



Office of the Leader of the Opposition

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Secretary General,
Mr. Luis Almajro,
Organization of the American States,
17th Street and Constitution Avenue, North West,
Washington DC
20006-4499
USA

March 8, 2019

RE: GUYANA ON THE PRECIPICE OF A CONSTITUTIONAL CRISIS

Dear Excellency,

Following our letter of January 3, 2019 to you which documented the passage of the no confidence motion in the National Assembly against the APNU+AFC Coalition Government of Guyana on December 21, 2018, I wish to thank you for your continued interest in Guyana and the unfolding developments.

As you are no doubt aware, the challenges by the APNU+AFC Coalition Government to the validity of the no confidence have been rejected twice by the Legislature, and, on January 31, 2019 by the Chief Justice (ag) in the High Court.

Pursuant to applications filed in relation to the consequences of the no-confidence motion, Her Honour Chief Justice (ag), Roxanne George-Wiltshire ruled, inter alia:

“As a result of my findings above, I hold that the NCM was carried as the requisite majority was obtained by a vote of 33:32. The President and the Ministers cannot therefore remain in Government beyond the three months within which elections are required to be held in accordance with art 106(7), unless that time is enlarged by the National Assembly in accordance with the requirements of the said art 106(7).”

The High Court, therefore, recognized that it could not extend a constitutional deadline as this could only be done by a two-thirds majority of all elected members of the National Assembly.

Further the Honourable Chief Justice (ag) ruled that:

DISSEMINATED BY MERCURY PUBLIC AFFAIRS, A REGISTERED FOREIGN AGENT, ON BEHALF OF THE PEOPLE'S PROGRESSIVE PARTY (GUYANA). MORE INFORMATION IS ON FILE WITH THE DEPT. OF JUSTICE, WASHINGTON, DC.

"It is hereby ordered that the oral application by the AG for a stay of the answers to the questions and for a conservatory order to preserve the status quo ante that the President and all Ministers of Government remain in office since an appeal was going to be filed, is hereby refused.

"...based on these conclusions which answered the questions asked by the AG, the order prayed for to set aside or nullify the Speaker's Ruling that the No Confidence Motion was carried, could not be made. In addition, as a further consequence an order staying the enforcement of Resolution 101 declared by the Clerk of the National Assembly that the No Confidence Motion was carried, could not be made. And further, that a conservatory order preserving the status quo ante that the President and all Ministers of the Government remain in office until the hearing and determination of the questions sought herein, was not necessary.

"...in relation to the submissions on behalf of the applicant, this Court accepts that, once the condition of the Government being defeated by a NCM has been met, the consequence must take effect, that is, Cabinet must resign."

"...I therefore, find that Cabinet is not required to resign with all convenient speed, as the resignation under art 106(6) takes immediate effect following the defeat of the Government on a vote of confidence by a majority of all the elected members of the National Assembly. In this case, Cabinet must be taken to have resigned with effect from the evening of December 21, 2018, and all functions or duties provided in any law to be performed specifically by Cabinet must have ceased from that time."

The Attorney General has appealed the Chief Justice ruling in Guyana's Court of Appeal and the President has also made it clear that if the Appeal Court does not rule in the Government's favour it will take the matters to the Caribbean Court of Justice (CCJ).

In the interim, the President is in contempt of the decision of the Legislature and High Court ruling of January 31, 2019, and is in violation of Article 106(6) and (7). He has ignored the court ruling.

As a consequence the following developments have emerged:

- I. The President has not, thus far, named a date for General and Regional Elections as required by Article 106(6) and 106 (7) of the Constitution of Guyana;
- II. On December 22, 2018, a statement released by the Ministry of the Presidency, quoted President Granger as saying: ***"We will do everything necessary to facilitate the smooth functioning of General and Regional Elections....there is no cause for alarm and there are no grounds for any form of disorder...we will continue to work even more closely with the Opposition."*** Since then the President has not informed the Guyanese public of how he intends to act in accordance with the constitutional provisions and hold elections

on or before March 21, 2019, or, in what way he will address the requirements of the Constitution after that date.

- III. The Government is behaving as if it is 'business as usual'. It has announced that it has created a "plenary of Ministers." Minister of State, Joseph Harmon, on February 15, 2019, said: "***Ministerial plenaries are chaired by the President and includes all of the ministers and therefore has all of the powers that a Cabinet can have.***" This grouping is making decisions, awarding contracts, 'giving out' natural resources, including land leases, and signing other agreements. There is no constitutional provision or any legislative mechanism for the creation of a Ministerial Plenary, nor is such a body empowered to function. This grouping is, therefore, acting with no constitutional or legislative cover.
- IV. President Granger's political party, the People's National Congress Reform (PNCR), as well as leaders of the Alliance For Change (AFC) – a partner of the APNU+AFC Coalition Government – as well as several Government Ministers have called for a new National House to House registration of voters, which would take a minimum of 6-8 months to complete.
- V. The Guyana Elections Commission (GECOM), a constitutional body, holds a delicate balance that was negotiated in 1991 by the Council of Freely Elected Heads of Government, led by President Carter, to imbue trust and confidence between the Opposition and Government. The negotiated balance saw three members being appointed by the Government and three members being appointed by the Opposition. The Chairman was selected by the President from a list of six persons submitted by the Leader of the Opposition, and appointed. This formula was made into law and then enshrined in the Constitution. From 1991- 2017 it was upheld. Government and Opposition parties maintained a common understanding of the process used to appoint the GECOM Chairman. President Granger on October 19, 2017 appointed the Chairman unilaterally after rejecting three lists – a total of 18 eminently qualified Guyanese who were nominated by the Leader of the Opposition. In so doing the President violated the balance of an independent Commission, with a Chairman who had the confidence of both Government and Opposition.
 - a) GECOM, with the responsibility of holding and managing elections efficiently and fairly, has in the main ignored the passage of the No Confidence Motion and abnegated its responsibilities to comply with Article 106(6) and 106 (7) of the Constitution. From December 21, 2019 to date the Commission (*the six Commissioners and the Chairman*) has failed to take any measures to make itself operationally ready to hold General and Regional elections.
 - b) On February 19, 2019, GECOM by a majority vote of the Chairman and the three government-appointed Commissioners decided to inform the President that it could not hold General and Regional Elections on or before March 21, 2019 and that it would also require more funds. Both decisions are designed to delay the holding of the elections in compliance with the Constitution and to extend the life

of the APNU+AFC Coalition Government as close as possible to the scheduled 2020 (June – September) Elections. The second decision, in particular, is untrue and deliberately contrived to buy more time. GECOM as a constitutional body, has been appropriated a lump sum of GYD\$5.371B in its 2019 Budget by the National Assembly in accordance with Article 222A of the Constitution, which provides for it to spend its annual subvention as “it deems fit.” Finance Minister, Winston Jordan, on November 19, 2019, during the consideration of the 2019 budget of GECOM in the National Assembly, said: **“Mr. Chairman, the sum of \$5,371, 061,000 is given as a lump sum to GECOM to use as it sees fit and as it prioritizes.”** The Minister of Finance has however not released the monies as required by the Constitution.

