



*Office of the Public Defender*

**INTERIM REPORT  
TO PARLIAMENT**

**CONCERNING**

**INVESTIGATIONS INTO THE CONDUCT OF THE SECURITY FORCES  
DURING THE STATE OF EMERGENCY DECLARED MAY, 2010 –  
WEST KINGSTON/TIVOLI GARDENS ‘INCURSION’ –  
THE KILLING OF MR. KEITH OXFORD CLARKE  
AND  
RELATED MATTERS**

**TEXT OF REPORT**

*April 29, 2013*



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AND  
RELATED MATTERS**

**BUNDLE OF APPENDICES**

*April 29, 2013*



## OFFICE OF THE PUBLIC DEFENDER

*"A Voice of the Voiceless... To Loose the Chains of Injustice"*

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April 29, 2013

The Honourable Michael Peart, M.P.  
Speaker of the House of Representatives  
Houses of Parliament  
Gordon House  
Duke Street  
KINGSTON

Honourable Speaker:

**INVESTIGATIONS INTO THE CONDUCT OF THE SECURITY FORCES  
DURING THE STATE OF EMERGENCY DECLARED MAY, 2010 - WEST  
KINGSTON/TIVOLI GARDENS 'INCURSION' - THE KILLING OF MR. KEITH  
OXFORD CLARKE AND RELATED MATTERS**

I have the honour to submit herewith an Interim Report into the matters referred to above.

Yours faithfully,

**W. EARL WITTER, Q.C., J.P.  
PUBLIC DEFENDER**

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## OFFICE OF THE PUBLIC DEFENDER

*"A Voice of the Voiceless... To Loose the Chains of Injustice"*

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April 29, 2013

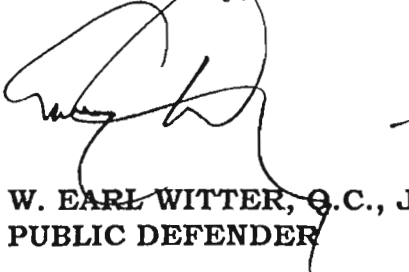
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President of the Senate  
Houses of Parliament  
Gordon House  
Duke Street  
KINGSTON

Honourable President:

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## APOLOGIA

The Public Defender acknowledges the relentless criticism by all who have rightly expressed impatience over the delivery of this **Interim Report** — a “**special**” and **extraordinary** report to Parliament. Their concern that it has contributed to the delay of justice, an injustice in itself, does have merit and is cause for much regret.

In the meantime and for months, frustrated, caustic critics exercising the **freedom of expression**, have fulminated in anger and indignation over the delay. That freedom is **one** of the various fundamental rights of the citizen which the Public Defender is enjoined to **protect** and **enforce**. He must therefore be and, has been especially tolerant of adverse commentary, in this case, by “outraged” would-be opinion-makers who, have launched virulent verbal assaults on him. These attacks relate to the handling of investigations concerning one of the **monumental** events in Jamaica’s torturous history (the State of Emergency declared in May, 2010 ) as well as the delivery of this review.

The delay has generated a great furore. Utterances, at times vitriolic; rarely balanced, fair and **informed**, were grist to the mill of gleeful media, hungry for and thirsting after something they call “news”. On occasion, the diatribe has stooped to unbecoming and

ii.

highly offensive “anal” ribaldry, spewed by what in times past was respectfully referred to as “the old **lady** of Harbour Street” - the *Daily Gleaner*.

There have even been calls for the incumbent’s resignation; for him to “pack his bags and go !” And if he does not, to hound him out of office.

Quite remarkably, those calling publicly for the resignation, included Mr. Delroy Chuck, Q.C., M.P., **leader of Opposition Business** in the House of Representatives, a **former Speaker** of the House and erstwhile **Chairman** of the Commission established by the Public Defender (Interim) Act, S.11(2), of which he remains a **member**. He spoke out strongly but in egregious disregard of relevant provisions of that statute as well as binding protocols. And Mr. Desmond McKenzie, M. P. for West Kingston, has accused the Public Defender of “**deceiving** the people of Jamaica, **particularly** the **residents of Tivoli Gardens**”, who, are amongst his constituents. (See pp. **198 – 204**, *post.*)

But are the faultfinders **all well-intentioned** ?. Are their **real** motives honourable, or sinister and deplorable ?. Time will tell.

Truth be told, so many of the critics know **too little** about way **too much**. They care to **understand** even **less**. There are ways in which they have done **more harm** than **good**. And yet, others must actually mean well.

iii.

That being so and, with the benefit of these contents, perhaps they will come to realize how often they have missed the mark: that so many of their laudable designs and righteous expectations can or will only be met through a **Commission of Enquiry** long ago *recommended* by the Public Defender; not **directly** by him. For the exigent circumstances of the case impose an **inescapable** procedural obligation on the Government, consistent with the requirements of democratic governance, to cause a **judicial** investigation to be conducted.

The Public Defender is chagrined by ambitious **projections** made but **not met**, of dates by which this **Interim Report** would have been submitted to the Parliament. Persistently, exuberant and energetic copycat news media and commentators have labelled them “self-imposed **deadlines**”, provoking more scathing criticism still.

Having regard to the **scope** of this **Interim Report**, it may also appear that a certain intimation given by the Public Defender to former Prime Minister, the Honourable Bruce Golding, regarding the delivery of reports to Parliament was, **in all the circumstances**, also ambitious. That intimation was given in August, 2010, barely three (3) months after investigations had begun: at a time when formidable challenges occasioned by fast-

iv.

vi.

necessary procedural steps will be taken to ensure that all probable causes of action are preserved.

Frankly, at the outset of the 2010 State of Emergency investigations, it was not imagined that this **Interim Report** would have been as **definitive** a document which some imagine it ought to be. The thinking was that, (as for example in the case of the recent 'Armada' enquiry,) the Public Defender, (**essentially** an investigator,) would, ideally, have made the evidence ferreted available for **judicial** consideration.

Doing so would have entailed no derogation from oath, let alone an investigator's abdication or dereliction of duty. It would have been a pragmatic exercise of discretion. After all, a Commission of Enquiry, by comparison, could be expected to be more **august** and **authoritative**; be better **funded** and **equipped**. Besides, it was at all times self evident that any Government should do the right thing.

That original thinking has now been overtaken by events.

The present Government seems hamstrung by the delay. But **tooling of the Government Forensic Science Laboratory to ensure that it is equipped with the necessary facilities** for completing the crucial ballistic examination of firearms, spent ammunition and bullet casings, is **an absolutely indispensable pre-condition** for completion of the investigations. Thereafter, it

as he addresses other **matters of moment** or **public interest**, as they arise.

Thus it deserves to be better known as well, that concurrently, the Public Defender at all material times has had to investigate or otherwise deal with varied **unrelated** singular complaints made by more than three thousand (3,000) other anxious citizens. Settlement of those grievances was always no less impatient of delay. For the greater part, those complainants understand that some priority has had to be accorded to the momentous subject matter of this **Report**. Their continuing forbearance is greatly appreciated. Interestingly, many of the remainder consider that that priority should have been accorded to their individual complaints !

The Public Defender seeks the continued patience of the 'Tivoli' complainants whilst striving to address their own grievances. They are assured that if the Public Defender concludes that their claims have **merit**, every effort will be made to secure appropriate redress. As soon as practicable therefore, appropriate *recommendations* will be made to the Government for settlement of all meritorious claims; firstly, those **not related** to alleged extra-judicial killings. Regarding the latter, reparations will have to abide the final determination of any relevant criminal proceedings. However, complainants aggrieved by those killings are assured that the

necessary procedural steps will be taken to ensure that all probable causes of action are preserved.

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would fall to the Government to determine its acceptance or rejection of the commission of enquiry *recommendation*.

In the meantime also, events have inspired expectancies which would make this Report the *raison d'être* of all things; the fulcrum of so many decisions yet to be made. If needs be therefore, so be it.

The Public Defender sincerely thanks those sober persons genuinely concerned at the delay but who are neither **blinkered** nor **blinded** by excessive zeal. Amid the raging furore, they have kindly elected to hold their peace. They are not at all unmindful of the **rights** alleged to have been abused during the State of Emergency. But they also respect the rights of those **persons** who **have been** or, **may yet be accused** of **related crimes**, or other forms of misconduct. (Like the **freedom of expression** relished by so many critics, these **rights** enjoy the **equal** protection of fundamental law: the Constitution.) Moreover, unlike a lumpen lot, those prepared to "wait and see" appreciate that the Public Defender is embarrassed by various constraints, some of them not unfamiliar; that there is no want of will, wit or industry; that although he **urgently** needs more **investigative** and other diligent, conscientious and tenacious personnel (an aspect which, lamentably, too few care about,) the delay is also a function of the **huge** and ever growing **volume** of grievances dealt with routinely.

Nevertheless, the Public Defender proffers profound apologies to the Speaker of the House of Representatives and to the Parliament. He couples with those sentiments, the Resident Representative of the United Nations Development Programme (UNDP) in Jamaica and the international donor community. The assistance co-ordinated by the UNDP concerning these investigations has been **absolutely invaluable. The Public Defender is eternally grateful to them and covets their continued support.** So too should our country.

Finally, the Public Defender thanks the officers and agents and all others who have assisted in these investigations and in the compilation of this **Interim Report**. They include Ms. Florizelle O'Connor, former Co-ordinator of the Jamaica Council for Human Rights, Mr. Boris Ormsby, Information Technology Specialist and two (2) highly proficient proof-readers lately made available by Parliament — Mrs. Pamela Brown, Hansard Editor and her distinguished predecessor, Mr. Dessler Smith. Without being, and hopefully not appearing invidious however, an abiding expression of gratitude goes to the Executive Secretary, Miss Lorna Palmer, whose exceptionally selfless service, patience and fidelity have been exemplary; throughout very taxing times.

**[N.B.]** In this apologia and elsewhere in this **Interim Report**, the words, phrases and sentences highlighted are, exclusively, **emphases added** by

the Public Defender. So too are **italics**, except where otherwise indicated. This "**special**" Report pretends to be no more than a brevified treatment of **massive** evidentiary material. The treatment is **eclectic**; not exhaustive. The material demands **judicial** evaluation which is, in all the circumstances, **beyond the capacity** of a **Public Defender**. It would be presumptuous of him to pretend otherwise.

An attempt has been made to deal **contextually** with relevant matters, issues and questions arising from the Emergency activities: some **directly**, some **indirectly** and others which **appertain**. That approach should help to sharpen objective appreciation and perspectives.

Much care has been taken both over what is reported herein and what must remain, for the time being, undisclosed. For there is a time and place for everything.]

(As an aside, the Public Defender makes a humble appeal to Jamaican journalists: in communicating these contents, please do strive for the standards of **accuracy**, sensitivity, proficiency, professionalism, taste and excellence exemplified by a venerable former editor of *The Daily Gleaner*, Mr. Theodore Eustace Sealy, CD — an unsung nation builder who, on the **rarest** of occasions only, awarded himself a byline.)

## INTRODUCTION

1. This **Interim Report** concerns continuing investigations undertaken by the Public Defender (aided by a special one-off budgetary allocation,) into events which led to the **greatest loss of life** in a single **State Security Forces** operation in independent Jamaica: **seventy-six (76) civilians** and **one (1) soldier**.

A table listing all **civilian deceased** whose death is attributable to action taken by those Forces, **or by others**, is attached as **Appendix 1**. Of the **seventy-six**, the Public Defender is investigating complaints that **forty-four (44) are** instances of **extra-judicial killings** (unjustifiable homicide.) They are listed in **Appendix 2**.

- 1.1 In addition, investigations have turned up five **(5)** cases of **missing persons**, (pp. **83 - 85 post**) four **(4)** of them extant, the corpse of one **(1)** of them now having been positively identified by DNA analysis. Those four may yet be **presumed** dead, according to law. Four **(4)** male corpses remaining unidentified may be theirs. If not, the **known** civilian body count attributable to relevant activities would rise to **eighty (80)** and the overall death toll to **eighty-one (81)**.

- 1.2 The deaths occurred during a joint Police/Military 'incursion', so called, into the poor **inner-city** community of Western Kingston, (principally Tivoli Gardens,) following the declaration of a State of

Emergency in the Corporate Area, effective Sunday, May 23, 2010 and a night-time raid on the residence of Mr. Keith Clarke at far-away Kirkland Close, Red Hills, Saint Andrew – **an upper middle class** neighbourhood.

**1.3** Although popularly called an **'incursion'**, the relevant West Kingston operations may be better and more accurately described as a **'siege'** – the most **elaborate** of their kind in Jamaica in almost one-hundred-and-fifty (150) years.

**1.4** The Report draws on the **several hundreds** of hand-written statements of **complainants** and **witnesses**, (reduced to typescripts) whose narratives, given separately and independently over more than two years describe what **they** said happened or happened to them at the hands of the State Security Forces; to their relatives, friends, neighbours and households, in those life-changing days. Statements furnished by State Security personnel to the Bureau of Special Investigations (the BSI) have been considered. Authoritative sources and pronouncements emanating from undoubtedly respectable quarters have also been consulted.

#### **Establishment of temporary Public Defender outposts**

**1.5** The physical accommodation and facilities at the Office of the Public Defender, (78, Harbour Street, Kingston,) were quite inadequate for coping with an anticipated flood of complaints. Arrangements were therefore made to receive complaints at Public

Defender outposts, set up at the Tivoli Gardens community centre and at the City Mission Church-hall, Blount Street, Hannah Town.

