

**WALTER RODNEY COMMISSION OF INQUIRY (WARCOI)  
WARCOI SECRETARIAT  
Supreme Court Library Building  
South and King Streets  
Georgetown  
Republic of Guyana**

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**SUBMISSIONS OF LINCOLN LEWIS AND THE  
GUYANA TRADE UNION CONGRESS**

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July 24, 2015

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## CHRONOLOGY AND BACKGROUND

1. The Guyana Trades Unions Congress (GTUC) is the umbrella organization for 22 affiliated unions of some 70,000 workers. It is the largest Trade Union in Guyana. GTUC has been in existence since 1940.
2. Mr. Lincoln Lewis is a Trade Unionist and the General Secretary of the Guyana Trades Union Congress. The daily operational control of the Union is vested in a full-time President, Seven Vice-Presidents, a Treasurer and various other officers.
3. On June 13, 2013, the thirty-third anniversary of the June 13, 1980 explosion that killed Dr. Walter Rodney, the Government of the Republic of Guyana, following a direct request from the Rodney Family, announced that it has approved the establishment of an International Commission of Inquiry into the death of Dr. Walter Rodney.
4. In February 2014, the then President of the Republic of Guyana, His Excellency, Donald Ramotar, appointed The Walter Rodney Commission of Inquiry. Three Commissioners were sworn in to probe the matter: Sir. Richard L. Cheltenham, K.A., Q.C., Ph.D – Chairman (Barbados); Mrs. Jacqueline Samuels-Brown, Q.C. (Jamaica) and Mr. Seenath Jairam, S.C. (Trinidad).
5. By way of written application, GTUC sought standing before the Commission on the following terms:
  - 1) An order granting standing as an interested party to the Guyana Trades Union Congress with full participatory rights including the following;
    - i. The right to have counsel present at the Inquiry;
    - ii. The right to receive all correspondence provided to the Commission or sent by the Commission with respect to this proceeding;
    - iii. The right to apply for preliminary, interim or summary orders and to respond to requests for preliminary, interim or summary orders brought by Commission Counsel or any of the interested parties with standing;
    - iv. The right to participate in the hearing of this matter, including the right to all evidence, request summons, cross-examine witnesses and provide submissions to the Commissioners;
    - and,
    - v. Any other participatory rights generally provided to an interested party.
    - vi. Such further and other order as may be appropriate.
6. The first session of public hearing commenced on April 28, 2014 and concluded on May 02, 2014.
7. On May 02, 2014, GTUC was granted full standing and participatory rights by the Commission. GTUC's interest was represented by Selwyn A. Pieters and Brian M. Clarke.

8. On May 24, 2014, Mr. Lincoln Lewis submitted his witness statement to the Commission.
9. At the Commencement of the Commission of Inquiry and today, GTUC's position remains that Guyana and Guyanese deserve closure to this chapter of our history and an end brought to use of Rodney's name as a wedge. The GTUC is prepared once again to play its part to the achievement of this end.
10. The participation of GTUC through its counsel, who provided legal services on a pro-bono basis, has been sustained, significant and meaningful. GTUC lawyers have cross-questioned witnesses and participated in the hearing of witnesses including Donald Rodney, Anne Wagner, Eusi Kwayana, Major-General (retd) Norman McLean, Eddie Rodney, Charles Ramson, Joe Hamilton, Gerald Gouviea, Karen DeSousa, Jocelyn Dow, Lt. Col. Patrick West, Lt. Col. Cargill Kyte, Dr. Nanda Gopaul, amongst others.
11. The last session of public hearing in which evidence was elicited from witnesses commenced at 0930 hours on March 23, 2015 and concluded on March 27, 2015. The main witness Donald Rodney, first appeared on January 30, 2015 and continued his evidence from March 23, 2015. His evidence was followed by another significant witness Anne Wagner, the sister of William Gregory Smith.
12. On March 28, 2015, the then President of the Republic of Guyana, His Excellency, Donald Ramotar, extended the life of The Walter Rodney Commission of Inquiry:

The Commission of Inquiry was directed that it shall render its report, findings and recommendations to the President within four months or within such time as may be directed by the President.

The Commission not being in a position to comply with the time set for the completion of its work, the President hereby grants the Commission an extension from March 31, 2015 to July 31, 2015.

13. By way of Extraordinary Gazette dated July 08, 2015, the life of the Commission was extended for the final time to November 30, 2015:

The extension of the life of the Commission came to an end on March 31, 2015. Based on the advice provided to the President, the life of the Commission is hereby extended to November 30th, 2015, being the final extension.

The extension of time granted hereof shall be effective from July 27, 2015. The Commission shall render its report, findings and recommendations to the President within the specified period of the extension of the life of the Commission.

14. GTUC would have liked to see the Commission to a fruitful conclusion , where each and every witness that remains to be heard was heard, including Robert Corbin, Cecil Skip Roberts, Norman McLean, Rupert Roopnarine and Lincoln Lewis. This solitary act would have contributed to filling lacunae. In bizarre fashion, Salmon letters were issued on behalf of Mr. Robert Corbin, Mr. Norman Mc Lean, Dr. Rupert Roopnarine and Mr. Cecil 'Skip' Roberts to appear before the Commission on Wednesday 29th July, 2015. Indeed, the fact remains that the evidence of these witnesses will be subjected to cross-examination and such cross examination will obviate any misguided perception that unchallenged evidence was accepted, which is a positive. Yet the Commission requested final submissions be submitted by all parties by Friday, 24<sup>th</sup> July 2015.
15. Whilst we respect the decision taken by His Excellency President David Granger and his Cabinet to abrogate the life of the Commission, we still need to be mindful of striking the right balance between expeditiousness and the objectives that all parties concerned have expended time and energy to achieve. At the start of this Commission, we strived with the common goal of finding answers. The fact that written evidence
16. In any event, GTUC's submissions are now respectfully submitted having regard to the evidence elicited in the hearing and documentary evidence tendered into evidence as exhibits.

## TERMS OF REFERENCE (TOR) AND SCOPE OF INQUIRY

17. The Commission's mandate established by its terms of reference is:-
  - (i) To examine the facts and circumstances immediately prior, at the time of, and subsequent to, the death of Dr. Walter Rodney in order to determine, as far as possible, who or what was responsible for the explosion resulting in the death of Dr. Walter Rodney;
  - (ii) To inquire into the cause of the explosion in which Dr. Walter Rodney died, whether it was an act of terrorism, and if so, who the perpetrators were;
  - (iii) To specifically examine the role, if any, which the late Gregory Smith, Sergeant of the Guyana Defence Force, played in the death of Dr. Walter Rodney and if so, to inquire into who may have counselled, procured, aided and or abetted him to do so, including facilitating his departure from Guyana after Dr. Walter Rodney's death;
  - (iv) To examine and report on the actions and activities of the State, such as, the Guyana Police Force, the Guyana Defence Force, the Guyana National Service, the Guyana People's Militia and those who were in command and superintendence of these agencies, to determine whether they were tasked with the surveillance of and the carrying out of actions,

and whether they did execute those tasks and carried out those actions against the Political Opposition, for the period 1st January, 1978 to 31st December, 1980;

(v) To examine, review and report on earlier investigations and enquiries done on and into the death of Dr. Walter Rodney.

#### The Legal Basis for the Commission of Inquiry

18. The *Commissions of Inquiry Act*, Chapter 19:03, of the Laws of Guyana provide the basis for the establishment of a Commission of Inquiry, its conduct and how it reports its reasons including findings and conclusion to the President.
19. The Commission has also created a Rules of Procedure that guided the conduct of the inquiry, the witnesses and parties.

## EVIDENCE AND ANALYSIS

### TOR # 1

PRESIDENT'S TERMS OF REFERENCE (a)	COI CHAIRMAN'S INTERPRETATION (b)
<i>"(i) To examine the facts and circumstances immediately prior, at the time of, and subsequent to the death of Dr. Walter Rodney in order to determine, as far as possible, who or what was responsible for the explosion resulting in the death of Dr. Walter Rodney."</i>	To focus, for example, on the crime situation in the country, the state of the economy, the political activities, the industrial relations environment, race relations, among other considerations and to determine against that backdrop of events and activities, who or what was responsible for the explosion which resulted in Dr. Rodney's death.

### Guyana June 1974 – June 1980

20. Guyana at the material time was a Cooperative Republic that had a President, Mr. Arthur Chung and Prime Minister, Forbes Burnham. The President was merely a figurehead.
21. GTUC submits that the following encapsulates the political, social and economic situation at the material time, each of which was referred to throughout the course of proceedings: :
  - EK5 Speech LFS Burnham at the Biennial Congress of the PNC 22-26, 1979
  - EK7 Sophia Declaration
  - EK8 "The Struggle Goes On" Walter Rodney Speech (20.7.1979)
  - EK9 "Pseudo Socialism" Eusi Kwayana Speech to UWI 1976 interpreting the Sophia Declaration
  - EK11 "Boiling Pot, What's in it?" Letter from Eusi Kwayana
  - NKG2 "Resistance & Change" Book by Nanda K. Gopaul
  - NKG9 letter Circular dated 10.5.1979
  - NRK3p "George K Danns: Domination & Power in Guyana"
22. Guyana's supreme law at the material time was the 1966 Constitution.
23. A referendum was held in 1979. A new constitution was brought into being in 1980.



## The Industrial Relations Climate in Guyana

24. The witness statement of Lincoln Lewis, submitted to the Commission on May 24, 2014, sets out Mr. Lewis' evidence on the Labour front. Unfortunately, he did not give viva voce evidence before the Commission due to being bumped to accommodate other Commission witnesses or unrealistic scheduling by the Commission's Secretariat.
25. The evidence of Nanda Gopaul, particularly the cross-examination by Basil Williams and Brian Clarke also contained useful information on what obtained at the material time in respect to the industrial relations climate. Further, Dr. Gopaul's *Resistance and Change: The Struggle of Guyanese workers in 1964-1994*, also provides some useful information albeit from the perspective of a trade unionist who was in opposition to the government of the day.
26. GTUC would submit that there is no doubt that the late 1970's presented economic challenges and that, along with the social-economic situation in Guyana, posed difficulties in the Labour Relations/ Industrial Relations context. There was an industrial crisis in Guyana during the relevant period, of limiting but important scope. There were allegations of government interference in job as well as scholarship selection which lead to career stagnation and/or loss of job prospects
27. Walter Rodney himself, as history would dictate, was a highly qualified and able man and claimed to have had difficulties finding a job commensurate to his qualification. Dr...Westmaas, in his viva voce evidence recited words from his article "Caribbean Studies":  
 Mr. Pilgrim: At page 116 of that article, you have a copy with you?  
 Dr. Westmaas: Yes.  
 Mr. Pilgrim: At what would be the second paragraph "It was in this context that Walter Rodney made his reappearance on the Guyana stage. Lewis, 1998, recounted the historian's application to the University of Guyana for a place of as Director of Caribbean Studies from Tanzania. Lewis cites the assistance of the registrar of 1972 response to Rodney famously terms Memo. No suitable vacancy in the Department of History for someone with your qualifications and experience. Your letter is on file and as soon as there is a suitable opening you will be given due consideration. The post, Director of Caribbean Studies, was offered to another candidate." I was just wondering if you had any specific knowledge, through your research and so on, who in fact this other candidate was and any of those circumstances, if you have any information about that other party who got that post.  
 Dr. Westmaas: There was talk of one Mohamed Insanally, but I am not sure if it refers to Mohamed Insanally because he was also denied post at the University of Guyana as An academic, but I am not sure if this refers to him. I cannot reconfigure the time line. I forgot the time line.