- c) The clarion call for a new National House to House registration by the government-appointed Commissioners and the leaders of the parties in the APNU+AFC Coalition surrounds a fallacy that the list is inflated for the size of the population. Ironically the 2015 Voters’ List used in the General and Regional Elections was much larger than that used for 2011 Elections – the former brought in the APNU+AFC Coalition into office and the latter produced a minority PPP/C Government. There were no complaints by the APNU+AFC Coalition. The Voters’ List used in the March 2016 and November 2018 Local Government Elections were larger than the 2015 Voters’ List. The political parties contesting those Elections accepted the list as credible, without any complaint. Furthermore, Chief Elections Officer (CEO) of GECOM, Keith Lowenfield, on February 5, 2019, declared that the List of Electors was, in fact, “clean.”
- d) Despite the fact that GECOM made no decision, it proceeded to advertise in the media (March 2-3, 2019) for “Enumerators for House to House Registration” and “Assistant Registration Officers for House to House Registration.”
- e) It is clear that the three government-appointed Commissioners and the Chairman of GECOM, are taking instructions from the People’s National Congress Reform (PNCR). The three government-appointed Commissioners hold senior positions in the Government and are therefore compromised. It therefore not surprising that the positions being taken by the People’s National Congress Reform (PNCR), the Coalition Government, and these Commissioners are one and the same.
- f) On March 8, 2019, the President met with the Chairman and Commissioners of GECOM. The opposition-appointed Commissioners prepared a work plan for the President to demonstrate that General and Regional Elections could be held within 50 days, on April 29, 2019. The government-appointed Commissioners called for a new National House to House Registration, taking at least eight months to complete, and elections in February 2020. *(See Appendix I, verbatim transcript by the President and Minister Harmon following the meeting on March 8, 2019 and Appendix II, press release of the three Opposition- appointed GECOM Commissioners on March 8, 2019)*

Efforts to avert the Constitutional Crisis:

- I. Key sections of civil society – the Private Sector Commission, the Georgetown Chamber of Commerce and Industry, the Guyana Bar Association, the Federation of Independent Trade Unions (FITUG), numerous democratic minded citizens, including Guyanese in the diaspora – have publicly called on the President, over the last two months, to abide by the Constitution and to hold elections by March 21, 2019, and avoid a constitutional crisis.
- II. Recognizing that the date of March 21, 2019 was fast approaching without any indication by the President or GECOM to meet the three-month deadline, the Leader of the Opposition offered a reasonable and feasible proposal to the President in the national interest and to prevent the country slipping into a constitutional crisis. In response to an invitation from the President to meet on March 6, 2019, the Leader of the Opposition, by way of letter on March 4, 2019, offered his support for a date for the General and Regional Elections “to be held before the expiration of the present Voters’ List on April 30, 2019.” (*See Appendix III, Office of the Leader of the Opposition letter dated March 4, 2019; Appendix IV, letter of reply from the Ministry of the Presidency dated March 5, 2019; Appendix V, press release from Office of the Leader of the Opposition on March 5, 2019*)
- III. The March 6, 2019 meeting was an exercise in futility, with no agreement and no results. The President repeated the views of the government-appointed GECOM Commissioners and his party leaders, and, reiterated his position that GECOM had to set the date for elections, and, that he had to await GECOM’s readiness to hold elections. (*See Appendix VI, press release from Office of the Leader of Opposition on March 6, 2019*).

From the above mentioned, President Granger is not prepared to call elections until: (a) the Voters’ List is ‘sanitized’, and (b) the legal processes are concluded. The Government continues in its current ‘business as usual’ mode. Therefore, there is no doubt, in our minds that the stage is being set for a new National House to House Registration, which would delay, by a year, constitutionally required General and Regional Elections, until February 2020.

In the meanwhile, the Guyanese citizens are waiting for the elections and are worried about what will happen to their lives and nation after March 21, 2019.

In concluding, Excellency, Guyana is on the precipice of a constitutional crisis. As of the date of my letter, there are only 12 days left before the constitutional deadline expires, and the government continues to be in defiance of, and, in violation of the Constitution. Guyana is steadily moving towards a constitutional crisis.

Additionally, Guyana is confronted with a ‘crisis within the crisis’.

The conspiracy between President Granger and the Coalition Government he heads, with GECOM, to knowingly and willfully violate the Constitution has now been exposed. GECOM has not, and will not, start preparations for General and Regional Elections, until guided by Congress Place (headquarters of the President’s political party), and, the President will not name

a date citing GECOM's unpreparedness as his reason. Herein lies the conspiracy – GECOM will not begin to ready itself without a date from the President and the President refuses to name a date without GECOM being ready.

The Leader of the Opposition's efforts to avert the constitutional crisis have been rebuffed by President Granger. As a result, the Leader of the Opposition informed the President that were he to proceed on a new National House to House Registration, the Parliamentary Opposition would not lend its support for the two-third majority needed for an extension [Article 106 (7)].

The APNU+AFC Coalition Government will, therefore, be unconstitutional, illegal and illegitimate after March 21, 2019, as we have indicated in our January 3, 2019 correspondence. The result will be a President with no constitutional coverage and no mandate of the people to govern and remain in office.

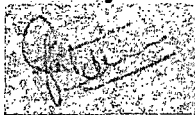
Secretary General, these developments now warrant your urgent attention and intervention.