- 1.6 Investigations conducted from those locations were also facilitated by the free broadcast of “public service announcements” on radio and television, kindly provided through the auspices of the Media Association of Jamaica (MAJ). The outposts were kept open from June to October, 2010 and were closed, after two weeks’ notice, broadcast as before. Thereafter (and, up to the present time,) complainants attended at the Office.
- 1.7 The Public Defender is much obliged to the MAJ and media houses as well as the City Mission Church, for their timely and unhesitating assistance.
- 1.8 Apart from allegations of extra-judicial killings and the disappearance of citizens, there are **five (5)** other categories of complaint relating to the conduct of who are alleged to have been **rampaging** members of the State Security Forces.
- 1.9 Investigations into a total of **one thousand two hundred and ninety-five (1,295)** fully documented **complaints** from six hundred and eighty-eight **(688) complainants** have been completed. They await **forensic** assessment of money compensation, or other suitable forms of redress. These claims (excluding personal injury, etc. and detention) are **provisionally** quantified at **one hundred and ten million eight hundred and**

**six thousand seven hundred and four dollars + (\$110,806,704.44).** This sum does not take account of claims which may yet be made for money compensation regarding the alleged **extra-judicial killings**. A caring, **volunteer** cadre of attorneys-at-law in private practice, will presently begin the assessment.

The categories of complaints are: -

- i. allegations of extra-judicial killings
- ii. missing/disappearance of persons
- iii. personal injury, battery and assault
- iv. detention
- v. malicious damage to real property
- vi. loss/malicious destruction of personal property, and
- vii. looting (larceny)

**2.1** Another **two hundred and sixteen (216)** citizens have lodged **dormant** complaints, totalling more than **three hundred** in categories **iii. - vii.** above. Investigations into dormant complaints are incomplete due to lack of evidence establishing *prima facie* proof of injury, loss or damage.

**2.2** (The **dormant** investigations include an **itemized** claim for **\$1,315,126.78** regarding allegations of **malicious** destruction of instruments, equipment and paraphernalia; of **looting** of cash and **larceny** of valuable property etc. belonging to the Tivoli Gardens

drum corps and drill team.)

- 2.3** A table showing relevant breakdowns of claims in categories **v. - vii.** is attached hereto as **Appendix 3.**

In the assessment process, all claims will be disaggregated in order to take account of **payouts** made by the Government to complainants and other persons, amounting to **Ninety-Two Million One Hundred Thousand Dollars (\$92,100,000.00)**, according to official figures. This sum was distributed by the Ministry of Labour and Social Security, at the instance of the Social Development Commission, as part of a programme of urgent "**social intervention**" instituted within weeks of the 'incursion'. The Ministry states that it includes an amount of **Four Million Three Hundred and Twenty-Seven Thousand Dollars (\$4,327,000.00)**, disbursed to help defray the **funeral expenses of forty-six (46)** of the deceased. No disbursement **unrelated** to funerary expenses was made on the recommendation of the Public Defender. The disaggregation will guard against duplication of those past money awards.

- 2.4** This **Interim Report** should therefore dispel any doubt of the need for an **independent public enquiry** into matters of the gravest concern as well as immense public importance.



## TIVOLI GARDENS AND "DUDUS"

- 3.0** Although expressed to be an initiative aimed at restoring law and order in the **Corporate Area** of **Kingston** and **Saint Andrew**, a **primary objective** of the limited State of Emergency declared in May 2010, was the capture of the arch-fugitive, **Christopher Michael Coke**, "**Dudus**". Hence, a joint police/military swoop on Tivoli Gardens, his reputed hideout and stronghold, was a natural and principal focus of operations. A sketch of the place and pariah should therefore help to put matters in context.
- 3.1** The historic Jamaican inner-city community of Tivoli Gardens rose from the rubble of the slum called "**Back o' Wall**" which was demolished in the mid-1960s. **Back o' Wall** was a dehumanizing, dirt poor, labyrinthine squatter settlement of dirt-floor, zinc and board or wattle-and-daub shanties and hovels, criss-crossed by a maze of narrow earthen footpaths; densely populated; bereft of plumbing and electricity; with distinctively poor sanitation.
- 3.2** The locality (now characterised by modest but tidily kept concrete tower block dwellings) derives from a social construct: a **modular concept** of comprehensive **urban transformation** developed by the Most Honourable Edward Seaga, former long serving M.P. for West Kingston and himself a former Prime Minister. [He was Minister of Development and Welfare when **Back o' Wall** was flattened. At the

time it had been regarded as a People's National Party (PNP) political stronghold.]

**3.3** Tivoli Gardens features a community centre which offers training in art, craft, music, and the dance; a maternity centre and infant school; a church, small grocery shops and other business outfits; a few small parks (green areas) and a relatively large playing field - all in the same complex. Thus it is an almost self-sufficient **enclave**.

**3.4** Over the years, residents of Tivoli Gardens have excelled in many forms of artistic expression and sport, across all age groups, winning many competitions, awards and trophies; sometimes **international** recognition or acclaim.

**3.5** But by May, 2010, Tivoli Gardens had long been at the heart of the governing Jamaica Labour Party (JLP) political establishment in the constituency of West Kingston.

The community has for umpteen years been regarded as a **prime example** of the Jamaican political phenomenon called the "**garrison**". In fact, Rear Admiral Hardley Lewin, a retired Chief of Defence Staff (later Commissioner of Police) once famously described it as "the **mother** of all garrisons." (See pp. **181-5 post.**)

Over time also, it came to be thought of as a **citadel** of sorts; the seat of an infamous cross-border crime syndicate named the

**“Shower Posse”**, the reputed head of which was **Christopher Coke, “Dudus”, the “President”**. He grew up there. (“Shower!” is a signature JLP epithet.)

**3.6** Coke gained renown as a benefactor of the poor; was both feared and revered; the undisputed ‘Don’. Adults and children alike came to depend upon his largesse. According to his supporters and admirers, it was **he** who kept a territory relatively **crime-free**, almost displacing the Jamaica Constabulary Force (‘JCF’), whose members were **scorned** or **deeply distrusted** by the citizenry; that it was **he** who kept children in school and off the streets at night, enforcing his own peculiar brand of discipline.

**3.7** Coke’s detractors counter that his tentacles penetrated the institutions of governance and realms of high society, industry and commerce; that peeling away his veneer of respectability reveals a demon needing to be exorcised.

**3.8** “Dudus” has now been extradited to the United States of America. He has pleaded guilty to charges of “racketeering conspiracy” and “conspiracy to commit assault with a dangerous weapon in aid of racketeering” and been sent to prison there. His departure has opened up a space for renascent agents of law enforcement where previously many of them feared to tread. The Tivoli office or shopfront of his set-up called the **“Presidential Click”** now houses a police post. His removal has also created a vacuum in social and

economic life and “governance” affairs, an aftermath which attracted spontaneous State responses, since much diminished, save as regards **law enforcement**.

**3.9** Most importantly however, Coke’s reputation of crime overlord and, his standing in the community; the **long reach** of his influence, his patina of benevolent protector of the poor, the **political links** and **patronage** which he may have enjoyed and, how all this may have led (inexorably) to the **cataclysm** of May, 2010, **demands** close **forensic** analysis and authoritative documentation. In the process **he too** should be given the opportunity of a **fair hearing** by commissioners of enquiry. For there is much that an **outcast** may be prepared to tell – to the enduring advantage of the greater good. Overall, Tivoli Gardens is, in **many** respects, a microcosm of post-independence Jamaica: a place and society fit for further and rigorous scientific and forensic study.

### The PUBLIC DEFENDER and INDECOM distinguished

- 4.1** It is felt desirable at this early stage, and, for general edification, to outline the status and remit of two State institutions — the Public Defender and the Independent Commission of Investigations (INDECOM). This will not only help to **explain** and **distinguish** the functions of these two **creatures of statute** but should relieve pervasive ignorance which, has been the basis of much misunderstanding.
- 4.2** Each is an independent Commission of Parliament. Both are required to investigate alleged Security Forces misconduct by reason of which the citizen suffers injury or damage; unjustly.
- But while INDECOM's investigations help to determine probable **criminal liability** or the taking of appropriate disciplinary steps, the Public Defender seeks redress (ranging from money compensation to an apology) for the victim of abuse or, his estate— particularly in the case of **extra-judicial** killings.
- 4.3** The remit of the Public Defender will be dealt with firstly. That of INDECOM will be looked at later (pp. **140 - 7 post**) in the context of the uncooperative or recalcitrant attitude to relevant investigations displayed by the Jamaica Defence Force (the JDF.)

## THE PUBLIC DEFENDER: ROLE AND FUNCTION

**5.0.0** In law, the Public Defender is not any one man but an **independent Commission of Parliament**; a hybrid institution (part parliamentary ombudsman and, **quasi** human rights commissioner) established by statute [the Public Defender (Interim) Act, 2000, [“the (Interim) Act”] S.5] for “the purpose of **protecting** and **enforcing** the rights of citizens...”

**5.1.1** This Commission is neither an **agency** nor **department** of Government – the executive arm of the State. It is therefore not under the control or **undue** influence of any Minister and reports to none; rather, to a democratically elected bi-cameral Parliament, (the legislative arm) historically constituted by members of two dominant political entities – the PNP and the JLP.

The (Interim) Act repealed and replaced the Ombudsman Act, 1978, which legislated the adoption by Jamaica of ombudsmanry in classical form.

**5.1.2** The Commission called Public Defender is largely the brainchild of Mr. Seaga. He conceived an “Advocate-General” as a complement of the Attorney-General, who, historically, was expected to be especially protective of the rights of the citizen but was not regarded as demonstrably so inclined in the post-Independence era. [During the parliamentary debate on the relevant Bill, the Government and Opposition differed over the nomenclature, *inter*

*alia*. It was Mr. Golding (from the Opposition side) who suggested the compromise of 'Public Defender' which was eventually adopted.] Thus it is a response to the perceived need for establishment of a State institution specifically mandated to **protect** and **enforce** the constitutionally defined fundamental rights and freedoms of the citizen. The Government is **guarantor** of those rights and freedoms. But a largely quiescent majority of citizens and the poor were, and remain, **hugely** ignorant of them. This ignorance has fomented endemic apathy and is alleged to have resulted in routine abuse of those rights (the **right to life** in particular) by **renegade** members of the State Security Forces.

**5.1.3** The remit of the Commission is defined by Section 13 of the (Interim) Act, which mandates **investigation** of complaints where the Public Defender is of opinion [ss.(1)] —

“(a) that any person or body of persons—

- (i) has sustained **injustice** as a result of any action taken by an **authority** or an **officer** or **member** of such authority, in the exercise of the administrative functions of that authority; or
- (ii) has suffered, is suffering or is likely to suffer an **infringement** of his **constitutional rights** as a result of any **action taken** by an **authority** or an **officer** or **member** of that authority.”

The expression “**authority**” (S.2) refers to Ministries, **agencies and departments** of Government, *inter alia*. It therefore includes the JCF, the Island Special Constabulary Force (‘ISCF’) and, (with limitations) the JDF.

**5.1.4** It will be clear therefore that the creature called Public Defender is of a distinctly different make-up than its United States namesake, with whom it is often confused, thereby engendering expectations which the Commission was neither designed nor intended to fulfil.

The **relevant** “constitutional rights” referred to in S.13(1)(a)(ii) of the (Interim) Act are those **formerly** entrenched in the original Cap. III of the Jamaica Constitution, itself also now **repealed** and **replaced** by the Charter of Fundamental Rights and Freedoms (the Charter) enacted by the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011. The Charter took effect on **April 8, 2011** but **does not**, of course, apply **retrospectively**.

**5.1.5** The *repealed* Cap. III afforded, *inter alia* -

- protection of the **right to life**,
- protection from **arbitrary arrest or detention**,
- protection of the **freedom of movement**,
- protection from **inhuman or degrading** punishment or other **treatment** and,
- protection for **privacy of the home** or other property.



[All of this protection was circumscribed in some way or other and was made **subject** to provisions of the Constitution which authorized suspension of or **derogation** from these rights (save for protection of the **right to life**) during a “period of **public emergency**” or, if reasonably required “in the interest of defence, public safety (or) public order...” [See — SS.15(5);16(3)(a); 19(2)(a);20(4)(c)(ii);21(6)(a); (22)(2)(a)(i) and 23(2)(i).]

**5.1.6** The remit is **delimited**, *inter alia* by **S.13(2)(b)(ii)** of the (Interim) Act by virtue of which the Public Defender is **expressly** precluded from investigating—

“(a) ...

(b) any of the following actions or matters—

(i) ...

(ii) any action done with respect to **orders or directions to the Jamaica Defence Force or members thereof, or any proceedings under the Defence Act...**”

**5.1.7** By the Defence Act, S.5, (‘the Defence Act’) the JDF is —

“charged with the defence of and **maintenance of order** in Jamaica and with such **other duties** as may from time to time be defined by the Defence Board (the Board).”

The composition of the Board is regulated by the Defence Act, S.10 which provides that it shall consist of the Minister responsible for defence (usually the Prime Minister) who is Chairman; another Minister appointed by the Prime Minister, the Chief of Defence

Staff and the Permanent Secretary of the Ministry having responsibility for defence.

- 5.1.8** The JDF consists of a “regular force” and the Jamaica National Reserve (the JNR). Their deployment in policing activities has become quite commonplace, due mainly to an **increase** in violent crimes. But as Dr. Lloyd G. Barnett states —

“this **incipient militarism** has only met with mild public protest. Indeed the party political leaders have appeared to be in general agreement with the **facile resort** to military intervention in the peace-keeping functions of the police.” (*The Constitutional Law of Jamaica, 1965, p. 156.*)

(So far from exciting “public protest” over the “incipient militarism” and, due no doubt to the dramatic increase in gun crimes over the last four decades, there have, intermittently, been fervent calls for the merger of the JCF, the ISCF and the JDF, creating a single law enforcement agency.)

- 5.1.9** The regular force and the JNR both fall under the Board and the JDF Chief of Defence Staff. However, the Board’s responsibilities do “not extend to the **operational use**” of the JDF, for which **use**, responsibility is “**vested** in the Chief of Defence Staff, **subject** to the overall direction of the **Cabinet**.” (the Defence Act, S.9).

Members of the JDF serve under a system of Military Law, [that part of the body of “service law” described by the Constitution, S.26(1),] which creates special offences related to **military** service and discipline, including dishonesty, e.g. **looting**. But when a

member's action (on or off duty) amounts to a civil offence, e.g. probable murder (extra-judicial killing) manslaughter or looting, he may be required to stand trial in the Civil Courts, where the domestic criminal law is applied.