Mr. Chairman: Mr. Pilgrim, if I am hearing you correctly, this is the first time that I am learning that Rodney had applied for position other than that of Professor of History.

Mr. Pilgrim: I understand that he applied, well, for two different positions this is picked up in this reference here as well.

Transcript of Evidence, Monday 30<sup>th</sup> June 2014, page 81-82

### Paramountcy

28. Burnham's PNC and government were declared socialist, the PPP was declared a communist party and Walter Rodney was declared a Marxist. State control is central to all of these political ideologies with socialists considered as the most moderate. The three leaders had their unique strengths and weaknesses. They shared the same turf battling for the support, hearts and minds of every Guyanese. Burnham had the responsibility to govern and with it came greater obligations to protect rights, uphold laws, craft and execute a national development agenda to the benefit of all.
29. Dr. Gopaul presented an August 24, 1979, Guyana Chronicle photograph on the front page on that papers that showed the heads of the joint services at the 18th Biennial Congress of the PNC.
30. This indeed occurred and a very prescient analysis is contained in page 186 of David A. Granger, National Defence: A Brief History of the Guyana Defence Force 1965-2005. Georgetown, Guyana : Free Press:

### GTUC's Leadership

31. The GTUC has never been affiliated or aligned with any political party. Some of our affiliates supported the PNC and PPP. The PPP Constitution makes provision for and identified GAWU to have a relationship with the party. The union's Honourary president was Cheddi Jagan. The PNC constitution allows for affiliation of trades unions and religious organisation. The President General of the Guyana Labour Union was Forbes Burnham and on his death in 1985 Desmond Hoyte assumed the Presidency of the GLU and leadership of the PNC party.

Mr. Clarke: Dr. Gopaul, I would like to ask you about the Guyana Labour Union. President Burnham was the President General until his death, is that correct?

9:54hrs

Dr. Gopaul: Yes.

Mr. Clarke: Would you agree that both the PPP and the PNC attempted to exert influence over the election process?

Dr. Gopaul: Who ...

Mr. Clarke: Over the election of officers of the GTUC?

Dr. Gopaul: Both the PPP and the PNC?

Mr. Clarke: Yes.

Dr. Gopaul: I would not say the PPP exerted any influence in the elections of the Trade Unions, but I would say it clearly that the PNC played a major role in influencing the decisions of the elections of not only Trade Unions but at the national level trade union congress.

Mr. Clarke: What role is this?

*Transcript of Evidence of Nanda Gopaul, February 06, 2015, p.*

Mr. Williams: No, we do not know that, we have the TUC, you must bring a certified record from the TUC to show that. You said you went and checked so you should have the record.

Dr. Gopaul: I hope it is at the Registry, but I checked the records and to show that the membership it was at the TUC at that time Sir...

Mr. Williams: Dr. Gopaul, just answer my question that is what you suppose to do. Now, is it not true this whole issue in the TUC was that the PPP wanted to control the TUC?

Dr. Gopaul: That is not true.

Mr. Williams: They were fighting for control of the Guyana Trades Union Council.

Dr. Gopaul: That is not true. The PPP has never made an attempt to control the, the PPP has never been part of the TUC, it was GAWU. Dr. Jagan was a member of GAWU and was the honorary president of GAWU until his death.

*Transcript of Evidence of Nanda Gopaul, November 06, 2014, pp. 61*

Mr. Williams: Now, it transpired that NAACIE, GAWU, CCWU and I think the UGWU evolved into a group into the TUC that acted together.

12:44hrs

Dr. Gopaul: Yes that you would refer to as the big four.

Mr. Williams: And they acted together at all material times to vest control of the TUC, at many conferences, during that period?

Dr. Gopaul: It is not to vest control of the TUC. The four unions sought to bring some semblance of democracy at the level of the TUC, sought to prorogate the rights of workers which had been denied, sought to bring the TUC into a lively body because it was a mute organisation. It was not representing the cause of workers and that is what the four unions set out to do and we succeeded years after. We succeeded in 1984 in enlarging and sensitizing workers and eventually we were able to break that monopoly which a small group had on a mute body.

Mr. Williams: Now, of course you failed to get that control of the executive of the TUC?

Dr. Gopaul: We never wanted control. We wanted reform in the TUC. We never wanted control at any time.

Mr. Williams: No but you were never able to get that control?

Dr. Gopaul: We...

Mr. Williams: Your members could not get into the presidency. They could not get into the...

Dr. Gopaul: We eventually won most of the positions we nominated persons for in 1984. We brought respectability to the TUC in 1984 and we were able to get for the first time in the history of the TUC a representative body.

Mr. Williams: We are at 1980.

Dr. Gopaul: We did that over a period of time.

*Transcript of Evidence of Nanda Gopaul, November 06, 2014, pp. 62-63*

### Intersection of Politics and Trade Unions

32. The PPP's influence was in the entire sugar belt and their unions - The Guyana Agricultural and General Workers Union (GAWU) and the National Association of Clerical Commercial and Industrial Employees (NAACIE) - which represented the largest single workforce group; whereas the PNC was heavily supported by the Guyana Labour Union (GLU) and other unions in the public sector.
33. The Guyana Public Service Union (GPSU), the Guyana Mines Workers Union (GMWU) and Guyana Bauxite and General Workers (GBGW) were never affiliated to any political party. Though persons in their leadership have been known to support the PNC. A number of the leaders in the WPA were in the leadership of the University of Guyana Workers Union (UGWU) but the union was never affiliated to the WPA.

### Wage Negotiations and Agreement

34. The 1977 Wage Agreement between the Government of Guyana and the Trades Union Congress was negotiated by the leadership of the TUC, inclusive of NAACIE.
35. The bauxite unions- GMWU (Guyana Mine Workers Union), GBSU (Guyana Bauxite Supervisor Union) - did not oppose the negotiated increase in 1977 at the TUC September Conference.
36. Dr. Gopaul's evidence in respect to NACCIE's opposition and in respect to the Bauxite Unions was faulty:

Mr. Williams: From under that umbrella. Now, centralised bargaining was a decision of the Guyana TUC.

Mr. Gopaul: No, it was not a decision of the Guyana TUC. The congress took a decision for the executive to negotiate on minimum wage with the Government. That is, to establish a minimum wage. What the TUC did was, in fact, was signed an agreement which ended up bringing an end to collective bargaining by individual unions.

Mr. Williams: Alright, you said that before. What I am asking you... the Congress, you mean the GTUC Congress? When you said the Congress took a decision?

Mr. Gopaul: The conference of the TUC.

Mr. Williams: The conference. And all affiliates would have participated in that conference?

Mr. Gopaul: Yes, it was.

Mr. Williams: So, it was a decision of the TUC.

Mrs. Samuels-Brown: What particular decision?

Mr. Williams: That they bargain centrally.

Mr. Gopaul: Not that they bargain centrally. That was not the decision. We criticised the TUC for going beyond the decision.

Mr. Williams: But that...

Mr. Gopaul: NAACI did.

Mr. Williams: No, but that is the point. We are not talking about going beyond the decision. You empowered the TUC to centrally negotiate a minimum wage.

Mr. Gopaul: A national minimum wage.

Mr. Williams: Yes, in other words, individual unions got together within the TUC, and said "Look, this umbrella body would negotiate the issue of a minimum wage of the workers in Guyana". Is that not so?

Mr. Gopaul: Yes, that is a minimum wage, but not the agreement in the format which they did.

*Transcript of Evidence of Nanda Gopaul, November 06, 2014, pp. 50-51.*

### The Wage Freeze

37. In 1979 when the Wage Freeze was announced by the Government of Guyana, the bauxite unions challenged the decision:

Mr. Williams: I do not know if you would have been aware of this Circular; this Guyana State Cooperation, which we call GuyStac Circular; number 25 of 1979. From secretary acting GuyStac to the Executive Chairman, General Managers, Managing Directors. Subject: Wage Freeze. Are you aware of that?

Mr. Gopaul: Could I see the Circular?

[Court Marshall handed the Circular to the Witness]

Mr. Williams: Mr. Pieters, has this been circulated to the Commissioners?

Mr. Gopaul: Yes, this is 1979.

Mr. Williams: Yes.

Mr. Gopaul: A similar circular was sent to GuySuCo resulting in the withdrawal of the increment that resulted in the Teemal case being filed. Yes, I am aware of that.

Mr. Williams: You are aware of that wage freeze?

Mr. Gopaul: That Circular, which invoked a wage freeze literally, and revert wages to December, 1978.

*Transcript of Evidence of Nanda Gopaul, November 06, 2014, p. 52.*

Mr. Williams: Yes, he is now saying that. He has accepted that. Could I respectfully tender that too?

Mr. Gopaul: I also explained, Sir, that it was a similar document that went to GuySuCo that resulted in Teemal and others' increment being withdrawn that resulted with the Teemal case being filed.

Mr. Williams: The wage freeze document dated 10th May, 1979....

Mr. Chairman: And as I understand it, which lasted till 83. That wage freeze was 79 to 83?

Mr. Gopaul: That is right.

Mrs. Samuels-Brown: I think what you are trying to indicate further, is that despite the Government having issued this, the union took issue with it and that is why you went to Court.

Mr. Gopaul: That is right. This document was violative of the contractual rights of workers.

Mrs. Samuels-Brown: And so....

Mr. Gopaul: And resulted in, 1 -the 1977/1979 wage agreement not being implemented; 2 -Increments being withdrawn which were paid, withdrawn, and resulted in the Teemal and others going to Court.

Mr. Williams: You are saying the increment -and this is on the GuySuCo side?

Mr. Gopaul: This is GuyStac too. GuyStac is saying here that they must revert to 1978, December 31st salary.

Mr. Williams: And they must return the increments paid. Is that what you are saying?

Mr. Gopaul: Whatever was paid in 1979.

Mr. Williams: Must be returned?

Mr. Gopaul: Must be returned. Well, must be revoked. It says...

Mr. Ram: I think if you read the first paragraph...

Mr. Williams: It is alright. I got it.

Mr. Gopaul: He said, "However, in those cases where persons have already received increments for 1979, they will be permitted to retain the sum already received in good faith, but as from 01st May, 1979, they should revert to the salary they were in receipt of at December 31st..."

Mr. Williams: But that is a very clear statement. That is, if they had already received the increments, they were to keep them?