We, therefore, call on you, as Secretary General and the Heads of Government of the OAS to stand firmly in defense of constitutional rule and democracy in Guyana, and, in the entire region. Anything other than constitutional rule will lead to instability, which will have grievous consequences for Guyana and its people, and, for the entire Region.

In these circumstances, we strongly urge the OAS to call on President Granger to comply with the Constitution and avoid a constitutional crisis.

Failing which, we call on you to not recognize the APNU+AFC Coalition Government after March 21, 2019. We also call on the OAS to ensure that the President Granger Administration nor its Ministers are accorded recognition at meetings of the OAS after March 21, 2019.

Sincerely



Gail Teixeira, M.P.,
On behalf of the Parliamentary Opposition of Guyana

Appendix I

1

**Ministry of the Presidency
Media Release**

Statement by President David Granger and Minister of State, Mr. Joseph Harmon following consultations with the Chairman and Commissioners of GECOM on March 8, 2019.

President David Granger: The Government had a very enlightening and useful engagement with the Guyana Elections Commission this morning. The Commission was invited by the Government to examine the ways and means of having credible elections in as shortest time as possible, and we sought guidance from the Elections Commission as to what they would need. It appeared to the Government side that there are some differences. We did not feel that the differences are irreconcilable, but there needs to be a fresh search for agreement between the competing opinions in the Commission. Much attention was focused on the List. Naturally, the List is central to elections. We feel that elections are a normal part of democracy, but we don't want any citizen to feel disenfranchised and it is evident from the evidence provided in the meeting this morning that the List is bloated... given the size of our population and much attention is focused on sanitising that List.

As far as we are concerned on the Government side, we did not receive the sort of guidance that we need to enable me as President to make a proclamation to actually announce a date, but we have kept the door opened and we have asked the Guyana Elections Commission to go back to the drawing board to examine how quickly and how easily they could arrive at an consensual position; merge the various approaches; ensure that the preparations for elections, which have already started, continue and that we could have an agreement as quickly as possible. So as far as the Government side is concerned, this has been productive, it has been edifying and we feel we have the basis for moving quickly towards having elections in Guyana.

The unfortunate thing of course, is that we do not have a date and I am confident that if the Guyana Elections Commission resolved or reconciled the different points of view, which exist in the Commission now, Guyanese could look forward to having elections at an early date as possible. I would like to ask Minister of State to...

Minister of State: Yes, sir. I would wish to add that the other issue you made very clear in the meeting was that there are four matters which are to be considered in addition to the work programme for GECOM, and that is that there is a need for Government to continue to function in its legitimate manner; that the court processes are going on at the same time while we are discussing this matter with GECOM, and that the outcomes of these matters are also going to impact on whatever it is that we do; that GECOM as an independent body, has to ensure that in its decision making processes, that it takes into consideration the approaches and views expressed by these Commissioners, but at the end of the day it is the decision of the Commission upon which the Executive branch will have to rely on and, therefore, it is decision of the Commission that would inform His Excellency in whatever decisions or pronouncements he would make.

Appendix I

2

While the sense we got in the meeting that there were different approaches, that there were personal views also expressed, we understand that that is normal; that will happen, but at the end of that we have to act on a decision of GECOM. Sometimes these decisions are unanimous and sometimes they are a majority decision, but the fact of the matter is that we must have a decision.

The other thing is that the President gave a commitment to GECOM that any issues which require the intervention of a Minister or for the Executive to take any action which has to be taken, that the President has undertaken to have that done expeditiously so that the work of the Commission can proceed with due haste.

President David Granger: Let me make one thing clear. The Government is in no way interfering or intruding in the constitutional role and duty of the Commission. It is for the Commission to advise me that it is ready and I will then proclaim a date.

Naturally, I would like to proclaim a date that is sanctioned by the National Assembly and the Constitution, but we have not intruded in the work of the Commission and we are prepared to support the Commission in what it has been doing. It is not for me to overrule the Commission. The Commission is independent. It is not for anybody to give the Commission instructions as to when elections are to be held. Once the Commission says it is ready, I will announce a date and I hope that date is as early as possible. So the question of the ball being in the President's court is not a credible position to take. I have to be advised by the Commission and we had two hours of, I would say, grueling discussions and I am very confident that when the Commission goes back to High Street and goes back to the drawing board, they will be able to give the Guyanese people or give the President, the type of guidance that I need to make that decision. I am satisfied that the will exists on both sides, the Government side and the Commission's side and we now have to make that decision as to when elections will be held in Guyana.

-ENDS-



PRESS STATEMENT

On Friday, March 8, 2019, the Opposition-nominated Commissioners, Attorneys-at-law, Ms. Bibi Shadick and Mr. Sase Gunraj and Mr. Robeson Benn, responded to an invitation from President David Granger to meet with the members of the Guyana Elections Commission (GECOM) to initiate consultation on the readiness of GECOM to conduct General and Regional Elections in 2019'.

At the meeting, the President was accompanied by a large delegation of Ministers, including Prime Minister, Moses Nagamootoo; Minister of State, Joseph Harmon; Minister of Public Security, Khemraj Ramjattan; Minister of Natural Resources, Raphael Trotman; Minister of Indigenous People's Affairs, Sydney Allicock; Minister of Social Protection, Amna Ally and Attorney- General, Basil Williams.

This was surprising in light of the fact that none of these persons has any statutory or other function related to the conduct of elections.

The meeting degenerated into one of the usual statutory meetings of the Commission, where no urgency is ever given to the holding of elections as is constitutionally mandated, but instead, focus was placed on a house-to- house registration exercise.

The Opposition nominated Commissioners attempted to submit a written proposal which contemplates the holding of elections in the shortest possible time, that is, before the expiration of the current Official List of Electors on April 30, 2019.

This submission was not allowed.

Instead, the Government nominated Commissioners insisted that house-to- house registration was necessary before the conduct of elections. It is appropriate to note that any house-to-house exercise will take in excess of nine (9) months and that Government nominated Commissioner, Vincent Alexander himself stated at the meeting, that with house-to-house registration elections could be held in February (2020).

To our surprise, the President then asked each of the Ministers present to share their views. Almost all of them spoke of the need for house-to-house registration.