**6.0.0** Part IV. of the (Interim) Act legislates a "Process of Investigation". S.16 thereof lays down the *modus operandi*. By ss.(11) and (12) it is provided that -

"(11) On the **conclusion** of an investigation, the Public Defender may make to the authority concerned such *recommendations* as he *thinks fit* and in particular, but without prejudice to the generality of the foregoing, may *recommend* any or all of the following -

- (a) that the action which was the subject-matter of the complaint be **reviewed**;
- (b) the **alteration** of an **enactment**, rule or regulation which **causes or may cause injustice** or **infringement of constitutional** rights;
- (c) that **compensation** be made to the complainant.

(12) If the Public Defender finds, **during** the conduct of his **investigations** or on the **conclusion** thereof, that there is evidence of a **breach** of duty, or **misconduct**, or **criminal offence** on the part of an **officer** or **member** of any **authority**, he shall **refer** the matter to the person or body of persons **competent** to take such disciplinary or **other** proceedings as may be **appropriate** against that officer or member and in all such cases shall lay a **special report** before Parliament."

Thus the Public Defender is an **investigator** and **intermediary** who remedies maladministration and enforces the **constitutional** protection and guarantees: a nascent species of *sentinel on the qui vive*, **not** an **arbiter**. If his *recommendations* for remedying infringement of **constitutional rights** are not accepted by the Government there is recourse to the Judiciary (the Courts) - the third arm of the State. Legal aid may be awarded for those purposes, but for them **only**.

- 6.1.1. A fact that needs to be or to be more fully appreciated is that as a creature of statute, the Public Defender operates within boundaries delineated by law; as illustrated by the foregoing. Exceeding them renders his actions *ultra vires*, although in an evolving democracy a purposeful Public Defender must be proactive; must constantly press those boundaries.

**[N.B.** The Public Defender's

- *modus operandi* of pressing the boundaries of a statutory remit;
- **initiative** in launching the relevant investigations
- conduct of those investigations;
- **cautious** and selective revelation of details concerning those **ongoing** and **incomplete** investigations and,
- care taken over and **discretion** exercised in deciding upon the **contents** of this **Interim Report**,

reflect an appreciation of the **ambit** of the **statutory** mandate.

Further, because of the exigencies of a clearly **extraordinary** situation (worsened by pervasive anxieties) the Public Defender's "*recommendations*" to "the body of persons competent to take .... proceedings as may be appropriate", i.e. the Government and the Kingston and Saint Andrew Corporation (the KSAC), against "(the) **officer(s)** or **member(s)**" of relevant "**authorities**", i.e. the JCF, the ISCF, the JDF and the KSAC, are included herein, (see pp. **116-117, 180, 186-230** *post*) without prior reference. In the result and with some measure of reticence, the Public Defender respectfully draws the attention of the Government and the KSAC to those *recommendations*.]

## BACKDROP OF THE 'INCURSION' OR 'SIEGE'

**7.0.0** Unfolding of **material events** could be said to have begun on the night of **May 17, 2010**. The then Prime Minister, Mr. Golding, announced in a nationwide television and radio broadcast that the Minister of Justice would, after all, issue an **authority to proceed** under the Extradition Act, 1991, S.13 (1), in relation to a request by the United States of America (the USA) for the extradition of Christopher Coke. The requisition had been received on August 25, 2009. Coke was wanted for trial in the USA on drug trafficking and gun-running charges but was now a fugitive, ignoring entreaties to surrender himself and, evading capture. His whereabouts were known to a **few only**.

**7.1.1** The fateful disclosure ended a period of some nine months, during which the Jamaican Government vacillated over its response to the extradition request. It had come under ever mounting pressure from the government of the USA, the local Church, private business sector and "civil society" groupings, to forego any or any further court proceedings in the matter. The issuing of the **authority to proceed** had been kept on hold, pending the outcome of those proceedings. But following upon that announcement, events took on a momentum of their own.

### March on downtown Kingston

**7.1.2** A large throng of West Kingston women, nearly all of them dressed in white, marched into downtown Kingston. They were protesting the signing of the **authority to proceed** and Coke's imminent arrest. The women displayed fierce loyalty to him. At least one of them considered him "next to Jesus." Others would "dead fi Dudus." (Were these women **dragooned** or **cajoled** ?. Or was theirs a **spontaneous demonstration of support and affection** for Dudus ?. Or, indeed, was the turnout dictated by a **combination** of these and other complex socio-economic factors ?.)

Vehicular entrances to Tivoli Gardens were barricaded. There were violent attacks upon police stations at Darling Street and in Hannah Town, West Kingston. Two police officers were killed in Mountain View Avenue, eastern Kingston - by all appearances, an event not **directly** connected to the extradition request.

**7.1.3** **Announcement of a State of Emergency;  
Mr. Golding's second nationwide broadcast**

**7.1.4** On the afternoon of Sunday, May 23, 2010, the Government announced that the Governor General had declared a State of Public Emergency. In another nationwide television and radio broadcast that night, Mr. Golding appealed to all law-abiding citizens to remain calm. He said that threats against the safety of the Jamaican people would be driven back. The State of Emergency had been declared based on "**information**" from the

Security Forces that actions were being carried out which posed significant **threats to law and order in the Corporate Area.**

“Since this morning” he said, “violent, orchestrated attacks have been launched on a number of police stations. Two members of the security forces have been shot and injured.” He described the situation as “**a calculated assault on the authority of the State that cannot be tolerated and will not be allowed to continue.**”

(There was a certain display of earnest resolve in the tone and content of that broadcast.) The State of Emergency would enable the security forces to exercise **extraordinary powers** which included “the power to **restrict** the freedom of movement, **search** premises and **detain** persons suspected of involvement in unlawful activities, **without warrant.**”

**7.1.5** By the evening of May 23, hundreds of well armed and camouflaged soldiers in **full battle gear** and drawn from various battalions of the JDF and JNR had descended upon West Kingston. They accompanied **hundreds more** armed policemen (a great many of them **masked**) drawn from various divisions of the JCF and ISCF. Armoured vehicles and bulldozers (to be used in breaching barricades) were deployed.

**7.1.6** A command structure provided for splitting up of the territory into “sectors.” Cordons were established. **One in particular, was tightly placed around Tivoli Gardens, the supposed**



**encampment of Christopher Coke.** Illegal gunmen loyal to Coke and recruited from West Kingston and beyond were said to have taken up position there, prepared to take on the State Security Forces. The battle lines were drawn. Night fell. Electric power supply to Tivoli Gardens was cut off, intentionally or not. The community was thereby plunged into darkness.

#### **Tivoli Gardens residents advised to evacuate**

- 7.1.7** Jamaica Urban Transport Company buses were parked in Marcus Garvey Drive, less than two hundred yards away and in the contiguous Industrial Terrace. All persons remaining in the community (some had fled earlier) who wished to, were advised by public announcements to avail themselves of transport to unspecified "secure locations", before the projected outbreak of hostilities. A relative handful of residents accepted the offer. Many of those who stayed put, later claimed that this was due to **fear** for their lives and **security** of their property. They were simply not minded to venture out into the dark and risk being shot, they said, by soldiers or policemen. They also claim to have been guided by the experience of previous Security Forces assaults on the community in 1998, 2001 and more recently 2008, in which more than forty (40) citizens were slain.
- 7.1.8** Beyond Tivoli Gardens, a gripping anticipated **showdown** between **organized** criminal elements loyal to Dudus and the **forces of**

**authority** brought the capital of a small nation to the edge of its seat. Some transfixed citizens saw it veering to the edge of the abyss; others, to the brink of anarchy.

- 7.1.9** But above the fray hovered the regnant **Constitution** of Jamaica; the fundamental law: the great **bastion** and **bedrock** of the **rule of law**. In high places and low, there was a call to duty. There was a role for the Public Defender, the Commission of Parliament mandated to protect and enforce the citizen's **fundamental** rights and freedoms. For "amidst the **clash of arms**, the law is not silent...."

#### **JCF announcement of operations**

- 8.** On Labour Day, Monday, May, 24, 2010, (a public holiday) the JCF announced that earlier in the day it had launched an operation in Tivoli Gardens and surrounding areas of West Kingston. The joint military/police operation, a news release stated -

“(was) aimed at **executing a warrant** issued by the courts of Jamaica for the arrest of **Christopher Michael Coke** otherwise called ‘**Dudus**’ as well as to restore the area to stability after three consecutive days of **barricading by criminal elements** and wanton **attacks on the police force**. During the operation, **seven** members of the Security Forces were injured. **Six** of the seven were **shot**, one **succumbed** to his injuries. The other was injured in an accident. The operation is still ongoing and the Security Forces are **resolute** in bringing the area to stability so that **law abiding** citizens of West Kingston and its environs can **get on with their lives in peace**. The Security Forces are reminding the residents of

Kingston and St. Andrew that there is a limited State of Emergency in effect and residents are **asked to remain indoors.**"

(It will be noted that the latter request now practically reversed the advice given earlier to residents of Tivoli Gardens.)

### **Mr. Golding addresses Parliament**

**8.1** The following day, Tuesday, May 25, Mr. Golding told a sombre House of Representatives that since Sunday, May 23, several roads in West Kingston had been barricaded, impeding the movement of pedestrian and vehicular traffic as well as normal police law enforcement operations. He continued —

“ **Intelligence** gathered by the security forces indicated that in anticipation of the execution of a warrant for **the arrest** of Christopher Coke, heavily armed men were preparing to attack members of the security forces. **Intelligence** further suggested that **criminal elements** in other communities **intended** to launch attacks on the security forces in order to **divert** attention and resources from the focused operation of what the situation in West Kingston required.”

**8.2** On Saturday night, May, 22, a police patrol car had been attacked by gunmen on Mountain View Avenue, East Kingston. Two policemen had been killed and eight others injured, Mr. Golding said. During that night and next morning, “**several** police stations **in and outside of the Corporate Area**” were attacked by armed men using guns and molotov cocktails. These included police stations in West Kingston and Rockfort in East Kingston and, Spanish Town, St. Catherine. The Hannah Town and Darling

Street police stations in West Kingston were **set on fire** and **extensively** damaged.

- 8.3 The joint police/military operation launched in Tivoli Gardens, he indicated, was meant to bring an end “to this **spate of lawlessness** and to **restore order** and calm to the affected areas.” The security forces encountered “**sustained** and **sporadic** (sic) gunfire” and in the exchange that ensued, he said, “**several**” persons were **confirmed dead**, including a member of the JDF. “Several” others, including **twelve (12)** JDF soldiers, had been injured. (But see **Appendix 12.**) The police had reported that “**twenty-six**” (**26**) persons were **confirmed dead**, but it was likely that the number was higher. It was not then possible to determine the precise circumstances in which those persons were killed, Mr. Golding said. More detailed investigations, including eyewitness statements would be required. The **most thorough** investigations would be carried out, he said.

#### **Public Defender begins investigation**

9. The Office of the Public Defender decided to embark upon its own **independent** investigations. The decision was welcomed by the Government and supported by the parliamentary Opposition. The mutual hope and expectation was that the Public Defender’s perceived **independence** and **disinterestedness** would lend **transparency** and enhance confidence in the integrity of the

“detailed investigations” foreshadowed by Mr. Golding’s presentation. This **Interim Report** concerns those independent investigations which, are **continuing**.

**DECLARATION OF STATE OF EMERGENCY  
AND THE 'INCURSION' OR 'SIEGE'**

**10.0.0** The 'Tivoli incursion', so called, had its genesis in a Proclamation made by the Governor-General, (on the advice of the Government,) exercising powers conferred by the Constitution, S.26(4)(b). A State of Emergency was declared in respect of the parishes of Kingston and Saint Andrew. The Proclamation, made also in accordance with the provisions of the Emergency Powers Act, 1938, (as amended) S.2(b), was **published** in the **Jamaica Gazette** dated **Thursday, May 13, 2010, (Appendix 4. )** but was actually **issued** under the Broad Seal of Jamaica on **Sunday, May 23, 2010.**

**10.1.1** The State of Emergency was expressed to remain in force for **one month**, with effect from that day, but was **extended** by resolution of the House of Representatives for another month, [the Constitution, S.26(6)(b)] **ending July 22, 2010.** The House also extended the area covered by the State of Emergency to the Parish of Saint Catherine.

**10.1.2** Thus, the Proclamation eventually embraced the **entire geographic area** designated the **"Kingston Metropolitan Region."**

**10.1.3** The Proclamation propounded His Excellency's **satisfaction** —"that, consequent on certain decisions of the Government, **action** has **been taken** or is **immediately threatened** by a person or body of persons

therein of such a **nature** and on so **extensive a scale** as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community (the parishes stated above) of supplies or services essential of (sic) life;...”

**10.1.4** Those recitals suggested official conformity with the provisions of the Constitution, S.26(5)(b) and the Emergency Powers Act, 1938 (as amended). The latter statute was enacted in the wake of the **labour riots** of that year. That statute is one of two by virtue of which there may be **derogation** from fundamental rights during periods of **public emergency**. The other is the Emergency (Public Security) Act, 1939 (as amended,) passed during World War II, but which is specifically concerned with the state of or threat of **war**, not domestic upheavals. [The two measures are examples of pre-Independence legislation expressly preserved by the Jamaica (Constitution) Order in Council, 1962, S.4(1)]. As Dr. Barnett explains -

“the **former** law empowers the Governor-General on the **advice** of the **Cabinet** to make Regulations during a period of **public emergency** for the purpose of securing the **essentials** of life to the community. For this purpose, the Regulations may empower Government Departments and public officers to do such things as the **Governor-General** deems **necessary** for the preservation of peace, for securing and regulating the supply and distribution of **food, water**, fuel, light and other **necessities**; for maintaining the means of communications; and for any other purposes **essential** to the life and **safety** of the community. The Regulations may also make such provisions as the Governor-General

thinks necessary for making the exercise of those powers effective.” (*op. cit.* p. 426.)

