

**WRITTEN SUBMISSIONS ON BEHALF OF THE OFFICE OF THE PUBLIC
DEFENDER**

BEFORE THE WEST KINGSTON COMMISSION OF ENQUIRY

INTRODUCTION

1. The Commission has asked for submissions from the parties with standing in relation to the following terms of reference (which we have copied with the addition of subparagraph numbers):
 - (1) The conduct of operations by the security forces of Jamaica in Tivoli Gardens and related areas during the State of Emergency in the month of May 2010;
 - (2) Whether, and if so under what circumstances, (a) civilians; and (b) police officers and soldiers of the JDF were shot and killed or injured during May 2010 in connection with the security forces seeking to effect the arrest of Christopher Coke on a warrant in extradition proceedings (while ToR(h) adds the word 'provisional', it was in fact a warrant of arrest).
 - (3) Whether the rights of any person or persons were violated in any of the affected or related communities by either (a) law enforcement officers or (b) by anyone else and, if so, whose rights were violated, and the manner and extent of such violations, and by whom such violations were perpetrated.
 - (4) The chain of command in relation to the decisions concerning the operations of the security forces in Tivoli Gardens and related areas during May 2010, and the respective responsibilities of each person in that chain of command.
 - (5) Whether any dereliction of duty or unlawful conduct is attributable to any person or persons in that chain of command in connection with the decisions concerning or the execution of the operations by the security forces in Tivoli Gardens and related areas during May 2010, and if so, which person or persons, and the nature and extent of such dereliction of duty or unlawful conduct.

2. The statutory remit of the OPD is the protection of the constitutional rights of the people of Jamaica, and to investigate alleged abuses of those rights. As early as the morning of May 25, the then Public Defender had determined that the allegations which had already been brought to his attention were within his remit, and he embarked upon an investigation (Day 74/45). He submitted his Interim Report to Parliament (“the OPD Report”) on 29th April 2013, and was careful to state throughout that the Report did not reach conclusions on the violation of people’s rights. but set out allegations made in the course of the lengthy investigation by his Office. The narrative of those who made statements “describe what **they** say happened” (Report, para 1.4).

3. We pay tribute to the then Public Defender, Mr. Earl Witter, for the energy and dedication which he showed from the first day of his investigation onwards. He showed courage along with Bishop Blair and Dr. Salmon, in entering Tivoli Gardens on the morning of May 25 when the situation was volatile and potentially dangerous. He constantly reminded the relevant authorities of their responsibilities with regard to the treatment of dead bodies, the setting up of crime scenes, and the necessity of obtaining accurate scientific evidence relating to the ballistic and forensic material which required to be examined. He pushed for, and obtained, valuable assistance from overseas experts in relation to independent post mortem examinations and ballistics protocols. He constantly drew attention to the value of the human lives which had been lost. Without his passionate advocacy for the rights of the families of those who had been killed to have a thorough and independent investigation into the causes of, and responsibility for, the tragedy of Tivoli Gardens, this Enquiry might never have happened.

4. Given this background, these submissions will focus on the loss of life, and how it was caused, as well as dealing with other violations of human rights. There is no controversy about the murders of Sergeant Henriques and Constable Davis on the night of May 23-4 in the vicinity of Mountain View Avenue. They were the victims of a murderous attack by armed criminals on a police patrol. See the evidence of SSP Pinnock at day 67. Likewise there is no controversy about the murder of Private Green. He was killed by

criminal gunmen in the first few minutes of the operation on May 24 after he emerged from the MSOC building in Denham Town where he had been pre-deployed. See the evidence of Major Henry (Day 60A/130 onwards) (note that there are two days marked 'Day 60', 22nd and 23rd September 2015; we will refer to them as Day 60A and 60 respectively).

5. The burning issue is, as it always has been, how did between 69 and 75 civilians lose their lives in and around Tivoli Gardens on May 24, 25 and 26 2010? We take the figure of 75 from Appendix 1 of the OPD Report, leaving out Keith Clarke, whose death is not within the scope of the Enquiry. We take the figure of 69 from the evidence of Supt Brown-Ellis as being her "final tally" of persons killed within the Area of Operations on the relevant days (Day 73/158). We will examine the difference in those figures.
6. Our focus will be to address that question and seek to answer it. We will refer to any evidence which might indicate that an individual could have been killed in legitimate self-defence by security forces seeking to enter Tivoli Gardens. We will analyse the killings about which the Commission has heard live evidence, some relating to named deceased and some related to deceased whose killing was witnessed without identification as to who they were. We will invite conclusions to be drawn as to the many whose killing was not the subject of any evidence, direct or indirect. We will have a special section on the use of mortars.
7. This focus will concentrate on ToR 2(a) and 3(a) as set out in paragraph 1. In addition to the evidence about loss of life, we will consider other violations such as the right to security of the person, and consider evidence that persons were assaulted and/or injured by the security forces; and the right to liberty in the context of the detention of many thousands of mainly young men.
8. In the light of that focus we will consider the issues raised in ToR 5. It is impossible to reach conclusions as to the attribution of responsibility for dereliction of duty/unlawful conduct (which is the focus of ToR 5), until the extent and character of the dereliction of duty and unlawful conduct has been examined.

9. By way of introduction we will make reference to the preparation and planning of the operation, and to the situation in Tivoli Gardens which the operation was required to confront, covering ToR 1 and 4 in general terms.

THE EXTRADITION REQUEST

10. There is not much dispute about the factual history between 24th August 2009 and 23rd May 2010. The two security chiefs met Mr. Golding on 24th August and advised him that an extradition request for Mr. Coke was soon to be made. It must have been obvious to the Prime Minister that they wanted to make a swift arrest as soon as the request was received and the authority to proceed had been signed. The Prime Minister delayed, for reasons which have been analysed in another Enquiry. Mr. Coke was tipped off and took refuge in Tivoli Gardens. The security chiefs started to make their plans for the operation which would be required if and when the authority to proceed was signed.
11. On 17th May 2010 the Prime Minister announced to the world that the authority to proceed would be signed by the Attorney General. The service chiefs were not informed in advance of the announcement (Day 14/25). We submit that Mr. Golding acted with gross irresponsibility in not giving them advance warning of the Government's decision. At this moment he was at the top of the chain of command. While operational decisions were for the service chiefs, the political decision which triggered the operation was his. It was certain to be a difficult operation, and it was his duty to enable them to prepare for it and move quickly if they thought it right. The speech which he made appears to have been more designed for political damage limitation, with no proper thought given to the security aspects of the operation which had to follow.
12. Operation Keywest stated that it was "a matter for governmental consideration" that the security forces should be advised three days in advance of signing of the warrant. It was a JCF document, but it is said to be the product of the joint planning exercise which had been going on since October. Yet the service chiefs did not tell the government that this

was a matter for its consideration. Mr. Ellington agreed that prior information would have been desirable for the element of surprise, but – in contradiction to the Keywest plan – he did not advise the Prime Minister of that (Day 27/211). Major General Saunders said that he “expected” the Prime Minister to give him advance notice (Day 39/87). But he did not communicate that expectation or give clear advice. The service chiefs too bear responsibility for not giving the advice which their own plan envisaged.

13. We shall never know how the operation would have gone if, as is usual in extradition cases, the subject was not forewarned of his imminent arrest. The senior military were clear in their evidence. Major General Saunders said that the public announcement “did deprive of us of the element of surprise (Day 38/28). Lt Col O’Gilvie agreed that the element of surprise would have been important (Day 63/51). In the event, the dramatic public announcement immediately triggered off a period of tension, demonstrations, the barricading of Tivoli Gardens, the recruitment of gunmen from outside the area, culminating in the attacks on police stations and police personnel on May 23.

THE STATE OF EMERGENCY

14. We agree with the conclusion of Mr. Witter that in the light of the situation on May 23, the proclamation of a State of Emergency was justified (OPD Report page 29). On the evidence of Mr. Golding and the service chiefs, they reported on the crisis as it was unfolding on May 23, and the Cabinet approved the advice which was conveyed to the Governor-General, who issued the Proclamation with effect from 6.00 pm on that day. Other evidence points to a conclusion that the State of Emergency had been envisaged from an early stage as an essential part of the planning. We note the following:

- (1) Operation Keywest referred to the imposition of a limited State of Emergency as another “matter for governmental consideration”.
- (2) Major General Saunders assumed that there would be a State of Emergency as he made his plans between May 18-20 (Day 39/120).
- (3) Dorothy Lightbourne, who as Attorney General and Minister of Justice would have had responsibility for the legal documentation required, said clearly that

at the Cabinet meeting on May 17 the chiefs said that a State of Emergency would assist, and “a decision was taken” (Day 17/82). She said that through the week the various departments were told what needed to be done, and the Solicitor-General and she sat and went through all the documents – well before May 23 (Day 17/85). This evidence is highly credible – the Regulations were received by the Government Printer on the morning of May 24 (Mr. Thompson at Day 28/127) and would have needed time to prepare.

15. We submit that it is yet another tragic consequence of the Prime Minister’s actions, in making the imminent signing of the warrant public and in not advising the service chiefs, that a whole week had to pass before the State of Emergency was proclaimed and the operation was launched. A week in which police lives were lost, police stations were burned, barricades were erected and Tivoli Gardens fortified.

THE PLANS

16. It is a remarkable fact that there was not one plan but two. When pressed by Commissioner Harriott, Mr. Ellington said that there was “one operation with two phases” (Day 21/150). But the written plans for those two phases were not shared. Mr. Ellington said that the JCF and JDF do not disclose everything about their capabilities (Day 21/149), and for example he was told nothing about the plan to use mortars (Day 21/148). He never saw the Garden Parish plan (Day 27/195). “We operate under the principle of police privacy.” (Day 28/196) He “imagined” that the Keywest Plan was shared with the military (Day 27/199). But Major General Saunders “did not know of Keywest, our operation was Garden Parish” (Day 38/79). He said that there were “constant conversations” between him and the Commissioner, but nothing was written (Day 39/158). Lt Col O’Gilvie said that the two plans “would have complemented each other.” (Day 62/189).

17. The need for close and detailed consultation over the plans was particularly acute in an operation in which it was decided that the JDF would take the lead in entering the area of operations. Major General Saunders said that in no operation of this scale had the JDF taken the lead (Day 39/95). This decision was not "cemented", in the words of the CDS, until May 23 (Day 39/92). It should have raised questions as to how the separate chains of command would interlock with each other in the second phase when both forces would be operating in the same sector. Who would be in charge? We shall later analyse the failures of communication and command structure which resulted from a lack of clarity in the original plans.
18. Additionally, the two plans appear not to have had the same objectives. For the JCF there were always two objectives. As defined in Keywest, page 3, they were (1) to apprehend the suspect and repel any resistance; (2) "to restore security and confidence to the community". This second objective was expressed in different ways. One was "to shape the environment in Western Kingston and particularly in Tivoli Gardens for the delivery of community policing service" (Ellington statement page 2). In reality, the Commission may conclude that this objective was to dominate Tivoli Gardens and impose a normal police service where there had been none for 30 years. But for Major General Saunders the objective was clear: "our operation was for the capture of Coke" (Day 38/81).
19. The first objective failed, as Mr. Coke was not caught, nor were any of his criminal associates. The Commission may wish to consider whether the planning was sufficiently careful and co-ordinated to achieve the first objective. As it turned out, security forces to the north of Spanish Town Road started to move, and one soldier lost his life, before the forces which were to move in from the south were in position.
20. The second objective achieved the goal of dominating the area and establishing a police presence, albeit at a terrible cost. But it did not, and perhaps could not, shape the environment for community policing. Community policing cannot be imposed. There is not sufficient evidence for the Commission to say that community policing has been delivered, even to this day.