Instead of the expected consultation with GECOM to determine its readiness, the engagement manifested into an obvious attempt to pressure the Opposition nominated Commissioners and

Appendix II

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GECOM into adopting the position being advocated by the Government and the APNU, AFC regarding House-to-House Registration.

Opposition nominated Commissioners:

Bibi Shadick

Robeson Benn

Sase Gunraj

Friday, March 8, 2019



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**Minister Joseph Harmon, MSM, M.P.,
Minister of State,
Ministry of the Presidency,
Vlissengen Road,
Georgetown.**

Monday, March 4, 2019

Dear Minister Harmon,

I received your letter dated February 25, 2019 conveying the President's invitation to meet me on Wednesday March 6th, 2019, at 11:00 am, at the Ministry of the Presidency.

As I have publicly stated, and, herein reiterate, that the Guyana Constitution is the supreme law of Guyana, and, therefore, the proposed meeting can only and must only focus on ensuring that the Constitution is not violated, and, that general and regional elections are held in compliance with Article 106(6) and 106(7) following the December 21, 2018 passage of the No-confidence motion.

In this regard, I am proposing to the President for his consideration, the following:-

- i) The date of the general and regional elections to be held before the expiration of the present voters' list on April 30, 2019;
- ii) No new contracts to be awarded by the State, including Regional Democratic Councils, and, State-owned corporations after March 21, 2019;

- iii) No new agreements, loans, grants, land leases, or any other such agreements or contracts after March 21, 2019, that bind Government;
- iv) No abuse of State resources for partisan activities/purposes;
- v) Access to the State-owned media by all the contesting political parties.

On the agreement of your Government to these proposals, the Parliamentary Opposition will be prepared to lend its support for the two-thirds majority required to comply with Article 106 (7) for an extension beyond March 21, 2019.

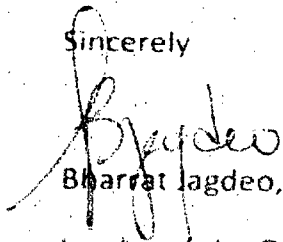
I, therefore, am proposing that the meeting focus exclusively on the date for these elections.

Further, I believe that my proposal to hold general and regional elections before April 30, 2019 is reasonable and feasible with a claims and objections period, provided that GECOM acts in good faith and in conformity with its mandate and the Constitution. This proposal will ensure that the Constitution remains intact and prevents our nation slipping into a constitutional crisis.

If my proposal finds favour with the President, I shall be prepared to meet him on March 6, 2019 at 11:00 a.m. or at any other time.

However, time is of the essence, March 21, 2019, when the government becomes unconstitutional, is fast approaching.

Sincerely



Bharrat Jagdeo, M.P.,

Leader of the Opposition



Government of the Co-operative Republic of Guyana

**The Minister of State
Ministry of the Presidency
Vlissengen Road,
Bourda, Georgetown.**

**Hon. Bharrat Jagdeo, MP
Leader of the Opposition
Office of the Leader of the Opposition
304 Church Street
Queenstown, Georgetown**

2019-03-05

Dear Mr. Jagdeo,

I acknowledge receipt of your letters dated Monday March 4, 2019, the corrected version dated Monday March 4, 2019 and the subsequent corrected version dated Monday March 4, 2019.

The content of these letters has been conveyed to His Excellency the President who advises that he is prepared to meet with you on Wednesday March 6, 2019 at 11:00 hrs at the Ministry of the Presidency and to discuss the issues raised in your aforementioned letters.

Sincerely,


Hon. Joseph Harmon, MSM, MP
Minister of State

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PRESS STATEMENT

Having received a letter on February 25, 2019 from the Ministry of the Presidency inviting the Leader of the Opposition to a meeting with the President on March 6th, 2019 to discuss the following matters:

- i) "The National Assembly's constitutional role in the present situation; and
- ii) The Guyana Elections Commission's readiness and requirement for funding to enable it to conduct General and Regional elections".

The Opposition rejected these grounds for the meeting in light of the apparent reluctance of the President to name a date for elections in accordance with article 106 (6) and 106 (7).

Recognizing that the date of March 21, 2019 was fast approaching without any indication by the President nor GECOM to meet the three months deadline, the Leader of the Opposition offered a reasonable and feasible proposal to the President in the national interest and to prevent the country slipping into a constitutional crisis.

The letter dispatched on March 4, 2019 stated:

"I am proposing to the President for his consideration, the following:-

- i) The date of the general and regional elections to be held before the expiration of the present voters' list on April 30, 2019;***
- ii) No new contracts to be awarded by the State, including Regional Democratic Councils, and, State-owned corporations after March 21, 2019;***
- iii) No new agreements, loans, grants, land leases, or any other such agreements or contracts after March 21, 2019, that bind Government;***
- iv) No abuse of State resources for partisan activities/purposes;***
- v) Access to the State-owned media by all the contesting political parties.***

On the agreement of your Government to these proposals, the Parliamentary Opposition will be prepared to lend its support for the two-thirds majority required to comply with Article 106 (7) for an extension beyond March 21, 2019.

I, therefore, am proposing that the meeting focus exclusively on the date for these elections.

Further, I believe that my proposal to hold general and regional elections before April 30, 2019 is reasonable and feasible with a claims and objections period, provided that GECOM acts in good-faith and in conformity with its mandate and the Constitution. This proposal will ensure that the Constitution remains intact and prevents our nation slipping into a constitutional crisis.

If my proposal finds favour with the President, I shall be prepared to meet him on March 6, 2019 at 11:00 a.m. or at any other time.

This afternoon, the Leader of the Opposition received a reply from Minister of State, Joseph Harmon, stating that "the content of these letters has been conveyed to the President who advises that he is prepared to meet with you on Wednesday March 6th at 11:00 hours at the Ministry of the Presidency and to discuss the issues raised in your aforementioned letters."

Many people believe that nothing positive will come out of the meeting tomorrow given the track-record of duplicity of the Granger administration thus far. The Opposition Leader shares some of these misgivings. Nevertheless, having been approached by many Guyanese, civil society bodies and members of the diplomatic corps to make one last attempt to avert the constitutional crisis that the President, with a complicit GECOM, is leading our nation into, the Leader of the Opposition is prepared to make one more good-faith attempt in the interest of the nation, and, will attend the meeting.

