

REPORT OF THE COMMISSION OF INQUIRY

INTO THE GENERAL
& REGIONAL
ELECTIONS OF
GUYANA

ON 2 MARCH 2020

APRIL 2023

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| 1 MAP OF GUYANA



| 2 ACRONYMS

ACP	Assistant Commissioner of Police
AMCHAM	American Chamber of Commerce
ANUG	A New and United Guyana
APNU/AFC	A Partnership for National Unity + Alliance for Change
CEO	Chief Election Officer
CARICOM	Caribbean Community
CCJ	Caribbean Court of Justice
DCP	Deputy Commissioner of Police
DCEO	Deputy Chief Election Officer
DRO	Deputy Returning Officer
EU	European Union
EU EOM	European Union Electoral Observation Mission
FUP	Fed Up Party
GECOM	Guyana Elections Commission
GOG	Government of Guyana
GPF	Guyana Police Force
LJP	Liberty and Justice Party
OAS/EOM	Organization of American States Electoral Observation Mission
OP	Office of the President
OVP	Organization for the Victory of the People
PNCR	People’s National Congress Reform
PPP/C	People’s Progressive Party/Civic
PRO	Public Relations Officer
PRP	People’s Republican Party
PSC	Private Sector Commission
RO	Returning Officer

ROPA	Representation of the People Act
SOP	Statement of Poll
SOR	Statement of Recount
TCI	The Citizenship Initiative
TOR	Terms of Reference
TSU	Tactical Service Unit
URP	United Republican Party
UK	United Kingdom
USA	United States of America

| 3 ACKNOWLEDGEMENTS

This report could not have been possible without the tireless and unwavering work of crucial personnel including Legal Counsel to the Commission, Ms. Sophia Chote SC and Mr. Javed Shadick, Secretary to the Commission, and all the hard-working members of the Secretariat listed in full below. We also acknowledge and appreciate the work of the state personnel who were involved in planning and executing the logistical elements of this Commission of Inquiry.

We also thank the print and electronic media which provided coverage to the people of Guyana.

We acknowledge the support extended to us by members of the Guyana Police Force.

Commission of Inquiry Secretariat

Ms. Sophia Chote, SC, counsel to the Commission; Mr. Javed Shaddiq, secretary to the Commission; Ms. Natasha Vieira, counsel; Ms. Keoma D Griffith, counsel; Tariq Scott, legal research assistant; Colonel Ronald Hercules, administrator; Guoyan Rampersaud, information technology coordinator; Dishon Harris, clerk; Rahema Bacchus, secretary; Amanda DaSilva, receptionist; Nerissa Simon, janitor; Kriskal Singh, personal assistant; Anwar Zaman, office assistant; Joel Samuels, information technology assistant; Tesia Urairie Ellis, transcriber; Daison Horsham, transcriber; Shevona Nicola Telford, transcriber; Indranie Priya Persaud, transcriber; Eyoke Elana Gibson, transcriber; Lushonn Kelita Bess, transcriber; Celisa

Phillipa De Florimonte, transcriber; and Somna Muridall, transcriber.

The Commission of Inquiry could not have fulfilled its mandate without the willing participation of all those persons who came forward and gave evidence before the commission. Their enthusiasm was a clear indication of their commitment to ensure free and fair elections are conducted in Guyana.

Witnesses

Vishnu Persaud, Edgar Thomas, Jonathan Yearwood, Dr. Josh Kanhai, Lenox Rono'Dall Shuman, Rawle Aaron, Ronald Edward Stuart, Sasenarine Singh, Aneal Giddings, Rosalinda Rasul, Paul Jaisingh, Gerald Gouveia, Charles Ramson, Junior Blair, Elston Baird, Ronald Ali, Sase Gonraj, Bibi Anieshaw Mohamed, Guy Nurse, Alexandra Bowman, Claudette Singh, Leslie Albert James, Cristal Robinson, Maxine Graham, Zulfikar Mustapha and Mohabir Anil Nandlall.

The following witnesses were summoned and either failed to appear or appeared before the commission and invoked their right not to incriminate themselves:

Shefern February, Denise Babb-Cummings, Carolyn Duncan, Michelle Miller, Volda Ann Lawrence, Carol Joseph, Dr. Karen Cummings, Keith Lowenfield, Clairmont Mingo, Phillip Azore, Enrique Alexander Livan, Nicola Denise Trotman and Roxanne Myers.

We thank Amanda Ramirez for her assistance with proofreading, editing, formatting and typesetting this report.

| 4 EXECUTIVE SUMMARY

On 13th September, 2022 we were formally appointed and sworn in as commissioners under a commission issued by Dr. Irfaan Ali, President of the Co-operative Republic of Guyana, acting under section 2 of the Commissions of Inquiry Act of Guyana.

The terms of reference of the commission, in essence, mandated us to, among other things, inquire into and report on attempts, and by whom, to undermine and frustrate the legally prescribed process for the counting, ascertaining and tabulation of votes in the General and Regional Elections of 2nd March, 2020 and on attempts to prevent a true declaration of the results of that election.

The commission began hearings on 3rd November, 2022 and concluded its sittings on 10th February, 2023. Some 39 witnesses were summoned or otherwise approached the commission to provide testimony.

Of those summoned, 13 invoked their right to remain silent or not to incriminate themselves, or otherwise declined to provide any evidence to the commission. Twenty-six witnesses provided evidence to the commission via witness statements, some of which included documentary, photographic and video exhibits and through oral testimony to the commission. Some of these witnesses were cross-examined by counsel representing individuals against whom adverse statements had been made in testimony given to the commission.

After three months of intermittent sittings, we were able to gather sufficient, credible evidence to make significant findings of fact and, in so doing, to fulfil our mandate as set out in the TOR.

In summary, our inquiry reveals that there were, in fact, shockingly brazen attempts by Chief Election Officer (CEO) Keith Lowenfield, Deputy Chief Election Officer (DCEO) Roxanne Myers and Returning Officer (RO) Clairmont Mingo to derail and corrupt the statutorily prescribed procedure for the counting, ascertaining and tabulation of votes of the March 2nd election, as well as the true declaration of the results of that election, and that they did so – to put it in unvarnished

language of the ordinary man – for the purpose of stealing the election.

We hope that the recommendations made will serve to address, if indeed steps to that end have not already been taken, aspects of the functions of Guyana Elections Commission (GECOM) and the senior officers attached thereto.

We have addressed the role played by certain ranks of the Guyana Police Force (GPF) with special reference to the Tactical Service Unit (TSU). It is hoped that the recommendations made with respect to the GPF would be addressed as a matter of urgency.

Finally, we hope that this report will help to bring closure to a sad and shameful chapter in the electoral history of Guyana in which the integrity of and trust in the electoral system of Guyana was undermined and temporarily overthrown by the shenanigans of election officials at the highest level of the system.

We also hope that what this report reveals might contribute to the process of restoring confidence to the people of Guyana in their election officials and their electoral system so that, going forward, they can be assured that the regional and general elections are conducted in a free, fair and transparent manner.

April 2023

Stanley John

Justice of Appeal (Ret)
Legal Consultant and
Non-Resident Justice of Appeal
Turks and Caicos Islands
Chairman

Carl A. Singh, OR; CCH

Former Chancellor (ag)
of the Judiciary of Guyana

Godfrey Smith, SC

Justice of Appeal (ad hoc)

| 5 CHRONOLOGY

- 15th November 2018: Leader of the Opposition, Bharrat Jagdeo, submits a No Confidence Motion to the National Assembly against the coalition A Partnership for National Unity + Alliance for Change (APNU/AFC) Government.
- 21st December 2018: No Confidence Motion debated for almost 10 hours and passed with 33 votes when APNU/AFC parliamentarian, Charrandas Persaud, voted with the Opposition People's Progressive Party/Civic (PPP/C). Members of the coalition government attempted to intimidate Mr. Persaud to change his vote.
- 3rd January 2019: Speaker of the National Assembly upholds the No Confidence vote against the APNU/AFC.
- 21st January 2019: Chief Justice Roxanne George-Wiltshire rules No Confidence vote is valid.
- 5th February 2019: Attorney General Basil Williams appeals High Court ruling.
- 22nd March 2019: Two of the three judges of the Court of Appeal ruled that 34 votes in the 65-seat

National Assembly were required to pass the No Confidence Motion.

18th June 2019: The Caribbean Court of Justice (CCJ) ruled that No Confidence Motion was lawfully passed with a vote of 33 members in the 65-seat National Assembly.

12th July 2019: The CCJ hands down Consequential Orders.

19th September 2019: The United States (USA), United Kingdom (UK) and European Union (EU) say APNU/AFC is in breach of the Constitution.

26th September 2019: President Granger confirms to the press that March 2nd, 2020 would be the definitive date for the general and regional elections.

2nd March 2020: General and regional elections are held in Guyana.

3rd March 2020: International election observer missions and diplomats commend Guyana on a peaceful election.

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- 5th March 2020: RO Mingo makes a declaration of results in Region 4 election before ascertainment and tabulation is complete. Election and observation and diplomatic missions express concern for transparency and credibility of the count.
- 6th March 2020: International and regional organizations, diplomatic and election observation missions and states and agencies unanimously call for completion of the counting process before any announcement is made.
- 7th March 2020: Chairman of Caribbean Community (CARICOM) calls for lawful completion of Region 4 results.
- 13th March 2020: RO Mingo makes second declaration.
- 14th March 2020: GECOM makes decision to do a national recount.
- 4th May 2020: Order 60 drafted by GECOM is gazetted.
- 6th May 2020: National recount commences.
- 29th May 2020: Order 60 is amended.
- 8th June 2020: National recount concludes.

-
- 15th June 2020: CEO submits his first report to GECOM which is rejected.
- 23rd June 2020: CEO submits his second report to GECOM which is rejected.
- 11th July 2020: CEO submits his third report to GECOM which is rejected.
- 2nd August 2020: CEO submits his fourth report which is accepted by GECOM.

| 6 TERMS OF REFERENCE

The commission's TOR were to:

"1. Inquire into and report upon the relevant circumstances and events leading up to, and the procedures following, the Regional and General Elections held in Guyana on the 2nd day of March 2020, not limited to but including that which are more specifically set out hereunder:

- i. The counting, ascertaining and tabulation of votes polled and the public declaration of those results by the Returning Officer of electoral district No. 4 and other election officers, as prescribed by sections 84 to 89 of the Representation of the People Act, Chap 1:03, and by whom;
- ii. What attempts, if any, were made to obstruct, frustrate, subvert and prevent the counting ascertainment and tabulation of votes polled and a declaration of the true results of electoral district No. 4 as prescribed by sections 84 to 89 of the Representation of the People Act, Chap 1:03, and by whom;

-
- iii. What attempts, if any, were made to obstruct, frustrate, subvert and prevent a decision of the Guyana Elections Commission made on the 14th day of March 2020, to conduct a national recount of the votes polled at the General and Regional Elections held in Guyana 2nd March 2020, from being executed and implemented, and by whom;
 - iv. The conduct of the Chief Election Officer, other Elections Officers, and others in respect of the discharge and execution of the statutory duties of the Chief Election Officer prescribed by sections 96 and 97 of the Representation of the People Act, Chap 1:03.

“14. Make such recommendations as the Commission deems fit and necessary to permit the Guyana Elections Commission to discharge its statutory functions as prescribed by sections 84-89, 96-97 of the Representation of the People Act, Chap. 1:03 in a manner which is impartial, fair and compliant with the Constitution and relevant legislation and to make any other recommendations which the Commission deems appropriate having regard to the law and to any evidence which may be presented.”

| 7 OVERVIEW OF THE ELECTORAL SYSTEM

The Co-operative Republic of Guyana is located in the north-east region of South America, bordered by the Atlantic Ocean in the north and the east, Suriname in the south-east, Brazil to the south and Venezuela in the west. The country was controlled by the British Crown until it was granted independence by Britain in 1966. Four years later in 1970, independent Guyana severed ties with the British Crown and became the Co-operative Republic of Guyana.

Guyana has a presidential system based on proportional representation. Parliament consists of the President and the National Assembly. When there is an election, the Guyana Constitution (“the Constitution”) provides for the casting of a single ballot by an elector. Electors vote for the members of the National Assembly.