Mr. Gopaul: Up to June.

Mr. Williams: No, man...

Mr. Gopaul: Up to May! This is what it is saying.

Mr. Williams: I thought you said they had to return them.

12:29hrs

Dr. Gopaul: It is saying they should revert to the salary they were in receipt of at 31st December, 1978.

...

Mr. Williams: Yes, but if they had not receive any for the further period, they would not receive it, but they would in fact revert to their original position.

Dr. Gopaul: No, this Circular is dated 10th May by which time, 1979, workers would have gotten their increments 1st January, 1979. They got their increments. By the 10th May, the decision was taken by the Government to invoke a wage freeze and therefore they said, "Look we will not introduce the

1979 agreement and secondly all those workers who had their increments paid, they keep January to May but their salary must be cut". The position it was as at 31st December, 1978. It was that cut in salary that deprivation of increments that resulted in the Teemal case.

Mr. Williams: Okay, we just wanted to make clear that all those who were already paid were allowed to remain, retain them.

Dr. Gopaul: The salary, the increments up to May and their rightful salary which is inclusive of the increments up to May 1979.

Mr. Williams: And did not have to return them?

Dr. Gopaul: They cut the salary thereafter

*Transcript of Evidence of Nanda Gopaul, November 06, 2014, p. 54 -55.*

### Court Ruling on Centralized Collective Bargaining

38. *Guyana Sugar Corporation v Seeram Teemal* (1983) 35 WIR 239 challenged the wage freeze imposed by the agreement between GTUC and the Government. In that case Massiah JA quoted from *Durga Persaud v Toolsie Persaud Ltd* (unreported) where Persaud JA stated: "To vary a contract, or to enter into a new contract there must be agreement on both sides, or as it has been described, consensus ad idem." In any event, centralised collective bargaining with the GTUC and government was deemed illegal by the Appeal Court. This decision was respected by the GTUC and PNC government. Collective Bargaining was returned to the unions.

39. We respectfully submit that Dr. Gopaul was mistaken when he testified that there was a denial of union rights and complete breakdown of the collective bargaining process.

### Strike Action

40. The 1979 strike was started by the bauxite unions, GMWU and GBSU, not by NAACIE, GAWU, UGWU or CCWU.

41. When the Wage Freeze was announced on 1st May 1979, by the 21st May bauxite workers were on strike. This strike lasted 5 weeks, challenging the Wage Freeze decision. Terms of Resumption were agreed upon by the company, which was stated-owned, and the bauxite unions. Bauxite workers, through this strike, were able to acquire their wage increments based on a merit system.

42. There were also strikes in the sugar industry:

Mr. Williams: The 1979 strike was the Bauxite strike. The 1977 that we are talking about was the ...

Dr. Gopaul: ... sugar strike, that is right.

Mr. Williams: So that is what I am saying, you are very modeled in how you dealt with the ... in fact, I am not even sure if the Commissioners knew you were referring to two separate strikes.

Dr. Gopaul: No, no, no. I did mention ...

Mr. Williams: Quite in fact think in one strike.

Dr. Gopaul: The 1979 strike, a strike involving Bauxite workers, NAACIE members, sugar workers ...

*Transcript of Evidence of Nanda Gopaul, November 06, 2014, p. 92.*

Dr. Gopaul: They had \$14 a day issue.

Mr. Williams: But they took the opportunity to only strike after the bauxite industry struck?

Dr. Gopaul: Trade Unions utilise their tactics and the effectiveness of industrial action when it is strategically wise to do so.

Mr. Williams: Dr. Gopaul...

Dr. Gopaul: When the four Unions coordinated their action, they coordinated their actions immediately after the failure to pay the \$14 and then to add insult to injury you withdraw the increments which had already been earned which was part of their contract of service and therefore you would expect strikes. I am amazed that we did not have the entire country down as a result of that violation.

Mr. Williams: So you are saying your strikes were not coordinated to support the bauxite strike?

Dr. Gopaul: The strikes were coordinated but the leadership of the Unions. It was coordinated.

Mr. Williams: And therefore the Government of the day would have been confronted by several unions calling strikes all over the country?

Dr. Gopaul: The country should have been shut down.

Mr. Williams: Well okay the country should have been shut down. We hear you. In spite of all that you are saying the Government must fold its hand like a timorous soul and do nothing because you are striking. Is that what you are saying?

Dr. Gopaul: Well if the Government wants to be big and bad and high and mighty and to deal with every strike as they want to and as they did, they beat the workers into submission from time to time... The consequences sometimes would be that people take note of it and at election time when they have a chance, they deal with them. Governments that fail to regard the right of workers will face the consequences of workers' action.

*Transcript of Evidence of Nanda Gopaul, November 06, 2014, pp. 115-116*

Ms. Rahamat: Yes, that is the booklet by Eusi Kwayana and it is tagged EK 12. [Court Marshal handed a copy of the book to the Witness]

Mr. Williams: Page 32, you have the caption Bauxite Workers Action and under that caption at page 34, the third paragraph, you see Mr. Kwayana saying, "The Kwakwani strike soon became a general strike in the Bauxite Industry sanctioned by the Union." I do not know if you are with me, Commissioners and



Witness.

Mr. Chairman: We are following you, yes.

Mr. Williams: Dr. Gopaul, do you have that? Page 34.

Dr. Gopaul: Sure, yes, "The Kwakwani strike soon became a general strike..."

Mr. Williams: If you could come overleaf at the top at 35, "The official bauxite strike led by persons among whom were members of the ruling party on a narrow question of increments, caused the PNC such extreme discomfort that it did not deem the strike political. However, when other unions called the solidarity strike after the bauxite issue remained unsettled for weeks, the regime deemed the whole movement political and "designed to bring down the Government." So, you see, he is saying the same thing like Dr. Rupert Roopnarine but this is what I want to put to you now in the next paragraph, the first sentence, "The entire movement collapsed because of the frailness of many of the institutions of Guyana, which have a certain image in public..." and he went on. He is saying to you, after your four Unions went in with the bauxite workers strike it was deemed political and he is saying too, like Dr. Rupert Roopnarine, that the whole movement collapsed.

Dr. Gopaul: Well, they are putting a perspective on it based on their viewpoint. As Trade Unionists, we are putting a different perspective. When strikes reach a certain stage that you cannot see immediate results, leaders take – trade union leaders, that is – action to preserve the integrity of the movement. With respect to the 1979 strike, because of what we saw as repressive actions, we took the decision to stagger the calling off of the strike at the strategic locations and we knew what we had to do to advance the cause of the workers. It was NAACIE that took the action to court thereafter...

Mr. Williams: Alright, we are not ... do not...

Dr. Gopaul: No, their perspective...

Mr. Williams: Let me further read on page 35, the penultimate paragraph.

Dr. Gopaul: Yes.

[Laughter]

Mr. Williams: The expert is probably even ahead of me. It reads, "Thus it was on the motion that the Bauxite Union whose interest solidarity had been expressed, the strike collapsed."

Dr. Gopaul: That is their perspective.

Mr. Williams: Sir, you know, this man worked in your Union.

Dr. Gopaul: Yes, but that is their perspective.

Mr. Williams: You praised him up so much.

Dr. Gopaul: A temporary end of a strike....

*Transcript of Evidence of Nanda Gopaul, November 07, 2014, pp. 8-9*

### Tear gas

43. The issue of bauxite workers being tear-gassed had no relation to the 1977 Wage Agreement nor the 1979 Wage Freeze. It arose through the storming of the Shopping Complex and breaking down of the door (this happened in 1978) by workers in Linden.

44. It was an agreed position by the TUC, as an organisation, to engage in centralised collective bargaining with the Government of Guyana. Noteworthy is the fact that Centralised Bargaining was an element of the socialist philosophy embraced by the government, the opposition and the trade union movement.

#### Foreign Impact - foodstuff

45. Certain imported foods considered as non-essentials or easily substituted were restricted as a matter of state policy. Restricted items affected all Guyanese in similar ways (flour was used for roti , bread, bakes and dhal puri , Irish potatoes in curry and stews, split peas in dhal , soup and cook-up). These restrictions were assumed to be aimed at stirring up strong racial sentiments and political animosity. This certainly manifested itself in the following dialogue below:

Mr. Jairam: If I may understand the tenant of your testimony is that these shortages were artificial and being used as an instrument of domination or oppression or whatever it was.

Dr. Gopaul: It was a fact that they did not had the foreign currency, the economy was virtually bankrupt but too because the Government did not allow for free importation by individuals, but by themselves and they had distribution outlet that makes it a weapon because they were controlling it. They created what was known as the Knowledge Sharing Institute (KSI) and they had party activists managing these institutions along with the Guyana Marketing Corporation. So if you wanted essential food items you had to go to these places and if you were not a supporter,, as we Guyanese say, “cat eat your dinner”.

*Transcript of Evidence of Nanda Gopaul, November 05, 2014, pp. 70*

Mr. Jairam: May I ask you this question? I am a Hindu and I know a significant part of this population in Guyana is Hindu and I grow up knowing that yellow split peas what we call “dhal” and Irish potato which we call “aloo” are significant in the Hindu culture. How did that... are you a Hindu?

Dr. Gopaul: Yes, I am.

Mr. Jairam: How did that impact the Hindus? Just limit your answer to 1978 to 1980, sorry, and flour of course? With the flour you make mettai, jellabi, roti many other things, puri, dhal puri and so on.

Dr. Gopaul: In fact, flour did not only affect Hindus. Agricultural workers working in the field never used to take rice for lunch, they will take the roti because roti can withstand longer period before it is spoiled and so very often, roti was the food or the staple that they would take with some form of curry in the field, in the agricultural field and so they had to moved away absolutely to rice by which time in a few hours, rice would spoil, get sour and so very often even agriculture workers could not work beyond certain a time because they

could not sustain themselves with the kind of food that was available. So flour, the banning of flour at that point in time and the banning of channa what we called chick peas and split peas, affected every Guyanese, but more particularly, it affected Hindus and Muslims because they used that in their religious functions and so, some of these things were brought in through the back track route from Suriname and people had to pay substantially higher prices secretly obtaining them because if they find them, they would charge them, even household, having it in your household.

Mrs. Samuels-Brown: I need to understand something because I think you stated in response to Commissioner Jairam that some of the shortages were created domestically in the sense that there were international factors OPEC, oil prices and so on, foreign exchange shortages in the country so are you putting the blame for this at the then Prime Minister/President?

Dr. Gopaul: Oh sure, absolutely.

Mrs. Samuels-Brown: Tell us how?

Dr. Gopaul: Complete mismanagement of the economy, complete lack of accountability, there was absolute no Audit Report in the country for almost a decade. There was no way of people knowing how their money was being spent. The foreign exchange that was earned from sugar did not go back into sugar. There was a heavy spending on militarisation on the purchase of arms and ammunitions in the country and weapons instead of concentrating on foods.