This is the last attempt by the Parliamentary Opposition to offer the government a way out of the constitutional crisis and to keep Guyana in the democratic fold of nations.

If the meeting fails, the true nature of the government will be seen by all those who urged the Opposition Leader to meet.

Tomorrow will be a test of the integrity, credibility and sincerity of the President; he will be tested as to whether he can be trusted "as a man of his word" to put our nation, its future and its people first on a foundation of constitutional and parliamentary democracy. This will be a test as to whether the constitution or 'power lust' wins out.

March 5, 2019

-ENDS-



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PRESS STATEMENT

One would have expected that President David Granger, having invited the Leader of the Opposition to a meeting, on the eve of a constitutional crisis, after March 21, 2019, would have come to the meeting prepared to avert the impending constitutional crisis.

However, the meeting today (March 6, 2019) with the Leader of the Opposition was another exercise in futility.

The Leader of the Opposition went into the meeting with some misgivings, as stated in our press release last night (March 5, 2019), but in the national interest he accepted the invitation and also proposed a reasonable and feasible solution to hold General and Regional Elections before the List of Electors expires on April 30, 2019.

The Parliamentary Opposition and the entire population have been subjected to a series of “bad-faith” actions by the APNU+AFC Coalition Government, after the passage of the no-confidence motion on December 21, 2018. Regrettably, this meeting did not offer anything different.

The President repeated the views of the government-appointed Commissioners and his party leaders, and, reiterated his position that the Guyana Elections Commission (GECOM) had to set the date for elections, and, that he had to await GECOM’s readiness to hold elections.

The Leader of the Opposition in response stressed that GECOM, a creature of the Constitution, could not be above the Constitution, nor, could it usurp the powers of the President to dissolve Parliament and summon elections at any time.

Mr. Jagdeo’s proposal for elections before April 30th, 2019, an additional 50 days past the March 21, 2019 deadline was doable. Furthermore, he was prepared to support GECOM in three actions: to have enhanced safeguards at the polling stations; to use selective tenders to allow it to fast-track procurement for the elections; and to simultaneously train additional elections day staff to meet that timeline.

Mr. Jagdeo removed any doubt, if there was any, that were the Coalition Government to support a new National House-to-House registration process, which would delay the elections for at least another eight (8) months, especially taking into consideration that the November 2018 Voters list, used in the Local Government Elections, was pronounced “clean” by GECOM’s Chief Elections Officer, and all the political parties contesting those elections accepted the list as credible, without any complaint, the Parliamentary Opposition would not support an extension past March 21, 2019, as required by 106 (7) of the Constitution.

Appendix VI

2

The President undertook to meet with GECOM and get back to the Leader of the Opposition. However, it is clear that the three government-appointed Commissioners of GECOM, and the Chairman, are taking instructions from Congress Place. The positions being taken by the People's National Congress Reform (PNCR), the Coalition government, and these Commissioners are one and the same.

No agreement was reached and no other issue was discussed.

In conclusion, the Leader of the Opposition stated that until the date is settled, there was nothing further to discuss.

The Opposition Leader informed the President that he would be calling for sanctions on the Coalition Government, after March 21, 2019, and reminded him that he would be invoking the same sanctions which Mr. Granger, as Leader of the Opposition, had called for in November 2014.

The President has not given the Guyanese people any assurance that the imminent danger the country faces will be averted. Instead, the Parliamentary Opposition could only conclude that the President and his Government have and will continue to act in bad-faith, and, that the President is willing to subvert and violate the Constitution to suit his Government's objective of staying in power beyond March 21, 2019.

The Parliamentary Opposition maintains that after March 21, 2019 the APNU+AFC Coalition Government becomes unconstitutional, illegal and illegitimate.

March 6, 2019

-ENDS-

Guyana's unavowed crisis

Bruce
Golding
Sunday, March 10, 2019



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Guyana is now deep in the throes of a constitutional crisis. It didn't have to be there.

The Government lost a no-confidence vote in Parliament on December 21. Section 106 of its constitution requires that in such an event, "the Government shall remain in office and shall hold an election within three months or such longer period as the National Assembly shall, by resolution supported by not less than two-thirds of the votes of all the elected members of the National Assembly, determine". That three-month period will expire on March 21.

In an article published in the **Jamaica Observer** on January 6, I had expressed the hope and optimism that the issue would be carefully managed. That optimism was then well founded. Both the Vice-President and Prime Minister Moses Nagamootoo, and the Opposition Leader Bharrat Jagdeo made mature and calming statements in Parliament immediately after the motion was passed. The following day, President David Granger agreed to a request by Mr Jagdeo that they meet to discuss the next steps.

From optimism to despair

That optimism has been shaken by subsequent developments. First, despite the initial assurance by Mr Nagamootoo that fresh elections would be held as required by the constitution, the Government challenged the validity of the no-confidence vote in the Supreme Court.

Having failed there on January 31, it took the matter to the Court of Appeal which is scheduled to hear oral submissions on March 15. It is uncertain when it will hand down a decision. At the same time, however, it refused the Government's application for a stay of the Supreme Court's decision and the effect of the no-confidence motion until the appeal is determined. Constitutionally, therefore, the March 21 deadline still stands.

The Government has signalled that if the appeal is dismissed, it will be taking the issue to the Caribbean Court of Justice (CCJ). It could be several months before the matter is finally decided.

The constitutional crisis arises because the time for initiating the procedures for elections to be held by March 21 has passed. The Representation of the People Act stipulates that nomination day must be not less than 32 days before election day. Nomination day, therefore, would have had to be no later than February 17.

The Opposition contends that the constitution does not give the courts any authority to extend the time within which the election must be held and that only the National Assembly, by a two-thirds majority vote, can do so. Up to now, the Opposition has remained adamant that it will not facilitate such a vote. Guyana is now facing a major rupture in its constitutional arrangements.

The crisis has been exacerbated by the positions taken by the Guyana Elections Commission (GECOM). A month ago, it stated that it would need 148 days to complete preparations for conducting the election, which would place it well beyond the March 21 deadline. Although more than 11 weeks have passed since the no-confidence motion, it does not appear that GECOM has begun any preparations at all for holding the election. Nor does it seem to have any intention of doing so because two weeks ago it announced that it would be reverting to its original work plan for 2019, which includes conducting a national house-to-house voter registration exercise. Given Guyana's huge land mass, which is 20 times the size of Jamaica's, such a process could well last until next year when a general election would normally be due.