### **State of Emergency justified**

#### **[N.B.:**

**10.1.5** For the record, the Public Defender formally accepts that the situation which confronted sovereign Jamaica at the material time showed that:

- a. the country was indeed faced with a state of public emergency;
- b. the circumstances then prevailing **near overwhelmed** the capacity of the JCF and its auxiliaries, (the **primary law enforcement agents** of the State;) those circumstances challenged or threatened the **institutional capacity** of the State itself to subdue **illegally** armed forces apparently operating under the control of **organized crime**;
- c. there does appear to have been **evidence** suggesting that some of these forces had been **assembled** in **West Kingston** to protect the fugitive, Christopher Coke and, to **obstruct** or **prevent** his **arrest** and that therefore,



- d. the circumstances **justified** the Government's resort to the Constitution, S.26(4)(b), (5)(b) and (6)(b) as well as the Emergency Powers Act, 1938, SS.2(b) and 3.]

**10.1.6** The Governor-General's "**satisfaction**" regarding the state of affairs then prevailing [S.26(5)(b)] is **significant**. As was **held** by a seven-member Supreme Court of Pakistan in *Farooq Ahmad Khan Leghari & Ors. v Federation of Pakistan & Ors.* [(July 28, 1998) (*Commonwealth Human Rights Law Digest, (2008) p. 119*)], interpreting a provision [Art. 232 (1)] of the Pakistan Constitution **similar** to S.26(5)(b) —

" (4) The **satisfaction** of the President, provided for in Article 232 (1), is **subjective** and is a **condition precedent** to the exercise of power. If it can be shown that there was no **satisfaction**, or that it was absurd, perverse, *mala fide* (sic) or based on **extraneous** or **irrelevant** grounds, it will **not** amount to **satisfaction** for the purposes of (the Article). Given its far-reaching consequences, a proclamation of emergency must have a **clear nexus** with the **objects** mentioned in (the Article...)" [*Minerva Mills Ltd. & Ors. v. Union of India & Ors. AIR (1980) SC 1789* (India Supreme Court) **applied.**]

Moreover —

" (6) The validity of a proclamation of emergency is *prima facie* to be examined on the basis of the **statements made in it**. Statements made by **Government** or **political leaders** may help to clarify the nature of the emergency or indicate Government intention but they **do not** provide a **sound basis** for imposing an emergency."

And further —

“ (12) Parliamentary approval of a proclamation of emergency or order **suspending** fundamental rights does not have the effect of validating any inherent **illegality** or **unconstitutionality**.”

### **Suspension of fundamental rights**

**10.1.7** Certain **fundamental rights and freedoms** guaranteed by Cap.3 of the Constitution (as it then stood) e.g. protection from arbitrary arrest or detention, the freedom of movement, privacy of the home and certain provisions to secure the protection of law, were **effectually suspended**. The Proclamation also legalized, “... measures that (were) **reasonably justifiable** for the purpose of **dealing with the situation** that (existed) during the period of public emergency.”

### **Conferment of emergency powers**

**10.1.8** Simultaneously, His Excellency promulgated the Emergency Powers Regulations, 2010, under the Emergency Powers Act, S.3. The Regulations conferred wide powers upon “**authorized person(s)**” i.e. any **constable, member** of the **JDF**, the Fire Brigade and “any person authorized by (a) competent authority” to take action in relation to –

- any service maintained or operated by any public or private enterprise including the **disposal of the bodies** of deceased persons
- the protection of public property

- the **protection** of public roads
- a power to **block** roads and **set up cordons**
- a power to **require information**
- a prohibition of assemblies
- a **prohibition** against **discharging** firearms
- the power to establish **curfews**
- the power to **restrict access** to any area
- the power to **search premises**
- powers of **questioning** persons
- powers of **arrest** and **detention**
- the **search** of persons
- **confinement** to places of **residence**
- the closing of premises and,
- the **control** of places of **public resort** and entertainment.

**10.1.9** In the result, the community of Western Kingston (**Tivoli Gardens in particular**) was placed under **austere lock-down**. There was **robust** enforcement of the regulations, particularly in the first fortnight after the Proclamation.

#### **Review Tribunal**

**10.2.0** A Tribunal for review of cases of “**detention** of (sic) restriction” was established under the chairmanship of Mrs. Pamela Benka-Coker, Q.C., Chairman of the Disciplinary Committee of the General Legal Council, to deal with applications by detainees for relief. [See the Constitution, Cap.III,S.16(4) [repealed and replaced by the Charter

of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, S.2] and the Emergency Powers Act, 1938, S.3(2)(a)]

- 10.2.1** The right to liberty and freedom of movement [the Constitution, Cap.III (repealed) S.16.—(1)] is a most valuable fundamental right. The citizen may only have been deprived of it in accordance with the provisions of SS.16 and 26 (due process.)] Every **moment of detention** is to be treated as unlawful unless it could have been shown to the satisfaction of the Review Tribunal (or the Court) that it was not *ultra vires* or otherwise unlawful: [*Liversidge v. Anderson* (1942) AC 206 (UK HL )] [But see the (Interim) Act, S.13.(2)(b)(i) — p.14 *ante* and pp. 116-117 and 230 *post.*]

#### **Jamaica House Meeting**

- 10.2.2** On Wednesday, May 26, 2010, the Public Defender accepted Mr. Golding's invitation to attend a meeting at Jamaica House. Other persons present included then Deputy Prime Minister and Minister of Foreign Affairs, the Honourable Dr. Kenneth Baugh and Minister of National Security, the Honourable Dwight Nelson; the Commissioner of Police, Mr. Owen Ellington, then Chief of Defence Staff, Major General Stuart Saunders, Bishop Herro Blair, Political Ombudsman and Chairman of the Peace Management Initiative and, Dr. Joslin Salmon, then Chairman of the Jamaica Red Cross. The meeting concerned the **joint** JCF/JDF "operations" in Western Kingston, (Tivoli Gardens in particular,) in the purported exercise

of the Emergency powers. At Mr. Golding's invitation, Bishop Blair, Dr. Salmon and the Public Defender agreed to tour Tivoli Gardens under the "**protection**" of the Security Forces.

**Tour of Tivoli Gardens and 'Rasta City';  
Tales of rampant aggression**

- 10.2.3** The ensuing tour lasted all day. A picture of **great desolation** presented itself. There were plaintive litanies of woe from residents and the scene of a community under **tightly restricted** freedom of movement. At least one wounded young man **left unattended** and, two male corpses **lying uncollected**, were seen. It was Bishop Blair who alerted an indifferent JDF sector Commander to the fact that the young man was moving **spasmodically**. But by the time he came to receive attention from the security personnel, he had **apparently died**.
- 10.2.4** Tivoli Gardens bore **classic features** of a **war zone**. There were burnt-out houses and apartments and unmistakable signs of the explosion of incendiary devices, described by residents as "**bombs**". There were many **blood-spattered interior concrete walls** and floors and aluminium windows shot out or riddled with bullet holes indicating **inward** heavy weapon fire. Exterior walls of buildings also, bore **physical indicia** of **high-powered** weapon fire. Frightened and **traumatized** residents (children, women and aging men but mainly women) cowered in fear. Dwellings had been **thoroughly ransacked**. Furniture, electric and electronic

appliances and equipment had been **dismantled, destroyed** or **damaged**. Members of the Security Forces (closely deployed everywhere) kept guard at the ground floor entrances or lobbies of tower blocks. Residents were **confined** to the **interior** of apartments or houses.

**10.2.5** Complaints of indiscriminate **rough handling** and **excessive abuse** by State Security personnel came from all quarters of citizens. They related accounts of a **ferocious organized assault** on the community, marked by unrelenting aggression. They claimed that soldiers and policemen alike told them that they were being punished for **supporting** and **hiding "Dudus"**; otherwise for **attacking** and **setting fire** to the **Hannah Town** and **Darling Street** police stations. In dazed disbelief, they wondered aloud why they had been abandoned and left defenceless by their M.P., Mr. Golding and, what would now become of them.

**10.2.6** Some members of the Security Forces wore hideous **hooded masks** in the broad daylight. One police constable in particular menaced the Public Defender during the tour of a building. A police sergeant, who **refused to identify himself**, to whom a protest was directed, evinced **no response**. It was left up to the Public Defender therefore to assert himself and so forestall the constable's boorish and disrespectful behaviour, by demanding that he keep his distance.

**'Rasta City'**

- 10.2.7** There is a squatter community situated in the shells of concrete buildings formerly occupied by the defunct Public Works Department (PWD) on lands outside the southern perimeter walls of Tivoli Gardens. It is known as **'Rasta City'**. It appears to have been served by illegal connections to the Jamaica Public Service Company Limited power grid. Scores of persons – a few old men, young women and children - were found living there on May 25, 2010. They too complained that **"bombs"** had been **thrown** into some of the buildings or **dropped from the air** and had exploded, **sparking fires**. The entire upper floor of one old PWD building, (a squatter dwelling) was gutted. There were also a few burnt out or partially destroyed board shacks. The surrounding area was bushy with domestic animals, pigs and stray dogs, roaming about.
- 10.2.8** As a result of representations made by the Public Defender to the JDF sector commander, Rasta City dwellers were allowed "air out" time to fetch water and empty slop pails and so relieve the **heavy** stench of accumulated **human body waste, feminine and babies' sanitary disposables**.
- 10.2.9** The touring party thoroughly inspected Rasta City, including the **burnt-out** buildings said to have been **"bombed"**. The party checked out **reports** or rumours that **dead bodies** had also been **burnt** there. But **no evidence** of **burnt bodies** was detected.

### Detainees

- 10.3** In late afternoon, the tour party indicated that they wished to inspect the facilities and conditions under which detainees were being kept, at a former Seprod company warehouse complex in Marcus Garvey Drive. Instead of being conducted to the complex, the tour party were shunted to the Police Area 4 Headquarters whence they had departed for Tivoli Gardens. The explanation for skirting the complex, (bellowed *en route* by the officious constable mentioned earlier) was that there were "**gunmen in the area**". On the insistence of the Public Defender however, the Police Area Commanding Officer caused the tour party to be escorted back to the complex. There, hundreds of detainees (mainly men of mature years) were found housed in a large old zinc-roofed warehouse. Younger detainees were **tightly bunched up** behind a fence of **razor wire**, many **kneeling in gravel**. They were all being "processed". There were **no sanitary conveniences**.
- 10.4** In time, the detainees [peaking at more than **one thousand (1000)**] were transferred to either Harman Barracks or to the National Arena. By midday Saturday, May 29, however, all those held at the National Arena had been released. (According to a member of the Police High Command, only **five (5)** detainees remained in custody thereafter; for further "processing".) (See also pp. **86-89** and **92-95** *post.*)



### Visit to Madden's Funeral Home

11. From the Seprod commercial complex, the tour party repaired to Madden's Funeral Home, North Street, Kingston. At our **insistence**, we were admitted to the morgue and viewed three **large** mounds of tagged corpses, most in varying stages of **decomposition**, many **nude** or **scantily** clad, piled up on the bare concrete floor: a macabre, surreal spectre of mass slaughter. At first, the two insensate and impatient morgue attendants on duty could give no accurate tally of these dead.

By that time it was nearing 6:00 PM.

### "Debriefing"

12. After viewing those bodies, Bishop Blair and Dr. Salmon departed to Vale Royal for a "debriefing" with Prime Minister Golding. The Public Defender remained behind to take a tally of the dead then piled up at Madden's, who, were found to number **fifty-six (56)**. In the meantime, radio transmissions which were overheard indicated that there were **sixteen (16)** corpses still lying in thoroughfares in Western Kingston [nine (9) of them in Darling Street], waiting to be picked up. Thus, the Public Defender, upon arrival later, was able to challenge or refute the Commissioner's report to the Prime Minister, that as at the time of the "debriefing", there had been **forty-four (44)** civilian fatalities. (It may well have been the

**extremely tense** and **volatile** situation **then existing**, which stalled the flow of accurate information **from the ground** on up.)

13. But when the Public Defender remarked upon the “**disparity** between the number of **civilian dead** and the number of **firearms**” said to have been recovered up to that time, (i.e. **72:4**), the sedate Commissioner of Police and Chief of Defence Staff concurred that the ratio was “**not unusual**”. Having regard or, compared to what ?. The gentlemen will want to explain that rejoinder some day. For this seemingly inscrutable response to a matter of such gravity and historical importance suggested that the **heads** of the Security Forces actually regarded the death toll as **a matter of no**, or **no particularly notable consequence**. [Perhaps this explains the initial failure or delay by the Commissioner to order the prompt start-up of police investigations into strident allegations of wide-scale **extra-judicial killings**. This had been an **urgent recommendation** made by the Public Defender, to the head of the BSI. (See **Appendix 10**, and pp. **158 – 60**, *post*.)]

**Letter to Police Commissioner and Chief of Defence Staff  
dated May 26, 2010**

- 14.1 There was a follow-up meeting next morning, May 27. Later that day, the Public Defender was moved to address a letter to the Commissioner and the Chief of Defence Staff, jointly, recording “**issues of grave concern**”. The letter which is attached hereto

marked **Appendix 5**. speaks for itself. But particular reference may be made to:

- i. the necessity that they "**bring home** to those under (their) command that the ... State of Emergency (did) not herald any **open season**, permitting unlawful **departure** from the **tenets** and **principles** of the **rule of law**; that the extraordinary power of cordon and search, seizure, arrest and detention without warrant conferred, must be **strictly** adhered to and be applied with **compassion** and **restraint**";
- ii. the attention drawn to the **ratio** of known **civilian deceased** to **firearms** allegedly **recovered**, (by then standing at **73:5**), the "evident **disproportionality**" obviously suggesting that there had been "**excessive** use of **deadly** force";
- iii. the restriction upon the freedom of movement of citizens of Tivoli Gardens, Denham Town and Hannah Town in particular, keeping "women and children **confined round-the-clock** to the **cramped** condition" of their homes which, was considered "unjustified and **unacceptable**;"
- iv. the allegation of "demeaning and highly disrespectful **verbal abuse**" of residents of Tivoli Gardens by

personnel in the lower ranks, who needed greater **supervision and control**;

- v. the fact that twenty-three **unidentified, decomposing bodies** had been taken to the May Pen Cemetery and, laid out on the bare ground for **on-the-spot autopsies** and **immediate interment** and,
- vi. the need for **systematic identification** of persons not afforded access to **medical attention** and **medication**.