Ballots are cast by eligible electors in favour of lists of candidates vying for seats in the assembly. Each elector’s single vote may be cast in favour of any of such lists. Each list of candidates shall designate not more than one of those candidates as a

presidential candidate. No separate ballot is cast for any presidential candidate. An elector voting at the election in favour of a list is in fact also voting in favour of the presidential candidate named in the list.

Interestingly, an elector's single ballot serves to determine both election of members to the National Assembly and also election of the president. The presidential candidate on the list for which more votes have been cast than any other list is deemed to be elected as president, and the chairman of GECOM must so declare.

Both the allocation of seats in the National Assembly and the identification of the successful presidential candidate are determined on the sole basis of votes counted and information furnished by returning officers under the Representation of the People Act (ROPA).

| 8 COUNTING, ASCERTAINMENT, TABULATION & DECLARATION OF RESULTS

The building situated at the corner of the Avenue of the Republic and Hadfield Streets, Georgetown, known as and referred to as the Ashmin's Building had been identified by GECOM as the office of the RO for electoral district No. 4 and was accordingly so published in the official Gazette of Guyana.

It was intended that the ascertainment and tabulation of the votes cast in electoral district No. 4 was to be undertaken in accordance with the procedure prescribed by section 84(1) of the ROPA.

The commission has been mandated by its TOR to, inter alia, "inquire into the counting, ascertainment and tabulation of votes cast and the public declaration of those results by the RO of electoral district No. 4 and other election officers, as prescribed by sections 84 to 89 of the Representation of the People Act, Chapter 1:03 and by whom."

To put our inquiry into context, it is now a convenient point to set out the provisions of section 84(1) of the ROPA which provision is material and directly relevant to this particular item of our TOR presently under focus.

“84. (1) as soon as practicable after the receipt of all the ballot boxes and the envelopes and packets delivered to him in pursuance of section 83(10), the Returning Officer shall, in the presence of such of the persons entitled under section 86(1) to be present as attend, ascertain the total votes cast in favour of each list in the district by adding up the votes recorded in favour of the list in accordance with the Statements of Poll, and thereupon publicly declare the votes recorded for each list of candidates.”

The commission heard from the witness Mr. Sase Gunraj, an attorney-at-law and Commissioner of GECOM, that (prior to 2nd March, 2020, the day of Guyana’s national and regional elections) on the 25th of February 2020, the CEO of GECOM, Mr. Keith Lowenfield, addressed a meeting of international observers, commissioners and other GECOM officials and political party representatives in relation to the imminent elections on 2nd March and there advised that as Statements of Polls (SOP) arrived at the office of the returning officer, that officer will, after notification and consultation with the persons

entitled to be present, set a convenient time for the commencement of the ascertaining and tabulation of the votes cast for each list of candidates for his district.

FORM 23A
THE REPRESENTATION OF THE PEOPLE ACT Cap 2:03
GENERAL ELECTION
DISTRICT: 4
STATEMENT OF POLL

Polling Division: DEMERARA/MAHAICA No. 4
Polling Station Name: R.O. Pachay
Polling Station Number: 412222-F (E)
Name of Presiding Officer: [Signature]

2. Total number of valid votes for all Parties/ Lists of Candidates: 267

3. Rejected ballot papers:
a) Want of official mark: 000
b) Unmarked or void for uncertainty: 002
c) Marked for more than one Party List of Candidates: 001
d) Marked so that the elector can be identified: 000

TOTAL (add a + b + c + d): 003

4. Total number of votes cast at polling station: 272 (add 2 + 3)

5. Number of spoilt ballot papers: 000

6. Number of destroyed ballot papers: 000

7. Number of used tendered ballot papers: 000

I hereby certify that this statement is correct.
Dated this 30th day of September 2020. 311844

NAME IN BLOCK LETTERS OF PRESIDING OFFICER: [Signature]
SIGNATURE OF PRESIDING OFFICER: [Signature]

The count for Polling Station No. 412222-F (E) has been witnessed and certified by the following Polling Agent (s) (PA) / Counting Agent (s) (CA):

NAME IN BLOCK LETTERS (Surname First)	FUNCTION	INITIALS/STAMP OF PARTY	PO
SHANE CONNOR	PA	GEORGE	PO
SANTOSH CHANDRA SINGH	CA	GEORGE	APP
SEANUS MATH	CA	GEORGE	PO
LEON LUMBA	CA	GEORGE	PO
RHEA GITTONE	CA	GEORGE	PO
SEAN JAMES	CA	GEORGE	PO
SEAN CUNY	CA	APP	AGENT
RODOLFO DALLA	CA	APP	AGENT

THE PRESIDING OFFICER SHALL SIGN A COPY OF THIS STATEMENT OF POLL AFTER THE CLOSURE OF THE COUNT AT A COMMUNAL POLL STATION AND AT A POLLING STATION IN THE PRESENCE OF ALL WITNESSES AS PROVIDED IN THE SCHEDULE TO THIS POLLING ACT.

ALL SIGNATURES ON THIS PAGE MUST BE ORIGINAL SIGNATURES.

Example of a Statement of Poll (SOP)



Packages for the RO Office

We heard also from Mr. Gunraj that around midnight on 2nd March, 2020 while in the company of another GECOM Commissioner, Mr. Vincent Alexander, they were approached by Ms. Emily Dodson, an attorney-at-law and an accredited observer of the Guyana Bar Association for the national and regional elections, who told them that the RO for electoral district No. 4, Mr. Clairmont Mingo, had commenced the tabulation process for that district in what became known as the tabulation room on the ground floor of the Ashmin's Building.

Mr. Gunraj told us further that both he and Mr. Alexander went to the tabulation room and found that Mr. Mingo had indeed commenced the tabulation process for electoral district No. 4. Mr. Gunraj said he pointed out to Mr. Mingo that there had been no notification to political party agents and observers of the time of commencement of the tabulation process, in keeping with the procedure that had been established by GECOM.

Mr. Gunraj's evidence was that Mr. Mingo conceded that he was in breach of GECOM's established procedure and agreed to halt the tabulation until 2 a.m. that morning, that is, the morning of the 3rd March, 2020. Mr. Mingo immediately contacted the representatives of the contesting political parties and notified them of the 2 a.m. time for the resumption of the tabulation

process since he had declared that he wanted “all and sundry” to be able to verify the figures called by the staff of GECOM.

At 2 a.m. on the morning of the 3rd March, 2020 among those present to witness the tabulation process was Mr. Sase Narine Singh, who was a supernumerary agent of the PPP/C, together with others from that party. There were also representatives from other political parties as well as local and international observers of the just concluded national and regional elections.

Through the evidence of Mr. Sase Narine Singh, the commission heard that all present were addressed by RO Mingo who made a commitment that the verification process for the general and regional elections of 2020 would continue until it was completed because according to him, “the nation was waiting on us.” He made it clear, said Mr. Singh, that the process to which he referred was verification of the SOPs in the possession of GECOM, by comparing them with the copies of such SOPs which had been given to party agents by the presiding officers in district polling stations and that was to be followed by a tabulation process.

Appearing before us also was Ms. Rosalinda Rasul, an economist and at the time of the national and regional elections, a local observer representative of the American Chamber of Commerce

(AMCHAM). According to Ms. Rasul, at 2 a.m. the ascertainment and tabulation process with the comparative use of SOPs as described by RO Mingo resumed and continued until 4:30 a.m. Mr. Mingo announced that the process would resume at 9 a.m. that morning, that is, the morning of 3rd March, 2020.

The tabulation process did resume at 9 a.m. on the 3rd March, 2020 and according to the witness Rasul, “the tabulation and verification process continued with SOPs without any hiccups throughout 3rd March, 2020 until 8:32 p.m., when the process was stopped for the day.”

Very significantly, the evidence of Ms. Rasul was that Mr. Mingo was present throughout the day, that is, on the 3rd March, 2020 and that for the tabulation process; the staff of GECOM were using the SOPs in the possession of GECOM to compare with the SOPs in the possession of political party agents. Ms. Rasul in her evidence said:

“the process up to this point was smooth and transparent with hardly any problems. By the time it ended at 8:32 p.m., 323 SOPs for North and South Georgetown had been verified but not all of the SOPs for Georgetown had been completed. The Returning Officer had indicated that the process would resume at 9 a.m. on the 4th March, 2020.

The commission notes that the RO and his staff had demonstrated the capacity for an efficient ascertainment and tabulation process through extended hours of work on 3rd March, 2020, in full compliance with Section 84(1) of the Representation of the People Act.

The 4th March, 2020 was a significantly eventful day in relation to GECOM's counting, ascertaining and tabulation process for electoral district No. 4. Seemingly encouraged and enthused by the impressive performance of the RO and his staff in the tabulation process the day before, party agents and observers were assembled at Ashmin's building at 9 a.m. that day. There was some initial delay but there was no sign of Mr. Mingo. We heard from the witness Rasul that at around 11 a.m. that morning, the DCEO Ms. Roxanne Myers informed all the people present in the tabulation room that the process would commence shortly. She also announced that she was limiting the attendance of political party agents to three persons per political party and that local and international observers would be limited to two persons from each group.

The further evidence we heard was that around 11:30 a.m. that day, Mr. Mingo was seen being lifted out of the building and was placed in an ambulance and taken away. According to the witness Rasul, about 10 minutes after Mr. Mingo had been taken

away, DCEO Myers returned to the tabulation room and announced that the RO was fine and was going to be back at Ashmin's Building in about 45 minutes. We heard, however, that Mr. Mingo never returned to Ashmin's Building that day.



RO Mingo taken out of Ashmin's Building

Nothing further happened until around 2 p.m. that day, when DCEO Myers announced that the tabulation process would continue, not for the completion of the Georgetown district which

was left incomplete on 3rd March, 2020, but that GECOM would start with sub-district East Bank Demerara and that two GECOM members of staff would take the place of Mr. Mingo and continue the tabulation process. Party agents protested that the Georgetown district would be left incomplete, and a new district (the East Bank of Demerara) started.

An argument between DCEO Myers and party agents followed. Ms. Myers contended that only three SOPs for Georgetown were left to be tabulated. Party agents contended that the outstanding SOPs for Georgetown far exceeded three in number. We heard that the witness, Mr. Sase Narine Singh, gave Ms. Myers the details of the outstanding SOPs for Georgetown which were far in excess of three in number. Ms. Myers, on receiving the information from Mr. Singh, promised to revert to him. She never did but according to Mr. Singh, Ms. Myers promised all party agents that the tabulation of SOPs for Georgetown would be completed on the return of Mr. Mingo.

It appears DCEO Myers prevailed, and the tabulation process resumed for sub- district East Bank Demerara. According to Mr. Sase Narine Singh, compared with the process employed on the 3rd of March, 2020, “there was a big difference in the process they began using.” The “difference” that the witness Singh spoke about was described by the witness Alexandria Sophia

Bowman. Ms. Bowman was one of two GECOM employees identified by DCEO Myers, as the person who would continue the tabulation process on 4th March, 2020 in the absence of Mr. Mingo.

In her testimony before us, Ms. Bowman said that on the 4th March, 2020, she was identified to be involved in the tabulation process for the East Bank of Demerara sub-district. She said before she began the tabulation process, she was advised by Ms. Michelle Miller, the clerical assistant to RO Mingo, that she would not be using SOPs for the tabulation exercise but a spreadsheet.

Ms. Bowman told us that she had worked in tabulation exercises in previous years for GECOM at national and regional elections and had no recollection of ever having relied on the use of spreadsheets in such ascertainment and tabulation exercises in those past elections.

The spreadsheet that she used in the March 2020 East Bank Demerara tabulation exercise was given to her on a USB Drive by Mr. Enrique Livan, another GECOM employee. Ms. Bowman said that the data that was on the USB drive was entered by Mr. Livan. It was he, she said, who opened the folder when the USB drive was inserted into the laptop which she was expected to use in the tabulation process.

The use of a spreadsheet in the ascertaining and tabulation process by Ms. Bowman, triggered a hurricane of protests from political party agents and was the cause, according to Ms. Bowman, of heated exchanges between representatives of competing political parties, particularly between the representatives of the APNU/AFC and the PPP/C.