*Transcript of Evidence of Nanda Gopaul, November 05, 2014, pp. 71-72*

46. GTUC's counsel in cross-examination explored this issue further:

Mr. Clarke: Thank you. Dr. Gopaul, I would like to ask you about some information you gave in your evidence-in-chief with regards to ban on imports into Guyana between 1978 to 1980.

Dr. Gopaul: Yes.

Mr. Clarke: You spoke specifically to flour, is that correct?

Dr. Gopaul: Yes.

....

Mr. Clarke: The ban on foreign imports, Dr. Gopaul, between 1970 and 1980, that is the area I want us to focus on at the moment.

Dr. Gopaul: Yes.

Mr. Clarke: You mentioned that this had an effect on Guyana and on Guyanese in general, is that correct?

Dr. Gopaul: Yes, it did.

Mr. Clarke: Would you say that the ban on flour had more of an effect on Christians or Hindus?

Dr. Gopaul: It had an effect on every Guyanese.

Mr. Clarke: The fact remains that the ban on flour definitely had an effect on all Guyanese across the board but to the extent that ... the answer that you gave in your examination-in-chief, you would agree that it could cause and stir up racial sentiments.

Dr. Gopaul: Pardon me?

Mr. Clarke: Would you agree that that could raise and stir up racial sentiments?  
The answer that you gave in your examination-in-chief.

...Mr. Chairman: ... in substance to what he had testified earlier?

...

Dr. Gopaul: I could offer an explanation. What I did say in giving evidence and in responding to the banning of flour, I said while it affected Guyanese, in particular, religious activities of Hindus and Muslims ...

#### WPA's Influence on the workforce

47. The Special Branch surveillance reports indicate that WPA activists were monitored in the workplace and some activists in positions of influence in the party who held positions of power in the workplace, were summarily fired.
48. The Special Branch reports indicate that the WPA had a role to play in some prolonged strikes particularly in the bauxite sector.
49. It is important to note that Donald Rodney, the younger brother of Dr. Rodney, held an important position as a Quality Surveyor. He was given access to the Prime Minister's Residence to inspect his swimming pool, as well as worked with other functionaries. He held his job until June 13, 1980 without any retaliation based on his brother's political activism:

Mr. Pieters: Thank you. I am now going to deal with your employment and you would agree that prior to 13th June, 1980, you did not attract any negative attention from the Government of Guyana or the security forces?

Mr. Rodney: Not that I am aware of.

...

Mr. Pieters: ... Between 1978 and 12th June, 1980, you were employed in the capacity of a Senior Quality officer with the Government?

Mr. Rodney: Yes Sir.

Mr. Pieters: All I ask you is, you suffered no negative consequences including termination as a result of your brother's political activities? You suffered no retaliations from the Government or your employer?

Mr. Rodney: Well I was dismissed.

Mr. Pieters: And you were dismissed after the events that occurred on 13th June, 1980, correct?

Mr. Rodney: Yes Sir.

Mr. Pieters: Right, and prior to, my question stopped at 12th June, 1980. You had no negative employment consequences prior to the explosion?

Mr. Rodney: Not that I am aware of.

Mrs. Samuels-Brown: Could we find out when he was dismissed please?

Mr. Pieters: Yes Madam Commissioner. The Commissioner just asked when you were dismissed, can you advise us?

Mr. Rodney: I effectively was interdicted, that is the word I was looking for. I effectively was interdicted from my job on 13th June, 1980 and my termination

was effective February 1982 following the date of my conviction.

...

Mr. Chairman: Getting back to the questions being asked by Mr. Pieters, one and two answers you gave earlier. So would you attribute your termination in the Government...did they tell you why they terminated you though?

Mr. Rodney: Okay, I was interdicted because I was charged and I was terminated I was found guilty.

Mr. Chairman: Was it normal at that time for people who were found guilty for what was that a misdemeanor? Mr. Pieters, was that then a misdemeanor or...

Mr. Pieters: Mr. Chairman, it is likely that he would have lost his employment in the circumstances of his conviction.

Mrs. Samuels-Brown: Mr. Pieters, I think the Chairman is asking you if it was a misdemeanor. Are you familiar with the processes and the civil service rules here in Guyana at the time?

Mr. Pieters: I have some familiarity with how public servants are treated in these circumstances. I think I read a 1960 or 1962 case, [*Abrams v The Members of the Governing Body of Anglican Schools* (1960), 2 WIR 187] and so the public service does have a structure if you are convicted of a crime. It could even be a simple crime, you can lose your employment.

Mr. Chairman: What was the Abrams case, what was he convicted of?

Mr. Pieters: He was convicted of disseminating political materials that was considered subversive.

### Conclusion of TOR #1

50. The atmosphere between 1978 -1980 was challenging and at boiling point. In our submissions there is a link between rising attempts at causing civil unrest as a result of labour relations, inter alia,, and an explosion of some sort, with Dr. Rodney being at the center of both events. The "civil rebellion", industrial actions of 1977 and 1979, the political rhetoric and the increased militancy of the WPA all made political violence inevitable.

## TOR # 2

PRESIDENT'S TERMS OF REFERENCE (a)	COI CHAIRMAN'S INTERPRETATION (b)
<i>(ii) To enquire into the cause of the explosion in which Dr. Walter Rodney died, whether it was an act of terrorism, and if so, who were the perpetrators?</i>	To investigate the cause of the explosion and to establish whether it was an accident or an act of terrorism and, if the latter, who were the perpetrators. I pause to indicate that the expression 'terrorism' admits of several meanings and the Commission will have to determine the specific meaning which it wears in the context of our Terms of Reference.

The evening of June 13, 1980

51. Donald Rodney provided evidence on the evening in question including what he said was him being conscripted to accompany Dr. Rodney to Gregory Smith's home as a Driver or wheelman. He testified that he acted on a need to know basis and did not ask questions about the device he picked up for Dr. Rodney nor did he ask questions of Gregory Smith:

Mr. Scotland: Thank you, Mr. Chairman. I want you to tell me what was your understanding, what did you understand of Dr. Walter Rodney's understanding that you had collected from Smith on that night?

Mr. Rodney: I started answering ...

Mr. Scotland: Yes, I know.

Mr. Rodney: ... in relation to what was my understanding ...

Mr. Scotland: Yes.

Mr. Rodney: ... I was sent to collect a walkie-talkie unit and I was given this unit as a walkie-talkie unit. I believed it was a walkie-talkie unit. It consisted of a circuit so that I could describe it other than being a circuit, but I believed it was a walkie-talkie unit.

*Transcript of Evidence of Donald Rodney January 30, 2015, p. 60*

Mr. Scotland: And, how did you come to be about his home early in the afternoon?

Mr. Rodney: I stopped by, on my way home from work.

Mr. Scotland: And, when you stopped by approximately –if you can recall- what time did you stop by earlier on?

Mr. Rodney: It was some time before 5 O'clock.

Mr. Chairman: I think there is actually a time here is actually a time here, 4:30.

That is correct; go ahead.

Mr. Scotland: 4:30. And, when you stopped by, what, if anything, did you and Walter discuss that led you to pick him up at 7:30?

Mr. Rodney: Walter said he was going to collect, or test –I am not sure which now...

Mr. Scotland: Yes.

Mr. Rodney: ...the unit from Gregory Smith.

Mr. Scotland: When you say the “unit” what do you mean?

Mr. Rodney: The walkie-talkie unit...

Mr. Scotland: Yes.

Mr. Rodney: ...from Gregory Smith.

*Transcript of Evidence of Donald Rodney January 30, 2015, p. 82*

Mr. Pieters: You cannot think so. You either have it or you do not. Would you agree that, to the extent that the hierarchy of the WPA had no knowledge of the interactions or contacts between Dr. Rodney and William Smith, that Dr. Rodney kept his relationship and the name of the supplier of walkie-talkies a secret that was revealed only to those who needed to know and that is you?

Mr. Rodney: At the time I would not have been aware of that and I remember at the time when I gave the statement to the Working People’s Alliance, in June 1980, that was for the purpose of letting the Working People’s Alliance know everything that I knew about Gregory Smith so that they could fit it into whatever they knew, but at the time I was not aware that I might have been the only person.

Mr. Chairman: You are saying that, subsequent to the death of your brother, you revealed all that you knew about Gregory to the WPA?

Mr. Rodney: When I gave the statement dated 17th June...

Mr. Pieters: Now, you had given evidence on 30th January, and I am going to look at page 82 of that transcript.

Mrs. Samuels-Brown: Could you repeat, Mr. Pieters, page 82?

Mr. Pieters: Yes 82 of the transcript of 30th January, 2015.

Mrs. Samuels-Brown: Thank you.

Mr. Rodney: I have page 82.

Mr. Pieters: Well just turn over to page 81, towards the bottom.

Mr. Rodney: Yes.

Mr. Pieters: You were giving evidence with respect to an arrangement to pick up Dr. Rodney?

Mr. Rodney: That is right.

Mr. Pieters: You were asked how this arrangement came about?

Mr. Rodney: Yes.

Mr. Pieters: You testified that you were on your way home from work and that you stopped by and it was at that time on that that specific date that Dr. Rodney tasked you with dropping him off to where Gregory Smith resided?

Mr. Rodney: That is correct.

Mr. Pieters: So let me ask you this, did you understand your role on that particular day as a wheelman?

Mr. Chairman: As what?

Mr. Pieters: As the driver or chauffeur for Dr. Rodney?

Mr. Rodney: Did you use a word before “driver” and “chauffeur”?

Mr. Pieters: Well I used the word “wheelman”...

Mr. Rodney: Okay.

Mr. Pieters: ...but it is not a term understood here...

Mr. Rodney: Okay.

Mr. Pieters: ...so I changed it to chauffeur or driver.

Mr. Rodney: Well that is the role that I turned out to be in. At the time, when I stopped I felt that I was still a go-between, which could be different in particular circumstances to a driver or chauffeur but the role turned out to be a driver or chauffeur

Mr. Pieters: Right because on that particular date, you simply stopped by to see what task if any Dr. Rodney would have had for you. This was on your way home from work. This was not a preplanned arrangement as I understood your evidence?

Mr. Rodney: That is correct. It was not preplanned.

Mr. Pieters: So I am going to suggest to you that given the fact that it was not preplanned that Dr. Rodney may not have alerted Gregory Smith that you would have been coming along when they met on that evening?

Mr. Rodney: I agree with you.

Mr. Pieters: That may have accounted for Gregory Smith surprise when he saw you?

Mr. Rodney: I agree with you.

Mr. Pieters: I would also suggest to you that Gregory Smith would have trusted you to hand over the placebo. You believe it was a walkie-talkie. It was a placebo or an explosive device. He would have trusted you to hand over that device to you as he did?

Mr. Chairman: Is that not inviting him to speculate? Try your best to...

Mr. Pieters: Well I am going to take the long road to get back here then. You recall that you were asked questions with respect to the reliability of Gregory Smith?

09:54hrs

Mr. Rodney: I recall that I gave evidence of Walter saying that Gregory Smith was not reliable.