**14.2** In the public interest, the letter, which was copied to the Prime Minister and to Bishop Blair, was **released** to the **news media**. This generated considerable **dismay, public debate** and **adverse commentary**, mostly in relation to the **“evident disproportionality”** referred to at ii. above.

In the following weeks, **scores** of firearms were alleged to have been **“discovered”, “found”** or **“recovered.”** (See pp. **43 - 5**, post).

**14.3** It must now be noted that **disproportionality** is also reflected in the **ratio** of **civilian** to **State Security Forces fatality** resulting from **‘incursion’** or **‘siege’** activities – **75:1**, suggesting that there was indeed **excessive** or undue resort to lethal force by those Forces.

### **Burial plans aborted**

15. But prior to that letter (**Appendix 5.**) the Public Defender had alerted the Prime Minister (by telephone) to the matter of the corpses intended for **immediate interment**. With **great alacrity** Mr. Golding directed that they be retrieved: that in fact all corpses should be "**frozen**", pending autopsies. In the event, the bodies were merely **refrigerated**. This cooling of the corpses slightly slowed **accelerating** decomposition. In many instances, if not most, decomposition had been worsened by **extraordinary delay** in collecting them from the streets, dwellings and tenements of West Kingston. But **police** witness statements suggest that the delay was **prolonged** in part due to illegal **sniper fire**. (See p. 100 *post.*)

### **X-ray of corpses**

16. Acting upon independent advice, the Public Defender insisted that all corpses be **x-rayed**, prior to the commencement of autopsies. In the result, x-rays were done **in secrecy**, under **special arrangements** organized with the assistance and cooperation of the Ministry of Health.
- After each was x-rayed, (by which time some were **very badly decomposed** or, had become **skeletonized**) thorough autopsies were performed on the corpses of **seventy-five (75)** persons whose

death by **gunshot trauma** or by **explosive devices** are **known** to have occurred during the 'incursion'. With the aid of x-ray films, **every scrap of foreign body**, (metallic or otherwise,) was extracted from each corpse and delivered to the police for transmission to the Government Forensic Science Laboratory. Forensic examination and evaluation will determine their evidentiary value.

#### **Death toll/body count**

17. But to this day, **speculation** fueled by anecdote and hearsay persists, regarding the **precise civilian death toll** related to the 'incursion'. In February, 2011, information was relayed to the Public Defender that "about two hundred (200) dead bodies" were being "stored at a cold storage" in West Street, Kingston. However, a thorough search showed that this report was **unfounded**.

#### **Weapons "finds"/"discoveries" etc.**

18. Various JDF accounts about the "discovery" etc. of weapons of varying calibre, given at press conferences called in the weeks of and immediately following May 30, 2010, all came in the wake of the Public Defender publicly expressing grave **disquiet** over the remarkable **ratio** of deceased to weapons "**found**" or "**discovered**". These claims should therefore be subjected to **severe scrutiny**. Put another way: **the story behind the Who, the Where, the What, the When and Wherefore and the How, of**

**each alleged find**, should be put to the acid test of **rigorous** forensic examination: for no fewer than six reasons, viz.

- i. **the time** of the supposed finds, and **the timing** of their announcement;
- ii. there is evidence, albeit anecdotal, that **most** of those weapons actually came from the **large stockpile of arms** seized and maintained by the **Security Forces**, prior to and in **operations entirely unrelated** to the 'incursion';
- iii. there appear to have been **no arrests** made or **charges laid** in connection with any of the alleged finds;
- iv. announcement of the "**finds**" or "**discoveries**" fit a pattern of the JDF making public pronouncements by way of **damage control** (**quick-fix** or **flip-flop** responses to **embarrassing disclosures** about the conduct of army personnel during the 'incursion') e.g., the **use of mortar rounds** or, conflicting with earlier statements of their spokesmen e.g., the **presence** of, the **role played** by and **assistance** derived from the USA Department of Homeland

Security surveillance aircraft during those operations (see pp. **107-116** *post.*);

- v. it has not been suggested or alleged that any of these finds were made **within** the walled perimeter of **Tivoli Gardens**, the supposed **hottest theatre** of confrontation with armed combatants and
- vi. thus, the veracity of those accounts will elucidate and help determine the elusive truth of the circumstances surrounding the **death** of the **greatest number** of citizens in any **one** State Security Forces **operation** in the history of independent Jamaica.

#### **Questions arising from 'incursion' activities**

- 19.** The Public Defender's investigations also throw up many broad questions for due consideration. Some examples are:
  - 1. What was **the level of resistance** actually encountered by the Security Forces or, such as would have **justified** the **scale of carnage** ?.
  - 2. Did the operational plans for the capture of the fugitive Coke or the **execution** thereof include a regime or element of crude **profiling** of citizens who stayed put, despite **warnings**, as **supporters** or **sympathizers** of



“Dudus” or, by virtue of which young males found in Tivoli Gardens were, *ipso facto*, to be considered (potential or actual) **combatants** and thus be **eliminated** ?. Put another way: did the State Security Forces declare **open season** in West Kingston, (Tivoli Gardens in particular) by virtue of which there was flagrant **disregard** for the Jamaica Constabulary Force Human Rights and Police Use of Force and Firearms Policy (the JCF Policy,) (see pp. **154-165** *post.*) leading to the death of so many civilians ?.

3. Did **execution** of the operational plans illustrate or exemplify a “**one size fits all**” approach to policing or law enforcement ? and,
4. Was there a cynical intention (conveniently but, disingenuously) to explain away the **death** of so many as **unavoidable** “collateral damage,” in the hope that that explanation would satisfy the expectations of an **apprehensive, gullible** or **quiescent** citizenry ? .

**SUPPORT OF INVESTIGATIONS BY THE PARLIAMENT, THE  
UNDP, INTERNATIONAL DONOR PARTNERS AND OTHERS**

20. Having only a small cadre of investigators, (a Deputy, a Director and four others) the Public Defender was obviously **not sufficiently equipped** to conduct investigations as momentous, or, of the magnitude of those under consideration: a **necessary** but challenging undertaking which required the engagement of **temporary investigators**. The Police Civilian Oversight Authority (PCOA) also volunteered the **temporary** services of two staff members. They represented the Public Defender as lay observers at the autopsies. Their assistance was halting, though better than perfunctory.

**Supplemental funding provided**

21. By way of a 2010/11 Supplementary Estimates of Expenditure, Parliament approved special funding of **J\$16,845,000.00** to defray the Public Defender's State of Emergency investigation expenses. That sum was itself augmented by an amount of **J\$9,645,360.34**, *vired* from the annual budget of the Office. The **total** sum of **J\$26,492,360.34** was spent as accounted for in **Appendix 6** and, in a **Status Report** requested by the Public Administration and Appropriations Committee of the House of Representatives in accordance with Order 73A of the Standing

Orders of the House. (See that Report, dated October 10, 2011, p.19.)

### **Forensic Sciences**

- 22.** The **most important** aspects of the Public Defender's investigation relate to allegations of **extra-judicial killings** (unjustifiable homicide) and involve the forensic sciences of **pathology, ballistics** and **radiography**.

### **Worldwide search for assistance**

- 23.** Fortunately, with the solicitous entreaties of Dr. Pauline Knight, former acting Director of the Planning Institute of Jamaica, and Ambassador Evadne Coye, then Permanent Secretary in the Ministry of Foreign Affairs, support soon came from the UNDP. At the request of the Public Defender, they persuaded the UNDP to conduct a **worldwide search** and survey of **friendly** and **sympathetic** foreign governments **prepared** to help out.

### **Who killed Who ?.**

- 24.** In particular, the Public Defender **urgently** needed the support of respected **forensic pathologists** to act as **independent observers** at autopsies on the bodies of all persons whose death was attributable to activities during the State of Emergency. For it was (and remains) **essential**, that it be determined **which** of the deaths was caused by bullets discharged from **weapons issued** to

**members** of the **State Security Forces** and fired during the 'incursion' and, the assault on **Mr. Clarke's house**; or by **anyone else**, e.g. **armed combatants** or **illegal gunmen**.

25. Thus, **ballistic examination** was (and remains) a **key process**.

(See pp. **133-139** and **151-152**, *post*)

It followed that, as far as possible, **all spent projectiles** or **fragments** lodged in any dead body, should be recovered for the purposes of forensic examination, evaluation and comparison. It was therefore imperative that **all** relevant corpses be **x-rayed**.

#### **Assistance offered by friendly nations**

26. The UNDP search and survey turned up assistance from governments of **five (5)** friendly donor countries viz. (in alphabetical order) **Australia, Colombia**, (the Province of) **Ontario, Canada, Portugal**, the **United Kingdom** and, the **United States of America**.

27. As stated earlier, the Public Defender is most grateful to the UNDP and, the governments of the donor countries, for their unstinting support. The **outstanding work** and **assistance** of the eminent forensic experts made available was **first rate**. (An exchange of letters between Mr. Minh Pham, a former Resident Representative and the Public Defender records an appreciation of the work of each other in the matter of these investigations.)

### Observer Pathologists

28. The eminent observer pathologists from the countries aforementioned present at the autopsies and representing the Public Defender were (in alphabetical order,) —

Dr. Stephen Cordner, Professor of Forensic Medicine, Monash University, **Australia**

Dr. Elizabeth A. Laposata, MD, FCAP, FASCP, of Boston, Massachusetts, **U.S.A.**

Dr. Maria Dolores Morcillo Mendez, MD, Forensic Doctor, Specialist in Criminal Law and Certified Forensic Expert, of **Colombia**

Dr. Maria Cristina Nunes de Mendonca, MD, PhD, of **Portugal** and,

Dr. Pollanen, MD, FRC(Path.), DMJ(Path.), of **Ontario**, Canada.

29. The observer pathologists each completed a two or three-week tour and furnished **independent** autopsy reports *pro forma*. All of these reports have been **disclosed** to the Government.

### Observer oversight

30. The **“PURPOSE”** of the oversight/observation of each **observer** pathologist **designated** by the Public Defender, courtesy of the UNDP, was to provide **independent** commentary on:

“1. the **state** of the body;

2. **identification** of the corpse;
3. **all** the injuries present, including **gunshot** wounds. If gunshot wounds are present, then to comment on –
  - i. the **number** and **locations** on the body of the **entry** and **exit** wounds;
  - ii. the number of **bullets** in the body;
  - iii. the path of the gunshot wounds in the body and,
  - iv. the **range of discharge** of the firearm(s);
4. the **cause** of death;
5. any other medicolegally relevant findings and,
6. the '**completeness**' of the post-mortem examination."

#### **Agreement re autopsy Protocol**

31. At a meeting on June, 14, 2010, chaired by the Public Defender, an initial post-mortem Protocol was agreed between Dr. Dinesh Rao DNB, MD, DFM, Government Consultant Forensic Pathologist and former acting Director of the Legal Medicine Unit of the Ministry of National Security and Dr. Michael Pollanen, Public Defender observer pathologist (**Appendix 7.**) That Protocol was **signed** by Dr. Rao and Dr. Pollanen but was **not** faithfully followed initially. For example, after a first post-mortem done on June 15, 2012, the next nine (9) were performed **two (2) at a time** in adjoining rooms. Dr. Pollanen reported that some **dissections** and the **retrieval** of spent bullets or fragments were delegated to

morgue assistants. The assistants searched for these foreign bodies after Dr. Rao generally indicated **where** in the bodies they could be found. Dr. Rao played no part in this process, it was said. These irregular routines aroused the **anxious concern** of Dr. Pollanen, which he communicated to the Public Defender **(Appendix 8.)**

32. At the instance of the Public Defender therefore, the autopsies were **suspended**.

#### **Agreement on revised autopsy Protocol**

33. A meeting to discuss the matter was called and chaired by then Minister Nelson. It was attended by senior Government officials including representatives of the Police and the Ministry of Health; the Director of Public Prosecutions, Ms. Paula Llewelyn, Q.C., Dr. Rao, Dr. Pollanen and the Public Defender. A **revised** Protocol was agreed which, the Minister announced, would subsequently **govern the conduct of all autopsies in Jamaica**; certainly those relating to **police/military killings**. (A copy of the revised Protocol is attached as **Appendix 9.**)

#### **Identification of bodies**

34. The autopsies were preceded by a **painstaking process** of personal **identification**, agreed between the JCF/BSI and the Public Defender. First, a thick **volume of photographs** of the **West Kingston dead** was compiled. A **"Ground Zero"** number was

assigned to each. Thereafter (over a **four-week** period) relatives and other witnesses made an **initial** photo identification. Each **identification** was **confirmed** by reference to the **physical remains** at the commencement of the **matching** autopsy.

35. The Public Defender acknowledges the assiduous performance of ACP Granville Gauze, (ret'd) Superintendent (now SSP) Ezra Stewart and Deputy Superintendent (now SP) Gladys Brown of the BSI in the identification process. They were especially diligent in **coordinating** the post-mortem arrangements.

#### **Autopsies**

36. Eventually, over a **two-month** period, autopsies were performed by Dr. Rao, and his colleague Dr. K.S.N. Prasad, MD, DFM, Government Consultant Forensic Pathologist, on the bodies of all **known persons**, whose death was **attributable** to **action** during the period of Emergency; in **purported** law enforcement or **otherwise**.

(The case of one **markedly decomposed** dead body deserves particular mention. In **some respects** it is **not at all unique**. Despite **refrigeration**, at the time of the autopsy it had become **extensively** infested with **maggots**. Relatives who had earlier identified the deceased now found him visually **unrecognizable**, by reason of discolouration of the



skin, the collapse of soft tissues and scores of **crawling maggots**. A family member called to identify the corpse actually **fainted** at the sight of it. She had to be lifted out.)