The evidence of Ms. Rosalinda Rasul was that since no party agent or observer was given a copy of the spreadsheet, and since no one knew the source of the information on the spreadsheet and given the protest flowing from the use of a spreadsheet instead of tabulation through the comparative use of SOPs, CEO Keith Lowenfield visited the tabulation room and addressed the contentious issue of the use of the spreadsheet, which he referred to as a broadsheet. According to the witness Rasul, Mr. Lowenfield sought to justify the use of the spreadsheet and explained to party agents and observers that “the broadsheet was an administrative document and that he did not see any problem with its use.”

Ms. Rasul said that Mr. Lowenfield assured everyone that in the event of any query or difference between the numbers on the “broadsheet” and those on the SOPs in the possession of the political parties, GECOM would address such circumstances by reverting to the specific SOP. We were told that Mr. Lowenfield

insisted that the “broadsheet” had to be used, and so Ms. Bowman said she continued to use the spreadsheet in the tabulation process.

According to the witness Rasul, however, several discrepancies were being observed between the numbers called from the spreadsheet and those on the SOPs in the possession of the political parties present. Concerned about the significant incidence of discrepancies between the information on the spreadsheet being used by Ms. Bowman and that on the SOPs in the possession of the political parties present, Ms. Rasul said she went in search of CEO Lowenfield. She met him and asked for a copy of the spreadsheet being used by Ms. Bowman to which request she said he told her, “Don’t do this to me” and walked away from her.

At around 3:30 p.m. on the afternoon of 4th March, 2020, CEO Lowenfield returned to the tabulation room. Mr. Lennox Shuman of the Liberty and Justice Party (LJP) who gave evidence before us, testified that on Mr. Lowenfield’s return to the tabulation room and on being told of the discrepancies between the numbers on the spreadsheet and those on the SOPs, attributed those discrepancies to the fact of the staff being tired.

Mr. Sase Narine Singh, however, related to us that he pointed out to Mr. Lowenfield that of the figures that were called from the spreadsheet for 21 ballot boxes, discrepancies had been observed for 17 such boxes.

Ms. Rosalinda Rasul said that the CEO, agreed to a random examination of the votes recorded on the spreadsheet for a selected polling station in comparison with numbers called from the SOPs. Ms. Rasul gave us two examples which she said she had recorded. For ballot box 4013, the CEO called 242 votes from the spreadsheet for the APNU/AFC party, while the corresponding SOP showed 192 votes for that party. For ballot box 4014, the CEO called 215 votes for the APNU/AFC party, while the corresponding SOP showed 162 votes for that party. The CEO then halted the ascertaining and tabulation process.

In the interim, Commissioner of GECOM, Mr. Sase Gunraj related to us, that he had become aware of the discrepancies that were being identified between the information on the spreadsheet that was being used by Ms. Bowman and that on the SOPs in the possession of the political party agents who were present in the tabulation room. As a result, Mr. Gunraj said that he requested that a meeting of the elections commission be convened to discuss the conflict between the information on the spreadsheet and that on the SOPs. Such a meeting was convened, said Mr.

Gunraj, at which CEO Lowenfield was present. Mr. Gunraj told us that the CEO sought to justify the use of the spreadsheet in place of SOPs on the ground that the use of the spreadsheet was both expedient and efficient. He said that the commission, after extensive deliberations, directed that the agreed procedure for the comparative use of only SOPs, must be reverted to and that the use of the spreadsheet must stop. According to the witness Gunraj, this position of the commission was very clearly conveyed to CEO Lowenfield.

The witness Ms. Rasul told us further that, around 5:45 p.m. that day (4th March, 2020), the CEO returned to the tabulation room and announced that:

- (a) GECOM had decided to revert to the use of SOPs in the ascertaining and tabulation process, and
- (b) on resumption, the ascertaining and tabulation process will continue well into the night, for as long as it took to complete the process, and
- (c) in the event of any discrepancy arising, such discrepancy would be immediately addressed.

After these announcements by Mr. Lowenfield, Ms. Bowman and her colleague resumed the ascertaining and tabulation process by the comparative examination of SOPs. The process thereafter proceeded smoothly and without interruption. Ms. Bowman and

her colleague took a break at 7:30 p.m. and resumed at around 8.30 p.m. We heard from the witness, Ms. Rasul that at 9 p.m., that is half an hour later, Ms. Bowman and her colleague announced that they were tired and hungry and were going to stop for the night. They subsequently left the tabulation room.

At around 10 p.m. that very night, both CEO Lowenfield and his deputy, Ms. Myers, returned to the tabulation room and engaged party agents about finding replacement staff for Ms. Bowman and her colleague who had left. Commissioner of GECOM, Mr. Sase Gunraj, said he reminded CEO Lowenfield and DCEO Myers of the need to deliver the results of the elections in a timely manner. Mr. Gunraj's evidence was that as far as he was aware, CEO Lowenfield for the first time since the commencement of the ascertaining and tabulation of the results for electoral district No. 4, raised an issue about the availability of staff for this process. Mr. Gunraj also told us that the CEO was told by party agents present that there were two Deputy Returning Officers (DRO) present in the tabulation room, who were willing to continue the tabulation process, but the CEO was not agreeable to utilizing the services of these DROs of electoral district No. 4 to continue the tabulation process.

The CEO, according to Mr. Gunraj, said that he was not prepared to have a DRO continue the tabulation process simply because

such a person was present. The CEO further explained that he preferred to have someone of his choice conduct the tabulation. He maintained his position even though his attention was drawn to the meaning of the phrase "Returning Officer" in the Interpretation section of the ROPA.

The commission notes that in the Interpretation section of the ROPA, it is stated:

"Returning officer" means –

- (a) A returning officer of a polling district;
- (b) A deputy returning officer."

At about 1:20 a.m., the preferred choice of the CEO became known. Two staff members of the GECOM turned up in the tabulation room to continue the tabulation process. One of them was Mr. Enrique Livan, he was the same person identified by Ms. Alexandria Bowman, as the person who had provided the controversial spreadsheet to her, on a USB drive, earlier that day.

Appearing before us was Mr. Paul Jaisingh. During the month of March 2020, he was employed by GECOM as a Deputy Returning Officer, for electoral district No. 4. During the morning hours of the 5th March, 2020 he together with Mr. Enrique Livan, at the request of CEO Lowenfield were asked to continue the ascertaining and tabulation process for electoral district No. 4. In

that process, Mr. Jaisingh said Mr. Livan called out the figures which he (Jaisingh) entered on a spreadsheet on a laptop that was provided for that purpose and which was projected onto a screen.

Mr. Livan commenced the tabulation with the use of SOPs in the possession of GECOM but, according to Ms. Rasul, within minutes he noticeably slowed the pace of tabulation and was calling numbers, which in many instances and with considerable frequency, did not correspond with the numbers on the SOPs in the possession of the representatives of political parties.

The evidence of a number of witnesses was fairly consistent on what followed shortly after Mr. Livan commenced the tabulation process, that is, that after about 20 minutes, Mr. Livan announced that he was tired. He picked up the laptop computer that was being used by DRO Jaisingh in the tabulation process together with the USB drive that was attached to it and left the room. This was confirmed by DRO Jaisingh. A huge commotion ensued. Party agents, aware that Mr. Livan had taken the laptop computer and USB Drive with him, went in search of him. He was found in a room with a laptop computer in front of him. Documents were being printed on a printer that was in the room. Mr. Livan was challenged and asked what he was doing on the

computer. His answer, according to multiple accounts, was “nothing.”

The witness Shuman told us that he took hold of a stack of the pages that were being printed. He observed that the information on the printed pages related to regions, votes cast, and political party information. He said he handed those pages over to the police who subsequently arrived, but this commission heard nothing more about them.

Ms. Bibi Anieshaw Mohamed, who in March 2020 was a tabulation agent for the PPP/C party, said in evidence before us, that Mr. Livan was questioned about the laptop in the room where he was found. Ms. Mohamed said that Mr. Livan told the police that the laptop that was on the desk before him was his personal laptop and that he did not remove the laptop from the tabulation room. We however accept the evidence of DRO Jaisingh and other witnesses as true, namely, that Mr. Livan removed the laptop with USB drive attached from the tabulation room.

Around 4:30 a.m., CEO Lowenfield arrived. The laptop and USB drive were taken back to the tabulation room. We heard from Ms. Rasul, as well as multiple other witnesses, that on opening the laptop, the information projected onto a screen from the

laptop did not correspond with the information on the corresponding SOPs in the possession of party agents and appeared in some instances to have been altered. Ms. Rasul told us that CEO Lowenfield made no attempt to ascertain the accuracy of the complaints being made by the agents of the political parties present about Mr. Livan's actions nor did he make any enquiry of Mr. Livan as to the circumstances in which the challenged information came to be on the laptop. Her evidence is that CEO Lowenfield simply said, "We will resume the tabulation at 9 a.m."

On the 5th March 2020, party agents and local and international observers were gathered at the Ashmin's Building at 9 a.m. in the tabulation room, ready for the promised resumption of the tabulation by the CEO. However, there was no sign of Mr. Mingo or of any GECOM staff.

We heard from Assistant Commissioner of Police (ACP) Thomas that around 10 a.m. on the morning of the 5th March 2020 he received a call from a police officer based at the Ashmin's Building, and was told that the police had received information that a bomb had been placed in the building.



ACP Edgar Thomas addressing the commission

ACP Thomas, who was at the time at his office at the Brickdam Police Station, hurried over to Ashmin's Building. He proceeded to request political party representatives, local and international observers of the elections and diplomats present in the tabulation room to leave the building in the interest of their own safety. He said everyone declined to do so.

The building was visited by investigating police officers on the said 5th March, 2020. The evidence of Deputy Superintendent of Police Elston Baird was that police records revealed that on the 5th March 2020, the police received a report of a bomb in

Ashmin's Building. He said no search was conducted because many people refused to vacate the building. Interestingly however, we learnt that the next day, police officers returned to the Ashmin's Building, where among other persons, they met the DCEO Myers who showed to the police officers a white Styrofoam cup with what appeared to be the face of a clock and the lens of a camera. The police took the object away and later reported it to be a completely harmless contraption. The commission has noted the evidence that Ms. Myers herself never left the Ashmin's Building even though on 5th March 2020 she had gone to the tabulation room and told everyone there, including party agents, international and local observers and diplomats, "Y'all get out the room. There is a bomb in the building."

It seems that all the hype about there being a bomb in the Ashmin's Building soon evaporated and the evidence revealed that at about 12:30 p.m. on the said 5th March 2020 Ms. Myers returned to the tabulation room and announced to all the persons gathered there, that the ascertaining and tabulation process would soon resume. The commission notes that the CEO Lowenfield, in his intervention in the Livan/laptop incident earlier referred to, had announced at that time that the tabulation process would have resumed on 5th March 2020 at 9 a.m. During the morning hours of the 5th March 2020 RO Mingo had not made an appearance. Indeed, from the morning of 4th March 2020 to the morning of 5th March 2020, Mr. Mingo had not been

seen and did not participate in the very limited ascertainment and tabulation exercise over this period. As the day progressed, however, the witness Sase Narine Singh in his testimony said that Mr. Mingo came to the tabulation room and announced that he was going to make a declaration of the district No. 4 results in accordance with his spreadsheet count.

Very significantly, ACP Thomas told us that before Mr. Mingo made known his intention to declare the results for electoral district No. 4, on the 5th March 2020, Senior Superintendent of Police Azore had telephoned him to say that he had been told by DCEO Myers that a very important announcement was going to be made that day. He said he later learnt that Mr. Mingo had indeed made a declaration of the district No. 4 election results.

At the point at which Mr. Mingo announced his intention to declare the results for electoral district No. 4, the evidence before us was that the tabulation of the results for North and South Georgetown as well as for the East Bank of Demerara was incomplete and the ascertaining and tabulation process for the East Coast of Demerara had not even started.