GECOM itself has been plagued by controversy and setbacks. The constitution requires that its membership comprise six persons, three each nominated by the president and the leader of the opposition and a chairman acceptable to the president and chosen from a list of six persons submitted by the leader of the opposition.

In 2017, President Granger rejected the six names submitted by Mr Jagdeo. Two subsequent lists were submitted but were similarly rejected and Mr Granger then proceeded to unilaterally appoint a chairman. The Opposition unsuccessfully challenged the constitutionality of the appointment in the Supreme Court and Court of Appeal and is awaiting a final decision from the CCJ.

To complicate matters, the chairman — who is 85 years old and who exercises the deciding vote when, as is often the case, there is disagreement between the political representatives — has been in poor health and resumed work toward the end of January after being on medical leave for almost two months. To complicate matters even further, the chief elections officer was admitted to the Caribbean Heart Institute just over a week ago after complaining of chest pains.

The stalemate has already attracted international attention. Diplomatic representatives in Guyana have twice met with GECOM. A team from the Carter Center also visited Guyana last month to have consultations with GECOM. There has been no word of any engagement by Caricom or the Organization of American States, for both of which any disruption in the functioning of democracy in a member state should be a matter of great and immediate concern.

It is to be recalled that in January 2001 when the Supreme Court declared the 1997 elections to be null and void on the grounds that the requirement for each voter to present a national identification card — a change that had been supported by both the Government and Opposition — was in breach of the constitution, it was Caricom's intervention that secured an agreement between both sides for fresh elections to be held within two months.

Guyana's turbulent past

Guyana has had an unfortunate history of turbulence in electing its Government. The 1961 election, which was won by the People's Progressive Party (PPP) then led by Dr Cheddi Jagan, was accompanied by mass protests, a general strike and widespread violence in which several persons were killed. British troops were sent in to restore order.

Following the 1964 election in which the People's National Congress (PNC) joined with the United Force to form a majority in Parliament, Dr Jagan refused to handover power and had to be unceremoniously dismissed by the governor.

The four succeeding elections over the next 20 years (1968, 1973, 1980 and 1985) were all won by the PNC, but the results were bitterly disputed amid charges of electoral malpractices. Local political agitation as well as pressure from foreign governments and international organisations, led to major constitutional and electoral reforms in the early 1990s. For more than 25 years since then, Guyana's elections have been relatively peaceful and credible.

The PPP was returned to power in 1992 and maintained that position in the subsequent elections held in 1997, 2001 and 2006. In the 2011 election, the PPP won the presidency but the PNC joined forces with smaller parties to control the National Assembly — the first time in which Guyana had to function with a governmental arrangement where the executive and legislature were controlled by different parties.

In the 2015 election, the PNC-led alliance secured a narrow victory, winning by less than one per cent and securing a 33 to 32 majority in the National Assembly. It was this narrow majority and the flipping of a member of the alliance that resulted in the no-confidence vote in December.

The current stalemate has hardened. A meeting between President Granger and Mr Jagdeo last week yielded very little, with Mr Jagdeo insisting that the setting of a firm and early date for the election is a *sine qua non* of any further discussions. He argues that with GECOM having conducted the local government election last November, it should have no difficulty in managing an early general election.

Breaking the logjam

Guyana faces two options in resolving the impasse. One is to declare the earliest possible date for the election, taking into account the time reasonably required by GECOM to make the necessary preparations. This would provide a basis on which the Opposition would no doubt be inclined to facilitate a two-thirds majority vote in the National Assembly for extending the March 21 deadline. If this is done within the next few days and prior to the deadline, the integrity of the constitutional arrangements would be preserved.

This would mean — in effect if not in actuality — the Government abandoning its challenge in the courts of the validity of the no-confidence motion. The two principal grounds on which the challenge has been mounted are (a) that 33 does not constitute a majority of 65 since it exceeds one-half of the votes in the National Assembly by only one-half; and (b) that the inclusion of the votes of persons who hold dual citizenship and were therefore not qualified to sit and vote in the National Assembly effectively nullifies the no-confidence resolution.

Case law on both points suggests that the challenge is unlikely to be upheld by the courts.

The second option is for the election to be placed in abeyance pending the outcome of the legal challenge. This would be entering upon uncharted waters and the legitimacy of the Government beyond March 21 would certainly be called into question. It would also run the risk of inflaming political tensions and returning Guyana to the political turbulence of 50 years ago.

As I suggested in my previous column on the issue, Guyana cannot afford that regression and the instability it would cause. Too much of the promise of a much brighter future is at stake.



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PRESS RELEASE

The Office of the Leader of the Opposition notes the Address to the Nation by President David Granger, on the afternoon of March 15, 2019 – an address that repeats the fallacies and fictions that the APNU+AFC Coalition Government has been peddling since the December 21, 2018 passage of the no-confidence motion.

To recognize the pattern of duplicity and the peddling of fallacies and fictions, Guyanese have to go back to the night of December 21, 2018, where there was initial acceptance by President Granger and his Government of the consequences that were triggered by the passage of the no-confidence motion. The Coalition, in bad faith, then backpedalled on its initial comments. Fallacies and fictions, as well as excuses, became the new order of the day.

In President Granger's address to the nation, one of the first fallacies repeated relates to funding for GECOM. The President says GECOM may need additional "resources" for the conduct of General and Regional Elections, when the Fiscal Management and Accountability (FMAA) (Amendment) Act 2015, which he signed off on in August 2015, makes it clear that GECOM can use sums from the \$5.731B appropriation to conduct Elections. Also, Article 222A of the Constitution says: "In order to assure the independence of the entities listed in the Third Schedule – (a) the expenditure of each of the entities shall be financed as a direct charge on the Consolidated Fund, determined by a lump sum by way of an annual subvention approved by the National Assembly... (b) each entity shall manage its subvention as such manner as it deems fit for the efficient discharge of its functions, subject only to conformity with the financial practices and procedures approved by the National Assembly to ensure accountability." Further, Finance Minister, Winston Jordan, on November 19, 2019, during the consideration of the 2019 budget for GECOM, said: "Mr Chairman, the sum of \$5,371,061,000 is given as a lump sum to GECOM to use as it sees fit and as it prioritizes."