Mr. Pieters: Right and did you provide any opinion or advice to Dr. Rodney in respect to how to deal with Gregory Smith’s unreliability?

Mr. Rodney: At the time... I would say “no”, and at the time the circumstances did not allow because it was the very day of 13th June.

Mr. Chairman: My understanding, Mr. Pieters, is that Walter’s remark that Gregory Smith was unreliable related to his unpunctuality. You know he would tell 08:00hrs and perhaps come at 09:15hrs, that sort of thing. It was unreliability in a particular context, on punctuality.

Mr. Pieters: Very well, Mr. Chairman and...

Mr. Chairman: I think that is the evidence.

*Transcript of Evidence of Donald Rodney February 20, 2015, p.*

.....

Mr. Pieters: Yes, Madame Commissioner. I am going to make this suggestion to



you, Mr. Rodney; I am going to suggest that if Gregory Smith did not trust you, he would have simply provided a convenient excuse for the material not being available on that day.

Mr. Chairman: Are you sure that he can answer that. You are asking him to get into Mr. Smith's mind and so on. I do not know that is... Anyhow, you get ahead.

Mr. Rodney: I do not know whether or not Gregory Smith trusted me, really, I do not know. I did know at the time, I have no idea now.

Mr. Pieters: I am going to suggest that over the six to seven meetings that you had with him that you developed a relationship with him.

Mr. Rodney: To the extent of course that I have described here already, the number of times and, of course, what the interaction was.

Mr. Pieters: You would not have accepted that package from him had you not trusted him?

Mr. Rodney: I was relying on the directions or instructions rather that I got from Walter that the walkie-talkie would have been ready at that time or...

*Transcript of Evidence of Donald Rodney* February 20, 2015, p.

52. Donald Rodney described what he received in this manner:

Mr. Scotland: And what did he do, if anything, relative to it. Did he give you anything? What happened?

Mr. Rodney: Well after that he did in fact come forward with a package. The package consisted of a wooden box inside of a paper bag. I could see; one could see, if they had the opportunity, that the wooden box protruded above the paper bag. That is why I called it a package. The paper bag with a wooden box in it where one can see the wooden box protruding outside the paper bag.

Mr. Scotland: He having given you this wooden box in the paper bag, what did you do?

Mr. Rodney: At that stage as part of giving it to me, he indicated that there was a switch and I believe that switch is on the right hand side...

*Transcript of Evidence of Donald Rodney* January 30, 2015, p. 88

53. He provided evidence on the travel route including stops along the way.

54. Donald Rodney provided evidence that he claimed to have received instructions from Gregory Smith. It is unclear why such instructions would have been provided to Donald Rodney and not directly to Walter Rodney who was also at Gregory Smith's residence, albeit in Donald's motor vehicle.

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55. Any discussion of this term of reference requires definition of the terms associated with terrorism including: defining a) "Terrorist activity"; b) "Terrorist group c) "Facilitation".

56. In the Guyana context, resort could be had to the *National Security Act* and

Standing Order 50. Resort could also be had to The International Convention for the Suppression of Terrorist Bombings, 12 January 1998, 37 I.L.M. 249, U.N. Doc. A/RES/52/164 [“Convention on Terrorist Bombings”]. Article 2(1)(b) defines “terrorism” as:

Any . . . act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

57. While the Improvised Explosive Device that killed Dr. Rodney was provided to him by Mr. William Gregory Smith and a relationship existed between Dr. Rodney and Mr. Smith, it is unclear whether Dr. Rodney died as a result of a terroristic act on the part of Gregory Smith or alternatively whether he died as a result of his misadventure and/or failure to comply with directions from Gregory Smith.

#### How did the device explode?

58. To the extent that the crudely constructed device exploded and killed Dr. Rodney, it is unclear, on the evidence before the Commission, whether the device was remotely triggered or whether it was triggered by Dr. Rodney fiddling with it as he looked for the “red light” or whether it was accidentally triggered by an unconnected electronic device in the vicinity.
59. Dr Skuse Forensic Report concluded however that: “the absence of injury to the hands, suggest that the hand or hands of Dr. Rodney were not operating controls or preparing the device, at the time of the explosion and my view is that the deceased had an armed device using TNT on his knee or lap which was detonated by receiving an external radio signal at the appropriate frequency.”

#### Analysis and Conclusions

60. Credibility relates to the witness’s honesty and sincerity, while reliability encompasses the accuracy and fallibility of the evidence.
61. The following factors assist in the assessment of credibility and reliability of a witness evidence:
- the internal consistency or inconsistency of evidence;
  - the witness’s ability and/or capacity to apprehend and recollect;
  - the witness’s opportunity and/or inclination to tailor evidence;
  - the witness’s opportunity and/or inclination to embellish evidence;
  - the existence of corroborative and/or confirmatory evidence;
  - the motives of the witnesses and/or their relationship with the parties;

- the failure to call or produce material evidence.

62. Donald Rodney's evidence included his oral evidence and the following documents:
  - a. Donald Rodney Witness Statement – DR1 Statement of Donald Rodney Distributed by Miles Fitzpatrick June 17, 1980
  - b. Statement of Donald Rodney - typewritten
  - c. Donald Rodney Proceeding Record, Magistrate's Court
  - d. WPA Press Release June 14, 1980
  - e. Donald Rodney Court Appearance June 25, 1980
63. It is our respectful submissions that Mr. Donald Rodney's written evidence, witness statement, examination in Chief and cross-examination were internally inconsistent in many respects, as set out in these submissions.
64. In respect to Dr. Rodney, it is our submissions that he was a risk taker. It is also clear that Dr. Rodney and his younger brother Donald kept their relationship with Gregory Smith a secret and information was traded on a strict need to know basis. The evidence, in our respectful submissions, indicates that the trio acted in a secretive and clandestine way and took the posture of a security nuclei whose purpose was to procure and use explosive devices or improvised explosive devices (IED's) disguised as walkie – talkies.
65. The GTUC submits that Donald Rodney's actions, based on the cumulative force of the evidence and his testimony, could be construed as conscious avoidance. In other words, Donald Rodney was willfully blind, as he stated that he operated on a need to know basis.
66. Had Dr. Rodney been killed by an identifiable act of terrorism, more so one perpetuated by the state, it would have represented a serious stain on Guyana's reputation. No factual record exists however to support such a proposition and we submit that no such finding can be made. No evidence was presented that linked the Burnham government to Dr. Rodney's killing.
67. Whilst Sergeant Gregory Smith was purportedly serving in the Guyana Defence Force at the material time, though it appears that he was absent without leave, there is little to no evidence that the GDF was a party to the interactions between Dr. Rodney and Mr. Smith; no evidence exist that the GDF was in anyway involved in the construction of the device that killed Dr. Rodney and no evidence that the GDF was involved directly or indirectly in triggering the device that killed Dr. Rodney.
68. There are numerous witnesses, one such being Clement Rohee who was not in

Guyana at the material time, who provided double and triple hearsay evidence. No weight, in our submissions, can be attached to the evidence and thus these submissions will go no further in addressing such testimony of little to no evidentiary value.

69. Rohit Khanai testified as an expert on the device that killed Dr. Rodney. However, his evidence cannot be accorded much weight.
70. Donald Rodney, the brother of Dr. Walter Rodney, provided evidence, however, it is our submissions that he did not come clean on what exactly took place that led to his brother's death. His evidence was that he was provided information on a need to know basis; that he did not know the device was explosive and that he thought it was a walkie talkie.
71. Donald Rodney, after the explosion occurred, left the scene and ran to the home of Dr. Omawale. That he was able to run after an explosion that killed his brother suggest that whilst he was in the vicinity of the explosion, it is very likely that he was not in the vehicle at the time the "terrible accident" occurred.
72. Donald Rodney has not produced any medical records either from his primary care doctor or the institution to which he was later admitted, however, even accepting his evidence concerning his injuries, none of which suggested that he was in the vehicle.
73. Donald Rodney did not testify that he was covered in the tissue of his brother Walter which would have been the case. Nor was he covered in the fragments and/or residue of the explosive device that blew the top of the vehicle off.
74. In conclusion, therefore, it is GTUC's position that the Commission does not have conclusive evidence to pronounce on the cause of the explosion in which Dr. Walter Rodney died, whether it was an act of terrorism, and if so, who were the perpetrators.

## TOR # 3

PRESIDENT'S TERMS OF REFERENCE (a)	COI CHAIRMAN'S INTERPRETATION (b)
<i>(iii) To specifically examine the role, if any, which the late Gregory Smith, Sergeant of the Guyana Defence Force, played in the death of Dr. Walter Rodney and if so, to inquire into who may have counseled, procured, aided and or abetted him to do so, including facilitating his departure from Guyana after Dr. Walter Rodney's death'.</i>	To inquire into the role, if any, which the late Gregory Smith, a Sergeant in the Guyana Defence Force, played in Rodney's death. Assuming a finding of Smith having played a role, the Commission is further required to identify who may have counseled, encouraged and supported Smith in doing as he did. A specific inquiry must be made, too, into who, singular or plural, or which agency or agencies facilitated Smith's departure from Guyana, immediately after Rodney's death

William Smith's Identity

75. William Smith was a member of the Guyana Defence Force. It appears that he was so employed from 1975 – June 1980: See, PW2, Guyana Defence Force Alphabetical Register 12 Q-S; PW3 Guyana Defence Force Male Numbering Ledger; PW4 29-Jul-14 Guyana Defence Force Payroll Ledger 1975, 76,77,79,80.
76. William Smith's identity was established by the GDF by use of his birth certificate and *William Smith* is the identity by which Gregory Smith was known in the GDF:

Lt. Col Kyte: Good Afternoon Mr. Pieters.

Mr. Pieters: I am Selwyn Pieters I am representing the Guyana Trades Union Congress and I have a few questions for you. Strictly on the basis of some questions that were asked of your colleague yesterday as well. You can confirm or deny this, let me ask it to you in a general way, when a person joins the Guyana Defense Force, how is their identity established?

Lt. Col Kyte: If I am to relate to when I join, identity is established by your birth certificate which has to be produced at the time of indictment.

Mr. Pieters: And a copy of that birth certificate would be kept on file?

Lt. Col Kyte: Yes, it would be kept on file.

Mr. Pieters: And the name on the personal file of the serving rank whether it's a Private or an Officer would that be reflected as the name on the birth certificate or would it be reflected from other sources?

Lt. Col Kyte: It would be the name reflected from the birth certificate.

Mr. Pieters: Okay, so let me ask you this I do not know if the Commission Counsel has Gregory Smith's book Assassination Cry of a Failed Revolution. Can we have that book passed up to the Witness please?

12:25hrs

Mr. Kyte: Thank you.

Mr. Pieters: Can you look at the page, it is the appendices after Page 151, it has the Certificate of Birth?

Mr. Kyte: Yes, I am at the appendices after Page 151.

Mr. Pieters: Is the document you are looking at 241545-8?

Mr. Kyte: That is the document 241545-8.

Mr. Pieters: What is the name of the child on that document?