Ms. Rasul related to us that Mr. Mingo proceeded to an upper floor of the Ashmin's Building and, standing there with two GECOM staffers at his side, began his declaration by reading

from a sheet of paper. His declaration was drowned by loud protest by all but agents of the APNU/AFC party. The further evidence we received was that looking on at Mr. Mingo and his declaration from one floor above at the Ashmin's Building was GECOM's DCEO, Ms. Roxanne Myers.

Despite the loud noise, everyone appeared to understand that what Mr. Mingo had done from the second floor of the Ashmin's Building was to make a declaration of the results of electoral district No. 4, even though a total of the votes cast for each party in that district had not yet been ascertained.

Several witnesses who appeared before us, told us that later in the evening of 5th March 2020, DCEO Myers came into the tabulation room where political party agents, international and local observers and diplomats were still seated and instructed everyone to leave the building because, as we were told, Ms. Myers said, they were going to lock it up.

We conclude from our analysis of the evidence of the events at the Ashmin's Building on the 5th March, 2020, that after the declaration by Mr. Mingo, DCEO Myers seemed to have formed the view that the ascertaining and tabulation of the results of electoral district No. 4 had been completed and that consequently there was no need for party agents and observers

to remain in the building. She therefore wanted everyone to leave the building. ACP Thomas said that he understood Ms. Myers's instruction to leave the building, included himself and GECOM Commissioner Sase Gunraj, who told us that his expression of concern to DCEO Myers about the security of GECOM's SOPs were ignored by her. This is a convenient point to note a somewhat similar disposition by DCEO Myers, who apparently had some other focus, seemingly much more important to her than the security of GECOM's records. We heard from GECOM's then IT Manager, Mr. Aneal Giddings, that at the time of the so-called bomb threat, he, following GECOM's established protocols in such circumstances, was endeavouring to remove a server on which was stored vital records for GECOM, but was told by DCEO Myers to leave the server in the building and evacuate.

Having become aware of Mr. Mingo's declaration of results for electoral district No. 4 on 5th March 2020, political party agents attempted to give notice for a recount to which they were entitled as a matter of law. By the provisions of section 84(2) of the ROPA, they had until noon of the day following from the day of the RO's declaration to do so.

Mr. Charles Ramson was appointed a counting agent for the PPP/C, one of the competing political parties. Mr. Ramson told us

in evidence that on the 5th March 2020, he faced considerable difficulty in getting his party's notice of a request for a recount served on Mr. Mingo. He said he encountered police barriers around Ashmin's Building which were manned by police who were reluctant to let him through. When Mr. Ramson did eventually get into the Ashman's building, he attempted to go up to the upper floor of the building where Mr. Mingo had retreated but police officers stood in his way and prevented him from doing so.

Eventually, with the assistance of then GECOM Commissioner Bibi Shadick, he was able to get up to the third floor of the building. On the floor he noticed that there were several rooms with doors that were all locked and the exterior handles of the locks on those doors had been removed. He knocked several times on those doors but got no response. He did eventually see Mr. Mingo leaving from the very third floor. Mr. Ramson told us, that he attempted to approach Mr. Mingo to deliver his letter of request for a recount but was again prevented by police officers from doing so, claiming that they were only acting on their instructions.

As a result of the difficulty he encountered in serving his letter of request for a recount, Mr. Ramson said he sent a copy of his letter electronically to the chairperson of GECOM, Justice

Claudette Singh, CEO Lowenfield and his deputy Ms. Roxanne Myers. None of these people responded. We heard further from Mr. Ramson that it was only on the 6th March, 2020, about 7 minutes before the expiration of the time allowed for a request for a recount, was he able to serve his letter of request. Other party agents we were told were also able to make similar requests for a recount at that time. On the very 6th March, 2020, Mr. Mingo replied to Mr. Ramson to advise that his request for a recount had been denied because the records of GECOM did not indicate that he was appointed a counting agent for the PPP/C for electoral district No.4.

The evidence of Rosalinda Rasul, which was given in a detailed and convincing manner, was that the departure from the tabulation procedure employed on the 3rd March, 2020, which was to use the SOPs submitted to GECOM by the presiding officers of electoral district No. 4, in comparison with the SOPs in the possession of party agents authorized to be present in the tabulation process conducted by the RO for that district, showed an inflation of votes for the APNU/AFC party and a corresponding reduction of votes for the PPP/C, and this was manifest in the spreadsheet being used by GECOM.

The first blow against this endeavour was struck by Mr. Anil Nanlall, attorney-at-law who moved the High Court seeking

immediate relief by way of injunctive orders against the RO and GECOM to prevent further action by GECOM, in further breach of the provisions of section 84(1) of the ROPA. The case filed was titled HOLLADAR V CLAIRMONT MINGO ET AL. In this case, Holladar sought inter alia:

- (a) An injunction restraining the Returning Officer District 4 from in any manner whatsoever, declaring the votes recorded for each list of candidates for District 4 before complying with or ensuring the compliance with the process set out in section 84, of the Representation of the People Act, Chapter 1:03, Laws of Guyana.
- (b) An injunction restraining the Guyana Elections Commission from declaring the total number of valid votes cast for each political party until the Returning Officer or Deputy Returning Officer for District 4 complies and ensures compliance with section 84 of the Representation of the People Act, Chapter 1:03.
- (c) An order directing that the Returning Officer or Deputy Returning Officer for District 4 are to commence compliance with section 84(1) of the Representation of the People Act, Chapter 1:03, no later than 11.00 hours on March 12, 2020.

The High Court granted the injunctive orders sought by Mr. Holladar. The substantive hearing of the proceedings brought by Mr. Holladar was presided over by Her Honour the Chief Justice

(ag) of Guyana, Roxanne George-Wiltshire. In her judgment, the learned chief justice made the following important statements:

“60. I hold that there are primarily two explicitly mandatory requirements in S84(1): (i) that the total votes cast in favour of a list in the district must be done by adding up the votes recorded in favour of the list in accordance with the SOPs, and (ii) that thereafter there must be a public declaration of the said votes recorded for each list of candidates.

70. I have concluded that a failure to tabulate the votes recorded on the SOPs in the presence of persons entitled to attend would be to defeat the intention of Parliament to provide for transparency in the tallying of elections results. To hold otherwise would be to stymie the intention of Parliament and affect the credibility of the elections. It cannot be that Parliament would seek to have the RO flout the provisions for public tabulation and declaration of results without there being a sanction for non-compliance. In my view, the sanction has to be invalidity of the actions.

84. At the end of the day, the only official documents that the RO can consider are the SOPs that have been transmitted to him by the presiding officers of the various polling places pursuant to section 83.”

The chief justice then made the following orders:

(4) the Returning Officer and/or the deputy returning officer must comply with section 84(1) (of ROPA) in ascertaining the total votes cast in favour of each list and the public declaration of the votes so recorded for each list of candidates.

(5) The Guyana Elections Commission cannot lawfully declare the results of the elections of March 2nd, 2020 unless and until the Returning Officer for district 4 complies with and/ or ensures the compliance with the provisions of section 84(1) of the Representation of the People Act, Chapter 1:03”

The chief justice then granted a final injunction restraining Mr. Mingo from in any manner whatsoever declaring the results recorded for district No. 4 before complying with or ensuring the compliance with the process set out in section 84 of the ROPA and restraining GECOM from declaring the total number of valid votes cast for each political party until the RO or DRO for district No. 4 complies with and ensures compliance with section 84 of the ROPA.

The RO or a DRO were specifically directed by the chief justice to commence compliance with the court’s directions on the

tabulation process pursuant to section 84(1) of the ROPA, not later than 11:00 hours on the 11th March, 2020.



Court marshals waiting to serve injunction on March 5th, 2020

The commission has noted that between 6th March, 2020 to 11th March, 2020, the ascertaining and tabulation of the total votes cast in electoral district No. 4 had been halted.

The witness Rasul was very clear in her evidence about her observations of the events that unfolded on the 12th and 13th March, 2020. She testified that on the 12th March, 2020:

(a) When she arrived at the Ashmin's building, she saw barricades around the building manned by police officers who prevented her access to the building, even as a GECOM accredited election observer wearing her identification badge.



Tabulation room shut and guarded on Myers' instruction

(b) A man identified himself to her as Colin April, claimed to be a GECOM security officer. He was casually dressed without any form of identification but told Ms. Rasul that there was a new procedure in place in that only one representative from a political party and one representative from an observer group would be permitted entry into the Ashmin's Building.

The commission heard no evidence that Mr. April's intimation to Ms. Rasul was a decision of GECOM.

- (c) Ms. Rasul said she was eventually allowed into the building. There she found that the tabulation room had been re-arranged. Only chairs were provided for party agents and observers. All tables had been removed, making recording of information or writing by party agents or observers particularly uncomfortable.

The commission has noted the provisions of section 86(2) of the ROPA by which the RO is enjoined to provide all reasonable facilities to those overseeing the tabulation process.

- (d) She observed that GECOM's SOPs previously kept in the tabulation room were no longer there. Mr. Mingo explained to everyone that he would be reading from a broadsheet. Then GECOM Commissioner Ms. Bibi Shadick told Mr. Mingo that that procedure would be in violation of the decision of the chief justice and Mr. Mingo in response asked her not to interrupt him.
- (e) Mr. Mingo also advised everyone present that he extracted the numbers on the broadsheet from GECOM's SOPs though he defiantly refused all requests to scrutinize his broadsheet.

(f) To a question from a party agent, "How would we know if the numbers on your broadsheet are accurate?" Mr. Mingo replied, "Follow on your SOPs." To an observer from the EU who wanted to know if he would permit access to his SOPs, RO Mingo made no reply. When asked what happens if discrepancies are identified between his broadsheet numbers and numbers recorded on the SOPs in the possession of party agents, Mr. Mingo said, "You can have recourse to the law."

Sometime later that day, the Chairperson of GECOM Justice Claudette Singh, visited the tabulation room where she heard the complaints of party agents and observers that the intended tabulation process proposed by Mr. Mingo was not in keeping with the decision of the chief justice. We learnt from Justice Singh that Ms. Myers had told her that she understood that the chief justice had ruled that the tabulation could be undertaken by any means. Justice Singh told those people in the tabulation room that she needed an opportunity to read the decision of the chief justice. As a result, the tabulation process was suspended for that day.

The following day, that is, 13th March 2020, the tabulation room was relocated to what was described as the GECOM media centre. Again, only chairs were provided for party agents and

observers. No tables were provided for them to write or place their computers.

Mr. Mingo had seemingly agreed to restart the tabulation process from box 4001 after consultation and discussions with party agents and observers. In fact, Ms. Rasul told us that restarting the process was Mr. Mingo's proposal. However, Ms. Carol Joseph, a representative of the APNU/AFC party became extremely loud and abusive, swearing at and threatening people in the room. She told the diplomats present that they were meddling in Guyana's elections and that they should leave the country. The diplomats we learnt subsequently left the room. Ms. Carol Joseph spoke directly to Mr. Mingo, telling him to ignore party agents and observers and that on no account should he restart the process. Following Ms. Carol Joseph's loud outburst, Mr. Mingo announced that he would not restart the ascertaining and tabulation process despite his earlier undertaking to do so.

GECOM Commissioner Robeson Benn, who was present in the room, advised Mr. Mingo that he was acting in violation of the order of the chief justice. In response Mr. Mingo asked Mr. Benn not to interrupt him and called on the police to remove Mr. Benn from the room, which we learnt did not happen.

On the instructions of Mr. Mingo, GECOM staff began to call numbers purporting to be numbers of votes cast for competing political parties in the elections. Mr. Sase Narine Singh told us that they were calling those numbers very rapidly. The witness Rasul who said she had timed the process, explained that 3 to 4 SOPs were being completed in a minute or less. The process was one that was difficult to follow. Ms. Rasul, whose evidence was very detailed, in relating what was transpiring at the Ashmin's Building on 13th March, 2020 said:

“As had happened on the 4th, the numbers that were being called by GECOM were not the same numbers that were on the SOPs that the party agents had in their possession...there was a pattern of increase in the number of votes that were read out for the APNU/AFC and a decrease in the number of votes allocated to the PPP.”