21. The second objective was spoken of in aggressive terms by the JCF leaders. The Commissioner in his statement to the media and to his forces on May 24 spoke of “a battle we must win”; “victory which is our mission”; the Police fight to uphold the laws of our land” (OE4L). ACP Budhoo said that “what took place in Tivoli was war” (Day 77/181). Each of Major General Saunders’ Situation Reports to Golding speaks of JDF Maintaining Dominance over Tivoli and Denham Town communities. One can understand why the second objective was considered so important, in view of the history of Tivoli Gardens. One can also understand the need for militant resolution in the face of the crisis which had developed by May 23. Our concern is that the language of dominance, victory, overwhelming force and like expressions, would have reinforced in the minds of the rank and file an attitude of hostility and even hatred which, as we shall see, was expressed by many officers on the scene. As ACP Rose accepted, there is a narrow line between dominating an area and terrorizing it (Day 34/164).
22. The unspoken question which is begged by these expressions is: who is the enemy? The answer given by the JCF leadership is that the enemy was the criminal elements in and around Tivoli Gardens. But in the minds of many officers, as expressed on the scene, the community of Tivoli was the enemy and the women were collaborators, whether willing or not. “A kill we come ya fi kill off the whole a oonu” (Day 9/15) was the sentiment repeated in different ways and heard by many witnesses. There was no evidence of women collecting guns left by “fallen criminals”.
23. The initiative to provide buses to take “law-abiding” civilians to a safe place is relevant here. As a plan it was, we submit, a non-starter. The Prime Minister did not visit the Governor General until 5.30 pm on May 23 (Golding statement para 9). The State of Emergency came into effect at 6.00 pm. The media announcement about the buses was timed at 5.56 pm (Item 83, events log). By 6.30 pm it was getting dark and SSP Pinnock ordered the buses to leave (Day 67/39). For some, it was just too late in the day. “How can you take bus when the place in a darkness?” (Lancelot Bailey, Day 61/44). Others were more suspicious: “I heard about the buses but people say we no make police trick us” (Kishonna Gordon, Day 2/138).

24. But however well-intentioned, the plan may have had the negative effect of allowing security force members to draw the inference that since no one had taken the offer of protection, those who remained behind were not law-abiding. As Mr. Golding confirmed, there were, and are, large numbers of law-abiding people in Tivoli Gardens. It is evident from the testimonies before this Enquiry that both the witnesses themselves and those deceased of whom they have spoken, were mostly people with decent jobs. They bitterly resented the smearing of the whole community as supporters and/or sympathizers of Dudus Coke because of the criminal activity of a few. "The whole of wi business people, not in gang" was Joan MacFarlane's description of her family (Day 53/125). "Dem come in like we not human being", said Annette Marshall (Day 52/111).
25. In spite of the oft-repeated assertions by senior officers that they emphasized the need to respect human rights and use minimum force, we suggest that such warnings were given in a tokenistic way, in words which have aptly been described as "high-falutin" (Day 30/72). ACP Rose, when asked whether the need prescribed by the Regulations for reasonable suspicion before an arrest was made, was mentioned by him, did not answer the question (Day 34/149). It is highly probable that, in the absence of clear guidance, the officers under his command would have thought that the proclamation of a State of Emergency gave them carte blanche to detain the citizens of Tivoli Gardens at will and to abuse their rights.
26. It is worth noting the compelling evidence from within the security forces that the morale of the officers of the JCF was very low and depressed by the end of May 23. "We were losing our members in terms of their morale and motivation" said DCP Hinds (Day 30/93). Major General Saunders thought that the police were "in a very demoralized state" (Day 38/26). At a lower level Sergeant Robert Clarke thought that the low morale on the evening of May 23 was because his colleagues thought they were facing "an all-out war against each and every police" (Day 67/100). He denied that there was any sense of wanting revenge. But the danger is evident: if and when the tide turned and the security forces had the upper hand, reprisals might be taken. Joan Haughton-Allison heard the new attitude from a police officer in Java on May 24: "Oh, today is going to be

like Christmas” (Day 50/141). Soldier 3 heard a police officer say “You know how long me wan get in here.” (Day 59/14)

VIOLATION OF THE RIGHT TO LIFE

THE CIVILIAN FATALITIES – SECURITY FORCES EVIDENCE

27. It is convenient to take the evidence sector by sector. In sector 1, where Major Cheverria commanded the JDF forces and Supt Tabannah the JCF, the C company of 2 JR arrived in the area of operation at about 12.47. They came under heavy gunfire from Rasta City and the high-rise buildings of Tivoli Gardens. The front-end loader was deployed, driven with immense courage by Lance Corporal McLennon who succeeded in demolishing the barricades. Two officers were injured by gunshots in the arm and leg. “By approximately 3.25 pm we had secured our sector.” (Major Cheverria, Statement para 14) He called Supt Tabannah. There was no more effective firing in his sector after that (Day 65/39).
28. There is ample evidence that the process of “securing” an area by the JDF meant controlling the access and egress to it and making it safe: see Major General Saunders day 39/125. In the case of Tivoli Gardens, it meant entering houses and occupying at least some of the roofs of the high rise buildings. Major Cheverria did this in Sector 1 before declaring it secure: his soldiers occupied high rise roofs and broke down doors to check that there were no hostile forces (Day 65/111).
29. In the process of entering and securing the area Major Cheverria saw only two bodies, “somewhere on Chang Avenue”, which had lacerations to the throat and abdomen (Day 65/25).. We shall suggest below that these two bodies could well have been those of Carl Henry and Bojan Rochester. No other bodies were reported to him as having been found in the high rise buildings or elsewhere. Generally it should be noted that there is no evidence from any soldier or police officer that he or she actually killed or struck a gunman in the course of duty. Of course a gunman may be struck and killed and the officer or soldier not see it or know it – which is why the actual observations of the

military men who secured control are crucial when it comes to assessing whether some or any of the deceased were lawfully killed during the period before control was achieved. Nor is there any evidence that any civilian was lawfully killed in any sector after control had been secured.

30. Lt Col Sewell was in command of 2 JR and visited all three sectors around 4.00-5.00 on May 24. He saw no dead bodies on that day (Day 40/68). He was not told about any dead bodies on the roofs of high rise buildings (Day 40/187).
31. Major Kennedy was in command of A company which was responsible for securing sector 2. He had to wait at the corner of Marcus Garvey Drive/Industrial Terrace because of the heavy fire which soldiers were encountering at Industrial Terrace. He reached Tivoli Gardens High School at 2.00 and then move into the community. One of his soldiers was shot in the hand by a gunman in the gully. He secured all areas of sector 2 at about 4.35 (see his statement). He saw no bodies on May 24 (Day 64/49). There was no more hostile fire on that day or on May 25. He carried out house clearing and occupied the roofs of every alternate building. He called DSP Turner and he came in within half an hour.
32. Major Anderson was in command of B Company responsible for sector 3. He met severe fire and booby traps in the train station. He met "medium resistance" from Rasta City and from high rise buildings. He had control of the whole sector by 5.00 pm, but there was still gunfire from criminal elements (Day 42/36). He communicated with Supt Thomas but the JCF did not enter until daybreak on May 25 (Day 42/47). He did house clearing, which he described as "tactically checking each room not searching" (Day 42/50). He saw no dead bodies on May 24 and received no reports of dead bodies in his sector. No dead bodies were found in the house clearing, and no firing was directed at his soldiers. Once he got in the firing was sporadic (Day 42/85-91 and 166).
33. The other company tasked to enter Tivoli Gardens was B Co of 1 JR, commanded by Major Henry, who seems to have encountered the most serious resistance, being fired on from high rise buildings in Spanish Town Road and from Coronation Market (Statement

para 7). He then was engaged in gun battles in order to secure the MPM Building, Passa Passa Plaza and Foxy's Plaza. By 6.30 observation posts had been established at various positions but firing continued during the night. Firing ceased on the morning of May 25 but intermittent fire continued until 6.00 pm when the Company "transitioned into sustainment and stability operations" (Statement para 24).

34. Major Henry said that the body count in his area was 16 up to the evening of May 25 (Day 60B/58). This number came from reports extending over the whole sector, from Denham Town School down to Oxford Mall, including 2 from Coronation Market. He personally saw one deceased in the area of the MPM Building and one in the Market (Day 60B/49). He did not get any reports that soldiers had fired and hit hostile targets (Day 60B/147). No bodies were reported seen in Foxy's or Passa Passa Plaza.

35. The evidence relating to the collection of bodies is highly unsatisfactory, since those concerned have no idea where they were collected from, and no written record exists. Sergeant Waugh, driver of one truck, says that on May 24 he picked up two bodies which Supt Tabannah had seen near the clinic on Bustamante Highway. He was fired on during the journey to Maddens and had to come back. On May 25 he picked up 12 and Inspector Pratt, who drove another truck, picked up 13. According to Supt Tabannah, "we had a diarist, Constable Maxwell, to record how and where bodies were found". But Constable Maxwell died some months later and his record, if he ever made one, has disappeared.

36. Most of the bodies, said Sergeant Waugh "were near barricades and sandbags" (Day 70/228). It is submitted that this evidence cannot be true. If any civilian had been killed on May 24 while at a barricade, the military commander of the relevant sector would have seen the body. So would Lt Col Sewell on his walk through the three sectors. Inspector Pratt simply said that on May 25 he went throughout the community and to Denham Town (Day 71/83). The bodies were single bodies, not several in one place. There was no evidence of guns being recovered on or near the dead bodies.

37. Of course there is an easy explanation why there were many more bodies seen on May 25 than when the sectors were secured on May 24, namely that the witnesses who saw murders committed, on May 24, 25 and 26, after the entry of the security forces, are telling the truth. Indeed there is no other likely explanation. After the security forces took control they were dominant. They controlled the entrances and exits. "After we secured control on 24th, civilians could not move in or out", was the evidence of the officer in command, Lt. Col Sewell (Day 41/30)
38. The evidence of senior police officers about bodies in these various sectors does not affect the picture. Supt Tabannah says that he had a report on May 24 concerning two bodies near the clinic, which Sergeant Waugh picked up. He saw a decomposed body on May 25 (Day 70/92). Supt Turner saw no bodies on the 24th, but was told on the 25th about two bodies having been "neutralized" (see analysis of this evidence below). Supt Thomas did not give evidence.
39. Thus after taking control on May 24, and after house clearing and steps to ensure the areas were safe, the JDF commanders had seen two bodies in Sector 1, none in sector 2, none in Sector 3. Police officers had seen two more in Sector 1. Major Henry of 1JR had reports of 16 bodies in the surrounding areas at the end of May 25. There are therefore 20 deceased at the most who might have lost their lives while the security forces were seeking to gain control. Yet Sergeant Waugh and Inspector Pratt claim to have picked up 25 on May 25. Another three bodies were picked up on May 26. DCP Blake saw three bodies in a house on May 26, and others on the ground (Day 35/50), and ordered Supt Phipps to investigate. Supt Phipps himself says he only saw three bodies in a house (Day 72/57).
40. Yet Mr. Witter on the evening of May 25 visited Maddens and was told that there were 56 bodies there and another 16 waiting to be picked up, 9 of them in Darling Street. 72 bodies in all plus three known to have been brought in on May 26. The difference between the number of bodies noticed by the security forces, and the total number (whether 74 or 69), is extraordinary. We will now analyse the evidence related to the

known killings, in rough chronological order, in order to see what patterns and possibilities emerge.

KNOWN FATALITIES – MAY 24 – SECTOR 1

(1) Carl Henry

41. There is evidence from two sources that Carl Henry, who lived at 21 Levy Path in Java (Sector 1), was killed before the JDF reached Java. First, the witness Romaine Walker heard loud explosions, and felt the ground shake, and saw Carl Henry lying on Chang Avenue with Bojan Rochester and Marjorie Hinds – at about 12.30, before the entry of the security forces. He then felt and heard a second explosion, and went to Chinnie’s house. Asked whether he saw the security forces while at Chinnie’s house, he replied: “Yes I did saw them but that was afterwards, when they came in and took full control of the area.” (Day 49/62)
42. Carlos Henry died from metal particles penetrating his kidney. The cause of death was a “perforated wound (shrapnel wound) to the abdomen”. He had a total of 13 lacerated wounds to his body, including one to the head, and nine metal fragments were found. Bojan Rochester suffered eight gunshot wounds and nine lacerated wounds. Marjorie Hinds, who lived in Building 2 Chang Avenue, survived and gave evidence, and produced a medical report which spoke to her suffering penetrating wounds with burns and possible chemical trauma.
43. This evidence fits with the evidence of Major Cheverria that he saw two bodies in Chang Avenue who had lacerated wounds to the throat and abdomen. His description of the abdomen wound is consistent with the post mortem of Carl Henry. He is mistaken in his memory of the wounds of the second man. It must have been Carl Henry and Bojan Rochester who he saw.
44. We will submit below that Carl Henry was killed, and Marjorie Hinds injured, by a mortar round fired by Major Dixon.