Mr. Kyte: The first name ... name of child is, William.

Mr. Pieters: Is there a middle name on this document? Do you see a middle name?

Mr. Kyte: There is no middle name here.

Mr. Pieters: Do you see the name Gregory on this document?

Mr. Kyte: There is no Gregory on this document.

See *Transcript of evidence of Cargill Kyte* Wednesday 23<sup>rd</sup>, July 2014 (23<sup>rd</sup> Hearing, pp. 60-61).

#### Anne Wagner on the Rodney and Smith Relationship

77. According to Anne Wagner's statement the following series of events occurred in the relationship between Dr. Rodney and William Gregory Smith:

#### WILLIAM GREGORY SMITH'S RELATIONSHIP WITH DR. WALTER RODNEY AND DONALD RODNEY

29. Gregory was introduced to Dr. Walter Rodney by Robert Yardan towards the end of 1978. Dr. Yardan was a friend of Gregory's girlfriend at the time. The introduction took place at Gregory's home.

78. Donald Rodney denied he knew Dr. Yardan. It will be seen also that Donald claimed to have been operating on a "need to know" basis, even with his brother:

Mr. Hanoman: Do you know someone by the name of Robert Yardan?

Mr. Rodney: No, Sir.

Mr. Jairam: Robert what?

Mr. Hanoman: Robert Yardan, Y-A-R-D-A-N.

Mrs. Samuels-Brown: Perhaps you should ask him if he knows any male by that name at that time because in reading a particular book there are times when only the last name Yardan is used.

Mr. Hanoman: Yes.

Mrs. Samuels-Brown: I do not know...

Mr. Hanoman: Do you recall the name Yardan around the time 1978, 1979 and 1980?

Mr. Chairman: Y-A-R-D-O-N.

Mr. Hanoman: ...D-A-N, please.

Mr. Chairman: ...D-A-N, sorry.

Mr. Rodney: No, Sir.

Mr. Hanoman: Did someone other than your brother Walter Rodney introduce you to Gregory Smith?

Mr. Rodney: No, Sir.

Mrs. Samuels-Brown: Could you ask the Witness specifically whether he knew a Yardan to be a member of the WPA at the time?

Mr. Hanoman: Do you know a Yardan to be a Member of the WPA at that time?

Mr. Rodney: No, Sir, but I did not know the members of the WPA at that time I was not a member of the WPA.

Mr. Hanoman: The name Dr. Robert Yardan is not familiar to you at all?

Mr. Rodney: No, Sir.

Mr. Hanoman: I see. And just for clarity did you have any interaction with Gregory Smith in 1978 and 1979?

Mr. Rodney: I, to the best of my recollection, had interaction with him between 1979 and 1980 so it would partly overlap with the period that you call.

Mr. Hanoman: But not 1978?

Mr. Rodney: Not 1978.

*Transcript of Evidence of Donald Rodney, March 23, 2015, p. 45.*

79. Donald Rodney believed Gregory Smith to be an ex-army rank at the material time. So did Walter Rodney. Gregory Smith was AWOL. It was believed by Special Branch Officers that Gregory Smith was running a private electronics business. According to an April 18, 1980 report by a Special Branch Operative: "Gregory Smith is an electronics expert who works on the waterfront." That was present tense at the material time and date.
80. The Special Branch report constitutes objective or independent indicia of Dr. Rodney's interactions with Gregory Smith including discussion of arms and ammunitions. It is likely then that explosives were discussed as well.
81. Dr. Rodney was secretive about his relationship with Mr. William "Gregory" Smith.
82. Dr. Rodney did not disclose the relationship he had with Gregory Smith to the collective leadership of the WPA. This relationship was known to Donald Rodney, Walter Rodney, Gregory Smith and to a limited degree the Guyana Police Force, whose intelligence unit prepared a report:  
*Transcript of Evidence of Eusi Kwayana, June 02, 2014, pp. 30-32.*
83. Mr. Kwayana was asked about his opinion about Gregory Smith as a political person and vetting by cells:

Mr. Pieters: Alright. You recall, let me ask you this about Gregory Smith. Would you agree that Gregory Smith was not a political person?

Mr. Kwayana: He did not sound political to me.

Mr. Pieters: Excuse me?

Mr. Kwayana: He did not sound political to me...

Mr. Pieters: You would agree then that he was not a political person?

Mr. Kwayana: ....from what I read in his book. Yes, I am inclined to agree with that. I cannot swear to it.

Mr. Pieters: We had a discussion earlier about the various nuclei that was formed within the WPA. You recalled we had that discussion earlier this morning?

Mr. Kwayana: Yes, Sir.

Mr. Pieters: Part of what is the function of the nuclei was, is vetting prospective members.

Mr. Kwayana: Getting members?

Mr. Pieters: vetting or doing a sort of screening of the members to make sure that they could be trusted?

Mr. Kwayana: I guess so, all branches or nuclei had their own ways of bringing members in and they would bring in people that they trust, for example, they would not recruit someone who is a member of the ruling party to which we were opposed and if in some cases, if there is infiltration, they had to be alert against that kind of thing.

*Transcript of Evidence of Eusi Kwayana, June 02, 2014, p. 53.*

84. On August 29, 2014, Jocelyn Dow was cross-examined by GTUC's counsel in respect to her knowledge of the relationship between Dr. Rodney and Gregory Smith and her answer was much the same as Mr. Kwayana:

*Transcript of Evidence of Jocelyn Dow, August 29, 2014, pp. 39, 42*

85. Mr. Donald Rodney was the sole eye-witness and brother of co-founder of the Working People's Alliance Dr. Walter Rodney who was killed in an explosion on June 13, 1980 in Georgetown, Guyana, while they were allegedly testing an apparent walkie-talkie (which in fact was an explosive device) put together by William Gregory Smith, a Guyana Defence Force Sergeant., Donald Rodney claimed to be working on a "need to know principle" on the one hand, and being duped by Gregory Smith on the other.

Mr. Pieters: You spoke about a need-to-know principle that you ascribed to when you voluntarily joined the resistance movements?

Mr. Rodney: Yes, Sir.

Mr. Pieters: You spoke about the information that you would have in your position to be limited in the event that you would have been detained and torture by State?

Mr. Rodney: By agents of the State, yes, Sir.

Mr. Pieters: Would you accept then on your premise the only information that may have been shared with you by Walter Rodney would be that which you were required to carry out any task assigned to you?

Mr. Rodney: That is the normal... my understanding of the need to know principle. Yes.

Mr. Pieters: Let me ask you this about walkie-talkies. Did you know, at the material time, that one required a license to have walkie-talkie?



Mr. Rodney: No, Sir.

.....

Mr. Rodney: Could I...? I answer the question already early on about license for walkie-talkie? I was not aware of a license as such, but I knew one had to get some sort of permission.

Mr. Pieters: Very well.

*Transcript of Evidence of Donald Rodney*, February 19, 2015, pp. 64-65.

86. In Examination in Chief by Keith Scotland counsel for Donald Rodney the following evidence was elicited:

Mr. Scotland: Yes. And, as it relates now to your interaction, or you assisting Dr. Walter Rodney, did you come into contact with one Gregory Smith?

Mr. Rodney: Well, I was introduced to Gregory Smith some time in 1980. I say introduce not personally; in the sense of, I was introduced by Walter, to Gregory Smith. And, when I say introduce, not personally in the sense that we were all three together, but Walter told me of Gregory Smith. And, the fact that Gregory Smith was making walkie-talkies for him, Walter, and I assumed the WPA. But, in any case, I am sure he meant Gregory Smith was making walkie-talkies for Walter. Mr. Scotland: So, you are telling me you said you were introduced, but not in the traditional sense to Gregory Smith; and that you learnt that he was making walkie-talkies for Dr. Walter Rodney, yes?

Mr. Rodney: That is correct.

.....

Mr. Scotland: So, he told you about Gregory Smith, and his manufacturing of the walkie-talkies. Tell us, on the first occasion that you met Gregory Smith.

Mr. Rodney: Alright. It was some time in 1980, after Walter told me I could assist with collecting or testing the walkie-talkie that was being put together.

Mr. Scotland: Yes.

Mr. Rodney: And, we went to collect the walkie-talkie together –this is Walter, and myself- in my vehicle. We went to a spot that I was directed to while we were driving, near the corners of Russell and Howes Streets....

*Transcript of Evidence of Donald Rodney*, January 30, 2015, pp. 39, 41.

87. Donald Rodney was then cross-examined by GTUC Counsel on his knowledge of Gregory Smith and familiarity with him including level of trust:

Mr. Pieters: I start where I left off yesterday. I do not believe that I asked you this question so I am going to ask you it now. Were you aware at the material time that Williams Smith was a member of the Guyana Defense Force (GDF)?

Mr. Rodney: I was aware that he was an ex-member of the GDF.

Mr. Pieters: How did you become so aware?

Mr. Rodney: I became aware of that through Walter.

Mr. Pieters: Very well. Let me ask you this because I think part of your evidence was you sort of formed yourself as a buffer between Dr. Rodney and Mr. Smith. That is the way I sort of got your role, in your interaction with Smith. Is that correct?

Mr. Rodney: Well at the time I saw myself as a go between and the word 'buffer' came up later on but at the time I saw myself as a go between Walter and Gregory Smith for the purposes of collecting the walkie-talkie, which Gregory Smith was building.

Mr. Pieters: When you were questioned by your Counsel, I believe it was the Chairman or one of the Commissioners had asked you a question and that question pertained to why you felt you needed to insulate yourself or insert yourself between Dr. Rodney and Mr. Smith and you had testified that there was nothing specific to Mr. Smith, simply if the person was not a close family member or closely connected to the political hierarchy of the Working People's Alliance (WPA) then you felt you could be of assistance?

Mr. Rodney: That is true. I did say that.

Mr. Pieters: Did you have any specific concerns with respect to Mr. Smith?

Mr. Rodney: Well indeed, as I said before, I did not know him to be part of the circle of the Working People's Alliance and of course he was not part of the family.

Mr. Pieters: No, I appreciate that answer. Specific concerns could go in respect to the reliability of Gregory Smith or whether you trusted him as somebody who your brother can be around. Any factors of that sort, did it come into your mind at any point while you were interacting with Gregory Smith?

Mr. Rodney: I did not feel that I had enough information about him or around him to make such a decision so I just had him in the general category that I have described before.

Mr. Pieters: Let me ask you this, at any point while you were interacting with Mr. Smith, did you have a conversation with Eusi Kwayana concerning Gregory Smith?

Mr. Rodney: No, I did not.

Mr. Pieters: What about Tacuma Ogunseye?

Mr. Rodney: I did not.

Mr. Pieters: Rupert Roopnarine?

Mr. Rodney: I did not.

Mr. Pieters: Did you, outside of the trio, yourself, Dr. Rodney and Gregory Smith, discuss Gregory Smith with any other person?

Mr. Rodney: Well I discussed Gregory Smith only with Walter, to the extent that I was a go between the two of them.