GECOM Commissioner Sase Gunraj, we were told in evidence, in a loud voice told Mr. Mingo that he was acting in breach of the chief justice's order, but the RO ignored him. We heard also that the attention of Mr. Mingo was drawn to the unfolding discrepancies, but he said nothing and did nothing, save to tell his staff, “Keep calling.” During all of this, according to the witness Rasul, DCEO Myers was present in the room seeing what was happening and hearing the complaints of the party agents but she too said nothing and did nothing.

Around mid-morning on the 13th March, 2020 a marshal of the Supreme Court visited the tabulation room and handed a document to Mr. Mingo who then announced that he had been summoned to appear before the chief justice. He instructed his staff before he left to, "Keep calling those numbers."

While Mr. Mingo was gone and his staff kept on with his instructions, we heard that Ms. Pauline Chase, an attorney-at-law, and an accredited representative of the Guyana Bar Association pointed out to the GECOM staff that they were not adhering to the decision of the chief justice whereupon, according to the witness Rasul, Ms. Carol Joseph told Ms. Chase, "You don't know me. I will stomp on you."

According to the evidence, Mr. Mingo subsequently returned to the tabulation room and disclosed that the chief justice had instructed that GECOM had to display the SOPs from which they were calling numbers. He disclosed further, said Ms. Rasul, that "they did not have the equipment to facilitate that process in the room they were in and that the tabulation process would be suspended until 4:00 p.m. that day and would resume at GECOM headquarters, at Kingston, Georgetown." The Commission notes that this decision was taken even though the Ashmin's Building, as we heard from GECOM Commissioner Gunraj, had been published in the official Gazette of Guyana, as the office of the

RO of electoral district No. 4 and from where GECOM intended the ascertaining and tabulation of votes for that district was to be undertaken.

The justification for shifting the tabulation process to GECOM headquarters was, as Mr. Mingo had explained, to be the lack of equipment at the Ashmin's Building. The evidence we heard was that at GECOM headquarters, party agents, observers and diplomats were seated in a shed in the compound. Again, only chairs were provided. The equipment to be used included a computer, a projector and a screen consisting of a sheet of cloth (which many witnesses referred to as a "bedsheet" which was draped over a piece of cardboard).



Bedsheet on which SOPs were projected at tabulation centre

The commission notes that no additional equipment was displayed for use at GECOM's headquarters that was different from that available at Ashmin's building and which was actually in use at that building.

Jonathan Yearwood, an accredited representative of the A New and United Guyana (ANUG) party, was at GECOM's headquarters. He gave evidence before us. He told us that Mr. Mingo explained to all present at GECOM headquarters that the process to be followed was that SOPs would be projected onto the screen and then each party would be shown the SOP. The actual process described by the witness Yearwood was one where numbers were being called and projected onto the cloth screen. Yearwood told us that the projected numbers could not be clearly seen. The European Union in its final report on the 2020 elections in Guyana described the tabulation process at GECOM headquarters.

The report noted that given the clear instructions of the chief justice about the use of the SOPs:

“the Returning Officer ultimately had no choice but to arrange for their projection. However, the process that ensued did not provide for any transparency. Instead of a live projection of the SOPs, blurred and cropped images of the scanned documents were briefly projected on an

undulating bedsheet which made it impossible to scrutinize their contents.”

In her evidence before us, Ms. Rasul said:

“I observed that there were markings on those SOPs and I am saying SOPs with uncertainty because I again, we were not allowed to see them but there were images projected on the screen that appeared to look like SOPs. They were faint in colour and what I saw, that the SOPs – and I am saying that, again, very cautiously, had markings on them and I saw most definitively, that the numbers for some of the SOPs for APNU with a higher number written ... handwritten on it and the numbers for the PPP were scratched with a lower number on it. And on some SOPs where there were zeros for the APNU/AFC, it was changed to an 8.”

Both witnesses Yearwood and Rasul said the representative of the EU who approached the table where the SOPs was told by Mr. Mingo to get back to his seat as he was not allowed to go up there. Both witnesses also said that there was a significant police presence at GECOM headquarters that day and that the police ranks were heavily armed. We have no doubt that this must have created an intimidating experience for those present, save a few.

As did the EU in its final report (referred to earlier), both Rasul and Yearwood said the numbers were being called by GECOM staff at a very rapid pace, and it was clearly established that the numbers being called were not reflected on the SOPs in the possession of political party agents.



GECOM staff calling out figures

We heard that Mr. Sase Narine Singh decided to leave GECOM headquarters. The witness Yearwood told us that he also decided to leave but before doing so he told Mr. Mingo that “If Guyana erupted into violence, he would be the sole cause because of what he was doing.” He said as he was leaving, he was accosted by APNU/AFC agent Ms. Carol Joseph.

When the tabulation process that Mr. Mingo had undertaken at GECOM headquarters was finished, he read a prepared statement by which he declared that the APNU/AFC party had won the elections in electoral district No. 4. Mr. Mingo signed a statutory return in relation to his declared results and so did Ms. Carol Joseph on behalf of the APNU/AFC.



Heavy police presence as RO Mingo prepares to declare on March 13th 2020

The next day, that is the 14th March, 2020 the Organisation of American States (OAS) announced that it was withdrawing from

Guyana and in a press statement which we had before us, stated “that the process conducted by the Returning Officer for Region 4 did not meet the required standards of fairness and transparency and was unlikely to produce a credible result.” (OAS report, March 2020, p.12)

This was followed by an announcement that then President Granger and then Leader of the Opposition Dr. Bharat Jagdeo had agreed to a national recount of the votes cast at the March 2nd, 2020 elections.

| 9 ATTEMPTS TO FRUSTRATE TABULATION AND PREVENT DECLARATION OF TRUE RESULTS

As is evident from the caption of this part of our report, we are tasked by our TOR with identifying what attempts were made to obstruct, subvert and prevent the counting, ascertainment and tabulation of votes polled and a declaration of the true results of electoral district No.4.

In relation to the first item of our TOR, we provided considerable detail in which we examined the participation of and roles played by senior officials of GECOM in the ascertainment and tabulation of the votes cast in electoral district No. 4. To satisfy the expected inquiry under the present head, we need do no more than distil the various items of evidence relating to those senior GECOM officials. Aspects of the evidence we refer to, if examined in isolation may be said not to carry much weight, but we are of the firm view that there is a particular context which attaches to the conduct of those senior officials of GECOM and we therefore considered the evidence holistically and looked at the cumulative effect of what occurred at Ashmin's building on the 4th, 5th, 11th and 12th March, 2020 and at GECOM's headquarters on the 12th and 13th March, 2020.

After careful scrutiny, we are satisfied that:

1. There was a conscious and deliberate – even brazen – effort to violate the provisions of section 84(1) of the ROPA.
2. In so doing, certain senior GECOM officials abandoned all need for neutrality and impartiality and demonstrated a bias for a competing political party and, in the course of events over those days, showed an open connection with that party and by their efforts sought a desired result for that party.

After careful consideration and analysis of the evidence before us, it is our considered view that CEO Mr. Keith Lowenfield, DCEO Ms. Roxanne Myers and RO Mr. Clairmont Mingo were principally responsible for clear and deliberate attempts to frustrate, obstruct and subvert the ascertainment of votes in electoral district No. 4.

We have come to this conclusion for the following reasons.

Regarding CEO Keith Lowenfield

Prior to the elections he met with international observers and party agents among others and explained to them:

1. That the ascertainment and tabulation of votes cast was going to be by a comparative examination of SOPs in the possession of GECOM, with those in the possession of political party agents.

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2. That ascertainment and tabulation of votes would be undertaken expeditiously.
 3. During the night of the 4th March, 2020 the CEO assured party agents and observers that the ascertainment and tabulation process would resume at 9:00 a.m. on that morning.

Of course, as we have already seen, the matters promised at 1 and 2 above were not honoured. There was no 9:00 a.m. resumption on the 4th March 2020. We have not heard any evidence of any explanations for these omissions and failures, nor of any apology, as a matter of courtesy, coming from the CEO to the waiting and expectant party agents and observers.

Additionally, the CEO made many other statements which, even if made with the best intentions, turned out to be misleading. For example, the evidence before us was that on 4th March 2020, after a GECOM meeting which immediately ordered the discontinuance of the use of a spreadsheet in the ascertainment and tabulation process and reaffirmed the use of SOPs for that process, the CEO told party agents and observers that, among other things, GECOM had decided after an interruption, that the tabulation process would continue into the night, for as long as it took to complete the

process. This was an empty undertaking which was feebly honoured and we are of the view that the general conduct of the CEO must have seriously eroded the trust of the Guyanese people in him.

The CEO, well knowing that GECOM had specifically decided that the approved method for the ascertaining and tabulation of votes cast for the respective competing political parties was to be by the comparative examination of SOPs, nevertheless, on the 4th March 2020, approved the use of a spreadsheet which turned out to be a document, the information on which was substantially inconsistent with that on the SOPs in the possession of party agents. This was confirmed by multiple witnesses who appeared before us and by reports in evidence from independent international and regional election observer missions.

Despite the loud objections of party agents who did not have access to nor possession of this spreadsheet, the CEO insisted that this document had to be used because it was an administrative document, and its use was efficient.

By referring to the spreadsheet as an “administrative document” the CEO was in our view, conveying the impression that the spreadsheet was a GECOM approved document, which it was not.

On being called before GECOM in relation to the use of a spreadsheet in the ascertainment and tabulation process, the CEO told the commissioners of GECOM, that the use of the spreadsheet was both expedient and efficient. He did not tell the commissioners that the efficiency of the ascertainment and tabulation process had been established the day before when some 323 SOPs had been ascertained and verified through extended hours of work by the comparative use of SOPs as had been decided upon by GECOM, something which he knew or ought to have known about.

Nor did he tell the commissioners that he was faced with complaints by party agents that the spreadsheet that was being used, and the use of which he was encouraging and supporting, bore significant errors. The data on the spreadsheet, when compared with SOPs in the possession of party agents, was found to have a record of votes for the APNU/AFC which had not been earned by that party and which was therefore an inflated record of the votes for that party, while the very spreadsheet carried a decrease in the number of votes earned by the PPP/C. Seeing

these glaring discrepancies and errors, party agents of several political parties vociferously protested the use of the spreadsheet.

At one point when it was recognized by party agents that the results recorded on the spreadsheet that were being used by GECOM staff carried votes for the APNU/AFC party that were over and above the votes recorded for that party on SOPs in the possession of party agents, and a corresponding decrease in votes for the PPP/C party, as against what was recorded for that party on the SOPs of party agents, an observer Ms. Rasul approached CEO Lowenfield and asked him for a copy of the spreadsheet, the use of which he had insisted on. Ms. Rasul explained the CEO's response was to walk away from her but not before saying to her "Don't do this to me."

We wondered what to make of those words. Was it that the CEO thought Ms. Rasul a nuisance? Was it that he thought that meeting her request was an onerous task? Or was it that his response was uttered after his immediate recognition that the spreadsheet was deliberately "engineered" to carry false statistics and that the spreadsheet, if put in the hands of persons unknown to him or whom he could not trust would be damning evidence of wrongdoing in relation to the ascertainment and tabulation of the votes for electoral district No. 4? Whatever he might have meant,

the CEO, by his overall conduct, certainly opened himself to the criticism that the spreadsheet was introduced for ulterior motives and not for efficiency. Indeed, the use of the spreadsheet caused major disruptions and slowed the tabulation process.

Further, with respect to the CEO's overt and vocal support for the use of the spreadsheet both to party agents and observers, and later to the commissioners of GECOM, we are of the view that the CEO knew or ought to have known that the methodology approved by GECOM for the ascertainment and tabulation of votes was through the use of SOPs. The CEO knew or ought to have known that section 84(1) of ROPA specifically provided that the ascertainment of votes cast for each political party was to be "in accordance with the Statements of Poll" and that by promoting and insisting on the use of a spreadsheet, he was acting contrary to law.

The CEO knew or ought to have known that Ashmin's Building had been identified by GECOM as the office of the RO for electoral district No. 4 and seemingly did not object to the relocation of the venue for the ascertainment and tabulation of votes at GECOM headquarters at Kingston, Georgetown. The chairperson of GECOM told us that the CEO told her that Ashmin's Building lacked facilities. However, we have noted that there were no facilities in

use at GECOM headquarters that were not available and previously in use at Ashmin's Building.