**Conduct of autopsies in accordance with best practices; Protocols**

**37.** The autopsies were all conducted in accordance with international **best practices** and **United Nations** standards (the '**Minnesota Protocol**') agreed (not without difficulty) between the Ministry of National Security and the Public Defender. (See **Appendix 9.**) It was later amended — (**Appendix 9A.**)

Stipulations in the **original** Protocol included –

- complete musculoskeletal dissection,
- the taking of **samples** of body fluids and the liver, for **toxicological** analysis;
- that **projectiles** recovered and biological **samples** taken should be **recorded** in the report of post-mortem examinations and,
- the taking of **reference samples** to be retained by the Government Forensic Science Laboratory, in **all** cases.

**37.1** The **amended** protocol, incorporated the foregoing stipulations, but also established a **prioritized** approach to the conduct of post-mortems, viz.

- a. bodies that had **not yet** been affected by **decomposition**

- b. bodies that were **slightly** decomposed
- c. bodies that were “found” **skeletonized** or in an **advanced** state of **decomposition**, on which **no** post-mortem procedures had been performed and,
- d. bodies similar to those at c. above, on which **partial** post-mortem procedures had been earlier performed (a reference to those **badly decomposed** and which had been **retrieved from the ground at the May Pen cemetery**, after a **strong protest** and, other urgent representations made to Prime Minister Golding, by the Public Defender.) (See p. **42 ante**.)

**37.2** The **amendment** also required the establishment of a **make-shift mortuary** (a **refrigerated** metal shipping container) set up at the Norman Road, Kingston 4 annex of Madden’s Funeral Home. This was to facilitate post-mortems on bodies which were in an **advanced** state of **decomposition** i.e., **markedly decomposed** or **skeletonized**. Further, sternum bone and other samples were taken from all bodies and stored for possible future DNA analysis.

#### **Storage of forensic data**

**38.** Careful linkage between **unidentified bodies** buried by the State following post-mortems and, their **related forensic data**, is to be maintained in case future requests for exhumation are made.

[ The requirement to store forensic data has proven astute. Stored forensic data have facilitated the **positive identification** (by DNA) of the corpse of **Andre Smith**, a previously “**unidentified**” deceased. Andre Smith, a young **dual citizen** of **Jamaica** and the **USA**, had also been previously classified as a “**missing person.**” But the wishes of his relatives to have his remains **exhumed** from a **pauper’s grave** and afforded dignified funerary rights, are stymied by **poor record keeping** of the Kingston and St. Andrew Corporation, relating to **interments** at the **May Pen Cemetery**. The precise burial site is **yet to be located.**]

(See also pp. **58** and **230**, *post.*)

- 38.1** Further, statistical DNA calculations done to determine **maternity**, have disclosed a **99.893%** probability that a Tivoli Gardens resident “**cannot be excluded**” as the **mother** of **another** previously “unidentified male”, **Dale Anthony Davis**.

#### **The KSAC and May Pen Cemetery burial data**

- 39.** By the provisions of the Kingston and Saint Andrew (Cemeteries) Act, 1874, (‘the Act’) S.4, over one hundred and eighteen (118) acres of land are declared vested in the KSAC under a **trust conveyance** “to be held and used as a **cemetery** for the parish of **Kingston.**” It is known as the ‘May Pen Cemetery’. S.13 of the Act

provides for the appointment of a 'keeper', now designated 'Superintendent'. By S.19, the "general management, regulation, and control of the cemetery" is vested in the KSAC. Under **S.22** of the Act -

"**All burials** within the cemetery **shall** be registered in register books to be provided by (the KSAC) by some **officer appointed** ..... to that duty, and such register book **shall distinguish** the part of the cemetery in which the several bodies... are buried..."

Further, those register books "**shall** be so kept and **indexed** as to facilitate searches for **entries** in them, in respect of **bodies interred.**" Copies or extracts of the books "**shall** be received in all courts as **evidence of the burials** entered therein." And copies of transcripts of the books are to be "transmitted to the Registrar-General" who is required to keep and record them "according to law."

- 39.1** S.6 of the Act contemplates and permits assignments of portions of the cemetery to churches or congregations "...for purposes of interment according to (their) rites..." And by paragraph 12. of the Kingston and Saint Andrew (Cemetery) Rules, 1947 (made under S.27 of the Act) the **plan** of the cemetery has an area shaded green and "set apart for the burial of persons not belonging to, or **not claimed** by any religious community or society."

**39.2** None of the unidentified bodies was “claimed.” Presumably therefore, they were buried in an area designated by the KSAC for the interment of paupers. But months of persistent enquiry have failed to afford access to any relevant “register book” or information regarding the “area” of interment of any unidentified corpse.

**39.3** It will be noted that the duties imposed by S.22 of the Act are **mandatory**; not discretionary. The KSAC and the “officer appointed”, (the ‘keeper’/‘Superintendent’) are therefore, *prima facie*, in continuing **breach** of statutory duty.

#### **Alleged extra-judicial killings**

**40.** Of the **seventy-six (76) known** and relevant **civilian** deceased, (**Appendix 1**) **forty-four (44)** (including **Mr. Keith Clarke**) (see **Appendix 2**) are **alleged** to be instances of **extra-judicial** killings (unjustifiable homicide.) The following six (6) cases are broadly illustrative of these **allegations**:

#### **Kevin Gordon**

**40.1** On Tuesday, May 25, 2010, at about 6:30 a.m., a forty-five year old male witness was at home along with his nephew, the deceased, (aka “Porridge man”,) who sold porridge for a living. Security forces entered the home having kicked off the front door. The witness was confined to the verandah while Mr. Gordon was being interrogated inside the house. After a short period of silence, the witness says he then heard gunshots inside the house. The witness tried to run from the verandah but was bullied to “go down on (his) belly and . . . **must not**

**look**". He alleges however, that about fifteen minutes later he **saw** three policemen —

“...**draw out** my nephew Kevin in a coloured sheet, **pulled** him on the sidewalk, **removed his clothes** from his body, and throw his clothes in (sic) the sidewalk”.

The witness alleges further that a few minutes later a Police truck drove up and the deceased was thrown into the truck. He too was ordered to board that truck in which there were at least ten **dead bodies**. After being in the truck for about ten minutes and, following **the protest of a policeman**, the witness and four other men were allowed to board **another vehicle** which transported them to the Seprod detention post.

**40.2** (There are allegations of some deceased being **taken away alive** by State Security personnel but later **turning up dead**. Did the protest of a percipient policeman prove timely ?. Fortuitous and decisive ?. Did it cause the life of this witness and the other four men to be spared ?. )

### **Bojon Rochester**

**40.3** Mr. Rochester, a twenty-one year old welder, lived in Tivoli Gardens, along with his mother, and other family members. On Monday, May 24, 2010, Mr. Rochester and neighbours were standing in a pathway, when his mother heard “**a loud noise making a booming sound and the place went dark and the building shook.**” She continued —

“After the **smoke kinda clear**, Bojon was lying down on the ground with other men **some of them dead.**”

Mr. Rochester's mother says that she was unable to go to the assistance of Bojon who, she noticed, was bleeding from his side and crying out for water. "About half an hour to one hour later," she continues, "police and soldiers came up the pathway and **kicked over some of the bodies.**" The deceased was **still alive** and "**crying out**" for water. "One of the soldiers **came over to him and just shot him.** It was more than one shot; I heard more than one shot," she alleges.

The soldier and policemen then "**scooped up all the bodies,** including Bojon's and **threw them** on a big **dumper truck.**"

- 40.4** (These allegations also provide *prima facie* evidence of the discharge and impact of **mortar rounds** or other explosive devices, described by witnesses as "**bombs**".) (See pp. **107 - 10**, *post* and **Appendix 11.**)

### **Errol Spence**

- 40.5** On Monday, May 24, 2010, Mr. Errol Spence was at home in Tivoli Gardens along with his mother and other family members. A number of other residents (totalling seventeen persons) were inside their home when members of the Security Forces entered. When asked, the deceased gave his age as twenty-two (22) and his occupation as barber. His mother says that she assured the police that he was her son and that he lived at the said residence. The police requested and were shown photos of him "from baby stage". **His hands were swabbed** after which he was told —

"We si yu a **run up and down** from morning and **man mus'**  
**dead fi man live**".

Mr. Spence's sister was asked how many brothers she had and she said two. A policeman is alleged to have replied "**yu a go have one lef**" The deceased was

ordered over to “the kitchen wall to sit down”. A policeman then “**fired four shots in his upper body and head** killing him on the spot”. When family members and neighbours cried out in shock and horror, the policeman is reported to have said -

“Wey uno a mek noise in ya fa . . . stop uno noise or else a kill all a uno in ya”.

The young man’s body was then “**hauled away**” from the house.

**40.6** (**Swabbing** of the hands is a forensic routine by which the presence of **gunpowder primer residue** may be **detected**. If that test proves positive, it indicates either that unwashed hands fired or handled a gun recently or, that they belonged to a person who had been in close proximity to a shooter or someone who had been in physical contact with the shooter, at material times.) (See p. **64**, *post.*)

#### **Orlando Brown, Fabian Grant and Fernando Grant**

**40.7** A **seventeen-year-old** graduate of Denham Town High School resided in Tivoli Gardens, at the time of the ‘incursion’. He was the **president** of his school’s **Inter-School Christian Fellowship** group.

On Tuesday, May 25, 2010 at about 6:00 a.m., the teenager was at home with his father and six other family members, including his brother **Orlando**, aged thirty-one. Members of the Security Forces stormed into their four-bedroom concrete house by **breaking down the back door**. They wore **dark blue denim** uniforms. **The faces** of soldiers and policemen were **painted in black, green** and **brown camouflage colours**. He heard them “**cursing several bad words.**”



On the instructions of the security forces, all occupants came out of the house which was thereafter searched. He himself was searched. "A policeman told him " **'mek mi smell you han'**. He **placed my left hand beneath his nose** while squeezing tightly on my right hand. It hurt me badly and it became red and swollen." The witness alleges that all **except** Orlando were then ordered back inside. The youngster went to a window of his father's room from where he could see and hear what was taking place across the street where Orlando was being kept guarded by the police.

Orlando Brown was questioned and searched by the security forces. A policeman made a cell phone call and was heard asking: "**How far the truck that collect the dead bodies deh ?**" Orlando was then instructed by a policeman to "**kneel down and place both hands behind (his) head**". After Orlando did as he was instructed, the witness says that he "heard three or four gunshots and then . . . saw Orlando fall..."

The policeman then turned to the direction of two brothers, Fabian ("Pucksie") and Fernando Grant ("Christopher") and instructed them - "uno two guh ova deh suh, an **duh di same ting**". Both men meekly obeyed the instruction of the officer and knelt facing the building where Orlando was killed. The policeman aimed his "long gun". According to the witness, he then "heard four gunshots and **Fabian fell sideways** into a garden and **Fernando fell face-down**". In a state of shock, the witness moved away from the window and so cannot say how and by whom the bodies of the three were taken up. But later he saw "a lot of blood in the garden and on the walkway" where the brothers had lain.

**(Cf.** the proven conduct of the **colonial militia** and **maroons** during the Morant Bay Rebellion, pp. 209 - 13, *post.*)

**Absence of clothing and expert forensic evidence**

41. The high incidence of **removal of clothing** from relevant corpses raises reasonable suspicion that there was an **intention** to **conceal, contaminate** or **destroy** vital evidentiary material capable of yielding up important forensic data, e.g., gunshot **primer residue** or gunpowder **burns**. The presence of either is one **basis of expert opinion** regarding **distance** separating victim and firearm at the material time. That distance is therefore **crucial** in determining the material **proximity** of a shooter and the mortally wounded: e.g. whether the shooting was “**close range**” or whether injuries were “**close contact**” or not. Thus, expert opinion ordinarily provides **independent** forensic support for complaints of cold-blooded killings made by witnesses and/or give the lie to allegations of **self-defensive** action.
42. The **nudity of corpses**, (total or partial,) and, corresponding with upper and lower parts of bodies where fatal gunshot injuries were inflicted, is established by **the** Public Defender’s **personal observation** and **by** thirty (30) **independent** autopsy reports. The significance of this will now be self-evident.
43. There may therefore have been a **concerted** endeavour to **conceal** highly **probative** evidence of infliction of “close range” or “close

contact" gunshot injuries allegedly inflicted by State Security personnel, suggesting that indeed there were **unlawful** executions.

**Further significance of swabbing or smelling of hands**

44. The swabbing or smelling of hands (e.g. in the case of **ERROL SPENCE** and the witness in the case of **ORLANDO BROWN & Ors.**) is *prima facie* or at least some evidence of **profiling**.

In the **execution** of operational 'incursion' plans was there or was there **systematic** rogue profiling ?

45. "**Field tests**" by the State Security servicemen if found "positive" could indicate to the layman tester that a person had **recently** discharged or handled a firearm or been in close proximity to or contact with someone who had. Was this procedure used to identify illegal **gunmen** who were later summarily executed ?. (And see p. **61**, *ante*.)

## Unidentified Corpses

46. The **unidentified** corpses recovered are recorded as —
1. **GZ 07**
  2. **GZ 23**
  3. **GZ 29**
  4. **GZ 38** and,
  5. **GZ 41** (see p. )
47. The following is a summary of the **findings** and **expert opinions** regarding the cause of death, rendered by the **Government pathologists** who performed post-mortem examinations (autopsies) on these bodies. Other **noteworthy** findings and observations of **Professor Stephen Cordner**, the **observer pathologist** made available to the Public Defender by the UNDP, and designated by him, follow thereafter. Not much else is known about these deceased. The recorded data regarding their physical characteristics e.g. height, scars, oral features, estimated age and gender, as well as clothing, may yet assist positive identification.

### 47.1.1. UNIDENTIFIED MALE (GZ 07)

The body of this unidentified male whose age was **estimated** at **twenty-five (25)** years, was “**discovered** between 23<sup>rd</sup> and 25<sup>th</sup> May, 2010 at **Kingston Public Hospital**, by the **doctor on duty**”. It was removed to Madden’s Funeral Home for Post-Mortem examination, “on the instruction” of the Police. “Information

obtained” was that “the deceased was shot and injured **during a shoot out** (sic) between members of the security forces and gunmen in Tivoli Gardens.”