(2) Bojan Rochester

45. Bojan Rochester was at his grandmother's house on Derrick Path on the morning of May 24. His mother (witness A on Day 5 –so described as she was an in camera witness) spoke to him and asked him to come for his porridge (Day 5/6). He said he would soon come. She never saw him again but heard that "the mortar caught him" (Day 5/8). She herself was at home on the fourth floor of Building 24 Seaga Boulevard when she heard the sound of the mortar and saw white smoke all around (Day 5/9). She also heard "a lot of gunshots."

46. As mentioned above, Bojan Rochester's body did have multiple lacerations. But the cause of his death was multiple gunshot wounds. There is no evidence as to the circumstances in which they were inflicted. If he had been a gunman resisting the security forces, there would likely be firearms discharge residue on his hands. DCP Hinds said that he knew from having seen a report that the hands of all the deceased were swabbed, and there was no report made that any of the hands were found to have firearms discharge residue (Day 31/23) Supt Brown-Ellis could not speak to the results of the wab tests (Day 73/176). No evidence has been adduced of any positive findings from the hand swabs of the deceased. No firearm was found in the vicinity of Bojan Rochester's body. The conclusion must be that this deceased was probably both shot by multiple gunshots and also injured by shrapnel from a mortar round, without any lawful justification.

(3) O'Connor Brown

(4) Orlando Brown

47. We list these deceased next because the evidence about them indicates that they were detained (but not necessarily killed) by soldiers at a time when no police officers were seen. The evidence comes from witness B on Day 5 who lived in DeeCee Avenue. She was at home on May 24 with her nephews O'Connor Brown, Orlando Brown, Michael Kennedy, Shuston Brown and Omar Brown, and her brother Altimont Brown – 6 males in all. Soldiers broke down the door and "a whole heap" of soldiers came in (Day 5/38).

Indecent language was used. A soldier tied up “all of wi” with tie-straps. She was told to stand in a line with the others. Orlando and O’Connor were at the back of the line. A soldier said “the last two man deh a back them a guh kill them”. Omar, who was aged 15, was pushed out onto the verandah. A soldier asked “if he waan that one there”, and another soldier replied “no man, a schooler that”.(Day 5/45)

48. O’Connor took off his ID from the National Water Commission and said they were all hardworking people. The soldiers told O’Connor and Orlando to run and they ran (Day 5/48). They ran out and went up DeeCee Avenue (Day 5/98). The witness never saw them again alive.

49. There is no evidence that gunshots were heard at that time. Orlando and O’Connor both died from gunshot wounds to the chest. O’Connor had two wounds to the chest and Orlando had two to the chest and one to the arm. Whether they were killed by soldiers or by the police who came in later, they were murdered by agents of the State. As in other such cases, there is no evidence of any hostile fire being aimed at the security forces in Sector one after the soldiers entered, and no evidence of any attempt to escape or retaliate. On the contrary, at the time they were last seen they were under the protection of the JDF.

(5) Kirk Allison

(6) Dashard Page

50. Kirk Allison was the husband, and Dashard Page the 20 year old son, of the witness Joan Haughton-Allison. After hearing the loud explosions she and they took refuge in Marjorie Hinds’ house in the building which adjoins Chang Ave. Soldiers and police kicked open the door. The soldiers were masked. Men were separated from women. She was ordered back into the house by a policeman who said “oh today is going to be like Christmas”(Day 50/141). The men were taken into an area which she tried to describe:

“Where they place us here, it have like a little curve area like. It’s on like – you would call it the corner. Where you have like the tree, they place the men them around that little section, it would be like the side of the building.” (Day 50/156)

51. When she went back into the house she could not see the men, as they were to the side. She never saw her husband or her son again. She added some details of great significance:

- When she went back into the house “you could still hear shots firing and I was wondering why I still hear shots firing” (Day 50/142)
- There were other men in the side area – “could be, I am not so sure you know, ,probably about 20 of them, 25 sitting” (Day 50/197). One of them was Micky, Marjorie Hinds’ baby father. (Radcliffe Freeman)
- “At that point there was a lot of police. Most of the soldiers, they went on the building.”(Day 50/198)

52. There is not a shred of evidence to suggest that any civilian tried to attack the police, or tried to escape, or do anything which would justify being shot. They were in the custody of the police, and they were never seen again. Gunshots were heard. Kirk Allison died from a gunshot wound to the back. Dashard Page died from multiple gunshot wounds to the chest. The Commission is entitled to infer that they met their deaths unlawfully in acts of murder by officers of the JCF.

(7) Radcliffe Freeman

53. He was Marjorie Hinds’ baby father: see her evidence at Day 49/147. He was last seen by her when he went to fix a neighbour’s door. Then she was hit by a bomb and she never saw him again. But Joan Haughton-Allison saw him in the area where the other detainees were placed. He died from multiple gunshot wounds to the chest and limbs. Nine copper fragments, one lead fragment and one copper jacket were found in his body – evidence which could well be linked to a firearm if the proper tests were done. The same inference can be drawn, that he was killed unlawfully in a further act of murder by officers of the JCF who were meant to be guarding him. How many others, out of the 20-25 men in the side area, met the same fate?

(8) Lundi Murphy

54. Roselyn Newton lived on Lenford Path, which runs off Bustamante Highway, was with her son and her baby-father and her nephew Lundi Murphy, aged 20. Soldiers banged on the door and her baby-father opened it. She saw eight soldiers wearing masks. They were told to go to the neighbour's yard and the three males ordered to lie face down (Day 9/104). A soldier pointed his gun at the men and she jumped in front of them and said "don't shoot them". A soldier held her by the neck and kicked away her foot and she dropped to the ground (Day 9/106). Then the men were told to get up and go "to the pathway where the rest of the people dem deh" (Day 9/107). Then they were told to run across the road in a chain, men first and then women, to a "muddy area" on Chang Avenue (Day 9/109), where all were told to lie face down in the mud. The men were separated from the women. A soldier kicked Lundi in the forehead. Another soldier said "hold dung you head before me shot you in a you head" (Day 9/112). She peeped and saw soldiers take her nephew and son and another youth across the road, where there were police officers. This was at Kirkpatrick Pathway. The police told Lundi to walk up the pathway, and he walked up until she could not see him. The policeman pointed his gun towards where he was and fired. She saw fire come out of the gun (Day 9/116). She never saw her nephew alive again. It was then about 6.00 pm, and she had been taken out of the house first at about 2.30 (Day 9/119).

55. This is a shocking account of an unprovoked murder by a police officer. Lundi Murphy died from three gunshot wounds to the chest. He had contusions on both sides of his face, injuries which corroborate the account that he was kicked in the forehead. He was told to go up Kirkpatrick Path which is a cul-de-sac, to a point where he could not be seen by others. The times given by Roselyn Newton are consistent with other evidence. At 2.30 the JDF were engaged on their own in house clearing and securing the area. By 6.00 the JCF had come in and the area was secure.

The Victims described by Soldiers 1 and 3

56. It is convenient to examine now the evidence of the two soldiers who speak to killings taking place in this sector on May 24. Soldier 1 confirmed that the JDF were securing the area and the police came in to do house to house searches (Day 57/11). In one house there was a mother and two sons, in the DeeCee Avenue/Chang Avenue area. The sons were ordered to wait, and the mother taken to a caged area. The police were talking to the sons and there were explosions in the vicinity of the house. One of the police said "a shoot you a go shoot me". He went to the area with another soldier and saw two bodies on the ground (Day 57/16). The "caged area" was a temporary detention area. The area was secure, and no shots were fired at them as they went to the area and saw the young men on the ground (Day 57/128).
57. Soldier 3 described how after they reached Java police officers came in an armoured vehicle. Persons detained were placed in a caged area, "not a physical structure like a cage, just a little confined area" (Day 59/13). It was in Java. More than ten men were in the area, most of them with their hands tied with tie-straps (Day 59/114-5). Women were also there (Day 59/16). The caged area was confined with rolled up barbed wire (Day 59/87-90). It was not on a street but in a kind of courtyard (Day 59/114)
58. Soldier 3 gave a chilling account of the murder of five civilians who had been in the caged area. A police officer took his rifle and fired shots into the caged area, hitting a young man with tied hands in the head (Day 59/15). A young man protested and another police officer shot him in the upper body (Day 59/20). A third police officer beckoned to another young man, took him to a house across from the caged area, and shots were fired (Day 59/22). The officer came back alone. Lastly, the same police officers went into a house where a lady had two sons, who appeared to be teenagers, and came out with two young men who they held by the collar, saying "yuh a go shoot me?" (Day 59/26). They took the young men to the back of the house and explosions were heard from that area. The police officers returned, laughing to each other. There had been no hostile fire in his area when he was in Java (Day 59/62). One of the police was firing in a left-handed manner (Day 59/102).

59. The evidence of Soldier 1 overlaps with that of Soldier 3 in relation to the murder of the two sons. They appear to be referring to the same two men. Together, their evidence amounts to a first-hand account of the murder of five young men by a squad of police officers in Java on the afternoon of May 24.

60. It is submitted that these members of the JDF were telling the truth to the best of their recollection:

- (1) Why should they lie? What possible motive could they have for inventing monstrous allegations against police officers, if they had not witnessed the events?
- (2) They gave their account to a Legal Officer of the JDF within days of the events, before the end of May 2010 (Day 57/66 and 105; Day 59/107). If their evidence to that effect was false, the Legal Office would have given evidence to rebut it. In the event there was no challenge. It was also not challenged that soldiers 1 and 3 both reported what they had seen to a Lance-Corporal, who would be their senior in the chain of command.
- (3) There was a “caged area” in Java. Major Cheverria explained the term as it is used by the military: “basically a building or space where we ensure is made sterile where detainees are kept. They are administered to whilst there and processed, and a determination made as to exactly what will happen to them after that point” (Day 65/41). He described what they had in Java as “temporary holding areas – primarily verandahs, other buildings which we considered to be safe” (Day 65/38-9). But there may be no physical structure, even an open area (Day 65/42). When asked whether the JDF had barbed wire in Java, he said he could not remember (Day 65/43).
- (4) This description of a caged area is echoed in the evidence of Joan Haughton-Allison cited in para 47 above about “a little curve area..they place the men them around that little section, by the side of the building”. It is therefore common ground that detainees, between about 10 and 25 in number, were kept in a holding area for a considerable time. They were still there at dusk: see Soldier 3 at Day 59/66, and Joan Haughton-Allison at Day 50/159.

- (5) Three of the deceased were last seen in the caged area (Kirk Allison, Dashard Page, Radcliffe Freeman), and two (O'Connor and Orlando Brown) were last seen going down DeeCee Avenue under police guard. The evidence of the civilians and the soldiers meshes. The soldiers saw events that the civilians were not intended to see.
- (6) Soldier 3 identified the two boys who were taken to the back of a house and shot as being the sons of "Madorie", who he had seen in Old Harbour (Day 59/83). The sons of Marjorie Williams, Fabian and Fernando Grant, aged 20 and 17, were killed on May 25, according to her account. Two brothers were killed in Java on May 24, namely O'Connor and Orlando Brown, but these were the nephews of Witness B whose name is not Marjorie, and they were aged 31 and 30. There is thus an uncertainty as to who Soldier 3 may be referring to as the sons of "Madorie". That uncertainty does not, in our submission, undermine the cogency of the reasons given above for accepting the two soldiers as witnesses of truth

61. It is impossible to say which, if any, of the victims referred to by these soldiers correspond to any of the five deceased whose actual killing was not witnessed. From the causes of death, some of them could be. Soldier 3 witnessed the actual shooting, and could speak to position of the victims, in two out of the five killings. The first man was shot while sitting in the caged area with hands tied, and the second, who was also sitting with his hands behind his back, protested and was shot. As noted above, all the five deceased except Kirk Allison had wounds to the chest, as did Lundi Murphy.

62. We submit that it is scandalous that the statements of Soldiers 1 and 3, and of Soldier 2 who was not available to give evidence, were not passed up the chain of command and then communicated to the BSI without delay. An investigation should have been started forthwith, at a time when the names of the potential perpetrators could be established, identification parades held, firearms retrieved and examined, and the caged area identified and made a scene of crime. In the event, nothing was done until November 2013 when the statements were typed and signed and passed to INDECOM. Even then it

took the intervention of the Public Defender to ensure that the Commission were provided with the statements, and the Commission then ensured that the two who were available were called.