The evidence we heard was that the CEO took possession of both the spreadsheet and the computer and USB attached, both of which had challenged information. We have no evidence of what became of the spreadsheet, computer and USB drive. We accept that the CEO was last in possession of these items, which may well contain information of incorrect and falsified elections results for electoral district No. 4.

The CEO is on record as having expressed his view that the CARICOM supervised national recount, accepted as credible and accurate in the reports from all the observer teams, did not represent the will of the people. We did not see this concern manifested when the spreadsheet which he authorised was met with howls of objection from political parties and observers, or when clear discrepancies in votes being called out were brought to his attention.

Regarding DCEO Roxanne Myers

We have closely scrutinized the evidence relating to the DCEO. It is clear to us that on the 4th March 2020, the DCEO took a decision to

limit the number of political party agents and observers for the ascertainment and tabulation process at the Ashmin's Building. The reason she gave was that GECOM staff did not feel safe with many people in the room. We note, however, that on the 3rd March 2020, no one from GECOM complained of intimidation or feeling unsafe. We are of the view that this was a unilateral decision by Ms. Myers taken as an administrative measure, for no justifiable reason but intended to limit the number of witnesses to GECOM's ascertainment and tabulation procedures.

On the 4th March 2020, Ms. Myers repeatedly conveyed what turned out to be misleading information on the time of restart of the ascertainment and tabulation process for that day. Even though at the close of that exercise on the 3rd March 2020, the RO had advised that the exercise would resume on the 4th March 2020, at 9:00 a.m. It was not until 11:00 a.m. that the DCEO went to the tabulation room to announce that the process would soon start. Thirty minutes later the RO was seen being lifted out to an ambulance and was taken away. Fifteen minutes later, the DCEO announced that the RO was fine and would return in 45 minutes. All of this proved to be wrong – even misleading – information that came from the DCEO.

The intervention by the DCEO in the absence of the RO was a troubling occurrence for the following reasons:

1. We have determined from the provisions of section 84(1) of ROPA that the ascertainment and tabulation of votes cast in an election is the statutorily conferred authority of the RO which also includes a DRO.
2. In the absence of RO Mingo, it was clear that DCEO Myers had arrogated unto herself the authority to continue the ascertainment and tabulation exercise.
3. She appears to have selected GECOM staff to conduct that process and apparently unilaterally decided to continue the process for sub-district East Bank Demerara when at the close of tabulation on the 3rd March 2020, the Georgetown district was being examined.
4. Even though she was not involved in the ascertainment and tabulation process for Georgetown, she engaged in an argument with party agents over the number of SOPs left to be completed for Georgetown.
5. Her promise to revert to the witness Mr. Sase Narine Singh on the details he provided to her about the outstanding SOPs for Georgetown never materialized. This coupled with her assurance that the SOPs for Georgetown

would be completed on the return of the RO, as events showed, were, in our view, just calculated to appease and placate agitated party agents and observers.

Even though it was DCEO Myers who set the tabulation process in motion in the absence of the RO, she appeared to have receded into the background with respect to the source material they were to use in the ascertainment and tabulation exercise. An assistant to the RO then entered the picture to give instructions to the staff about the use of a spreadsheet which was provided to them by Mr. Enrique Livan. The DCEO only appeared again after the two GECOM staff she had identified to conduct the tabulation process abruptly ended the exercise on the grounds of being hungry and tired.

The DCEO, in most of her interactions with party agents, appeared unhelpful and carried a hostile and abrasive bearing, evident in the video footage placed in evidence before us. This was evident when she asked party agents and observers to leave the tabulation room saying, "Take your rubbish with you and leave".

On the occasion of a report of a bomb being placed in Ashmin's building, she told party agents, observers and diplomats, "Y'all get out the room. There's a bomb in the building." She never left the

building. GECOM Commissioner Mr. Sase Gunraj told us that on one occasion as he went up the stairs to the second floor to meet the RO, DCEO Myers stood in his way and blocked his path to prevent him from getting into contact with the RO. However, we saw video evidence of a minister of the then APNU/AFC government visiting the Ashmin's Building to have a meeting with diplomats and observers. The minister was chaperoned into the room where the meeting was to be held by the DCEO. At one point, the DCEO received a call on her phone which was apparently intended for the APNU/AFC minister, and so she passed her phone to the minister. The difference in her demeanour with the minister sharply contrasted with her demeanour with party agents and observers who had a legitimate interest in being at the Ashmin's Building. Interestingly, the Chairperson of GECOM told us of being completely unaware that such a meeting by a government minister was to be held in a GECOM building.

On the 5th March 2020, the DCEO seemed to have developed an obsession with getting party agents, observers and others out of the room. We believe that the bomb threat which turned out to be a hoax (given that the police had determined the objects handed over to them by the DCEO were completely harmless contraptions) was a contrivance, an artifice created by persons bent on manipulating the outcome of the elections.

While no one had seen the RO on the morning of 5th March 2020, the DCEO, at around 12.30 p.m. that day, was assuring party agents and observers that the ascertainment and tabulation process would soon resume. Yet, not much longer afterwards, RO Mingo who had not completed the ascertainment of votes for his district, went to the tabulation room and announced that he was going to make a declaration of the district No. 4 results in accordance with his spreadsheet count.

This was an incredible occurrence in our view. It is difficult to accept that when DCEO Myers went into the tabulation room, minutes before the RO gave notice of his intention to make a declaration of results, to herself announce that the tabulation process would soon resume, that she was unaware of the RO's intention. We say so because we believe the evidence of ACP Thomas that he had been told by Senior Superintendent Azore, that Ms. Myers had advised him that a very important announcement was to be made that day. The important announcement turned out to be the RO's unlawful declaration.

The assurance of the DCEO to party agents was, in our view, misleading and was most likely intended to placate and appease the party agents and observers who had been waiting in the tabulation room for a protracted period of time. The DCEO, we

believe, knew that the RO was going to make a declaration and that no further tabulation exercise was to be undertaken.

It is our further view, from the totality of the evidence surrounding the RO's declaration, that there appears to be such collusion and collaboration between senior GECOM officials as to likely amount to a conspiracy to make what was undoubtedly a premature and unlawful declaration of falsified results which showed the APNU/AFC party as the winner of electoral district No. 4. This, we believe, was the ultimate goal of the CEO, the DCEO and the RO.

The collusion and collaboration between these senior officials of GECOM was evident at the time of the declaration itself. While the RO was making the declaration, the DCEO was looking on from the floor above. At that time, she knew or ought to have known that:

1. The RO's spreadsheet was not a true record of the total votes cast for electoral district No. 4.
2. On several previous occasions party agents and observers had detected and drawn to her attention and that of the CEO that there were deliberate attempts being made, through the use of spreadsheets and other computer generated records, to falsify the results of the elections in electoral district No. 4, to show a lead in votes for

the APNU/AFC party and to alter the votes for the PPP/C to show a decrease in votes for that party. These were matters to which the CEO and the DCEO paid no attention to and took no meaningful action on.

3. The DCEO knew or ought to have known that at the time of the RO's declaration, the statutorily prescribed procedure and requirements of ascertainment and tabulation for electoral district No. 4 had not been completed and that therefore the RO's declaration was a clear violation of the law. But the DCEO merely looked on. She said nothing and did nothing.

Regarding RO Clairmont Mingo

The RO for electoral district No. 4 was Mr. Clairmont Mingo. On the 3rd March, 2020, he supervised what can only be described as a successful ascertainment and tabulation of the votes cast for competing political parties in electoral district No. 4. The methodology used by the RO on that day was the comparative use of SOPs, which he had advised party agents and observers would be the methodology to be employed. He apparently fell ill on the 4th March, 2020. Replacement staff were identified to continue the ascertainment and tabulation process. His assistant told one of the GECOM staff, identified to continue the ascertainment and

tabulation process in his absence, that the process would no longer be done through the comparative use of SOPs but rather by the use of a spreadsheet.

The RO was not seen for the entire day. He returned on 5th March 2020 and, on that day, he proceeded to make a public declaration of the results of the elections in electoral district No. 4. At the point in time when he made the declaration:

1. The RO knew or ought to have known that the ascertainment and tabulation of the votes for electoral district No. 4 had not been completed.
2. The RO knew or ought to have known that, pursuant to the provisions of section 84(1) of the ROPA, he was required to ascertain and tabulate the **total** votes cast for each competing political party in electoral district No. 4. Further, he knew or ought to have known that the total votes cast in that district had not been ascertained and tabulated by him and that he was therefore acting in violation of the law by making a declaration at the time he did.
3. Following a decision of the chief justice which gave clear directions that the ascertainment and tabulation of the votes for electoral district No. 4 had to be done through the comparative use of SOPs, the RO, in

complete violation of the order of the chief justice, resorted to the use of a broadsheet of numbers, which he said had been extracted from SOPs.

As to this development, we note:

1. The RO ignored all advice that by so doing he was acting in breach of the court's order.
2. He offered no comfort to party agents and observers who sought to question him on the integrity of the information on his broadsheet. Very significantly, he made no response to a request to inspect the SOPs he claimed were used in the compilation of his broadsheet data. Indeed, we are satisfied that the RO and his staff defiantly resisted all efforts by party agents and observers to scrutinize GECOM's SOPs.
3. The RO, on 13th March 2020, continued the use of his broadsheet in a changed location and in a room where tables previously provided for the convenience of party agents and observers had been withdrawn and were no longer available to them.
4. On 13th March 2020, the RO allowed himself to be influenced by APNU/AFC party representative Ms.

Carol Joseph, who was conducting herself in a wholly inappropriate manner, and as a result recanted on his earlier undertaking to party agents and observers to restart the ascertainment and tabulation process in the interest of transparency.

5. On the said 13th March, 2020, under the supervision of RO Mingo, GECOM staff called numbers from his broadsheet very rapidly, making it very difficult to follow. A pattern was however discerned which was that votes for the APNU/AFC, party when compared with the votes recorded on SOPs in the possession of party agents, showed that the votes for that party were increased, while votes for the PPP/C showed a decrease in the number of votes actually received by that party.

6. It took another intervention from the chief justice to put a halt to the RO's use of the broadsheet. We construe his exhortation to his staff to "keep calling those numbers" when he left to attend before the chief justice, as a manifestation of his intention and his desire to complete the process with the use of his broadsheet and secure a declaration of a win for the APNU/AFC party in reliance on the falsified figures on his broadsheet.

7. The resumption of the ascertainment and tabulation process at GECOM headquarters over the period 12th/13th March, 2020 can best be described as a charade and was a process which was not attended by procedures that were open, transparent and fair. On 12th March, 2020 the RO indicated he would be calling the numbers from a spreadsheet. This was a complete deviation from the ruling of the chief justice who had emphasized that transparency was best achieved by full compliance with the statutorily prescribed procedures, that is by the comparative use of SOPs. On the 13th March 2020, as a result of intense objections to his 12th March, 2020 methodology, the RO switched to reading out results from what he said were SOPs which were fleetingly projected onto an undulating cloth screen (which some described as a bedsheet) which made scrutiny of these documents very difficult, if not impossible. The authenticity of these documents was in doubt. The figures on them were in instances altered in favour of the APNU/AFC party and the RO continued to stoutly resist all efforts by party agents and observers to examine the documents he claimed to be SOPs.

8. The RO, late in the night of 13th March, 2020, prepared and signed a statutorily prescribed form bearing the results of his ascertainment and tabulation of the results of electoral district No. 4 which was to be transmitted to the CEO. This was followed by a disturbing occurrence which suggests collusion and collaboration with APNU/AFC party representative Ms. Carol Joseph. We have found no requirement, as a matter of law, for any political party agent to sign the form that was to be transmitted to the CEO. We conclude therefore that permitting the signature of the APNU/AFC agent, Ms. Carol Joseph, was an effort by the RO to legitimize his highly unlawful conduct in the ascertainment and tabulation of the results of the elections in electoral district No. 4 and as an endorsement by the APNU/AFC party of the RO's unjustified and wrongful declaration of their victory in electoral district No. 4.