**47.1.2** The autopsy was done on July 8, 2010. The body was that of a “somewhat heavy built (sic) **six foot** (183cm) male.” There was peeling of the skin “with drying present on the face”. White fungus, was seen around the eyes. Both eyeballs **collapsed** from **decomposition**. There was an “**irregular small scar** seen on **front of left knee** over an area of 4 x 3cm as well as a **linear scar** 7.5cm in length seen on the antero-lateral **lower left thigh immediately above left knee.**” There was **one gunshot wound** to the body. It is described as “an **entrance ..... wound** 0.9cm x 0.7cm on **left temporal region** of the head 6.5cm below top of head, 10cm from anterior midline, 7cm above and lateral to right eye brow **without gunpowder deposition.**” There was an **exit wound** on the “**right parieto-temporal region** of the head 13cm from midline on top of head.” **No** surrounding **sooting** or **blackening** was seen in the temporal tissue.

**47.1.3** The pathologist retrieved a severely deformed “**copper jacket bullet**” (sic) from the posterior part of the left temporal fossa.

**47.1.4** An x-ray done on the body revealed -

- (a) a large fracture on left side of the skull and
- (b) a **large** fragment in the left mastoid region.

No fragment was found in the chest, abdomen, pelvis, upper or lower thigh, knee or legs. On the **left ankle** of the deceased there was a tag with the label "**Ground Zero #7, unidentified male**" but, on the **right great toe** there was a tag - "**GZ 27**". The **left wrist**, had a tag marked "**Ground Zero #7, Unidentified male**".

**47.1.5** The pathologist found the deceased clad in a **white t-shirt** which was heavily blood-stained and in "Blue under-pants (boxer shorts), blue jeans pants Quest Brand" with a "Complex crest design on both back pockets" and a white belt.

**47.1.6** The cause of death was –

- (1) **penetrating injury to the brain**, and
- (2) gunshot wound to head.

**47.2.2. UNIDENTIFIED MALE (GZ 23)**

The autopsy was conducted on July 8, 2010. This body also, was "**discovered** (lying on its back) between 23<sup>rd</sup> and 25<sup>th</sup> May, 2010 at the **Kingston Public Hospital**, Kingston by **the doctor on duty**". The corpse was subsequently, "removed to Madden's Funeral Home on instruction from the Police for Post-Mortem Examination." The **estimated** age of the deceased is "**between eighteen (18) and twenty (20) years**."

**47.2.3** There were four (4) **gunshot wounds** to the body described as –

1. an entrance wound on left upper posterior arm 45cm

below top of head with downward trajectory but **without** gun powder deposition.

“**2&3**”(sic) an entrance gunshot wound 0.5 x 0.3cm on **right lower posterior chest** 49cm below top of head, **without** gun powder deposition; another entrance ..... wound 0.4 x 0.3cm on **right lower posterior chest** 50cm below top of head and 12.5cm from midline **without** gun powder deposition.” One bullet travelled through the underlying tissue muscles of **posterior chest, fracturing the right scapula**, while another “travelled through the underlying tissues, muscles of posterior chest, thoracic cavity, all three lobes of right lung, continuing between oesophagus and thoraco-cervical spine **at root of neck** and exited on **left mid anterior neck**, 25cm below stop of head.”

4. an entrance gunshot wound 0.4 x 0.3cm on “left **posterior** hand on mastoid behind left ear, 16cm below top of head,” **without** gun powder deposition.

**47.2.4** One (1) copper fragment and one (1) “copper jacket” taken from the muscles of the right posterior shoulder, were handed over to Police.

**47.2.5** **X-ray** results revealed multiple fractures to the skull cap. The pathologist observed **three tags** on the body, one of which was on the right ankle and bore the legend “**GZ 23** unidentified male”.

The corpse also bore a “**half length blue jeans pant** (cut at lower legs) with **worn** white-black belt, ‘LEVI’ Brand and a white **t-shirt** with complex pattern; **damage associated** with gunshot wounds and **removal (cut)** seen.”

**47.2.6** According to the pathologist, “from information obtained” the deceased was, “**shot** and injured during a **shoot out** (sic) between members of **the security forces** and **gunmen** in **Tivoli Gardens**”. He concluded that the cause of death was

- (1) haemorrhage and shock and
- (2) multiple gunshot wounds.

**47.2.7** [**Who** cut out a portion of the t-shirt ? **Why** was that done ? Did the **portion removed** hold evidence of **unburnt** or **burnt** gunpowder; **blackening** or **singeing** of the fabric ?. If so, the **distance** between the **muzzle** of the firearm and the **body of the deceased**, when he was shot, could have been **reliably estimated** by forensic experts. These physical indicia as well as the material distance (range of firearm discharge) are or would be of **crucial importance** in determining the immediate circumstances surrounding his death.]

**47.3.1** **UNIDENTIFIED MALE (GZ 29)**

An autopsy was performed on July 9, 2010. The body, (age **estimated** at “above **20** ... **but** below **24** years”), was “**discovered** between 23<sup>rd</sup> and 25<sup>th</sup> May, 2010 at **Tivoli Gardens**, Kingston 14



**by the Police.**" It was "removed to Maddens' Funeral Home on instruction from the Police."

**47.3.2** The Government pathologist's report recorded –

"...the body is that of 6'1" (186cm) male about 160lbs. Scalp hair **short** and **black**. Post-mortem loosening and loss of scalp hair seen. Very slight beard seen on chin. Both **eyes collapsed**. Post-mortem peeling and drying of skin present on face, anterior trunk, anterior left lower limb, anterior right upper thigh, left upper limb. **Complete epidermal loss of skin** present on posterior trunk, buttocks and thighs. No visible scar seen on the body. Tatoo of 'Anchor' (sic) **with long axis vertically** seen on right arm on deltoid (sic) region."

**47.3.3** There were two (2) **gunshot wounds** to the body, viz. —

1. an **entrance** wound 0.5 x 0.4cm on **left lower buttocks**, 83cm below top of head and 16.5cm from **posterior midline**, without **gun powder** deposition." The bullet "travelled through the underlying tissues muscles of buttock, ilium entered **abdominal cavity** passing through psoas muscle, disrupting a loop of small intestine and exited on **left lower anterior abdomen** on left iliac fossa....", the intestines protruding through the wound.

2. an entrance wound 0.4 x 0.7cm on "**right lower anterior neck** 26cm below top of head and 6.6cm from midline without **gunpowder deposition**. Right half of **mandible fragmented** with missing of teeth (sic) except both incisors and canine. **Presumably**, the fragments travelled **upwards, backwards** fracturing mandible, ricocheted downwards and to left passing through the **left chest cavity** and fragmented." A **large** copper fragment, a conical **small** copper fragment and, three **small** lead fragments were recovered from "the muscles behind left clavicle and muscles between it (sic) and the scapula."

**47.3.4** The results of the **x-ray** were (inter alia) -

**Skull lateral view:** "multiple fragments **snow-storm** appearance seen in the neck, lower jaw and left shoulder."

**Chest:** multiple fragments seen [**snow storm** (sic) appearance] in left upper chest, left shoulder and left neck.

**Abdomen and Pelvis:** "**Snow storm** (sic) appearance around left sacro iliac joint (multiple fragments)."

**47.3.5** The body was tagged on the left ankle — "unidentified male, **GZ 26**". It was clothed in "**brown-white striped shorts** with black belt **size 32**, a **green-white t-shirt**, **blue-brown-white-green striped boxer shorts** with round defect in left upper buttock."

According to the pathologist, "**information obtained**" was that the deceased was **reportedly** (sic) killed **during operations** by the **security force**" (sic). The cause of death was -

- (1) haemorrhage and shock and,
- (2) gunshot wound to **neck and chest**.

#### **47.3.6 UNIDENTIFIED MALE (GZ 38)**

A post-mortem examination was conducted on this corpse on July 8, 2010. The **estimated** age, "based on x-ray findings and teeth", was put at "between **16 - 19** years". This body too "was **discovered** between 23<sup>rd</sup> and 25<sup>th</sup> May 2010 **at Kingston Public Hospital** by **doctor on duty**." It was removed to Maddens' Funeral Home "on instruction from Police for Post-Mortem examination."

**47.3.7** According to the pathologist's report, the body was that of a "5' 11 (180cm) male, of slim built, with very short curly black scalp hair showing ordinary **right angle trim** on fronto-temporal area on **both sides**. **Intermittently shaved** left eyebrow. No beard and no moustaches." **Three** (3) scars were identified, viz. —

- (a) a **vertical linear scar** 5cm length seen on **left anterior mid arm**,
- (b) a 4cm **linear traverse** (sic) **scar** seen on anterior lateral left mid thigh and
- (c) a 1.5cm **scar** seen on **right mastoid region**.

Post mortem peeling of skin was present "**here and there** on the body."

**47.3.8** There were two (2) **gunshot** wounds —

1. "an **entrance wound** 0.4 x 0.3cm on **right upper anterior abdomen** on epigastrium 54cm below top of head and 2cm from mid line **without** gun powder deposition." The bullet "travelled through the **abdominal cavity**, left lobe of **liver** at the junction with **right** lobe, diaphragm, apex passing through **left lung** fracturing **left** posterior **6<sup>th</sup>** rib and .... fragmented." A **large** "copper jacket **fragment**" (sic) was recovered from the muscles on left lower scapular region and handed over to police. The **base** of the **heart** was found "**completely shredded and pulpified.**" The trajectory of the bullet was "upwards, backwards and to the left."
2. an entrance wound on "**upper anterior chest** 30.5cm below top of head and 2cm from midline **without** gunpowder deposition." The bullet "travelled through **thoracic cavity** fracturing right 1<sup>st</sup> rib passing through upper and lower lobe of right lung." A "**large gaping wound**" was seen in the **right posterior chest muscles** around 6<sup>th</sup> rib measuring 6 x 25cm. Two (2)

**large lead fragments**, one (1) small lead fragment and, two **large** copper fragments recovered from muscles on the right upper posterior chest were “handed over to the police.”

**47.3.9 Three** (3) tags were observed on the body – one (1) on the **left ankle** with the legend “**Ground Zero 38**, unidentified male” and on the **left wrist**, another, “**GZ 38, 25-5-10**. The **right wrist** bore a tag marked “**Ground Zero 38**, unidentified male”. The body was clothed in “**white merino... blue jeans pants and blue belt – ‘TOM CRUISE’ brand** (with) complex crest pattern seen on back pockets. Size 32. The deceased had blue underwear (boxer shorts) ‘FUBJOLD’ brand.” According to the pathologist, “from **information obtained**” this deceased also was “shot and injured during a **shoot out** (sic) between members of the **security forces** and **gunmen** in Tivoli Gardens.”

The cause of death, in the opinion of the pathologist, was -

- (1) haemorrhage and shock and,
- (2) **gunshot wound to abdomen and chest.**

**47.4 UNIDENTIFIED MALE (GZ 41)**

This body was reportedly “**discovered** May 2010 (sic) in the **Coronation Market**, Kingston by **the Police**.” It was subsequently “removed to Madden’s Funeral Home”, on their instructions, for a post-mortem examination to be done. The “**severely charred**”

body was 42 inches (107cm) in length. Both **lower limbs** below the lower one-third of the thigh were found **missing**; so too were the **left upper limb** below the mid forearm, the **right upper limb**, from the lower one-third of the arm and, the cranial vault. **Remnants** of a **penis** were present. The lateral halves of **charred clavicles** were present on both sides. The **thoracic** and **abdominal walls** were **burnt anteriorly** and **anterio-laterally**, exposing their abdominal and thoracic contents, which were **severely charred**.

**47.4.1** The report states that **five (5) copper fragments, one (1) copper jacket fragment** and **three (3) lead fragments**, from the muscles over scapula, were recovered and handed over to Police. A **large copper fragment** was retrieved from the right upper buttock (the muscles under the fractured iliac crest). The fragments were handed over to police. It was **estimated** that the deceased was aged “**above** twenty-five (25) years.”

**47.4.2** The results of an x-ray done on the body were —

(a) “Lower half of skull, neck and upper chest: a **cluster** of fragments seen in left upper chest. Skull upper half **missing**.”

(b) Pelvis and upper thighs: scattered tiny fragments in pelvis.”

**47.4.3** The pathologist found a tag on the right upper arm of these remains labelled “**GZ 41**” and on the left upper arm, “**unid male**,

**burnt body, Darling Street, D. Gayle, Denham Town Police, 25-5-10". No clothing** was seen on the body.

**47.4.4** The pathologist recorded -

"Brain coagulated (sic) and contracted. Soft tissues of neck missing attached (sic) with trachea. On opening the paraboiled (sic) and contracted trachea **no soot is visible. No visible soot** in both main **bronchi**. Trachea is **filled** with **coagulated blood**. Thoracic contents **exposed** and **charred**. Abdominal contents **exposed** and **charred**."

The cause of death was given as "**gunshot wound** to chest and pelvis".

**47.5.5** [The **absence of soot** or of "**visible soot**" may indicate that death occurred **prior** to the corpse becoming charred (**partially burnt**).]

#### **Noteworthy Findings/Observations Of Independent Observer Pathologist**

**47.5.6** **UNIDENTIFIED MALE GZ 7**

Professor Cordner recorded that -

1. he "specifically asked if **fingerprints** had been taken and was assured they had been and had been **checked** against criminal records. **No match** was found."
2. the apparent age of the deceased was "**not assessable** from external examination" and **the eyes** also were "**not assessable**.";

3. the deceased had a short **“goatee type”** beard and **moustache “black cane row planting”** (sic), 10cm in length at back of neck” and “no sideburns”;
4. a “3.5cm almost square raised **keloidal legion**, presumably a scar in central R buttock, 9cm to R of midline”;
5. there was a gunshot **entry wound** to the “L **upper** temporal region, 6.5cm from the top of the head and 10cm from the anterior midline with (a) defect in shape and 0.9 x 0.7cm in size and a corresponding **exit** wound located in the R temporo-parietal region 6cm behind and above the R ear, 13cm from the vertex (sic) midline, 15cm from lateral R eyebrow.” The direction of the fatal projectile was “more or less **across the head** from left to right coursing slightly backwards”;
6. a **femoral** bone sample was retained and that
7. the corpse was partly clothed in a “white heavily blood-stained **merino**,” (with damage associated with “**removal by cutting**,”) **as well as** a “white heavily blood-stained **T shirt**.”

