an upward trend has returned and in November 2010, a 58 percent increase in the number of murders was reported when compared to the same period in 2009.²⁶ Equally disturbing is the fact that the majority of these murders remain unsolved. An important contributor to the violence is Guyana's status as a transit country for cocaine and marijuana, and a safe haven for smugglers and drug traffickers.²⁷

Local initiatives, such as those included in the Justice Sector Reform Strategy (2006–2010) and the Citizens Security Programme (implemented in 2007), have had little impact on the investigative capability and professionalism of the police or the continuing crisis in public safety. The regional crime-fighting solutions that were expected from Guyana's participation in the July 2006 agreement establishing the CARICOM Implementation Agency for Crime and Security (IMPACS) failed to materialize, and efforts at international security collaboration ended with the collapse of negotiations for the implementation of the Security Sector Reform Action Plan (2007–2011), which was to be funded by the British government. The PNCR has identified the deteriorating security situation in the country as the most pressing problem facing a postelection administration.

In 2007 Guyana established a National Task Force for Combating Trafficking in Persons within the Ministry of Home Affairs to implement preventive measures, especially with respect to indigenous women who are trafficked from the interior to work in other regions. Nevertheless, in 2010, Guyana retained its place on the Tier 2 Watch List of the U.S. State Department's Trafficking in Persons Report.²⁸ After release of the report, Guyana recorded the first successful prosecution under the 2005 Combating Trafficking in Persons Act, and a three-year sentence was imposed for the crime.²⁹

Guyana's system of providing redress for violations of human rights remains underdeveloped. The constitution states that all persons who are aggrieved as a result of the violation of their human rights may apply to the High Court for redress, and appeal to the Court of Appeal if necessary. In addition, another level of judicial review is provided by Guyana's acceptance of the Caribbean Court of Justice as its appellate court of last resort.³⁰ However, with respect to complaints against the police, the PCA has no independent investigative authority and plays no part in internal police disciplinary procedures; rather, the PCA may direct the police to record and investigate complaints. Complaints of human rights violations may also be made to the ombudsman, but this position has been vacant since 2005. In addition, the constitution calls for the creation of a Human Rights Commission, but as of early 2011, this body was not yet operational. The sole nongovernmental, independent human rights body, the Guyana Human Rights Association, can receive complaints but has no power to provide redress.

Social discrimination in all its forms is constitutionally prohibited, and the Convention on The Elimination of All Forms of Racial Discrimination was incorporated into the reformed constitution. Domestic legislation on this subject includes the Prevention of Discrimination Act 1997, which prohibits employment or service discrimination, and the Racial Hostility Act, which outlaws acts of racial intolerance or hatred. An Ethnic Relations Commission mandated by the constitution is fully operational and receives frequent complaints, but has been repeatedly accused of bias in the conduct of its deliberations. Notwithstanding this antidiscrimination

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framework, the United Nations Independent Expert on minority issues, Gay McDougall, issued a scathing report after holding widespread consultations with the government and other interested parties during the summer of 2008. The report highlighted perceived racial discrimination, economic marginalization, the stereotyping of Afro-Guyanese, and the nonobservance of minority rights in practice.³¹ Afro-Guyanese report discrimination in employment, the award of government contracts, and the allocation of resources to their communities.

Some of the most severe allegations relate to the extrajudicial killing of hundreds of young Afro-Guyanese males deemed to be “suspects” by police quick-reaction squads and an alleged police “phantom” death squad. Unrestrained security operations in their communities are allegedly sanctioned, resulting in the destruction of farmland and private property and the killing of innocent civilians.³² In November 2009, an opposition coalition composed of the AFC, PNCR, Guyana Action Party (GAP), National Front Alliance (NFA), and the Working People’s Alliance (WPA), prepared a dossier calling for an international inquiry into what it described as “grave human rights violations” in Guyana. Their report lists, inter alia, 449 cases of extrajudicial and other killings between 1993 and 2009.³³ The government has consistently refused to sanction such an investigation.