Mr. Pieters: I appreciate that, and there was no discussion with Edward Rodney as well?

Mr. Rodney: No discussion with Edward Rodney, who is my brother.

Mr. Pieters: Right. To the best of your knowledge... Well let me put it differently. You would be aware of the evidence that the Commission heard previously as well that none of the person whose name I called a few minutes ago knew of Gregory Smith and his interactions with Dr. Rodney?

Mr. Rodney: Well I am not aware but I would be so informed by your statement.

Mr. Chairman: [Laughter]

Mr. Pieters: You take me at my word?

Mr. Rodney: Well I believe you referred to what the Commission heard.

Mr. Pieters: Very well.

Mr. Rodney: I assume it was therefore said here as a matter of recorded information.

*Transcript of Evidence of Donald Rodney*, February 20, 2015, pp. 7.

88. To the extent that Gregory Smith played a role in Dr. Rodney's death, it could be said he provided material support to Dr. Rodney in his quest to have improvised explosive devices constructed. Dr. Rodney, Donald Rodney and Gregory Smith shared a common purpose that was not known to persons outside of the trio.
89. Little credible and/or reliable evidence emerged before the Commission to suggest that anyone outside of Dr. Rodney, Donald Rodney and Gregory Smith "may have counselled, procured, aided and or abetted Gregory Smith, in the construction of the explosive device.

Facilitating Gregory Smith's departure from Guyana after Dr. Walter Rodney's death

90. It is alleged that Gerald "Gerry" Gouveia transported William Smith and his family to Kwakwani. However, that is not definitively confirmed due to the failure of the Commission to call any of Smith's family members who may have been on that flight.
91. Commission Counsel was aware of Gregory Smith's son's, Shawn, existence and failed to call him as a witness:

Mr. Hanoman: Did he have a son called Shawn?

Mrs. Wagner: Yes he does.

Mr. Hanoman: Did you ever speak to him?

Mrs. Wagner: Yes, I do.

*Transcript of Evidence of Anne Wagner*, March 27, 2015, p. 120.

92. In his June 26, 2014 evidence before the Commission Captain Gouveia was not certain in his evidence. He testified to the effect that "When I saw the picture of the person.. "There was an anomaly in my mind...."

*Transcript of Evidence of Gerry Gouveia*, June 26, 2014, pp. 30 - 31

93. It is also alleged through evidence of Constable Clive De Nobrega that Laurie Lewis and Skip Roberts were connected to Gregory Smith as a part of the intelligence community. Except for the evidence that could be corroborated by third party and objective evidence, former Constable De Nobrega's evidence was false, erroneous or otherwise misleading.
94. Cecil Skip Roberts was available to give evidence and was not called before the Commission of Inquiry. Laurie Lewis is deceased.

Sergeant Alexis Adams - 1999 Passport Application

95. On March 27, 2015, the Walter Rodney Commission of Inquiry heard from Guyana Police Force Sergeant Alexis Adams. She appeared in her capacity as record holder of a passport application purportedly made indirectly on Gregory Smith's behalf under his alias Cyril Johnson and purportedly approved on the instructions of the Commissioner of Police Laurie Lewis.
96. Several observations are appropriate.
97. Firstly, counsel for the parties present at the Inquiry was given no notice up to the time the Immigration Officer was called that such a witness exists.
98. Secondly, the documents were sprung on us at the very last moment.
99. Third, the witness Sergeant Sealey exists and still serves in the Guyana Police Force,; she should have been brought to be cross-examined about the application.
100. Fourth, even if a command is given by a superior officer, if it is illegal a rank does not have to comply;
101. Fifth, even if a direction is given to a rank to process an application, it is the rank's duty to ensure all the necessary requirements are complied with.
102. Finally, 1999 is completely outside of the scope of the Terms of Reference of the Commission. It would be sheer speculation to draw any conclusions from that application without questioning Sergeant Sealey and others within the passport office with has direct knowledge of what transpired.

Anne Wagner – Gregory Smith Sister

103. On March 27, 2015, the Walter Rodney Commission of Inquiry heard from Anne Wagner the sister of Gregory Smith and co-author of "Assassination Cry of a Failed Revolution".
104. William Gregory Smith did discuss the conditions under which he would speak to the authorities in respect to Dr. Walter Rodney's death:

Mr. Pieters: Yes, [para.]46 [of your witness statement], you said that at some later point, your brother was aware of attempts to extradite him and he was always willing to return to Guyana to testify at trial under the condition that both he and Donald Rodney be subject to lie detector tests. "Additionally, Gregory was never reluctant to return to Guyana to face an investigation. He said so many times and reiterated that in his interview with the British Broadcasting Corporation." Do you see that?

Mrs. Wagner: Yes, Sir.

Mr. Pieters: My question to you is why within the two times that he was in Guyana, when he came here and knew that he was a person of interest, he did not avail himself to the authorities for that purpose, the investigative purpose? Did he explain that to you?

Mrs. Wagner: No.

Mr. Pieters: When he gave the interview on the BBC, which I listened to last night, he spoke of much more than the lie detector test. He spoke of security, he spoke about the lie detector test, he spoke of an impartial tribunal – I am getting old and blind – he spoke about amnesty for the four persons or the persons in high authority who he was going to expose; do you recall that?

Mrs. Wagner: Yes, I recall that.

Mr. Pieters: Right. So, it was much more than a lie detector test?

Mrs. Wagner: Yes, Sir.

Mr. Pieters: You would agree with me... Let me ask you this; you would accept that the issue of state protection or security, if someone had that concern it is nullified if the person re-availed themselves of a country for which they are claiming they will be persecuted, tortured or any crimes against humanity that exists? You would agree with that?

Mrs. Wagner: Yes, Sir.

Mr. Pieters: And your brother re-availed himself twice without any security incident, as far as you know? Your brother was not tortured when he came back here in 1980? Your brother was not tortured or otherwise subjected to any sort of cruel and unusual treatment or any form of persecution, would you agree?

Mrs. Wagner: Yes, Sir.

Mr. Pieters: And you would agree that the same applies when he came back here in 1982?

Mrs. Wagner: Yes, Sir.

*Transcript of Evidence of Anne Wagner, March 27, 2015, pp. 56 – 56 (electronic version)*

## TOR # 4

PRESIDENT'S TERMS OF REFERENCE (a)	COI CHAIRMAN'S INTERPRETATION (b)
<i>(iv) To examine and report on the actions and activities of the State, such as, the Guyana Police Force, the Guyana Defence Force, the Guyana National Service, the Guyana People's Militia and those who were in command and superintendence of these agencies, to determine whether they were tasked with the surveillance of and the carrying out of actions and whether they did execute those tasks and carried out those actions against the political opposition for the period 1<sup>st</sup> January, 1978 to 31<sup>st</sup> December, 1980</i>	To review and report on the activities of state agencies, such as the Guyana Police Force, Defence Force, National Service and People's Militia as well as those who were operationally in charge of those agencies, and determine whether they had specific responsibility for surveillance and other activities, and whether those activities were directed at and against the political opposition for the period 1 <sup>st</sup> January, 1978, right through to the end of December, 1980.

Situational Context

105. The WPA particularly its leaders in the political realm took a radical position to the extent that its leaders stated that their goal was to remove the government of the day by any means necessary. See, for example, "The Struggle Goes On" a speech by Walter Rodney (20/07/1979), printed and published by the Working People's Alliance (WPA) and it was reprinted in May 1984, Exhibit EK6.
106. Firearms were being procured, collected and used by WPA operatives including a co-leader Dr. Rupert Roopnarine.
107. Police officers and Guyana Defence Force officers were being encouraged through Yamvine and other WPA publications and advocacy to disaffect and support the WPA.
108. The Office of the General Secretary and Ministry of National Development was burnt down under suspicious circumstances.
109. There were regional disturbances including the Cubana Air Disaster; Grenada Revolution amongst others that would not have escaped attention in Guyana.
110. In addition, there was what the WPA described as a "civil rebellion".
111. These activities served to support and enable terrorist activity and activities that undermined the peace, order and good governance of Guyana.

Competing Rights and Interests (the State versus Citizens)

112. The Guyana Police Force, Special Branch Unit, during the 1978-1980 did have members of the Opposition, particularly WPA, under investigation and surveillance pursuant to its mandate: Ex. U2, Guyana Police Force Standing Order No. 50 (Special Branch):

Mr. Williams: Yes, Sir, I know that you will facilitate that. You are the Head of Special Branch and you are now Crime Chief, was there anything unlawful being done by Special Branch in conducting the surveillance that you have indicated here in this Commission of Inquiry?

Mr. James: No, Sir. Special Branch mandate is obtained through Standing Order No.50 of the Guyana Police Force.

Mr. Williams: So what they were doing is normal Special Branch business that would have been done in any Commonwealth country, is that not so?

Mr. James: Yes, Sir.

*Transcript of Evidence of Senior Superintendent Leslie James, August 07, 2014, p. 33.*

113. It was alleged that the WPA, at its highest levels was infiltrated by government agents, who reported on the activities of the WPA leaders. While the Guyana Police Force record management system could be improved, in this case, records kept were produced to the Commission: See, for example, Guyana Police Force Special Branch Files on Working People Alliance 1980; L J/SB/WPA 28-Apr-14 (1) Guyana Police Force Special Branch Files on Working People Alliance 1980; L J/SB/ WPA 28-Apr-14 (2) Guyana Police Force Special Branch Files on Working People Alliance 1980; L J/SB/WPA 28-Apr-14 (3); L J/CID/WR1 28-Apr-14 Guyana Police Force Crime Files re Death of Walter Rodney 1; L J/CID/WR2 28-Apr-14 Guyana Police Force Crime Files re Death of Walter Rodney 2; L J/CID/GS1 28-Apr-14 Guyana Police Force Crime File Gregory Smith.

114. The WPA Recognition Handbook and numerous other documentation in the Special Branch files constitutes secret intelligence report derived from surveillance of WPA activist, some of its leaders and individuals including low level members in Georgetown, New Amsterdam, Essequibo and other areas where the membership of the WPA was growing in numbers and influence.

115. The Constitution of the Co-operative Republic of Guyana, 1966, provides for individual rights and liberties including freedom of expression (article 12(1), freedom of assembly and association (article 13(1) of the Constitution), and freedom of movement within Guyana (article 14(1) of the Constitution).