KNOWN FATALITIES – MAY 24 – OTHER SECTORS

(9) Damion Lindsay (“Lion King”)

63. Evidence was given by his step-daughter Kishonna Gordon. Although she did not give his name, except when she agreed with the name Donovan Lindsay which was put to her on Day 2/133, she said at the end that he was indeed Lion King, a Rastaman and a musician, “no mix in badness” (day 2/191). Damion Lindsay is Lion King’s proper name.
64. She said that she was in the PWD building on 1 McKenzie Drive when the shooting started. At the last shot “mi si mi stepfather a drop” (Day 2/99). With the help of a friend she put him on a cart. She could see soldiers from the Lizard Town side coming through the gully (Day 2/101). She took him to KPH where he later died. She got shot in Spanish Town Road by a soldier who later came to KPH and apologized, “because he thought I was a man” (Day 2/166).
65. In relation to the shooting of her stepfather she added details: “mi si the soldier man point the gun after him and shoot him, and he got one in the back and one right here” (Day 2/119). The soldier was at the gully front. Her stepfather had nothing in his hands (Day 2/121). She said that during the battle “soldier fire after man and man fire after soldier”; but by the time her stepfather got shot “nobody else neva out deh” (Day 2/157). She did not give a distance between the soldier and her stepfather at the time of firing. The post mortem showed one injury, a gunshot wound entering the lower abdomen and exiting in the buttock.
66. Sharon Warren saw “Lion King’s baby mother”, who she could not name, bringing Lion King through the gully, injured in the belly (Day 54/103). She could not assist with any direct evidence as to how he was shot.

67. Kishonna Gordon's evidence suggests that he was unlawfully shot in the period when the JDF were moving towards Sector 2, since he did not have any weapon or anything similar, and he appears to have been in a place which was visible. However there is a lack of corroborating evidence which would enable us to find any pattern of misconduct at this stage of the operation.

(10) Andre Smith

(11) Dwayne Edwards

68. Joan McCarthy lived in Building 22, Seaga Boulevard. On May 24 at about 2.30 pm she was with members of her family including Andre Smith her grandnephew and Dwayne Edwards her daughter's boyfriend. She opened the door and saw five soldiers. They were all told to come out onto the verandah, and later told to go downstairs. Andre and Dwayne were wearing white tops, a ganzie and a t-shirt. The soldiers abused them, saying "the whole of oonu we dead fi oonu don man" (Day 7/12). "Oonu Prime Minister send wi hear fi kill oonu off" (Day 7/15).

69. She said that the police arrived about 5.00. They questioned Andre and Dwayne. A soldier called out "all flat clear". The police officers told Andre and Dwayne that "we are going up for a search" (Day 7/22). When they went upstairs she heard a barrage of gunshots. "It was extra terrible and it was very close" (Day 7/23). She had pain in her foot and she sat down, and then saw police officers beating her grandson Jermaine Johnson, and then she saw the officers who had taken Dwayne upstairs come down with his body in the sheet from his bed (Day 7/26). She recognized the sheet, and also his pants and shoes. The sheet had blood on it.

70. Two other men had been taken upstairs with Dwayne and Andre. They came down again and were placed on the verandah. She did not see Andre, but later she looked outside and saw police carrying something which she believed to be Andre's body (Day 7/35). Later when she went back into her home she stepped in a pool of blood at her bedroom door (Day 7/39) and saw gunshot holes in the wall (Day 7/43). She never saw Andre or Dwayne again. Andre Smith was examined at a post mortem and found to have sustained

two gunshots, one to the abdomen and another in the right forearm which continued into the chest. Dwayne Edwards' body has not been identified. Given the evidence, he was certainly killed in the area of operations and may be among the unidentified deceased.

71. Paulton Edwards lived in the same building and was ordered downstairs with the others. He saw Andre Smith and Dwayne Edwards brought down (Day 7/99). Then the police came and took over, and took the two young men upstairs "to do a search" (Day 7/103). He heard a barrage of shots, and police officers came down and said "oonu think oonu can hide gunman from wi, yuh think wi a fool?" (Day 7/105). He thought they were going to kill the "likkle youth" (Jermaine Johnson) as well. He described how later he saw the police with a bloody sheet and a foot hanging out with a sneaker (Day 7/111).
72. There is clear evidence here of deliberate murder, with the victims taken upstairs away from the eyes of other residents, and then executed in their homes. As in other cases, there is no evidence in any police statement of people in their custody seeking to escape or to cause them any harm, such as might justify the killings.

(12) Decorey Wright

73. This is a particularly sad case. Decorey Wright was a gifted cabinet maker, but he suffered from mental illness and was a patient at Bellevue Hospital. He was last seen in the evening of May 24 in Lancelot Bailey's apartment on the fourth floor of Building 25, Seaga Boulevard in Sector 2, where he had been allowed to stay for his own safety. His body was next seen being taken down in one of Mr. Bailey's sheets, dead. His post mortem showed that he had suffered ten gunshot wounds, including to the neck, the chest, the abdomen and the thigh.
74. Lancelot Bailey spent the day of May 24 in Barbara Jackson's flat on the third floor. In the afternoon of May 24 he heard Decorey Wright singing, he thinks on the second floor. Police and soldiers came on the building at about 8.30 in the evening. They came to Barbara's house and asked about the ages of the people there. They took away one of Barbara's relatives (Day 61/10). He went up to his own flat to get his medication and

saw Decorey outside his door. He gave Decorey his key and told him to get his medicine and some food and hand it to him. He went back to Barbara's flat and then heard Decorey turn on the radio in his flat. He went up and told Decorey to turn it off, and he turned it down. Then he saw soldiers and police in the front of the building, swearing profanities (Day 61/16). They came back upstairs and went to his flat, which was directly above Barbara's flat. Mr. Bailey then heard "a lot of shooting" coming from his flat (Day 61/18). He did not hear Decorey Wright or the radio again. Next morning he saw two soldiers coming down with a body in a sheet he could identify as his. When he returned to his flat on May 26 he saw the door shot off, blood splattered about in the bedroom, holes in the bedroom and bathroom walls, teeth and marrow, and spent shells (Day 61/25).

75. This is the only account we have of an incident in the night of May 24. The whole of sector 2 was under security forces control. As noted above, there was no hostile fire. At most there was a man playing a radio too loud. The Commission can conclude that this man was brutally shot to pieces, whether by police or soldiers or both, with no lawful excuse.

76. In relation to this fatality the evidence of Supt Turner may have significance. He says that when he came into Sector 2 in the morning of May 25, Major Kennedy told him that there was a dead body on the top floor in building 26 in Belgium and another at the bottom of building 27. The body on the top floor "had been neutralized by soldiers" (Day 68/70). Lancelot Bailey lived in Building 25. There is no other evidence of a civilian being killed in a top floor apartment. Whether the "neutralized" civilian was Decorey Wright or another who suffered a similar fate, it is strange that Major Kennedy had absolutely no memory of reporting such an event to Supt Turner, or indeed of knowing about such an event (Day 64/90).

KNOWN FATALITIES – MAY 24 – SECTOR 3

(13) Sydney Clarke

77. Minette Lindsay left her house in McKenzie Drive after feeling explosions shake the house, and went to her mother-in-law's house in Dreckett Place. Soldiers came and separated the men, and made them lay on the ground. "Some soldiers "walk round kick off their face", and some "a walk upon dem hand" (Day 55/28). Sydney Clark was one of the men on the ground.

78. She saw a truck arrive, and a soldier said "who caan hold in the truck, run". Sydney Clark, who she described as being "not so righted inna him head", ran. Another soldier shot him as he was running (Day 55/37). The body lay in Drecketts Path for two days. He had sustained six gunshot wounds, two to the chest and four to the thighs and buttocks. The inference is, we submit, that the soldiers created a bogus excuse for murder. If anyone questioned their actions, they could say they shot a detainee as he tried to escape.

KNOWN FATALITIES – MAY 25 – SECTOR 1

(14) Fabian Grant

(15) Fernando Grant

(16) Jermaine Gordon ("Kevin"/"Porridge Man")

(17) "Giffy"

79. Around 6.00 am on May 25 there was another atrocity at DeeCee Avenue. A soldier knocked on the door of Marjorie Williams' house at number 25. Other soldiers and police were there. A soldier looked at her older son Fabian, a tall youth, and said "Mom, you cannot tell me this guy was not firing (Day 60A/13). Police ordered Fabian and his brother Fernando to go out and took them across the road where they were kneeling down with their hands on their head (Day 60A/15). Other men were with them. Police also went to number 27 which was Kevin's house. Kevin was outside and a soldier ordered him in. There were lots of soldiers and police around. Police in blue with masks on

ordered her to go inside her house (Day 60A/20). She was peeping through and saw that her sons had been taken to the garden of number 23 next door. The boys were crying and police officers said "shut up boys, shut up, you gwine dead today" (Day 60A/23). Marjorie Williams was telling her father, who was blind, what was going on.

80. When she was away from the window with her father, she heard an explosion and Fernando cried out "mommy, mommy, they kill Puxie" (Fabian) (Day 60A/27). Then he said "mommy, mommy, are they going to kill me?" She then heard more shots go off, and Fernando said nothing more. When she next looked out, after comforting her daughters, police were taking away Fabian's body (Day 60A/29). They threw it in a truck.

81. Fernando received three gunshot wounds to the arm, chest and thigh. Fabian had six wounds in the thighs, buttocks and chest. There were lacerations on his knee and traces of powdered stone. When Mr. Witter came to visit later in the morning, fresh blood was seen on the steps of number 23, adjacent to the small garden. The photographs taken by Mr. Hemmings on that day were shown to the Commission, with Fabian's orange slipper by the step. Since it had rained overnight ("heavy showers", according to ACP Graham at Day 37/109) the blood could only have been shed in the early morning of May 25. We still await any evidence which might match any blood samples found at the scene with any deceased.

82. After the shooting police officers came to Marjorie Williams' house. "They were very mad with masks on and they had something on their back attached here and they were puffing it" (Day 60A/32). One of them said "we are going to kill you all because your daddy can't see" (Day 60A/34).

83. Kevin had been killed before Fabian and Fernando Grant. Marjorie Williams said that after he had been taken into his house at number 27 she heard shots, more than two (Day 60A/39). She saw police carrying his body across the road in a sheet but the sheet blew off and she saw his face (Day 60A/41). He was found at post mortem to have had three gunshot wounds to the right shoulder, right chest and right thigh.

84. Denton Dacres also lived at 27 DeeCee Avenue. He was at his neighbour's house at 25, and he said that three police officers and a soldier took Kevin into his house at 27. He heard gunshots in his house at the back (Day 62/40). He ran out and a voice told him to get down on his belly, which he did. He saw three police and a soldier drawing a body out of his house in a sheet. They put the body in a truck which had about 12 bodies in it, including the Grant brothers. He could then see the body was Kevin (Day 62/43-5)
85. He had been lying on his belly with about six other men (Day 62/40). After Kevin was put in the truck, he and the other men were told by police to get in the truck with the bodies, with two police officers sitting at the back. (Day 62/46). One of the "bigger head" of the police asked what they were going to do with the men who were alive. "how unnuh a mix up live man with dead man? Dem yah a go dead too?" (Day 62/49). The officers went away and talked together, and Denton Dacres and the others took the opportunity to get out of the truck. He was taken to Seprod.
86. Veronica Muirhead spoke of her two sons Andre and Dwayne Watkis being ordered out of her house in DeeCee Avenue and lying on their belly with Denton (Day 61/88) A soldier was there. She heard shots from up the road. A police officer said to the soldier "send over one a dem boy deh". The soldier took up Dwayne and said "you want him?" But the soldier refused to hand him over, saying that he had told his mother he would bring him back safe. (Day 61/91). The police took them over to where the trucks were with the dead bodies. She then saw the shooting of Fabian and Fernando Grant in the garden. One lay on a tyre, and "police gave Brillifa (Fernando) gunshots so" (Day 61/101). The same police officer shot both brothers.
87. She said that the police used "Giffy" to put the bodies in the truck and then "they just kill him inna the dead truck with the dead men them" (Day 61/106-7). The proper name of "Giffy" was not given.
88. The evidence of these witnesses, who clearly saw the same chain of events from different angles, reveals horrific acts of murder by police officers, apparently with the

acquiescence of some soldiers who were with them. One soldier may have spared the life of Dwayne Watkis by refusing to hand him over to a police officer who evidently wanted to execute him. What caused this early morning bloodbath? It is sure that there is no evidence of any of the security forces being attacked and needing to defend themselves.