Guyana has always adopted a progressive legislative agenda with respect to gender equity, including incorporating the UN Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women into the reformed constitution. In 2009, 15 nominees were appointed by the National Assembly to a constitutionally mandated Women and Gender Equality Commission.³⁴ Women’s property rights are protected.³⁵ Workplace discrimination is outlawed by the Prevention of Discrimination Act, which applies to both the public and private sectors; this law protects women (among other groups) from discrimination in the workplace (including sexual harassment) and promotes equal pay for equal work by women. However, little has changed with regard to patriarchal societal attitudes and beliefs. Despite the passage of measures to protect women from physical and sexual victimization, including the much-anticipated Sexual Offenses Act passed into law in May 2010, women continue to be frequent victims of the brutality and homicidal violence plaguing the country.

Sex between men is criminalized, though the relevant laws are not enforced. Transgendered persons have protested the enforcement of archaic laws against cross-dressing as an infringement on their right to privacy and freedom of expression. This includes, for example, the 2009 prosecution and conviction of seven transgendered persons for cross-dressing in public. One organization working in the area of sexual and gender rights, the Society Against Sexual Orientation Discrimination (SASOD), has also alleged that transgendered sex workers are targeted for police harassment.³⁶

Disabled rights received a boost with the 2010 enactment of the Persons with Disabilities Act. The National Commission on Disability, an advisory body that was established in December 1997, receives an annual subvention from the government to provide services for disabled persons.

Amerindians comprise approximately 9 percent of the population. An Amerindian Act was passed in 2006 to provide social and economic justice to indigenous groups, but four years went by before action was taken to bring it into force.³⁷ Titling of the remote lands on which many indigenous groups live is a particular problem: the delay in implementation of the Amerindian Act deprived these communities of nearly US\$1 million in royalties from mining

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activities that the act had authorized.³⁸ In September 2010, members were sworn in for the first time to the constitutionally mandated Indigenous Peoples Commission.

The constitution also guarantees freedom of conscience, which includes the freedom to worship and propagate one's religion without hindrance, and this is generally respected in practice. Christianity (both Protestantism and Roman Catholicism), Hinduism, and Islam are the main religions in Guyana, with slightly more than 50 percent of the population identifying as Christians. No significant violations of the religious freedom of Guyanese citizens have been reported in recent years.

Freedom of assembly is constitutionally protected. Trade unions loudly voice their concerns and grievances in the streets, in industrial action, and in the press, but with little influence on governmental policies. In fact, there is a serious conflict developing between the labor movement and the Guyana government due to the latter's failure to perform its proper role in the settlement of industrial disputes and inaction on workers' cost of living concerns, as well as charges of discrimination by Afro-Guyanese in the bauxite and mining industries. The government generally allows peaceful public demonstrations in public places, provided that laws requiring police permission are complied with. Small picketing exercises have occasionally taken place without incident, mainly in the capital city of Georgetown, but there have also been cases where trade unionists and social activists have been arrested, detained, and subsequently charged by police for engaging in alleged illegal picketing and other protest activities.³⁹

RULE OF LAW

The independence of the judiciary is specifically mandated under the constitution, which provides that all courts and persons presiding over them "shall exercise their functions independently of the control and direction of any other person or authority; and shall be free and independent from political, executive and any other form of direction and control" (Article 122A(1)). The charter also provides for the funding of the courts directly from the general fund into which all state revenues flow, thereby providing the judiciary financial control over its operations (Article 122A(2)). According to the chancellor of the judiciary, 2008 was the first year that some level of financial autonomy was achieved in practice, with funds made directly available to the judiciary.⁴⁰

Political impartiality in the appointment of judges is achieved through the requirement that the minority leader (leader of the opposition) concur in the selection of candidates for appointment to the highest judicial offices—chancellor of the judiciary and chief justice of the High Court. However, the dysfunction of this provision in practice is demonstrated by the absence of a mechanism to resolve disagreement between the president and the minority leader. As a result, both the chancellor and the chief justice have been "acting" in their respective positions for several years, without the security of tenure and concomitant independence that flow from permanent appointment.

