

May 30, 2014

Mr. Hugh Denbow and Ms. Nicole Pierre

Walter Rodney Commission of Inquiry

Top Floor, Supreme Court Library Building, Victoria Law Courts

Avenue of the Republic & Charlotte Street

Georgetown, Demerara

Dear Administrator/Counsel:

RE: Request for Particulars, documents and directions

As you know I continue to represent the Guyana Trades Union Congress in this Inquiry. I have some concerns and I believe they should be articulated very early in the process so that the appropriate information could be collected and brought to the Commission and appropriate notice provided to the respective entities.

The Terms of Reference specifically calls for the Commission to look into the conduct and professionalism (or the lack thereof) of state actors from the Guyana Police Force, the Guyana Defence Force, the Guyana National Service, the Guyana People's Militia, there is no state counsel representing any of the joint services or are there any counsel representing the state. While the Commission has reminded us at the commencement of the Commission of Inquiry that potential witnesses "have nothing to fear from testifying. No prosecution can follow from your testimony", it does not follow that civil proceedings cannot be initiated and/or international proceedings. See, for example, Canada's *Crimes Against Humanity and War Crimes Act* (S.C. 2000, c. 24) and *Song Dae Ri* (Re) 2003 CarswellNat 4527; (2004) 36 Imm. L.R. (3d) 203.

Witness Eusi Kwayana testified that police officers, the armed forces and possible civil aviation authorities were actively involved and/or complicit in facilitating Gregory Smith in several ways. There are relevant and important records missing and investigative reports. We therefore request the following:

1. The Guyana Police Force should be directed to produce the station diary of the Tactical Services Unit or any other unit that is normally on duty at the Georgetown Prison in the normal course for the material date (June 13, 1980) and time in question.

2. If any officers of the Guyana Police Force were on duty at the Georgetown Prison, the Guyana Police Force should be directed to make its best efforts to locate those officers, and provide their contact information in the event that it is determine that they have relevant and material evidence to offer to the Commission so that witness statements can be taken.

3. That the Guyana Police Force make its best efforts to locate the officers who were assigned to conduct the investigation and that the contact information of such officers, whether serving or not, be made available in the event witness statements can be taken and a determination made as to whether or not viva cvoce evidence would be heard from those witnesses. Some discussion took place at the Commission previously, see, *Transcript of evidence of Leslie James Monday 28th, April 2014* (1st Hearing, pp. 59 - 60).

4. That both the Guyana Police Force and the Guyana Defence Force be reminded that they are entitled to have counsel present at the Commission pursuant to section 13 of the *Commissions of Inquiry Act*, Cap 19:03, of the Laws of Guyana which provides that:

Any whose conduct is the subject of inquiry under this Act, or who is in any way implicated or concerned in the matter under inquiry, shall be entitled to be represented by counsel or solicitor at the whole of the inquiry, and any other person who may consider it desirable that he should be so represented may, by leave of the commission, be represented in the manner aforesaid.

5. Further, that these state actors also be made to understand that notwithstanding the immunity from prosecution promised by that the President, that immunity does not assist the state agencies from salvaging their reputation. *Transcript of evidence of Lawrence Rodney Tuesday 29th, April 2014* (2nd Hearing, pp. 15 - 17).

6. The state actors must be made to understand that the terms of reference calls upon them to explain or risk negative findings in the Commission's reports.

7. As the Chairman noted on day 1 of the hearing in dealing with answers from Senior Superintendent James "It would be useful, Sir, to help us with

specifics. We do not want to walk away from here with generalizations. Be as specific as you can but you may need the help of the file.” *Transcript of evidence of Leslie James Monday 28th, April 2014* (1st Hearing, pp. 52, see also, p. 50). Thus, the state agencies that have hard evidence are required to bring it forth and explain it to the Commission.

8. Acting Chief Justice Ian Chang who was the Director of Public Prosecutions when the advise to charge Gregory Smith with murder was given should be directed to appear and provide evidence to assist the Commission in its task. The following discussion amplifies my view:

Mr. Jairam: Why did it take the police 16 years to come to the conclusion that Gregory Smith should be charged with the offense of murder?

Mr. James: I am not in a position to explain why, but what I know from my perusal of the files there are indications that checks have been made for that person....

Mr. Jairam: I am only asking; is it of the practice of the police in Guyana to get the advice of the Director of Public Prosecution (DPP) or a police legal advisor for a charge such as murder preferred?

Mr. James: That is correct, Sir. The usual procedure...

Mr. Jairam: Was that done in this case?

Mr. James: That was done in that case and the person who so advise that charge was the then DPP (Ag.) Mr. Chang.

Transcript of evidence of Leslie James Monday 28th, April 2014 (1st Hearing, pp. 43, 44).

9. In respect to the Guyana Defence Force plane that allegedly took Gregory Smith to Kwakwani and outside of Guyana, please ask the Guyana Defence Force to produce its records for its aircrafts and helicopters for June 15 – 17, 1980.

10. Any official Immigration Records for Gregory Smith for June 17, 1980.

11. Any official records from the Civil Aviation Authorities in Guyana including record of departure and passport used, whether false or genuine.

The above request is to ensure that all that materials are required for the Commission to perform its statutory mandated task are made available and that the state actors be able to fully and

fairly respond to allegations that are very serious and for which they are better able to respond to than others who do not have access to the documents or evidence.

Yours Truly,

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