89. A glimpse of the state of mind of the police officers who spent the night in the High School was given by Supt Tabannah. In the evening of May 24 the men were “grumbling amongst themselves” about the fact that the JDF had gone into Tivoli. They were tired and complaining (Day 70/39). They would have little or no sleep. At least one was seen to be puffing at what may have been some kind of stimulant. None of this can mitigate a series of murders committed on the day after the relevant sector had been fully secured. One might note also that there is an absence of evidence that any senior person took command of the situation, except perhaps the officer who seems to have forestalled the killing of Denton Dacres and the other men who were bundled into a truck full of corpses.

KNOWN FATALITIES – MAY 25 – SECTOR 2

(18) Nicholas Wilson

90. Adina Darby was the mother of Nicholas Wilson and lived at 3 Wilton Hill Drive. She said that on May 24 he went upstairs to get a phone signal. She next saw him on the landing and heard him say “Tassie me get shot” (Day 6/57) and he dropped down the stairs. Tassie was his baby-mother. She saw blood on his chest. She put him on a handcart. Shots were firing and there was a soldier on the PWD building. She ran past a policeman, and was then shot herself (see below).
91. Annette Marshall said that these events happened on May 25. She helped Adina Darby put her son on the handcart. She said that she had seen a shot go through his bedroom window (Day 52/52). When they were outside and Adina was shot, “we were surrounded by soldiers” (Day 52/50). Lelieth James also said that it was the Tuesday when she saw Nicholas Wilson lying on the handcart (Day 54/17). So did Sharon Warren. She said it

was about 6.30 am when she heard Adina bawl “murder”, saying Nicholas had been shot (Day 54/111) She saw him fall from the top floor, and helped push the cart.

92. The preponderance of evidence is therefore that Nicholas Wilson was shot on May 25 in his bedroom. No clear evidence has been given as to who shot him and why. Wilton Hill Drive was on the edge of Sector 2 which was fully secure on that day. His hands were swabbed and there was no report of finding firearm discharge residue. It seems likely that he was shot because he was seen moving about in the bedroom, holding a cellphone, a man who was innocent of any crime.

KNOWN FATALITIES – MAY 26

- (19) **Oshane Walker**
- (20) **Martin Lindsay**
- (21) **Unidentified male**

93. Jane McFarlane was the mother of Martin Lindsay (“Pops”) and aunt of Oshane Walker (“Pow”) lived at 11 Wilton Hill Drive. She was not in Tivoli Gardens during the operation, but gave a dramatic account of her conversations on the telephone up to and including the time when they were killed. They had been in Annette Marshall’s house at 5 Wilton Hill Drive, but they died in Jane McFarlane’s house where they also lived. She heard Oshane on the phone say “Pops dead” (Day 52/190). She saw that Oshane was using Martin’s phone and she called back. Oshane said “Lee-lee mi get a shot inna mi back and Pops dead pon the step” She asked “who shoot you?” and he said “the police” (Day 52/191). She heard from neighbours that a third man had gone into the house alive and came out dead.

94. Annette Marshall saw the three bodies but was “not quite sure” whether it was on Tuesday or Wednesday (Day 52/83). She was talking to Jane McFarlane as things were going on. Jane McFarlane told her that Pow had said that Pops was dead and he had been shot in the back. She heard policemen ask a policewoman if “you call the truck yet tfi take them dead bwoy deh out of the house?” She later saw the police take the three bodies out. First a man she did not know; then a “body without head”; then a body she

recognised as Pops (Day 52/82-3). When Jane McFarlane came back to her house on the Friday, "it remind me of a slaughterhouse" (Day 52/207). Blood was everywhere. She found spent shells which she handed to Mr. Witter (see evidence of the OPD investigator who received the shells: day 81/151).

95. Martin Lindsay sustained two gunshot wounds to the chest and forearm. Oshane Walker, the "body without head", had a wound to the right part of the face which destroyed the eye and jaw, with brain matter exposed. He also had a wound to the neck.
96. The uncertainty about the date of these events in the evidence of Annette Marshall may be resolved, we submit, by the evidence of DCP Blake and Supt Phipps. DCP Blake says he went to Tivoli Gardens on May 26 and saw three bodies in a house and two on the ground (Day 35/50). He instructed Supt Phipps to process the scene. Supt Phipps spoke only of three bodies in a house, one on a staircase and two on the upper floor (Day 72/57) "in a building somewhere closer to Lizard Town" (Day 72/57). DSP Blake had said that the house was in Java (Day 36/33). Neither of these senior officers could be more specific about the address. However there is no other evidence relating to any bodies being found after May 25, so that the date of these events is likely to be May 26.
97. The witnesses cannot say what Oshane Walker or Martin Lindsay were doing when they were shot, apart from talking on a cellphone, and cannot say who shot them and why. Nor can they identify the third man in the house. There is as yet no ballistic evidence as to what weapon fired the spent shells. However the deaths took place on a day when the whole of Tivoli Gardens was under security forces' control, and we cannot see any probable explanation other than unlawful killing by members of the security forces.

SUBMISSIONS ABOUT THE KNOWN FATALITIES

98. We have listed 21 people about whose deaths there is evidence. There may be up to five more, depending on whether the victims referred to by Soldiers 1 and 3 correspond with the victims named by others. Some general observations can be made about these deaths:

- (1) 18 of them (all except 1,2 and 9) occurred after the security forces had gained control and secured the relevant sectors.
- (2) In the majority of cases where acts of deliberate murder were witnessed the perpetrators were police officers. But not in all: see number 13 involving only soldiers.
- (3) In many cases the evidence of the witnesses is strikingly consistent with the post mortem reports.
- (4) The murderous intent of some members of the security forces was echoed in the threatening and abusive language which they used.
- (5) The assaults and other injuries, as well as the inhumane treatment of bodies, which are analysed below, add confirmation to the submission that the rights of the young men of Tivoli Gardens were treated as of no value.
- (6) As mentioned many times, there is no evidence to explain the deaths. No soldier or police officer has come forward to say that he shot a man in lawful circumstances after the initial gun battle.
- (7) There is a pattern seen from many of the cases that the actual killings took place where it was intended that civilians could not see: victims were taken round a corner, or into a building.
- (8) The swabbing of hands proved negative. None of the deceased had residues on their hands which might confirm use of a firearm.
- (9) None of the deceased was identified as a person who had committed any serious crime, or was even known to or wanted by the police. DCP Hinds said clearly that he could not say that any of the deceased was a gunman (Day 31/148), nor could he say that any of the 300 “foreign gunmen” were among the deceased.
- (10) Much has been made of the inconsistencies between the evidence given by various witnesses and their previous statements. There are many good reasons why the narrative given to the statement takers may be different – it depends on what questions are asked. The Commission is asked to find that witnesses were seeking to be truthful. Indeed there are many instances where the account of one witness is corroborated by another.

- (11) There is a total absence of any credible alternative narrative. If the deceased had been killed by the lawful action of the security forces in gaining control, their bodies would have been seen by the JDF as they entered the area and carried out house clearing. The suggestion that some deceased were murdered before the operation and somehow smuggled in, is absurd. The security forces had the access points to the community secured and guarded, so that any entrance from the outside would be seen.

THE UNKNOWN FATALITIES

99. We have referred to a maximum of 20 bodies seen by the security forces whose deaths may have occurred during the taking of control. We have referred to a maximum of 26 whose death was the subject of testimony by civilians and by soldiers 1 and 3. There is one case, of Gary Davis, which is before the Coroner's Court (Day 19/41). There remain at least 22 more (going by Supt Brown-Ellis' count), or 27 more (going by the OPD Report) whose deaths are wholly unexplained.
100. What is the correct figure? The difference between Mr. Witter's table at Appendix 1 (76 deceased) and Supt Brown-Ellis' final tally of 69, is made up by deducting the following names:
 - (1) Keith Clarke
 - (2) Sandrae Harrison and
 - (3) Errol Mitchell, who were "said to have been murdered by gunmen"(Day 73/87)
 - (4) Mark Anthony Smith, who "was already at Maddens, killed before the operation"
 - (5) Kesley Nelson "murdered in other circumstances"
 - (6) Petrona Edwards "shot and killed by gunmen" because she was not operating her weapon well
 - (7) Carl Henry, because he was killed by a piece of shrapnel.

101. Of these, Keith Clarke did not die in the AO and is anyway outside the terms of reference. In the case of Mark Anthony Smith, whose body was not available for post mortem, Supt Brown-Ellis made enquiries which confirmed that he was already at Maddens and had been taken for burial by his family (Day 73/89). In the other five cases Supt Brown-Ellis has relied on hearsay which has not been confirmed by evidence. We would submit that there are a total of 74 deceased who come within the terms of reference as having been killed in the area of operations. Mr. Witter's tally in the evening of May 25 was 72, and we add to that the 3 killed in Wilton Hill Drive on May 26. 75 less Keith Clarke = 74. At least 27 of these are unexplained.

102. From the analysis of the known fatalities, we submit that it is unlikely that many of the unexplained deaths were of gunmen lawfully killed in the battle to get control. If they were, their bodies would have been seen when control was gained. We submit that it is likely that many of the 27 were unlawfully killed. Many of the known deaths were deliberately done in ways which would not be observed by outsiders: for example the death of Decorey Wright. When we have reviewed other violations of human rights, we will put forward general conclusions for the consideration of the Commission.

VIOLATION OF THE RIGHT TO LIFE AND SECURITY OF THE PERSON – THE USE OF MORTARS

103. Major General Saunders took the decision to use mortars. The purpose was to keep women and children indoors and to disorient the gunmen (Day 38/46). According to Major Dixon it was to "create a sound effect to disorient criminals and to compel women and children to stay inside. (Day 80/132). The mortar officer and mortar fire commander was Major Dixon, commanding the operation from the roof of the Seprod building. He said that he fired 37 mortar rounds into three open areas. One area was a grass field west of the bus park, one was to the southwest of the Edward Seaga Oval, and one was the Tivoli Gardens Community Centre football field (Day 80/166). Mortars were fired at 11.00 am, 12.08 pm and 12.40 pm, plus an illumination round at 7.00 pm. He said that the only rounds fired into the football field were at 12.40 pm following a

request made by Major Cheverria. Two rounds were fired of which one did not explode (Day 81/55).

104. Major Dixon described the “normal safety distance” as being 550 metres away from the point of burst. Beyond this distance shrapnel will not travel. The “operational safety distance” was 250 metres.”This is the time now when there is a real threat.” (Day 80/144). The “danger area” was a radius of 190 metres. “This is the distance to which the shrapnel can really cause injury” (Day 80/148). The “lethal area” is 40 metres radius, and “anyone in this radius is likely to be killed by the shrapnel”. He explained the various processes which would be gone through to ensure that the mortar was fired “within plus or minus one metre accuracy.” (Day 80/135). Major Dixon claimed that the mortars which he fired could not have killed or injured anyone.

105. There was conflicting evidence as to whether the mortars were incendiary devices capable of causing a fire. It was admitted in the letter written by Captain Crooks to Mr. Witter dated 28th August 2012 that “the types of incendiary devices that were used were mortars”. (OPD Report Appendices page 76). In a later letter dated 31st August 2012 Captain Crooks changed that statement, saying that the rounds used at the time were “explosive and not incendiary” (page 78). Major General Saunders was clear that a mortar round “could cause a fire”, and if it landed on a building it could cause the building to be burnt out (Day 38/90). But Major Dixon was adamant that “the HE (High Explosive) round as far as I am aware has absolutely no incendiary property.” (Day 81/58). He said that there would be a measure of shaking the ground. The vibration would be felt within a 100 metre radius from the point of impact (Day 82/104), a distance which is well within the danger area described above.