The president is required to act in accordance with the advice of the Judicial Service Commission in appointments for other judges, including part-time judges, raising the question of the independence of the Judicial Service Commission. The chancellor, chief justice, and chairman of the Public Service Commission (whose appointments require consultation with the minority leader) are automatic members of the Judicial Service Commission, with the chancellor

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acting as chairman. The fact that the president can only appoint the other members of the Judicial Service Commission, who come from the bench and the bar, after consultation with the minority leader allows for some degree of independence. In addition, decisions of the Judicial Service Commission can be challenged in the High Court; there are at least two pending cases challenging the Commission's decisions, one concerning sanctioning of a magistrate and the other concerning a magistrate's summary dismissal. Although the independence of individual judges has sometimes been called into question, the 2008 and 2009 court decisions regarding the government's monopoly on radio broadcasting (see *Accountability and Public Voice*) indicate that the government cannot take judicial subservience for granted.

In November 2010 the National Assembly approved the first set of rules governing the conduct of judicial officers, whereby they are prohibited from indulging in any activity that may involve a conflict of interest or compromise their ability to dispense justice without fear or favor. They are also required to abstain from political activism, may not accept appointments as officers of any political party, and may not engage in any activity that may cause the integrity of the judicial service to be called into question.⁴¹

Persons charged with criminal offences are constitutionally entitled to a fair hearing before an impartial and independent tribunal within a reasonable period of time. Provisions to secure the protection of the law include the presumption of innocence and customary due process rights such as the right to the assistance of counsel. For those who cannot afford a private attorney, legal aid is available in some administrative regions, and the director of public prosecutions (DPP) appoints defense counsel by fiat in capital cases in the High Court when the defendant cannot afford an attorney. Lawyers are free to represent their clients, regardless of the nature of the case, without fear or hindrance. However, in the predominantly Afro-Guyanese Region 10, which includes the town of Linden and its environs, government funding for legal aid has so far been denied. Prosecutorial independence is also guaranteed by the constitution, which provides that the powers conferred upon the DPP "shall be vested . . . to the exclusion of any other person or authority" (Article 187(3)). The DPP is appointed by the Judicial Service Commission.

The autonomy of the security forces and their separation from political interference is problematic, since the commissioner of police is responsible to the minister of home affairs for the administration and good governance of the GPF. In the case of the Guyana Defence Force, the president is chairman of the Defence Board, which is responsible for "command, discipline and administration."⁴² Under the constitution, the president is also commander-in-chief of the armed forces. Although any aggrieved member of the public can seek redress in the High Court for violations of their constitutional rights by any member of the security services, many alleged victims do not possess the financial resources to take advantage of this remedy. Corruption within the security forces is considered a serious problem.

The protection of property rights is guaranteed by the constitution, including rights to Amerindian lands. Privately-owned land can only be compulsorily acquired by the government if the minister declares that the land is required for "public work,"⁴³ which can be challenged in court. However, a provision under the Amerindian Act 2006 allows Amerindian lands to be compulsorily acquired if the minister determines that the acquisition is "in the public interest." Six Amerindian Captains have moved to the High Court seeking a declaration that the provision violates their communities' constitutionally-protected property rights. As of spring 2011, evidence was still being taken in the case. Amerindians have also been vociferous in their

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dissatisfaction with current mining and logging practices, which show scant regard for their property rights, and the impending implementation of the government's Low Carbon Development Strategy, which they fear will threaten the ownership and enjoyment of their ancestral lands.⁴⁴

ANTICORRUPTION AND TRANSPARENCY

In Transparency International's 2010 Corruption Perceptions Index, Guyana ranked 116 out of the 178 countries surveyed, with a score of 2.7 out of a possible 10.⁴⁵ When compared with the past three years,⁴⁶ the current ranking reflects only marginal improvement. The absence of sufficient accountability and transparency at every level of government, along with weak enforcement of anticorruption measures, result from failures by the ruling party, opposition political parties, and civil society groups to exercise due diligence in safeguarding the pillars of a parliamentary democracy supposedly governed by the rule of law.

Guyana has acceded in recent years to several international treaties that are intended to combat corruption, organized crime, money laundering, and other illicit activities, including the United Nations Convention against Transnational Organized Crime (2000), to which Guyana acceded in September 2004; the Protocol against the Smuggling of Migrants by Land, Sea and Air, acceded to in April 2008; the Inter-American Convention against Corruption, acceded to in April 2007; and the United Nations Convention Against Corruption, acceded to in April 2008. Nevertheless, little has been done with respect to effective implementation of the measures prescribed, such as the seizure of property obtained through corrupt acts.