Regarding Mr. Enrique Livan

We are unable to say that Mr. Enrique Livan was responsible for the adjustment of the actual votes in electoral district No. 4 found on a computer in his possession. The evidence from witnesses relating to this incident did not reach that threshold to facilitate such a conclusion. We hasten to add, however, that a degree of

suspicion surrounds Mr. Livan's conduct in the early hours of the morning of 5th March, 2020 in relation to the laptop incident.

9From the witness Alexandra Bowman, a GECOM employee, we heard credible evidence that Mr. Livan had put on her personal USB drive a spreadsheet with electoral returns for district 4, the information on which she said had been entered by Mr. Livan on her USB drive and which turned out to be falsified figures showing an incorrect increase in votes for the APNU/AFC party and a corresponding decrease in votes for the PPP/C.

| 10 ATTEMPTS TO PREVENT A NATIONAL RECOUNT

On 14th March 2020, the president and the leader of the opposition reached an agreement brokered by the then Chairperson of CARICOM, Prime Minister Mia Mottley, for a national recount. GECOM thereafter issued press statements that a national recount would be done of all ballots cast. On 17th March 2020, Ulita Moore brought legal proceedings challenging the legality of the decision to recount. Ultimately, the Court of Appeal decided that it was lawful for GECOM to proceed with the recount.

This commission's third limb of inquiry is to report on what attempts, if any, were made to obstruct, frustrate, subvert and prevent the decision of GECOM, made on 14th March 2020, to conduct a national recount of the votes polled at the general and regional elections held in Guyana on 2nd March 2020, and who did so.

The only witness who testified as to attempts to frustrate or obstruct the GECOM decision to conduct a national recount was

the Attorney General Anil Nandlal. He testified before the Commission that,

“... there was great sloth in transitioning from GECOM to the venue identified for the recount. They had to move all the containers containing the ballot boxes. That was a nightmare to get them to move that. Then to ready the place for the recount, to set up the stations *et cetera* that was a...Even before that, they fumigated the entire building and told us that no one can go in there for I don’t know how many days or weeks and until it is certified by some public health expert, because at that time, COVID had just entered.”

When asked by counsel to the commission whether there was any reason for not using Ashmins building, the attorney general answered that, “it was purely GECOM’s decision. I don’t know. I can’t speak to that.”

The attorney general further testified that The Carter Center and other organizations that wanted to field election observation missions were not permitted by the government to return to observe the recount, except for a team from CARICOM; and that his party’s request to have the recount livestreamed were rejected.

The commission is aware from the evidence before it that one Ulita Moore filed an injunction application in the High Court of Guyana to prohibit GECOM from carrying out the national recount of votes. The Court of Appeal of Guyana decided that it was lawful for GECOM to proceed with the recount. Nothing turns on this, however, as a citizen is entitled to bring any application he or she sees fit before the courts of the land. The courts then decide – as they did – whether an application has merit or not.

This evidence, however, is not sufficient for the commission to conclude that there were attempts to subvert, frustrate or prevent the national recount by GECOM. Neither does it reveal any moving hands behind any such attempts.

| 11 CONDUCT OF CHIEF ELECTION OFFICER & OTHER ELECTION OFFICERS

The TOR also tasks us with inquiring into the conduct of the chief election officer, other elections officers, and others in respect of the discharge and execution of the statutory duties of the chief election officer prescribed by sections 96 and 97 of the ROPA. We note that the TOR limits our inquiry into conduct regarding duties prescribed by sections 96 and 97 of the ROPA.

Sections 96 and 97 fall under Part XI of the ROPA under the rubric “Ascertainment of the Election Results” and provide as follows:

96(1) The Chief Election Officer shall, after calculating the total number of valid votes of electors which have been cast for each list of candidates, on the basis of the votes counted and the information furnished by returning officers under section 84(11), ascertain the result of the election in accordance with sections 97 and 98.

(2) The Chief Election Officer shall prepare a report manually and in electronic form in terms of section 99 for the benefit of the Commission, which shall be the basis for

the Commission to declare and publish the election results under section 99. (Underlining added)

97(1) The total number of votes cast for all the lists of candidates shall be divided by fifty-three and the whole number resulting from that division shall be known as “the electoral quota”.

(2) The number of votes cast for any list shall be divided by the electoral quota; there shall be allocated to that list a number of seats equal to the whole number resulting from that division; and the number of votes represented by a fraction so resulting shall be known as “surplus votes” of the list; and if the number of votes cast in accordance with this Act for any list is less than the electoral quota, those votes shall accordingly be treated as surplus votes of that list.

(3) Any seat or seats remaining unallocated after seats have been allocated in accordance with subsection (2) shall be allocated as follows—

- (a) one seat shall be allocated to the list with the largest number of surplus votes;
- (b) if the number of seats so remaining is two or more, one seat shall be allocated to the list with the next largest number of surplus votes,

and so on until all the seats so remaining have been allocated;

- (c) for the purposes of this paragraph, where two or more lists have equal numbers of surplus votes, then lots shall be drawn by the Chairman of the Commission in the presence of the representatives of the lists affected to determine which list or lists shall be deemed to have more surplus votes than the other list or lists.

(4) For the purposes of the foregoing provisions of this section a combination of lists shall be treated as one list.

(5) The seats allocated to a combination of lists shall be allocated among the lists comprised in the combination in accordance with subsections (2) and (3), the electoral quota for that purpose being the whole number found by dividing the total number of votes cast for the combination of lists by the number of seats allocated to the combination.

As prescribed by s. 96(2), the CEO is obliged to prepare a report in terms of s. 99 for the benefit of GECOM which shall be the basis for it to declare and publish the election results under s. 99.

For completeness, we set out the provisions of section 99:

99. As soon as practicable, but not later than fifteen days after election days the Commission shall publicly declare the results of the election and shall cause to be published in the Gazette a notification thereof, specifying—

- (a) the number of votes cast for each list of candidates;
- (b) the number of rejected ballot papers;
- (c) the number of seats allocated to each list of candidates; and
- (d) the names of the persons who, as a result of the election, have become members of the National Assembly; and, as respects a combination of lists, such notification shall be so arranged as to give the particulars required by paragraphs (a), (c) and (d) with reference to both the combination and each list comprised therein.

The commission had before it evidence of the report of the CARICOM Special Team to observe the national recount. This team was apparently the only observer team that the government of Guyana allowed to come in and observe the

national recount. That report found that the recount had been done fairly and transparently and the results reflected the ballots cast at the March 2nd general and regional elections in Guyana. The report recommended that the results of the national recount should form the basis for the declaration of the final results. The APNU/AFC made a series of allegations to the effect that the results of the national recount were not credible, but the CARICOM Special Observer Team rejected these allegations as baseless.

CEO Lowenfield, however, unilaterally engaged in an exercise of scrutinizing the votes alleged to be invalid by the APNU/AFC and determined that of the 460, 362 votes cast for the PPP, 275,092 were not valid, thereby disenfranchising 275,092 electors. The effect of the CEO's unilateral nullification of votes was that the APNU/AFC ended up with 125,010 votes and the PPP, 56, 627 votes.

Chairman of GECOM, Ms. Claudette Singh, testified that on 13th June, 2020 GECOM received a report from the CEO in which he made allegations of irregular votes, and she did not recall these having been made before to GECOM. After much discussion, she decided that GECOM did not have the power of a court of law to determine the truth of these allegations and that only the High

Court could determine matters pertaining to the legality of an election.

GECOM did not accept that report and Ms. Singh testified that the CEO was requested to prepare and submit a report by 1:00 p.m. on 18th June, 2020. She stated that, on that date, the CEO came to her office to advise that he had been served with court documents in a matter brought by Eslyn David. She (Ms. Singh) was also served. She instructed the CEO that he had to produce his report that day, but he failed to attend the GECOM meeting.

Before he presented his second report, Eslyn David, an APNU supporter, commenced proceedings in the Court of Appeal to determine the meaning of Article 177 of the Guyana Constitution. There is no need to delve into the details of this case for the purposes of this inquiry. Suffice it to say that, at the heart of the case, the issue was whether the CEO was justified in nullifying the votes which he did. The Court of Appeal decided by a 2-1 majority in favour of Eslyn David.

Fortified by the Court of Appeal judgment, the CEO did another calculation in which he disqualified another 115,844 votes and submitted a second report in fulfilment of his statutory

obligations under s. 96 (2) of the ROPA. As Ms. Singh put it in her testimony to the commission:

“I received a report from the CEO on 23rd June, 2020 in which he spoke to ‘valid and credible’ votes and purported to rely on the Court of Appeal decision in Esllyn David. The effect of this was that over 100,000 votes which had previously been counted as valid were now being described as not valid and credible by the CEO.”

On 26th June, 2020 the CEO issued a press statement stating that he had acted within the Constitution.

At this point, the leaders of the PPP had appealed to the CCCJ against the decision of the Court of Appeal.

Again, there is no need to plumb the depths of the CCJ judgment¹ for the purposes of this inquiry. What is relevant for the purposes of our inquiry into the conduct of the CEO and other election officers is the following pronouncements by the CCJ in that judgment:

“[46] At the point in the electoral process where Article 177(2)(b) is reached, there is no further need to

¹ Ali and Jagdeo v David and Others [2020] CCJ 10 (AJ) GY delivered on 8th July 2020

reference 'valid votes' because, subject to Article 163 (which is triggered by election petition after the election), the relevant validation process has already been completed. It was therefore unnecessary for the Court of Appeal majority to qualify 'votes' in Article 177(2)(b) by inserting before it the adjective 'valid' and, in any event, they were wrong to do so. Article 177(2)(b) rightly only needed to reference 'more votes' and there was no basis for the Court of Appeal to assume jurisdiction to interpret that provision. It is clear that, under the legal infrastructure governing the electoral process, unless and until an election court decides otherwise, the votes already counted as valid votes are incapable of being declared invalid by any person or authority. In this respect, the Guyanese electoral system is not very different from other such systems in other Commonwealth Caribbean countries.

[47] By the unnecessary insertion of the word 'valid', the Court of Appeal impliedly invited the CEO to engage, unilaterally, in a further and unlawful validation exercise unknown to and in clear tension with the existing, constitutionally anchored electoral laws. That further exercise, which the CEO was quick to embrace in breach of the Court of Appeal Stay of proceedings, also had the effect of facilitating a

serious trespass on the exclusive jurisdiction of the High Court established by Article 163. The idea that the CEO or GECOM could, in an unaccountable, non-transparent and seemingly arbitrary manner, without the due processes and the legal standards established in Article 163 and in the Validation Act, disenfranchise scores of thousands of electors is entirely inconsistent with the constitutional framework. Whatever allegations of irregularity attended those votes (and we neither agree nor disagree as to the existence of such irregularities) must be adjudged by the High Court under Article 16350 as was correctly stated by the Chairperson of GECOM.”

The CCJ then ordered, among other things, that the report of the CEO of 23rd June, 2020 was of no effect.

At this juncture, notwithstanding that the CCJ pronounced his report of 23rd June, 2020 invalid, the CEO cannot fairly be adjudged as having wilfully or deliberately acted improperly since his action of nullifying scores of thousands of votes was, as the CCJ said, impliedly sanctioned by the majority of the Court of Appeal.

The following day, the chairman of GECOM wrote to the CEO asking for his report, following the CCJ decision.

On 11th July, 2020, the CEO submitted another report. Notwithstanding the judgment of the CCJ, the CEO prepared a report using as the basis of his report, the ten declarations of the ROs and ignored the results of the national recount. These ten declarations from the 10 electoral districts or regions of Guyana would have included the declaration made by Mr. Mingo on the incomplete and utterly discredited count for district 4. GECOM did not accept that report. The testimony of Ms. Singh before the commission was that:

“On 9th July, 2020, I wrote to the CEO requesting a report by 2:00 p.m. on 10th July, 2020. On the day on which he was to submit the report he wrote seeking clarification. I replied that very day advising that he should submit his report by 11:00 a.m. on 11th July, 2020.