106. We now look at the civilian evidence. Romaine Walker in Lewis Path said that he heard explosions and the ground shook. He saw Marjorie Hinds, Bojan Rochester and Carl Henry lying on Chang Avenue. A bomb then fell on Michael Williams’ house, and he saw “a lot of dirt and stone just rise up in the air” (Day 49/59), and then something came through the tree and landed on his roof, causing a big hole in the roof.

107. Joan Haughton-Allison heard a bomb at about 1.00 and “the building shake, it feels like it is coming down” (Day 50/124). Shanna James was sitting outside her house at 18 Chang Avenue, and heard something whistle through the mango tree. “It drop in Java and I see pure dirt.. I see the tree leaves them shake” (Day 51/123). Major Cheverria, when he came in, saw a fire in Chang Avenue, and no soldier could say why. When asked if residents spoke about bombs, he hesitated and said that he could not recall (Day 65/109).

108. In a different sector, Annette Marshall in Wilton Hill Drive said “everything inside my house grumble” (Day 52/44). Lelieth James in the same road said there were two loud explosions, seconds apart: “I hear a next loud one and I feel the house dance” (Day 54/10). She went out and saw a large hole in front of a neighbour’s house. In 1 McKenzie Drive explosions “shook the house and bare dust came in.”

109. We recall that there is evidence from Colonel Cummings that his engineers breached walls on three occasions, one in Rasta City (Day 46/167), which may account for the evidence of houses shaking in the sector 2 area. But the evidence coming from sector 1 admits of no other explanation that Major Dixon did in fact fire at least one mortar round into the Java/Chang Avenue area, for the following reasons:

- (1) The three people whom Romaine Walker saw lying on Chang Avenue after his house shook were all people found to have received lacerated wounds, and they are the only three with such wounds: see the post mortem reports on Carl Henry and Bojan Rochester and the medical report on Marjorie Hinds. Between them, Carl Henry and Bojan Rochester suffered 22 lacerated wounds.
- (2) If the mortars had landed in the centre of the playing field as claimed, there would be no shaking of houses as graphically described by the witnesses.
- (3) The only fires in the Tivoli Gardens streets, leaving out McKenzie Drive, were in Chang Avenue, and no explanation is given except that the mortar landed on at least one roof and caused the fire.
- (4) Denton Dacres, at DeeCee Avenue, gave a significant piece of evidence at day 62/63. He heard three loud explosions, one from Industrial Terrace near his

house; one from over Java by the gully; and one from over the playing field. We know that engineering units were used in Industrial Terrace to clear a way into Tivoli Gardens : see Lt Col Sewell at Day 40/58. We heard from Major Dixon that one mortar round was fired into the playing field. He said that the other one did not go off. Denton Dacres' evidence assists in establishing that at least one mortar fell in Java, causing one death and one serious victim of injury. The third man seen by Romaine Walker may have been already dead.

110. Apart from the evidence of witnesses, it is not easy to believe that only one effective round was aimed at sector 1. Sector 1 was the seat of Coke's headquarters. If any disorientation was needed, it would have been there in particular. If any women and children needed to be protected from being used as human shields, it was the women in Coke's immediate vicinity.

111. Even if there was not this evidence of a mortar causing death and injury, the decision to use mortars for this operation was irresponsible and unlawful. The JDF had no experience whatever in using mortars in built up areas. The range within which shrapnel can penetrate was too wide for safety. The calculations can be wrong: see for example the statement of Major Dixon that there was a six foot wall between the playing field and Chang Avenue; the evidence of Mr. Hemmings will be that the wall was perforated, was between 4'10" and 5'3" in height, and that the level of the ground around it was lower than the level of the playing field. The supposed rationale was totally inadequate in proportion to the dangers. Why should gunmen be disoriented by loud bangs at lengthy intervals? The evidence was that there was plenty of firing after 12.08 after 35 of the mortar rounds had been fired. Why should women be any more deterred from coming out of doors than they would have been (and were) by the noise of a prolonged gun battle? We submit that the use of mortars was the use of disproportionate and dangerous force, beyond the concept of minimum force which the law requires.

VIOLATION OF THE RIGHT TO SECURITY OF THE PERSON – INJURIES

Accidental Injuries

112. It was contemplated from the outset of the planning of the operation that there was the possibility of civilian casualties. Special provision was made in the planning documents for there to be an armoured ambulance. It is to be noted that none of the witnesses who gave evidence spoke of injured civilians being extracted from the area by way of armoured ambulance.
113. Indeed, the general pattern is that injured persons made their own way to the hospital with the assistance of family and/or friends. Examples can be found in the evidence of:
- (1) Kishona Gordon (Day 2/105), the thirteen year old girl whose stepfather was shot and was placed on a handcart and pushed to the hospital. On her way back from the hospital Ms. Gordon was shot by a soldier who approached her while she was in the hospital and admitted shooting her but said that he only wanted to slow her down (Day 2/212).
 - (2) Granville Roy Johnson (Day 2) thought he was safer when he left Tivoli Gardens to stay with a friend Miss Bertha in Charles Street. On going to use the bathroom on Tuesday May 25 in the early morning, he was shot in the back by a soldier. When he approached the soldier suggested he walk to KPH (Day 2/13).
 - (3) Adina Darby, whose son Nicholas Wilson was shot while he was in her house, placed her son on a handcart and sent him to the hospital. She herself was later shot, and was taken to hospital by soldiers.
 - (4) Nichola Bryce-Wilson (Day 4) was shot in the breast whilst inside her house on Monday May 24. She had to remain indoors with her injuries until Wednesday May 26 when she was finally able to go to the hospital.
 - (5) Colette Robinson (Day 3) was shot whilst standing in her doorway on Tuesday May 25, and was carried to KPH, On the way she met a soldier, who instead of offering assistance said "Go back dung go dead".(3/127). She was taken to Seprod where

there was supposed to be a medical outpost, but the witness does not speak of being treated there. What the witness describes is being made to wait for hours while the policeman sought permission from his superior to take her to the hospital.

114. It is submitted that it is clear from the foregoing that the security forces only played lip-service to the notion that there should be some medical facility for the injured civilians. Indeed Sergeant Steve Waugh who was in charge of the team tasked to remove injured civilians did not seem to know that he was tasked with that responsibility and unsurprisingly he did not rescue any civilians. See Day 36/102 and 111; Day 71/44.

CIVILIAN NON-FATAL INJURIES - MAY 24

(1) Germaine McLeod

115. Germaine McLeod was the first witness to give evidence to this enquiry. He lived at Harold Path, Tivoli Gardens in May 2010 with his stepfather and little brother. He owned and operated a game shop. On hearing gun shots getting closer he thought he would be safer by Miss Sissy and he and his brother went to stay with Miss Sissy and her family. The house in which they were staying caught fire and was engulfed in smoke so the occupants exited the building. When he reached the end of the path he was told to put Miss Sissy, who he was carrying, down. A soldier beat him all over his body, first with a baton then with a tree limb (Day 1/151, 156). . He could observe the occupants of another house in the yard lying face down, A police lady came to his rescue. The response of the soldier "if I didn't caught him he would have been shooting on us too, right" (Day 1/157).. He was taken to Java along with other residents.

116. He was questioned about whether he knew Dudus and when his response did not find favour with the soldier he was tie-strapped and called a liar (Day 1/167). . The tie-strap was so tight his fingers began swelling. After being tie-strapped a soldier called him up and beat him further. Again the policewoman interceded. An army truck arrived and he was forced to crawl t the truck while being kicked and beaten (Day 1/171). He was put

on the truck and told he was a shield. While on the truck the assault and battery continued. When he arrived at Up Park Camp (as he was told by the soldier) a soldier placed his hand under the wheel of the truck and the driver of the truck drove over his hand (Day 1/176).. To this day he bears the scars of that encounter. His back teeth were broken when he was assaulted with the tree branch. He, and the other men who were taken from Tivoli in this truck were made to crawl behind each other to a cell. (Day 1/178).

117. Mr. McLeod was cross examined at length on his knowledge of current affairs, general knowledge and games he may have sold. He was questioned about his tax compliance status. He denied suggestions from JDF counsel that he was not abused.

(2) Lovette Bryan

118. Ms. Lovette Bryan of 5 Levy Path, was not a victim of physical abuse herself but she spoke of the abuse of others. She was taken from her home to an abandoned house and placed to sit in dirty water (Day 3/195). Other residents of Tivoli Gardens were brought there. She observed Dean Spence arrive tie-strapped. A soldier asked for his name. When both father and son answered Dean Spence the father was beaten with a gun and accused of being a liar. Another resident was beaten after he answered that he didn't know who lived in a particular house. His wife came to his rescue and she too was boxed (Day 3/200). None of the persons who were beaten by the soldiers were attacking the soldiers at the time they were being beaten.

119. Ms. Bryan was cross examined on current affairs and her general knowledge of the state of emergency. It was not suggested to her that the men she saw assaulted were in fact assaulting the soldiers at the time they were beaten or that she was not speaking the truth.

(4) Maurice Tomlinson

120. Maurice Tomlinson was at home at 1 McKenzie Drive on Monday May 24. When he heard the gun shots he went by his mother's home on Sangster Crescent with his wife

and children. He looked through a window and saw a soldier with a gun pointed at him. Shortly thereafter a bullet came through the window (Day 4/9). The soldiers demanded that the occupants exit the building. When Mr. Maurice Tomlinson exited the building he was kicked in his stomach and bottom by a soldier (Day 4/14). He fell to the floor and the soldier stepped on his face. He was questioned about the whereabouts of Dudus and Splicer. When he said he did not know he was kicked "all bout". When he maintained that he did not know he was beaten with a gun. His nose was busted up and he bled. His wife protested on his behalf and she was boxed (Day 4/22). He was taken to a yard and told to go on his knees. He heard a "click" and realised that a gun was pointed to the back of his head. He eventually got away and was knocked out by another soldier. He was taken to Harman Barracks on May 24, 2010. While at Harman Barracks he was taken to KPH. He was finally released on May 27, 2010. On release he was given a receipt signed by ACP Rose which indicated that he had no injuries.

(5) Troy Palmer

121. Troy Palmer was inside his residence in Ebenezer Lane on May 24 when he looked through his window. He saw soldiers on the roof of the market. Shots were fired into his residence damaging his property. The soldiers came and removed him from his house. He was in fear while the soldiers made jokes at his expense. One soldier said "big man, laugh because we a go teck yuh picture today". When he refused to laugh he felt an impact to the back which was powerful enough to drop him to his knees (Day 3/16). Since then he continues to feel pain in his right knee to date. (Day 3/23)

(6) Nichola Bryce-Wilson

122. At About 3:00 p.m. on Monday May 24 Mrs. Bryce-Wilson was at her mother's residence in Dreckett Place. Her evidence is that she was inside the residence which was sprayed with bullets. She took cover but felt something like water running down her belly. When she looked she noticed that it was blood.. The actual injury was to her breast (Day 4/150). She did not see who fired the weapon but when she went downstairs crying for help she was confronted by soldiers. One of the soldiers said "hey gal, a kill we a go kill yuh now" (Day 4/152). Once the soldiers gained entry to the house they took the men

and put them to lie face down and restrained them using tie-straps, even though there was no evidence of resistance. Her brother cried out that they should take her to the hospital and the soldier hit him with the gun (Day 4/155).. The soldiers searched the house while Mrs. Bryce-Wilson continued to bleed. She later noticed that she had two other gun shot wounds. One wound was to her foot and the other was a graze on the left hand. A soldier assisted her by treating her wounds. She remained in the house with the soldiers until Wednesday.

(7) Adina Darby

123. On Monday May 24, 2010 Miss Adina Darby was at her house on Wilton Hill Drive with her family. Wilton Hill Drive is the border of sectors two and three. Ms. Adina's son Nicholas Wilson was shot while he was in her house. That aspect of the evidence is dealt with in the section on Known Civilian Fatalities. Nicholas was placed on a handcart to be taken to the hospital. While she was pushing her son to the hospital on the handcart she saw a policeman. After she passed the policeman she heard a noise and felt an impact to her body (Day 6/63). She was shot from behind. She fell to the ground. She tried to get up but could not. On the intervention of family members contact was made with soldiers who came for her in a jeep and took her to University Hospital of the West Indies. She believes it was the policeman who shot her (Day 6/77).