Similarly, amendments incorporated in the reformed constitution to strengthen the office of the auditor general by providing for financial autonomy and removing constraints on independence failed to provide adequate remedy for suspected wrongdoing by public officials. Nor has the Public Accounts Committee within parliament engaged in adequate oversight of the auditor general's annual reports. Domestic anticrime legislation enacted in recent years to authorize wiretapping and to curtail money laundering, drug trafficking, and organized crime has also had limited results in curbing corruption. The worst offenders, such as those responsible for facilitating the production or distribution of drugs, money laundering, and other drug-related financial transactions, continue to face only weak threat of prosecution.

There have been few thorough investigations of allegations of corruption by government officials. Corruption at the middle and lower levels remains endemic, with the GPF generating a steady stream of offenders within its own ranks.⁴⁷ In addition, calls for change are hampered by severe "corruption fatigue" in the society at large. It is difficult to measure the deterrent effect of piecemeal anticorruption measures. For example, polygraph testing was introduced for officers attached to the Customs Anti-Narcotics Unit (CANU), the Guyana Revenue Authority, the Guyana Energy Agency, the Narcotics Branch of the GPF, and employees at Cheddi Jagan International Airport. However, dismissals based solely on the results of lie detector tests may call into question the government's commitment to fundamental due process rights.

Corruption is prosecuted under the general criminal law, and there is no specialized anticorruption unit in the office of the DPP. In the case of police corruption, reports can also be made to the Police Complaints Authority and the GPF's Office of Professional Responsibility.

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Two commissions have been established under the current administration to promote transparency and accountability. The Integrity Commission requires disclosure of the annual income, assets, and liabilities of all persons in public employment, including the president, employees of public corporations, and other companies owned or controlled by the state.⁴⁸ Nevertheless, these requirements are largely unfulfilled, and the commission has been dormant since the resignation of the chairman three years ago. The Public Procurement Commission, mandated by the constitution and regulated by the 2003 Public Procurement Act, had not been constituted as of late 2010.⁴⁹ However, disclosure is provided through the National Procurement and Tender Administration (NPTA), through which government contracts are advertised and awarded. Information is published regarding the identity of bidders, minutes of the bidding process, and specifics of the contracts that have been awarded. The government ensures open bidding through advertisements on a procurement website, although there have been complaints (frequently by the independent media) of lack of transparency in the details of the awards, personal biases in the award of contracts, and inadequate vetting and supervision of contractors.⁵⁰

The budget-making process is generally the sole preserve of the government. The annual budget is usually presented for debate in parliament by the minister of finance. The majoritarian principle inherent in the parliamentary system affords the government little incentive to vary its budget allocations as a result of expressions of disapproval by the parliamentary opposition. More generally, the ruling party's expressed commitment to inclusive governance supports the expectation of free and open disclosure in all policymaking matters. However, in practice, access to government information is limited. There is currently no law regulating access to information. A Freedom of Information Bill was first compiled and presented in parliament by Raphael Trotman, an AFC parliamentarian, in 2006. In March 2010, the first reading of the bill was deferred when the government officially informed the AFC that it would not support the legislation—even though President Jagdeo had announced in April 2009 that such legislation was being drafted by the government in keeping with the PPP/C's 2006 election manifesto.⁵¹ Several deadlines for the tabling of the bill in the National Assembly passed before the head of the presidential secretariat, Roger Luncheon, announced on April 8, 2011, that the drafting of the bill had been completed and it would be tabled in the National Assembly within weeks.⁵² In the meantime, the public has relied on the Government Information Agency (GINA) and its affiliates as well as the independent media for information on government affairs.

RECOMMENDATIONS

- The current system of majority rule should be reformed to provide for a power-sharing model that is representative of the ethnic diversity in the population. This would reduce the adverse effects of racial voting and promote minority inclusion in governance.
- The recommendations of the Disciplined Services Commission for the improvement of the Guyana Police Force, the Guyana Defence Force, and the Guyana Prison Service, adopted by the National Assembly in June 2010, should be implemented.

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- The fleeing-felon rule, which allows the police to use deadly force against unarmed, fleeing suspects, should be abolished.
- All commissions mandated by the constitution should be fully constituted and made fully operational, in particular the Human Rights Commission, the Integrity Commission, the Public Procurement Commission, and the Women and Gender Equality Commission.

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