The President also insists that his Government has respected the judiciary. However, the January 31, 2019, Chief Justice's (ag) ruling which made clear that that "cabinet stood resigned" continues to be disregarded. The Chief Justice (ag) ruled that: *"I therefore find that Cabinet is not required to resign with all convenient speed, as the resignation under Article 106(6), in my view, takes immediate effect following the defect of the Government in a vote of confidence by a majority of all elected members of the National Assembly. In this case, Cabinet must be taken to have resigned with immediate effect from the evening of December 21, 2018, and all functions or duties provided in any law to be performed specifically by Cabinet must have ceased from that time."* Minister of State, Joseph Harmon, on February 15, 2019, announced that "ministerial plenaries are chaired by the President and includes all of the ministers and therefore has all of the powers that a Cabinet can have." The Chief Justice also ruled that: *"The President and the Ministers cannot therefore remain in Government beyond the three months within which*

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elections are required to be held in accordance with Article 106 Sub Article 7 unless that time is enlarged by the National Assembly in accordance with the requirements of said Article 106 Sub Article 7.” Therefore, the President’s claim that his government “continues to comply” with the ruling of the Chief Justice (ag) is another fallacy.

Additionally, the President insists that the legal challenges were not “calculated to frustrate the implications of the no-confidence vote” it is clear that the cases advanced represent an abuse of the judicial process. The President claims that the Government’s move to legal action was a move to bring clarity to “contentious” issues. On this point, it must be underscored that:

- Prior to the vote on the no-confidence motion the Government claimed that their 33 votes would be enough to protect it – after the vote, questionable mathematics relative to 33 not being a majority of 65 found its way into government’s legal arguments; and
- Prior to the vote on the no-confidence motion, Charandass Persaud’s votes were validated by the Coalition Government itself – after the vote, the legitimacy of Charandass Persaud sitting in Parliament found its way into government’s legal arguments.

The President refers to the January 3, 2019 ruling of House Speaker, Dr Barton Scotland, selectively, to suggest that the Speaker directed the Government to approach the Court. What he fails to admit is that the Speaker refused to reverse his December 21, 2018 ruling (after a ‘request’ made by the Coalition Government) and said: “...a Court of competent jurisdiction will place beyond doubt any question which may exist and serve to give guidance to the Speaker and to the National Assembly for the **FUTURE.**” The Legislature upheld the validity of the vote on the no-confidence motion.

The President also quotes Article 106 (7) as grounds to claim that he and his Ministers “remain in office” constitutionally. The President fails, here again, to admit that the Explanatory Memorandum, on Page 15, of Bill 14 of 2000 – Constitution (Amendment) – said: “Clause 5 alters Article 106 to provide for the resignation of Cabinet and the President following the defeat of the Government in the National Assembly on a vote of confidence. Although defeated the Government shall remain in office **FOR THE PURPOSE OF HOLDING AN ELECTION.**” To claim that “the Constitution contemplates continuity of the Government” is yet another fiction being peddled by Granger. Therefore, if – as the President claims – the Government “is conducting its affairs in accordance with the Constitution” of Guyana, we would not be on the precipice of a constitutional crisis. **IT IS NOT BUSINESS AS USUAL.**

The President’s claim that he has urged the “readiness” of GECOM to conduct “credible elections at the earliest possible time” runs contrary to the actions of Coalition-appointed GECOM Commissioners, who have been insisting on National House to House registration – a process that would delay Elections until 2020 – and Congress Place, where a call for ‘war’ in every Region was issued. He also contradicts himself when he comments on the need for a sanitized Voters’ List – a list that was used without complaint less than four months ago for Local Government Elections.

Clearly, the holding of General and Regional Elections is not of paramount importance for the Granger-led Government. For the President to claim that he is acting responsibly, not recklessly, because he did not receive “guidance” from GECOM to allow him to proclaim a date for Elections – having met with GECOM on March 8, 2019 – is another fiction, as that meeting

largely focused on national House-to-House Registration. It must be noted, that at the very March 8, 2019 meeting, the President rejected a work plan from the Opposition-nominated GECOM Commissioners, which contemplated the holding of General and Regional Elections on April 29, 2019. The President has insisted that he is waiting on GECOM to be ready, while his own Commissioner, Vincent Alexander, has said that GECOM is waiting on the President to name a date before it can begin to ready itself for Elections.

The President's comments on the issue of GECOM underscore the duplicity with which he continues to act on this issue. This duplicity is evidenced when the President claims that GECOM is "insulated from political interference" – when, in fact, it is none other than the President who violated the balance of GECOM by unilaterally appointing a GECOM Chairman and transforming GECOM into a partisan body that dances to the tune of his Government. GECOM's partisan actions were evidenced when, initially, the GECOM Secretariat, on December 27, 2018, declared that it would be ready to deliver Elections, yet weeks later, backpedalled on that position.

The Office of the Opposition Leader maintains that President Granger abdicated his responsibility to name a date for General and Regional Election when he, without constitutional cover, hides behind GECOM and says that it is the Commission that must determine an elections date. GECOM is subservient to the Constitution.

The President talks about "collaboration" but has not acted in good faith when engaging the Parliamentary Opposition. Opposition Leader, Bharrat Jagdeo, proposed an option that would have seen Elections being held on or before April 30, 2019 – and made clear that if the proposal was accepted the Opposition would support an extension of the Government's life in office. This was rejected by President Granger.

The Office also reiterates that the life of the Coalition Government can only be extended by a two-thirds vote in the National Assembly. If there is no such vote, the life of the Government ends; the maximum timeline set by the Constitution (three months after the passage of the no-confidence motion) will have expired. The clock has been ticking since December 21, 2018, and there has been no stay of that timeline by the Court.

After March 21, the APNU+AFC Coalition Government becomes unconstitutional, illegitimate and illegal. Sole responsibility for the impending constitutional crisis rests with President Granger and his government.

The President's failure to address the fundamental issues has been addressed by the Parliamentary Opposition, repeatedly. The Guyanese people have witnessed the disparity between the platitudes offered and the actions of the Granger-led Government.