CIVILIAN NON-FATAL INJURIES - MAY 25

(8) Collette Robinson

124. At about 7:00 in the morning of Tuesday May 25 Ms. Collette Robinson was standing at her doorway at 4 Linton Place talking to her neighbour when she was shot (Day 3/124).

CIVILIAN NON-FATAL INJURIES - MAY 26

(9) Oneil Smith

125. On Wednesday May 26 Oneil Smith was in Lucius McFarlane's shop on Wilton Hill Drive where he worked. He slept in the shop overnight on Monday May 24, and Tuesday May 25. On May 26 all the persons in the shop were taken from the shop by soldiers and placed across the road. They were taken to Top Ten and told to hold on to a wall. While standing there he was kicked on the leg by a soldier which forced him to the ground (Day 58/12). As a result of the fall he sustained injuries to his leg. There were stones and chipped pieces on block on the ground. The uneven surface caused injuries to his leg; the scarring which was a result of those injuries is still visible today.

CIVILIAN NON-FATAL INJURIES - MAY 25- OUTSIDE TIVOLI

(10) Granville Roy Johnson, Charles Street

126. Granville Johnson observed barricades on the days leading up to the security forces operation. He thought it prudent to leave the area and stayed with Miss Bertha, a friend who lived on Charles Street. On Tuesday May 25 at about 4:00 to 5:00 in the morning he awoke to use the bathroom. He went to look out the front of the yard and observed a soldier jeep. No soldiers were in the jeep but he observed two soldiers kneeling on the ground. Shots started firing from where the soldier was kneeling. As Mr. Johnson heard the shot he started moving but he was shot in the back (Day 2/6).. He peed blood. He remained indoors until Wednesday when he approached the soldiers. The soldier suggested that he walk to KPH. When he persisted in his request the soldier asked another soldier to carry him to the hospital. The soldier refused to carry him to the hospital because they were very busy. Eventually a phone call was made and a soldier who appeared to be a medic came and tended his injuries

(11) George Harriott, 76 North Street

127. On Tuesday May 25 at about 6:00 in the morning, George Harriott went into his backyard to take a leak. His backyard faces Tivoli Gardens. As soon as he finished he was shot in his right hand (Day 9/27). The impact "carried him down" to the ground. His hand started to swing. His hand started to bleed. He found his way to Kingston Public

Hospital where he was admitted for twenty (20) days in the first instance. He was re-admitted for four additional days in June to do surgery. He was told that the police and soldiers on the building by Tivoli Courts shot him.

INFERENCES

128. One of the patterns which unfolded from the evidence was that persons in sector 1 were subject to the most brutal treatment. They were questioned about the whereabouts of Christopher Coke and when they were unable to provide the coordinates for the fugitive the men in particular were savagely beaten and ill-treated. The presentation of non-fatal injuries ceased on Monday May 24. Thereafter only fatal injuries were recorded.
129. In sector 3 non-fatal injuries commenced on Monday May 24 and continued until Wednesday May 26. The presentation of non-fatal injuries continued after the JDF and JCF report that the sector was secured. In particular Collette Robinson was shot on the morning of May 25. when the evidence of the security forces is that there was no hostile fire in that sector.
130. In the area outside of Tivoli Gardens, two men who were outside their houses in the early morning on May 25 were shot at on sight. No warning was given, and they were not engaged by the security forces in any dialogue to discover their intent.

TREATMENT OF THE DEAD

131. The treatment of the dead touches and concerns a variety of fundamental rights - not all of which are constitutionally protected rights.
132. Safeguarding the right to life has been interpreted to include a duty on the state to have effective legislation and properly enforcing it. In Jamaica this means creating criminal offences for intentional killings and enforcing them. This requires the civil

authority, in Jamaica's case the JCF, to conduct effective investigations into the deaths of persons. The investigation must be

- a) be brought by the State on its own initiative (i.e. relatives of the victim should not have to push for an inquiry);
- b) be independent and effective;
- c) be reasonably prompt;
- d) be open to public scrutiny and involve the victim's next of kin

133. In McCann and others v. the United Kingdom, a judgment of 5 September 1995, § 147, 161 the European Court of Human Rights, in interpreting Art. 2¹ of the European Convention on Human Rights had this to say:

The Court confines itself to noting, like the Commission, that a general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life under this provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State.

134. It is submitted that in this case the treatment of the remains of the persons killed during the period May 24 - May 26, was such that it impeded the proper investigation of the deaths of the civilians over that period.

135. In addition to the right to life, the treatment of the bodies of the deceased in this case was without doubt an affront to human dignity. Even in cases of warfare there are rules on the treatment of the remains of the deceased, much less in cases of civil disobedience. It has been recognized that the treatment of the remains of persons has an

effect on their surviving loved ones. It is against this background that we examine the treatment of the remains of the individuals killed during this period.

136. In Tivoli Gardens, the evidence of the civilian witnesses concurs with the evidence of the security forces that as early as Monday May 24 there was a truck in the area collecting bodies. John Greene in his evidence mentioned seeing a truck full of dead men (Day 8/97), while Sergeant Waugh gave evidence that he collected two bodies on May 24 (Day 70/186).. In addition the evidence of the witnesses in respect of Tuesday May 25 is that this truck was in Tivoli Gardens in the early morning: see the evidence of Marjorie Williams (Day 60A/30), Veronica Muirhead (Day 61/94), and Denton Dacres (Day 62/43). In respect of the area outside of Tivoli Gardens there is not as much evidence from civilians. The evidence of the security forces is that these bodies were collected later: see Major Henry who indicated that the bodies were removed on May 26 (Day 60B/61). There is no dispute that the retrieval of bodies was the responsibility of the JCF which had the duty to investigate the deaths of the persons who were killed.

137. It is recognised that the circumstances of the period created difficulties for the investigation of the deaths of the civilians. These difficulties were compounded when the members of the JCF failed to maintain a proper record of the locations from which persons remains were extracted. The only evidence offered to rebut the conclusion, that there was a systemic contempt for the corpses of the residents of Tivoli Gardens and the surrounding inner city communities, is the supposed diary of Constable Maxwell. The notes which were to have been recorded in this diary were never preserved by any of the senior officers who came to give evidence of its existence. It is submitted that it is doubtful that the notes were ever kept. The first person to speak about the elusive diary was Supt Tabannah who did not know what became of it (Day 70/62).

138. Even if there was such a diary with notes its existence does not take the matter further, because there was no effort to preserve the records and use them in any fashion to conduct investigations. Sgt Waugh made no mention of Constable Maxwell in his

statement made for the purposes of the investigative process, although Maxwell was still alive. Insp Pratt did mention Maxwell but by that time he had died. Supt Gladys Browb-Ellis did not even know of Constable Maxwell (Day 73/143). There was no supervision by the supervisors. No checks and balances. No proper system in place for an investigation, even though the reports that there were allegations of extrajudicial killings were made to the heads of the security forces as early as May 24.

139. In at least eight (8) post mortems there is a record of a location where bodies were found but the senior officers who came to give evidence have no information on how this section came to be completed and they did not make any enquiries.

140. The importance of the preservation of evidence cannot be overstated. There are two relevant categories of evidence. The *viva voce* evidence given by the witness is one category. It is submitted that it was important for the BSI, independent of whatever work was being done by the Public Defender to collect statements from the civilians as well as their own officers as to how each person met their death, The different remits of the various agencies require collaboration but one does not supplant the other.

141. In addition to the *viva voce* there is need of forensic evidence. There are obvious difficulties with *viva voce* evidence, particularly where offences are committed outside of the line of sight of the individuals. It will either support or negate an account when faced with contrasting accounts of events as we are faced with here. In this case the forensic evidence included the collection of blood samples which could potentially link victims with crime scenes. There are also spent shells and other munitions which could potentially link perpetrators with offences or at the very least lead us on a line of enquiry which could take us to the truth.

142. Former Public Defender Mr. Earl Witter was very anxious for crime scenes to be preserved and processed at the earliest. On May 31 Mr, Witter had written to the ACP Gause about the necessity to identify and preserve all potential crime scenes. On June 2 had written to the Former Commissioner of Police Owen Ellington. By June 3 he had prepared a press release for issue to the media.

143. The evidence of Insp. Harris was that he can only process a crime scene if a request is made. He also indicated that the area had to be safe. His team commenced processing crime scenes on June 4 (Day 78/98). By that time much evidence would have been lost. It is submitted that the failure of the police to preserve evidence in this respect is a breach of their own protocols and of the procedural requirements that an independent and effective investigation be conducted into the deaths of the civilians who lost their lives during the period under review.

ON THE SPOT POST-MORTEMS

144. There is some mystery in respect of 23-27 bodies which were found in May Pen Cemetery. Lt. Col. David Cummings gave evidence that there was a large pile of bodies found in May Pen Cemetery on May 25 (Day 45/171). In his evidence he tendered some gruesome photographs showing badly decomposed bodies to support the inference that these persons were the victims of murder prior to the incursion.

145. It is submitted that Lt. Col. Cummings must be mistaken in his account of the date he went to May Pen Cemetery. In the photographs there were wooden coffins, persons who were, on his evidence, from the BSI, and persons in medical dress. The evidence of Mr. Madden is to come, as well as the rest of the officers from the BSI, but to date the earliest account of persons from the BSI being in May Pen Cemetery is May 26.. In addition, by the records kept by Supt Gladys Brown-Ellis who commenced numbering bodies by GZ numbers on Wednesday May 26 at Maddens Funeral Home, no fewer than twelve of the bodies in May Pen Cemetery on May 27 were already tagged at Madden's Funeral Home by her on May 26,2010. Another six (6), based on the post mortem reports were collected from locations outside Tivoli Gardens. The evidence of Major Henry is that the retrieval and removal of bodies in his sector commenced on May 26. These six persons are: (1) Carlton Samuels (Coronation Market); (2) Gregory Witter (91 North Street, Denham Town); (3) Ian McKenzie (Wellington Street, Denham Town); (4) Ishawni Harrison (Albert Street); (5) Patrick Mitchell (Spanish Town Road); (6) Leroy

Smith (Tulip Lane, Kgn 14). It is submitted that based on the timeline given by Major Henry and Supt. Gladys Brown-Ellis it is unlikely that the remains of these persons were in May Pen Cemetery on May 25. It is more probable that the remains of these persons were brought to May Pen Cemetery between Wednesday May 25 to Thursday May 27.

146. The corpses in May Pen Cemetery were laid out on the ground and exposed to the elements. These were said to be the badly decomposed bodies which were sent to May Pen for on-the-spot post mortems. (See evidence of Supt. Gladys Brown-Ellis (Day 73/29). With the exception of the post-mortem of Errol Mitchell, none of the post mortems puts the time of death beyond May 23. At the time of these on-the-spot post mortems the identity of the deceased was not yet established and as a natural corollary the families of the deceased had not been notified. Although Supt. Gladys Brown-Ellis denied that it was the intention to bury the persons immediately, it is submitted that May Pen Cemetery is a curious place to take a body for an autopsy. Especially in light of the oft-referred tension in the area. The environment leaves much to be desired. It is submitted that it is more probable that the intention was to bury these persons immediately, and with them much evidence would have been lost.

147. It is submitted that the treatment meted out to the remains of the deceased is further evidence of the callous disregard for the residents of Tivoli Gardens who were presumed to be criminals and, if not criminals, supporters of criminality and therefore not worthy of a proper burial where the family could attend and mourn their loss.

RIGHT TO LIBERTY - ARRESTS AND DETENTIONS

148. Detention must be looked at from two perspectives. There were persons who were removed from their communities and taken to a detention centre where they were processed and either further detained or released. There is another perspective; persons detained within the community. During the evidence of former Minister of National Security Dwight Nelson the issue emerged that there was a permit system for the residents in affected communities which permitted persons to leave. Indeed it was the

Minister who implored the security forces to remove certain barricades to permit the residents egress and ingress from their community (Day 16/47)..