116. The following international conventions are further evidence of this important and fundamental right:

*Universal Declaration of Human Rights*, G.A. Res.271(III), UNGAOR, 3d Sess., supp. No. 13, UN. Doc. A/810 (1948) 71, Article 12:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171, Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

117. In *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, 2007 SCC 9, Canadian Chief Justice Beverly McLaughlin, PC, made some salient comments on the balancing of citizens' rights verses the government's right in national security cases:

1. One of the most fundamental responsibilities of a government is to ensure the security of its citizens. This may require it to act on information that it cannot disclose and to detain people who threaten national security. Yet in a constitutional democracy, governments must act accountably and in conformity with the Constitution and the rights and liberties it guarantees. These two propositions describe a tension that lies at the heart of modern democratic governance. It is a tension that must be resolved in a way that respects the imperatives both of security and of accountable constitutional governance.
118. Given the posture of the WPA at the material time, its members particularly the most vocal, threatening and potentially violent against the State, would have attracted the attention of the authorities.
119. An insight into the Guyanese courts' interpretation of this issue is to be found in the West Indian reported case of *Ramson –v- A.G.* (1979) 28 WIR 191 reversed in part by *Ramson –v- Barker* (1982) 33 WIR 183. Peradventure there is confusion as to the issue and GTUC respectfully submits that the State has an obligation to ensure the security of its citizens which ought to be influenced by the individual's right to exercise any or all of the fundamental rights as guaranteed under the 1966 constitution, subject to reasonable limits as can be demonstrated in a free and democratic society..



120. The GTUC submits that the *Ramson* case is the most authoritative illustration of the interpretation of those competing rights of the individual and state under the then 1966 Constitution. Summarised as follows in the report: “On the evening of 22nd August 1979, the applicant Ramson and a fellow barrister were standing beside their motor car in Sheriff Street. They were discussing crowd dispersal and crowd control methods used by the police who had, a short while before, broken up an intended political meeting in the vicinity. The barristers were asked by the police to move on and to remove their motor car from the highway. Some policemen were attired in uniform without regulation numbers. Mr Ramson, however, stood his ground and, on being asked what he was doing on Sheriff Street, replied it was his business. Thereupon, one of the unnumbered policemen pulled him by the right arm and spun him around causing abrasion marks to appear on the inner aspect of that arm. Another policeman jabbed him in the ribs with a staff until both he and his colleague were reluctantly compelled to depart from the scene with their car. ..He *Ramson* elected to approach the High Court under art 19(1) of the Constitution seeking ‘redress’ for constitutional contraventions of which he complained and to obtain declarations on the constitutionality of (a) the conduct of the persons dressed in police uniform; (b) failure of the Commissioner of Police to comply with the applicant’s request to disclose the names of persons who were new recruits in uniform without numbers; (c) violation of the applicant’s fundamental *right to assemble* with others in Sheriff Street; (d) the acts of the unnumbered policemen on the evening in question infringed the applicant’s *freedom of expression*; and (e) infringement of the applicant’s *right of movement*.”
121. The GTUC submits that the contrast between Ramson’s complaint and Rodney’s and the WPA’s action, which all occurred under the 1966 Constitution, should not go unnoticed. Ramson was a mere observer in a ‘movement’ of two men including himself, absent any acts of subterfuge and open hostility to the state. Rodney’s WPA was *agent provocateur par excellence* in contrast. Rodney’s complaint, if there ever was one under the 1966 Constitution, would have been militated against his actions of organized, highly intellectually orchestrated, planned, invisible and unquantifiable network of military and civilian recruits for his sole and publicly declared purpose of removing the government of the day.
122. Yet notwithstanding the contrast in their infractions as alleged or proven, the Court held in *Ramson* that the strength of the arguments in favour of the State’s right to secure public security and the person of every member of its body politic outweighed the infractions Ramson, with his comparatively “angelic” behaviour, in the exercise of his fundamental rights.
123. The judgement of the Court is instructive. It suggests that the Courts considered that if every infraction as alleged like the *Ramson* behaviour which caused a

contest between Ramson's rights and the State's rights were allowed to see the light of day it will not result in an outcome the framers would have considered ideal. It ruled:

"If a constitutional right to 'redress' were permitted for any other than a direct or intentional hindering of freedom of speech, any trivial, or even aggravated assault by the police on persons in the act of speaking to each other, assaults that really had only a mere consequential effect on the enjoyment of freedom of speech, would ground a claim in the High Court. This would open the floodgates to constitutional motions and other actions seeking, as did the instant case, declarations and redress for the contravention of constitutional rights. It was important that the newly-created right be not misused in that way".

124. In a competing rights case *Taylor-Baptiste v. Ontario Public Service Employees Union*, affirming 2015 ONCA 495, 2014 ONSC 2169 (CanLII), 323 O.A.C. 376, dismissing an application for judicial review from the decisions of the Human Rights Tribunal of Ontario, dated July 16, 2012, and February 1, 2013, with reasons reported at 2012 HRTO 1393 (CanLII), 1 C.C.E.L. (4th) 104, and 2013 HRTO 180 (CanLII), which pitted freedom of expression and association versus the right to be free in one's employment from sexual harassment, the tribunal and reviewing courts sided with the constitutional values.
125. In my original arguments before the Tribunal on the competing rights albeit in the Industrial Relations Regime, the argument is recapitulated in 2013 HRTO 180 as follows:

[27] The applicant included in her authorities cases about union expressive and associational rights under the Charter. Her counsel referred to *Pepsi-Cola and Ontario (Attorney General) v. Fraser*, 2011 SCC 20 (CanLII). The former deals with union expression under s. 2(b) of the Charter and the latter with associational rights under s. 2(d). *Pepsi-Cola* was referred to in support of the argument that the union had to respect the Code in the course of its protected activities. Paragraph 30 of the applicant's written closing submissions reads as follows:

Collective Bargaining and strikes are not a "free for all" – Criminal, Torts and Human Rights Laws are to be respected

In the context of collective bargaining or any other activity for that matter undertaken by OPSEU criminality, torts including defamation and human rights Code related violations are not protected activity – even if an employer grants amnesty from disciplinary proceeds, it does not mean that a criminal court does not have the jurisdiction to deal with any criminal acts that occur, [nor] does it mean that a civil court does not have jurisdiction to deal with any libel that occurs. It also does not mean that the Human Rights Tribunal has no jurisdiction to deal with a claim of a

manager that her rights were violated under the Human Rights Code. It is trite that one's human rights cannot be contracted out: *N.A.P.E., Local 3201 v. Newfoundland* 1996 CarswellNfld 133F, 1996 CanLII 190 (SCC), [1996] 2 S.C.R. 3; *Ontario (Human Rights Commission) v. Etobicoke (Borough)* 1982 CanLII 15 (SCC), 1982 CarswellOnt 730, [1982] 1 S.C.R. 202; *Pepsi-Cola Beverages (West) Ltd. v. R.W.D.S.U., Local 558*, 2002 SCC 8 (CanLII), [2002] 1 S.C.R. 156.

126. Mr. Justice Brown of the Ontario Court wrote:

Section 2(b) of the Charter protects a broad range of expressive activity, including “distasteful” expression.[17] By the same token, it does not protect violent expression,[18] and some expression, such as hate speech, does not enjoy equal treatment in determining an appropriate balancing of competing values under a s. 1 analysis.[19] The Tribunal understood these legal principles, stating that “the nature of the expression is a factor in the balancing of rights.” But, the blog postings in this case were not hate speech. They contained rude, distasteful, and sexist remarks which even Mr. Dvorak acknowledged, upon reflection, appeared to him to have been “written by an ‘asshole’.” Initial Decision, at para. 19.

127. It is submitted that competing rights between the State and the party concerned are ultimately just a factor that to consider, amongst others, in deciding as a question of mixed fact and law in particular circumstances of each case. This much has been affirmed in Canadian jurisprudence. Though not binding on Guyanese courts and Tribunal, it is still instructive. The Supreme Court of Canada in a decision released on July 23, 2015 had this to say in terms of National Security issues:

[95] The Commission adds that Mr. Latif's spotless record is incompatible with the conclusion that he posed a threat to aviation or national security in the United States. In its view, this, combined with the rest of the evidence, shows that his ethnic or national origin was a factor in DOJ's refusal of his request.

[96] We cannot accept this argument. The refusal by the U.S. authorities was intended to protect the national security of the United States. Mr. Latif's career record up to that time was not determinative of the threat he might pose to national security any more than were the many FAA-approved training courses he had taken in the past.

128. What is clear is where issues of national security is concerned the state's interest and the interest of the public trumps the interest of the individual. An individual would have to submit direct or circumstantial evidence that meets the standard of proof on a balance of probabilities that his political opinion as a factor or connection to the adverse treatment by security officials. Even if he or she proves

discriminatory conduct or being singled out the state can then justify its conduct by resort to statute: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, para 64..

129. In the Guyana situation as per 1978 to 1980, the would mean resort to the National Security Act and Standing Order 50 of the Guyana Police Force to deal with the “civil rebellion”, violent words and acts to remove the government of the day “by any means necessary”, in addition to the other subversive and terroristic activities engaged in by activists of the WPA.

### Conclusion

130. Surveillance is important and useful to governments and law enforcements globally. It is used to maintain social control, recognise and monitor threats, and prevent and investigate criminal activity. Government and its agents use surveillance to gather data on their external and internal foes and allies. Public activities like the trades union meetings, strikes, and protests were monitored by Special Branch. These were events where they gathered information. Data gathering has its benefits.

131. Even non-state actors engage in some form of surveillance. The trade union has collected intelligence on political parties, employers and even among themselves to advance their interest. An issue that can be remembered occurred when Jeffery Thomas was Minister of Labour. A strike was called in the bauxite belt and when the security arm compiled its report, the said evening I received a faxed copy. The next day when the union delegation appeared at the Ministry of Labour, one of the documents the minister was looking at was the same copy I received the evening before.

## TOR # 5

PRESIDENT'S TERMS OF REFERENCE (a)	COI CHAIRMAN'S INTERPRETATION (b)
<i>(v) To examine, review and report on earlier investigations and inquiries done on and into the death of Dr. Walter Rodney."</i>	To examine, review and report on those earlier investigations and inquiries which were done and carried out into Rodney's death. They will include, among others, the Coroner's Inquest, police investigations and investigations carried out by the International Commission of Jurists.


132. GTUC makes no submissions in respect to this section of the Commission's mandate.

### Conclusion: Thoughts and Observations

133. The adage "better late than never" is not one that fits with this Commission of Inquiry. This is because with the passage of such substantial time, beliefs as to what happened on June 13, 1980 have become embedded and a sense of distrust, pegged to political affiliation, engendered in Guyana. This aspect of unyielding belief.
134. In normal circumstances, the reality of events is best captured closer to the time the event occurred. This Commission of Inquiry commenced close to thirty four (34) years after the events took place and the value of evidence available has accordingly been diminished. To come to conclusions, rules of evidence, such as the hearsay rule, were relaxed to compensate for this significant passage of time.
135. Be that as it may, GTUC participated fully in this Commission. Our non-participation would be an abrogation of our responsibility and contribution to this society on the matter and more so denying the country an opportunity in arriving at the truth.
136. Dr. Rodney, as a national and international figure, name continues to be used in various pursuits including politics, as illustrated by the recently concluded National Elections in Guyana, and deserve closure.

137. Guyana and Guyanese deserve closure to this chapter of our history and an end brought to use of Dr. Rodney's name as a wedge. Our participation and extensive written submissions hopefully will assist the Commission in its deliberation and its report.

All of which is respectfully submitted,



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