March 15, 2019

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Stabroek News

No resolution to elections deadline seen -Jagdeo

By Staff Writer On March 18, 2019 @ 2:16 am In Guyana News |

With the constitutional deadline to hold elections following the December 21 passage of a no-confidence motion against the government expiring at the end of Thursday, Opposition Leader Bharrat Jagdeo does not foresee a resolution for which he blames President David Granger.

The country will head into uncharted waters should an agreement not be reached by the governing APNU+AFC coalition and opposition PPP/C to extend the deadline. A two-thirds majority in the National Assembly is required for this and the government thus needs the support of opposition parliamentarians. The opposition has been insisting on elections by April 30th while the government has said that it is the Guyana Elections Commission that has to advise when it would be ready. Both sides remain deadlocked and Granger is currently in Cuba where he is undergoing treatment for Non-Hodgkin Lymphoma.

"Doubt it. The President gave an 'it's not me' address to the nation and left for Cuba," Jagdeo told Stabroek News yesterday when asked if he believed a resolution to the deadlock could be reached in time.

Jagdeo has accused Granger of acting in bad faith on the holding of constitutionally-due elections, while maintaining that government cannot continue holding office beyond the March 21st deadline unless an extension is granted by two-thirds of the elected members of the National Assembly.

Government, in response, has said the claims are furthest from the truth as Granger has demonstrated impeccable leadership, despite consistent attacks from the opposition, given the current circumstances and that Jagdeo should be blamed.

Former Attorney General Anil Nandlall is concerned about the situation as he explained that when the time expires, Guyana's Constitution has no provisions for an extension of government's life subsequent to that and all decisions taken thereafter, would be in breach of the law or "extra-legal", even if both sides agree to elections. "Strictly speaking, the Constitution provides for and contemplates that the life of the government must be extended before it lawfully expires. Of



Anil Nandlall

course, the life of the government can only be extended by a resolution passed by the National Assembly with a two-thirds majority vote. In that resolution, it would be stated the length of time the life of the government is to be extended and the date for elections, and within that time, the president would have dissolved the parliament. The Constitution does not contemplate nor provides for an extension of the government's life after it has expired. In other words, after death the human being cannot come back alive. The life would have been extended only while the human is alive," he stressed.

"After (March 21st) parliament cannot constitutionally be reconvened and even without the (reconvening) of parliament, the president cannot lawfully fix a date because to do so, he has to trigger a proclamation under the Constitution itself but that Constitution doesn't recognise him as President. That is what is meant by a constitutional crisis. The Constitution is silent on what is to happen thereafter," he added.

Nandall said that he has heard arguments for the doctrine of necessity being advanced and that it can be invoked in such a circumstance as when the timeframe expires. He argued that the doctrine of necessity cannot be resorted to where the constitutional vacuum is self-induced or deliberately caused by those who want to invoke it. "The doctrine of necessity applies when there is something that occurs which is not contemplated nor foreseen. In other words, one cannot violate the Constitution intentionally and procure that violation, invoke the doctrine of necessity or else if that is the position, the doctrine of necessity would become the refuge of despotic and tyrannical rule the world over. Any government would then be able to remain in

office deliberately so beyond its constitutionally scheduled tenure, refuse to hold elections and then at its own whim, invoke the doctrine of necessity to legitimise its stay in office. Clearly, that is not the purpose for which the doctrine of necessity was created," he stressed.

Vitiated

"Take for example the 1997 general elections which were declared unlawful and vitiated by a High Court Judge because of the use of the voters' ID card. The doctrine of necessity was involved in that situation to legitimise all actions of the government up to the time of the ruling of the court and legitimise the remaining in office for the purpose of holding elections. Another example where the doctrine of necessity can be invoked, is when there is a disruption of the existing legal order caused, for example, when there is a successful coup d'état and a democratically elected government is removed by those who overthrew it, as what happened when Maurice Bishop's New JEWEL Movement successfully overthrew the Eric Gairy government and then when the Bishop government was overthrown by a military grouping. You have none of those situations here. What we will have is a government remaining in office deliberately after its constitutional tenure expires. These were proper invocations of the doctrine because at the time, that parliament unanimously passed the law for the use of the ID card. No one contemplated or foresaw that a court would later set it aside," he added

He maintains that only in such cases as the examples he gave, could the doctrine of necessity be invoked and if any other move is made, it will be in violation of the Constitution.

Said Nandlall, "Anything that happens beyond the 21st of March, and anything that the government does beyond that date, will be extra-constitutional and ultra vires of the Constitution."

Government has said that the very Constitution that saw the passage of the no-confidence motion, makes clear that the President remains in office until another President is sworn in.

"It is important to note that contrary to the claims by the People's Progressive Party (PPP) and their supporters that the Government is acting illegally, Article 106 (7) of the Constitution of Guyana states clearly that: "Notwithstanding its defeat, the Government shall remain in office and shall hold an election within three months, or such longer period as the National Assembly shall by resolution supported by not less than two-thirds of the votes of all the elected members of the National Assembly determine, and shall resign after the President takes the oath of office following the election," a statement from government on Saturday said.

"It may be apposite to note that the attorney for the Leader of the Opposition, Mr Anil Nandlall submitted to the Court of Appeal that there must be a Government. Referring to Article 106 (6) and Article 106 (7), Nandlall submitted that while the first article provides for the resignation of Cabinet including the President, the Government remains intact until a new president is sworn in.

As such, he put to the Appellate Court that the President remains the President, and the Ministers remain Ministers of Government," it added while quoting Nandlall's submission on the matter.

As such, government believes that it is legal and will remain in government. "There are no legal barriers to Government's functioning and as such, the Government will continue to execute its functions to the citizenry," the statement said.

Nandlall said that the President is ill-advised and, as such, he and his advisors are deliberately omitting from that provision of Article 106 (7) the line that says "that the election must be held within three months." "One cannot read that provision and just ignore that conditionality as if it does not exist. He remains in office until a next president is sworn in, but the Constitution fixes an event which must take place within a timeframe which will cause that next president to be sworn in. That event is the elections and that timeframe is within three months from the date that the incumbent government was defeated by a no-confidence motion. They are reading the Constitution conveniently and selectively," Nandlall said.

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