On that day, he brought 10 declarations which I ruled had to be set aside since these had been overtaken by the recount. These declarations were not in conformity with the recount figures. I instructed the CEO to submit a report by 2:00 p.m. on July 14th, 2020. On the very same day an application was brought by Misenga Jones claiming, inter alia, that the commission had to act on the declarations of the CEO. The application was dismissed. It

was appealed and there was a cross-appeal. The appeal was dismissed by the Court of Appeal on 30th July, 2020.”

Finally, on 2nd August, 2020 the CEO submitted his report based on the results of the national recount and GECOM was finally able to declare the true results of the general and regional elections of 2nd March, 2020.

Based on the above facts, the commission finds that, certainly after the CCJ judgment of 8th July, 2020 which made clear pronouncements on his actions and the validity of Order 60, CEO Lowenfield wilfully, deliberately and perversely persisted in basing his report to GECOM on the ten declarations of the ROs from the ten electoral districts notwithstanding those declarations had been plainly overtaken by the national recount, and notwithstanding that the declaration by Mr. Mingo that had been universally and resoundingly condemned by independent regional and international election observer missions and judicially rejected by the courts of Guyana.

We find that the conduct and actions of CEO Lowenfield, in relation to the discharge of his statutory duties prescribed by sections 96 and 97 of the ROPA, were a brazen attempt to prevent GECOM declaring the true results of the elections of 2nd

March, 2020. His conduct was – to borrow the words of former Jamaican Prime Minister Bruce Golding, Head of the OAS Observer Mission to Guyana – a transparent attempt to alter the results of an election.

As the chief election officer of Guyana, his conduct dealt a deep, pernicious body blow to the integrity of Guyana’s electoral system and cherished democratic values and must justly and forcefully be condemned as the ultimate betrayal of trust reposed in the highest election official in the land by the people of Guyana.

The TOR mandated that we inquire into the conduct of the CEO, and other election officers, in respect of the discharge and execution of the CEO’s statutory duties prescribed by s. 96 and 97 of the ROPA. We are, however, based on the evidence before us, unable to pronounce on the conduct of any other election officer in respect of the CEO duties under s. 96 and 97 of the ROPA.

| 12 SUMMARY OF FINDINGS

In this section we set out a summary of the key findings of the commission:

1. There was a conscious and deliberate – even brazen – effort to violate the provisions of section 84(1) of the ROPA.
2. Senior GECOM officials abandoned all need for neutrality and impartiality and demonstrated a bias for a competing political party and, in the course of events over those days, showed an open connection with that party and, by their efforts, sought a desired result for that party.

In relation to s. 84-89 of the ROPA

CEO Keith Lowenfield

3. CEO Mr. Keith Lowenfield, DCEO Ms. Roxanne Myers and RO Mr. Clairmont Mingo were principally responsible for clear and deliberate attempts to frustrate, obstruct and subvert the ascertainment of votes in electoral district No. 4.
4. Notwithstanding that GECOM had specifically decided that the approved method for the ascertaining and tabulation

of votes cast for the respective competing political parties was to be by the comparative examination of SOPs, the CEO nevertheless approved the use of a spreadsheet which turned out to be a document, the information on which was substantially inconsistent with that on the SOPs in the possession of party agents.

5. The CEO, by his overall conduct, opened himself to the criticism that the spreadsheet was introduced for ulterior motives and not for efficiency. Indeed, the use of the spreadsheet created turmoil, caused major disruptions and slowed the tabulation process.
6. The CEO knew or ought to have known that the methodology approved by GECOM for the ascertainment and tabulation of votes was through the use of SOPs. He knew or ought to have known that section 84(1) of ROPA specifically provided that the ascertainment of votes cast for each political party was to be “in accordance with the Statements of Poll” and that by promoting and insisting on the use of a spreadsheet, he was acting contrary to law.

DCEO Roxanne Myers

7. On the 4th March, 2020, the DCEO took a decision to limit the number of political party agents and observers for the ascertainment and tabulation process at the Ashmin’s

Building. This was a unilateral decision by the DCEO taken as an administrative measure, for no justifiable reason but intended to limit the number of witnesses to GECOM's ascertainment and tabulation procedures.

8. In the absence of RO Mingo, DCEO Myers arrogated unto herself the authority to continue the ascertainment and tabulation exercise.
9. The DCEO appears to have selected GECOM staff to conduct that process and, apparently, unilaterally decided to continue the process for sub-district East Bank Demerara when at the close of tabulation on the 3rd March, 2020, the Georgetown district was being examined.
10. On a report of a bomb being placed in Ashmin's building, she told party agents, observers and diplomats, "Y'all get out the room. There's a bomb in the building." She herself never left the building.
11. It is difficult to accept that when DCEO Myers went into the tabulation room, minutes before the RO gave notice of his intention to make a declaration of results, to herself announce that the tabulation process would soon resume, that she was unaware of the RO's intention.

12. The DCEO knew or ought to have known that at the time of the RO's declaration, the statutorily prescribed procedure and requirements of ascertainment and tabulation for electoral district No. 4 had not been completed and that therefore the RO's declaration was a clear violation of the law. But the DCEO merely looked on. She said nothing and did nothing.

13. From the totality of the evidence surrounding the RO's declaration, there appears to be such collusion and collaboration between senior GECOM officials as to likely amount to a conspiracy to make what was undoubtedly a premature and unlawful declaration of falsified results which showed the APNU/AFC party as the winner of electoral district No. 4. This was the ultimate goal of the CEO, the DCEO and the RO.

RO Clairmont Mingo

14. The RO knew or ought to have known that the ascertainment and tabulation of the votes for electoral district No. 4 had not been completed at the time he made his declaration.

15. The RO knew or ought to have known that, pursuant to the provisions of section 84(1) of the ROPA, he was required to ascertain and tabulate the total votes cast for

each competing political party in electoral district No. 4. Further, he knew or ought to have known that the total votes cast in that district had not been ascertained and tabulated by him and that he was therefore acting in violation of the law by making a declaration at the time he did.

16. Following a decision of the chief justice which gave clear directions that the ascertainment and tabulation of the votes for electoral district No. 4 had to be done through the comparative use of SOPs, the RO, in complete violation of the order of the chief justice, resorted to the use of a spreadsheet of numbers to which he said had been extracted from SOPs.

17. The RO offered no comfort to party agents and observers who sought to question him on the integrity of the information on his spreadsheet. Very significantly, he made no response to a request to inspect the SOPs he claimed were used in the compilation of his broadsheet data. Indeed, the RO and his staff defiantly resisted all efforts by party agents and observers to scrutinize GECOM's SOPs.

18. On 13th March, 2020, the RO allowed himself to be influenced by APNU/AFC party representative, Ms. Carol Joseph, who was conducting herself in a wholly

inappropriate manner and, as a result, recanted on his earlier undertaking to party agents and observers to restart the ascertainment and tabulation process in the interest of transparency.

19. It took another intervention from the chief justice to put a halt to the RO's use of the spreadsheet. We construe his exhortation to his staff to "keep calling those numbers" when he left to attend before the chief justice, as a manifestation of his intention and his desire to complete the process with the use of his spreadsheet and secure a declaration of a win for the APNU/AFC party in reliance on the falsified figures on his spreadsheet.

20. On the 13th March, 2020, as a result of intense objections to his 12th March, 2020 methodology, the RO switched to reading out results from what he said were SOPs which were fleetingly projected onto an undulating cloth screen which made scrutiny of these documents very difficult, if not impossible. The authenticity of these documents was in doubt. The figures on them were in instances altered in favour of the APNU/AFC party and the RO continued to stoutly resist all efforts by party agents and observers to examine the documents he claimed to be SOPs.

21. Permitting the signature of the APNU/AFC agent, Ms. Carol Joseph, on a statutorily prescribed form bearing the result of the RO's ascertainment and tabulation of the results of electoral district No. 4, was an effort by the RO to legitimize his highly unlawful conduct in the ascertainment and tabulation of the results of the elections in electoral district No. 4 and as an endorsement by the APNU/AFC party of the RO's unjustified and wrongful declaration of their victory in electoral district No. 4.

In relation to s. 96-97 of the ROPA

CEO Keith Lowenfield

22. The CEO unilaterally engaged in an exercise of scrutinizing the votes alleged to be invalid by the APNU/AFC and determined that of the 460, 362 votes cast for the PPP, 275,092 were not valid, thereby disenfranchising 275,092 electors. The effect of the CEO's unilateral nullification of votes was that the APNU/AFC ended up with 125,010 votes and the PPP, 56, 627 votes.

23. Certainly after the CCJ judgment of 8th July, 2020 which made clear pronouncements on his actions and the validity of order 60, CEO Lowenfield wilfully,

deliberately and perversely persisted in basing his report to GECOM on the ten declarations of the ROs from the ten electoral districts, notwithstanding those declarations had been plainly overtaken by the national recount, and notwithstanding that the declaration by Mr. Mingo that had been universally and resoundingly condemned by independent regional and international election observer missions and judicially rejected by the courts of Guyana.

24. The conduct and actions of CEO Lowenfield, in relation to the discharge of his statutory duties prescribed by sections 96 and 97 of the ROPA, were a brazen attempt to prevent GECOM declaring the true results of the elections of 2nd March, 2020. His conduct was – to borrow the words of former Jamaican Prime Minister Bruce Golding, Head of the OAS Observer Mission to Guyana – a transparent attempt to alter the results of an election.

25. As the chief election officer of Guyana, his conduct dealt a deep, pernicious body blow to the integrity of Guyana’s electoral system and cherished democratic values and must justly and forcefully be condemned as the ultimate betrayal of trust reposed in the highest election official in the land by the people of Guyana.

| 13 RECOMMENDATIONS

Fifteen months elapsed from the tabling of the no confidence motion and the March 2020 election and five months elapsed between voting and the declaration of results, which were unprecedented in the history of Guyana. The commission offers the following recommendations in the spirit of trying to ensure that the electoral system is strengthened and that the kind of occurrences that bedevilled the March 2020 elections do not recur.

Reform the Structure of GECOM

As it stands, the structure of GECOM is, at its core, politicized, making it difficult for it to operate with any efficiency or effectiveness. Consideration should be given to amending this to allow for more balanced participation from other organizations or professionals with technical expertise thereby reducing the politicization of the electoral process.

The Carter Center noted in its report on the 2001 elections, "As part of electoral reform efforts, Guyana should give careful consideration to alternative models, possibly reducing or eliminating political party representation and increasing the role of independent members of civil society and professional experts"

The Legislative Framework

The legal framework for the conduct of elections in Guyana is anchored primarily in the Constitution, the Representation of the People Act and the National Registration Act. We are of the opinion that the legislative framework provides adequate grounds for the conduct of competitive elections. However, there do exist several ambiguities which have left room for political manipulation through litigation and the tarnishing of the electoral process. Happily, the major anomalies have been addressed in the recently enacted Representation of the People (Amendment) Act 2022.

All persons who are eligible to vote must be allowed to exercise their franchise. To this end we recommend that legislation be enacted to facilitate the following:

- i.** Persons with limited mobility not having to climb stairs to vote.
- ii.** Visually impaired persons to vote using ballots prepared in Braille.
- iii.** Hearing impaired persons to be given the required assistance by a qualified Sign Language translator.
- iv.** Persons who are challenged in a manner not mentioned in 1, 2 and 3 supra.

The Private Sector

The commission received valuable contributions from the Private Sector Commission (PSC) through Captain Gerald Gouveia who chaired the PSC in 2020. The PSC documented 16 recommendations for improving elections in Guyana some of which have been enacted in the Representation of the People (Amendment) Act, 2022. For their contribution, we are most grateful.

Campaign Financing

Save for the provisions set out in Part XII of ROPA, there is no legislation applicable to campaign financing in Guyana. Accordingly, there is a lack of transparency and accountability regarding political parties and campaign financing. Political parties have historically raised funds without any limitations regarding the source or amount of donation, and with very little obligation to disclose election expenses.

There is a strong need for such legislation as there is a perception that persons and/or corporations who give large donations stand to gain political favours.

The Guyana Police Force

The role of the police is to preserve law and order and detect crime. There should be some prohibition against police officers openly showing partisanship in elections and more importantly so, they should play no part in the election process on polling day save for such functions that are delegated to them by the commissioner of police.



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