149. 4,614 persons were detained and processed during the limited state of emergency [Source: JCF Operational Report p. 13]. Of that number 129, or less than three percent (3%) were issued with detention orders and 17, or less than 0.4% of the persons detained were arrested and charged with any offence [Source JCF Operational report Appendix D]. The rest of the detainees were "processed" then sent home.
150. Some of the witnesses who gave evidence on oath before this commission of enquiry who were detained during the State of Emergency were: Germaine McLeod (Day 1); Troy Palmer (Day 3); Maurice Tomlinson (Day 4); Vallin Joilles (Day 8); John Green (Day 8); Oneal Smith (Day 58); and Denton Dacres (Day 62). These witnesses were subjected to cross examination and save for Vallin Joilles about whom there was some intimation of suspicion in respect of the extent of his security system, no suggestion was made that there was evidence that any of these witnesses were suspected (whether reasonably or unreasonably) of engaging the security forces in a shoot out or otherwise acting unlawfully.
151. Indeed Maurice Tomlinson was able to produce a copy of document which bore the title "Receipt of Release from Mobile Reserve Reserve Processing Centre"(sic) (Day 4/110), exhibit MT1). This receipt does not list any offence for which Mr. Tomlinson was suspected and indicates that Mr. Tomlinson was released from police custody after being "processed"
152. Section 31 of the Emergency Powers Regulations states:
- 31.--(I) Any authorized person may arrest without a warrant and detain, pending enquiries, any person whose behaviour is of such a nature as to give reasonable grounds for suspecting that he has--*
- (a) acted or is acting in a manner prejudicial to the public safety; or*
- (b) has committed or is about to commit an offence against these Regulations.*

(2) Subject to paragraph (3), a person shall not be detained under paragraph (1) for a period exceeding twenty-four hours, except with the authority of a Resident Magistrate or of a police officer not below the rank of Deputy Superintendent on whose directions such person be detained for a further period not exceeding five days.

(3) Where a Resident Magistrate or a police officer not below the rank of Senior Superintendent is satisfied that any necessary enquiries, pursuant to these Regulations, cannot be completed within such further period of five days mentioned in paragraph (2), he may direct that the person be detained for a further period not exceeding five days.

(4) Any person detained under paragraph (1), shall be deemed to be in lawful custody and may be detained in any prison or any lockup or in any other place authorized generally or specially by the Minister; and an authorized person may, during such detention take photographs, descriptions, measurements and fingerprints of any person so detained and any information so obtained may, after the release of such person, be preserved

153. The majority of the detainees were males. During the commission several members of the security forces were asked about the criteria for detention as they understood it. The first such witness was former Commissioner of Police Owen Ellington. In examination-in-chief when asked about the rationale for separating persons and putting persons in detention his response was as follows:

A: It was a hot zone and there was intense gunfire. We didn't know who was who, we were primarily concerned about the safety of individuals, we could not give orders to civilians, thousands of them and enforce those orders to keep inside, stay indoors, keep out of the way of gunfire. So the safest option for us to do was to remove them from the hot zone and that is why there was mass detention and separation as we battled the criminals on the ground. As soon as it was possible to reunite citizens with their community that was done and so the considerations were citizens, security, their own safety, preventing obstruction of the men and women who were conducting the operation, preserving evidence, ensuring that citizens did not get caught in crossfire between security forces elements and criminals who were embedded in the community. (Day 19/11).

154. It is important to examine this rationale against the known facts. During the first day of the operations over 400 persons were detained and taken to the Mobile Reserve Detention Center. After the first day there was no "hot zone" as the sectors were secure. The majority of detainees were men who were taken from their homes or communities,

"processed" then released. It is submitted that this is not a lawful rationale for the mass detentions.

155. In answer to Lord Gifford in cross examination former Commissioner of Police Owen Ellington replied that:

It's scripted out in the document and the basic principles are, we detain only when necessary to do so, we respect citizens' rights, we try to keep detainees in custody for short a period as is necessary to conduct investigations, and we ensure they are reunited with their families as soon as possible. (Day 28/14)

156. It is submitted that this explanation falls woefully short of the criteria for detentions created by reg. 31 of the Emergency Powers regulations. The arrest is the culmination of investigations or the observation which creates reasonable suspicion and not the precursor to investigations.

157. DCP Glenmore Hinds also spoke of the rationale behind the mass detentions. In his evidence-in-chief he said:

A: The initial phase of the detention were persons who we suspected to have been firing weapons at us, that was the initial phase; there was a state of emergency, a number of open files we had and a number of persons who we detained were also implicated in some of the crimes who we had open files for.

Q: So out of this exercise persons were arrested and charged?

A: Yes ma'am.

Q: Can you tell us about how many matters?

A: Seventeen persons were actually arrested and charged and eight persons were not charged but were the subject of further investigation at that time. [30/103]

158. The Deputy Commissioner of Police alludes to the possibility that the detainees were firing weapons. The question for this tribunal is whether the suspicion was reasonable in all the circumstances of the case. The case for the security forces is that the JDF went in first and it was the JCF which was responsible for arrest and detention. By the time the JCF entered the community of Tivoli Gardens there was no more hostile fire. From where does the evidence, no matter how tenuous, to ground the arrest emanate? in the absence of direct or indirect evidence that specific individuals were responsible for firing on the security forces is it then reasonable to arrest everyone in a sort of dragnet

with the hope that the guilty party is somewhere among the innocent? Is this compatible with our Constitution? It is submitted that the answer to both questions is no.

159. Major Marlon Kennedy who was responsible for sector 2 of Tivoli Gardens, in answer to the Chairman's question "For what purpose did you detain these men?", gave a frank statement which confirms the unlawful policy which was followed:

"The information we got prior to going into Tivoli was the fact that there were a large number of suspicious men in the community, a lot of them did not come from the community, and we had a list of some of the wanted men but there were others there that we weren't aware of. So we treated the situation that everyone would have equal opportunity to be interviewed by the Police so we take the young men and handed them over to the Police.

COMMISSIONER: So you did not detain these men on the basis of reasonable suspicion that they were doing anything wrong?

A: Not that I am aware of, no, sir.

COMMISSIONER: Thank you.

MR. MCBEAN: And that applies to all the persons detained, there was no ground for reasonable suspicion for any of them? I mean in your sector.

A: It was really a part of our security plan, also just to make sure that the area was safe, and we were aware that majority -- well, the persons reported were involved in shooting were all males, from teenagers all the way up to probably men in their 30s, 40s, 50s, so we used the opportunity just to make sure that we secured all the males and handed them over to the Police.

160. In addition to being detained the witnesses gave evidence that they were beaten and questioned after being taken into custody. The questions they were asked, on the evidence presented, did not relate to their own criminal activity but was relevant to whether they knew the location of the fugitive Christopher "Dudus" Coke. Indeed, even in the cross-examination of the witnesses counsel for the security forces concentrated their efforts on challenging the witnesses' knowledge of the notoriety of Christopher

"Dudus" Coke, past area leaders and then sought to extrapolate from that evidence that the witnesses, without any other evidence than their address, were firing weapons on the security forces. It is submitted that this is not a reasonable leap.

THE CHAIN OF COMMAND

161. We have observed above that at the planning stage there was a lack of co-ordination and sharing, to the point that neither JDF nor JCF shared their written plans. The decision to use mortars was not shared with the JCF. The decision for the JDF to act as the lead force was only made on May 23. As the operation itself unfolded, the lack of communication was aggravated. The police sequential event logs contain no information emanating from the JDF, not even the major news of Sector 1 being secured at about 3.30 and Sector 2 at around 4.30. Lt Col Ogilvie, commanding 1 JR, said he had no communication with JCF senior commanders, only with the Superintendents in his battalion. Lt Col Sewell did not share with ACP Budhoo that Coke had escaped (Day 41/91). There were two separate chains of command with inadequate links between them.

162. Even within the two chains, command and oversight seem to have been weak. Prime Minister Golding got the impression that there were weaknesses in command and lack of supervision on the ground. "The impression I have is that every soldier and every policeman that was there was virtually operating on his own" (Day 13/71). The various accounts of unlawful killings which we have analysed suggest that those members of the security forces who abused their powers were not restrained or reprimanded by their immediate superiors.

163. A remarkable failure to communicate appears on May 24 in the co-ordination, or lack of it, between the JDF and JCF commanders. Major Cheverria says that he called Supt Tabannah to say that that the sector was secure at 3.30 and that Tabannah came at about 4.00, and there was no more effective firing in that area. Supt Tabannah said that he was called at about 5.00 and then came under fire from Rasta City while going along

Industrial Terrace. He was "at DeeCee Avenue for two hours, pinned down" (day 70/117). He retreated to Tivoli Gardens High School. "I came to the opinion that the JDF soldiers were not in total command of the situation" (Day 70/18). But he never called Cheverria to say that he was pinned down or that he had retreated to the school (Day 70/138). He said that he made three or four reports to Control between 5.00 and 8.00, but as the Chairman pointed out, there is no record of these reports in the events log (Day 70/171).

164. In this clear conflict of evidence as to the situation in the late afternoon of May 24, the evidence of Major Cheverria is to be preferred. The sector was under control, and the police were inside it, creating mayhem by killing the innocent. For it is in this part of the day that the six victims listed above as numbers (3) to (8) were killed, most of them by police officers, and it is in this part of the day that Soldiers 1 and 3 observed murder being committed by police officers.

165. In relation to Sector 2, Major Kennedy had reached Tivoli Gardens High School by 2.00, and started to move into the community soon after (Statement para 23-5). The area was secure by 4.30, and called for the JDF, commanded by Supt Turner, to enter, and Turner came within half an hour. Supt Turner said no, Kennedy called him at 8.00 and he got in at 8.20. Who is right? The witness Joan McCarthy, in a building in Seaga Boulevard in sector 2, may have the answer. She said that the soldiers arrived at 2.30, and ordered her and her family to come out and go downstairs. At 5.00 the police arrived (Day 7/18) and it was then that the police took Andre Smith and Dwayne Edwards upstairs and killed them. Her times match with those of Major Kennedy. Once again the evidence of the JCF officers is that they were not present at times when witnesses say that they were not only present, but some were committing crimes.

166. The position in Sector 3 is also far from satisfactory. Major Anderson had control of the whole sector by about 5.00 and called his opposite number Supt Thomas and said that he could enter. But the JCF did not enter until next morning daybreak. Supt Thomas has not given evidence, so that his reasons for not responding to Major Anderson remain a mystery.

CONCLUSIONS

167. The Commission is respectfully invited to conclude:

- (1) That the public announcement by Prime Minister Golding of the imminent signing of the authority to proceed against Mr. Coke, without advance notice to the security chiefs, severely undermined their ability to plan an effective arrest operation.
- (2) That there was by May 23 a severe threat to the security of the state which justified the State of Emergency.
- (3) That there was too little co-ordination and communication between the senior officers of the security forces in the planning of the operation.
- (4) That the security forces, and especially the JDF, faced severe armed resistance in many areas in the course of their mission to gain control of Tivoli Gardens and surrounding areas.
- (5) That the security forces did secure control of the three sectors of Tivoli Gardens by the evening of May 24, such that Lt Col Sewell was able to walk through the three sectors.
- (6) That 1JR faced heavy resistance in the areas to the north and east of Tivoli Gardens, but was able to gain control by the morning of May 25.
- (7) That once control was secured there was little or no hostile gunfire against the security forces, and the criminal elements appear to have retreated.
- (8) That Mr. Coke evaded the security forces and made his departure at some point on May 24.
- (9) That between May 24 and May 26 a number of police officers, and at least one soldier, committed acts of murder against innocent civilians, in circumstances in which the perpetrators were not in danger.
- (10) That police officers committed such acts in many cases by seeking to remove their victims to places where their acts would not be witnessed.
- (11) That mortar rounds were used without any reasonable justification, and that one round at least caused death and injury in the Java area.
- (12) That both JDF and JCF personnel treated the people of Tivoli Gardens with verbal abuse and in some cases with unlawful assaults.

- (13) That young men were separated and detained without lawful cause pursuant to a policy of mass detention of young men which was itself unlawful.
- (14) That the dead bodies of the deceased were treated with gross disrespect, and without any attempt being made to record the circumstances and places in which they were found.
- (15) That the chain of command broke down once areas were secured, permitting members of the security forces to kill and assault with impunity.
- (16) That the process of investigating the deaths of the deceased has been seriously flawed by the late securing of crime scenes, through to the failure to complete the ballistic and forensic tests which were necessary.

168. The Commission, in addition to asking for written submissions on the five terms of reference, has asked for recommendations to be made to the Commission. The Public Defender's recommendations will be submitted to the Commission during the first week of the February hearings.



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29th January 2016

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