**47.7 UNIDENTIFIED MALE GZ 23**

1. The apparent age was “**not assessable**”; nor were the eyes, because “orbital contents (were) **sunken** and **largely absent**.” There was also “**marked decomposition** with skin slippage and loss over chest, abdomen, thighs and neck.”



2. There was a "**gold coloured**" ear stud in each ear lobe.
3. Signs of **recent injury** included
  - i. "a gunshot **entry** wound to the **head** located in the L mastoid region";
  - ii. a "**crencentic** abrasion 0.2 x 0.5cm between 4 and 8 o'clock";
  - iii. "**complete** disruption of the cranial vault and floor" with haemorrhage not obvious due to **decomposition**;
  - iv. the gunshot **entry wound** was to the "**R lateral back**" with an associated "**crencentic** abrasion 0.5 x 0.4 cm between 4 and 8 o'clock, the path of the bullet causing extensive transverse fracture just inferior to the spinous (sic) of the scapula";
  - v. "a projectile (folded copper jacket) and one other copper fragment" were located in subcutaneous tissue over the scapula having travelled "from **R back** more or less directly upwards and superficially";
  - vi. the projectile, which caused an entry wound to the **R lateral back**, "**nicked** the lower margins of the 8<sup>th</sup> rib, coursing supero-medially through all lobes of the R lung continuing between the oesophagus and the thoracic/cervical space at the base of the neck and **shredded** the structures of the neck";

- vii. there was a “**crescentic** abrasion 0.4 x 0.3 cm between 2 and 4 o'clock” relating to a gunshot entry wound to the **back** of the left upper arm;
- viii. a **femoral** bone sample was retained and,
- ix. that **significant** projectile fragments were recovered and retained.

He commented that “**distinctive teeth**” may enable identification and that although the deceased was “**probably no older than 23/4... some care needs to be taken** with this conclusion.” He associated the **damage** to the white T-shirt with **gunshot** wounds and “**removal by cutting**”.

#### **47.8 UNIDENTIFIED MALE GZ 29**

Professor Cordner -

- 1. estimates the age as “>20 (**probably greater than 23/24**)”,
- 2. described the tattoo as being in the “outer R deltoid region:  
(a) **form of the cross** with a circle replacing the top projection of the ‘t’” and
- 3. states that a **femoral** bone sample was retained.

#### **47.9 UNIDENTIFIED MALE GZ 38**

- 1. Professor Cordner found “**decomposition** established” as well as “patchy epidermal skin loss and **sunken**, largely decomposed **orbital** contents.”

2. He too estimated the age of the deceased at **16 – 19 years** “a conclusion based mainly on **incomplete fusion** of the lower femur.”
3. He noted **unique features** of “**very short** fingernails” which, “appeared **bitten**” and toenails “not cut”.

**47.10 UNIDENTIFIED MALE GZ 41**

Professor Cordner observed -

1. **three** (3) labels affixed to the body, viz. -
  - i. on the “R upper arm: ‘**GZ41**’ ”;
  - ii. on the “L upper arm” -
    - a. “unidentified **male** burn body Darling St D Gayle Denham Town Police 25-5-10”;
    - b. “ ‘**GZ 41** Unidentified **male** burnt remains’ ” and
    - c. “**female** (sic) GZ 41 25-5-10.” (sic)
  - iii. that there was “no **obvious soot** visible on the inner surface” of the “contracted parboiled trachea when opened” but that it was “filled with coagulated blood” and that there was **no soot** in the “R main bronchus”;
  - iv. a **femoral** bone sample and “a **vertebral body**” (sic) were retained;

- v. that the “charred body obliterated ability to assess” whether the (**no fewer than two**) gunshot wounds showed evidence of contact, close-range or intermediate-range discharge of firearms;
- vi. that within “**severe limits** of assessment”, no injuries caused by **stabbing or cutting** were apparent;
- vii. that the burns to the corpse were “**probably** post-mortem”;
- viii. that because there were “no signs of unfused epiphyses”, age should be put at “**probably >24/25 years.**”
- ix. that because they were **incinerated**, the following parts of the remains were found absent –
- **R and L lower limbs** below the lower femurs
  - **below** mid L forearm
  - **below** lower third R humerus
  - front and sides of chest
  - **cranial vault**
  - medial half L and R clavicle
  - anterior abdominal wall and,
  - soft tissues (of the) face and neck
- x. that regarding “dental (oral) characteristics”
- “• L mandible 3 molar teeth present;

- R maxilla: 2 molar teeth present, broken 1<sup>st</sup> premolar;
- L maxilla: 2 complete molar, 3<sup>rd</sup> molar incomplete eruption (and)
- R mandible absent.”

2. These were “**badly charred** incomplete **human** remains” with the “**base of (a) penis** and remnants of **testes** identifiable.”

**47.11** In his opinion, in each of the five cases, the post-mortem examination done by the Government pathologist was “**satisfactory**”.

**MISSING PERSONS**

48. The remaining **four** (4) citizens reported **“missing”** since the ‘incursion’ are **Dale Anthony Davis, Dwayne Edwards, Winston Purrier** and **Vincent Samuels**. All four resided in Tivoli Gardens. All, **when last seen alive**, were in the **custody** or **company** of **State Security personnel** at locations inside that place. They may yet be presumed dead according to law. According to **civilian** witness statements, the circumstances preceding their individual disappearance are as follows -

**Dale Anthony Davis**

- 48.1 Dale Anthony Davis was born on June 13, 1993 to Ms. Dawn Brown.

Dale attended Operation Friendship School for **slow learners**. He was a **student** of **National Hero the Right Excellent Marcus Mosiah Garvey, ON** and read at Liberty Hall. Dale lived with his grand-aunt, Ms. Ivy Grant, aged sixty-plus, at Flat B, Building 15, Seaga Boulevard, Tivoli Gardens. Ms. Grant is a diabetic. She also suffers from heart ailments. Dale was her caregiver. Ms. Grant reported to Ms. Brown that on Tuesday, May 25, 2010, Dale was **“taken ... out of her house** while they (the Security Forces) were doing house to house search. The soldiers also told her that they were taking him to **check him out”**. Despite making checks at various places, including the National Arena detention centre, police stations, Madden’s Funeral Home and after viewing the photographs of deceased persons at the Tivoli Gardens community centre, Dale Davis has **not been seen or heard of** since.

[On July 15, 2011, a **buccal swab** was taken from Ms. Dawn Brown, mother of Dale Davis. A **bloodstained swab** taken from the body of an **“unidentified**

**male**” deceased at “Ground Zero 23” (**GZ 23**) was **compared** with the swab taken from Ms. Brown. **Statistical calculations** by the Government Forensic Science Laboratory to determine **maternity** resulted in a **99.893% probability** that Dawn Brown **cannot be excluded** as being “the **mother** of the source of the blood stain” present on the swab allegedly taken from the body of the “unidentified male” at “Ground Zero 23”. Therefore, according to a DNA report, the missing person, Dale Davis “**cannot be excluded** as being **the source**” of that blood stain.]

### **Dwayne Edwards**

**48.2** Mr. Edwards, a twenty-seven year old janitor, resided at Building 22, Seaga Boulevard, Tivoli Gardens, a tower block. On Monday, May 24, 2012 at about 5:30 p.m., Mr. Edwards and his cousin Mr. **Andre Smith**, were seen **in the company of policemen** in the ground floor lobby of Building 22 where they lived. The police were heard telling both Mr. Edwards and Mr. Smith “to come with them upstairs to **help them search**”. Both men then “**walked up the stairs** with the police officers.” Shortly afterwards, **shots were heard**. At about 6:30 p.m. two policemen were seen **carrying a body** which was **covered by a sheet**. This sheet was recognized by a relative of Mr. Edwards as **the sheet** which had **covered** his bed. A **foot** and **trouser leg** protruded from the sheet. The relative recognized **the leg of grey trousers** and a **foot of the “crepe”** which Mr. Edwards had been wearing at the time he went upstairs with the police officers. About twenty minutes later, policemen brought **another body** downstairs. That body also, was wrapped in a sheet. (The **corpse of Mr. Andre Smith**, previously classified as a “missing person” and who was **not seen alive** after ascending the stairs, **has now been positively identified** by DNA.)

### Winston Purrier and Vincent Samuels

**48.3** On Monday 24<sup>th</sup> May 2012, Mr. Keith Patterson was at the house of his two grandsons, Winston Purrier, a “farmhand” and Vincent Samuels, a gardener. Their home was situated at McKenzie Drive, Tivoli Gardens. Mr. Patterson, aged seventy-three, is **practically blind**. He can “only ... barely glimpse a little from the left eye”. He **heard** members of the security forces questioning his grandsons (aged eighteen, twenty-three and twenty-five years respectively) at the home and, **accusing** them of supporting “**Dudus**”. He then heard about **four loud explosions** and screaming. Later he was told by a neighbour that “soldiers shot and murdered my two grandsons (Mr. Purrier and Mr. Samuels) and brutally”. **Neither** of the two has been **seen or heard from** since.

**48.4** These cases of missing persons may be among the five (5) **unidentified male corpses** buried in **paupers’ graves** dug at the May Pen cemetery.



**MORE ON DETAINEES**

**49.** Two members of the Tivoli Gardens **football team** were among the over **one thousand (1000)** detainees. One of them, **(TG 1)** participated in Jamaica's 1998 World Cup football qualifiers. The other, **(TG 2)** is of a later generation. The experiences they relate, are **not** untypical of allegations made by detainees.

**49.1** **TG 1** alleges that –

On **May, 24**, at the height of the 'incursion', he was on his way to **retrieve his cellular phone** which was being charged, when a family friend anxiously dragged him into her house for safety. He had been in her house for about two hours when he heard a knock on the door. After the door was opened, a soldier entered and started to carry out a search. Another soldier who was **masked** had a gun in one hand and a **machete** in the other, he said, and demanded that he come outside.

**49.2** He alleges further that when he reached the door "to go outside, the soldier (who) came with the machete **pushed the machete** in my face, he **wanted to put it in my throat. I held his hand** to prevent the machete from **going into my throat** and I fell to the ground." **TG 1** says that he shouted to the soldier who was inside to come outside. That soldier "heard" and said to the other "**no man nuh kill him, him a baller.**" He was **slapped four times** in his head with the machete.

**49.3** He was taken out into the yard of the premises and made to kneel on the ground. A soldier asked him "**weh yu a do here — ?**" (calling him by surname.) He replied "a mi phone me did a try go fah cause **Mr. Seaga** suppose fi call me." Another soldier interposed: "**him deh yah fi Dudus,**

**him should a gone like the res' a baller dem."** He alleges further that the masked soldier kicked him and used "the gun nozzle lick me in my ribs". Another said: **"the whole a unno a go dead off"**. Yet another soldier riding on a passing jeep asked his fellows who were in the yard: **"weh unno a do wid so much live bodies ?"** The soldier who had searched the house comforted him: **"Jus' easy man. Mi a stay wid unno. Mi nah mek dem kill yu."**

**49.4** Later, with his hands bound, he was herded along with others to the Tivoli Gardens Comprehensive High School campus. Along the way he asked one of the soldiers guarding him "weh unno a do dis fah ?" Came the reply: **"a di orders weh we get. A kill den search so unno must tank God fi de soldier weh come inna di house."**

**49.5** Late in the day, he was taken to the old Seprod compound "placed in an open area with gravel on the ground and **bird filth** on the ground." He was **"beaten by the police** who said **we ago dead** same way". About two o'clock next morning he was fed sliced bread and bottled water. With his hands still bound, he told a policeman that he wanted to urinate. He alleges that the reply was: **"a nuh your pants, piss ina it"**. Because he had no choice **"I had to pee same place."** At about 11:00 a.m. later that morning, he was "given a tea that tasted like Milo" and at about mid-day, he was returned to an open area where he had been placed the evening before. Later still, he was photographed and other personal details recorded.

**49.6** **TG 1** says that he remained in that open area until about 6:30 p.m. when it started to rain. He identified himself to a policeman who had bawled out his name and who asked him: **"who is the next baller ?"**. Thereupon, he identified **TG 2** and along with him, soon after 7:00 p.m.,

was "taken in an open back police van along with **other civilians** and seven policemen to **Vale Royal** as **instructed** by Mr. Seaga."

**49.7**     **TG 2** says that -

He was at home in Tivoli Gardens on May 24 when he "heard a knocking on the door and a voice saying '**unno come out of the house in five seconds with unno hand on unno head**' ". All the occupants did and were promptly arrested. Later that night, soldiers and policemen "**just start beat the whole of we wid dem gun. Them box me in my face and kick me up saying a dead mi fi dead, 'bout me a baller.**" Eventually, they were bussed to the Seprod compound where he encountered **TG 1** in an open area, in the company of other detainees. They remained there up until about 2:00 a.m. next morning when they were moved into a zinc-roofed building to sleep. "**It was all covered in pidgin (sic) droppings. The building had a zinc roof. We had to sleep on the bare dirt.**" On Tuesday May, 25, the detainees were fed and their pictures taken. Upon his release in the night, he elected to go to Portmore "due to the fact that (he) was **afraid to go home** in Tivoli because bare police and soldier was over there". He was transported to a bus stop in Waterford, St. Catherine where he was picked up by his sister. He remained at his sister's until Sunday, May 30 when, because of information he had received, he returned home to find "**the whole of my clothes thrown down on the ground, my door mash up and the glass them break out.**" He continued: "About 4 weeks later, in June, about 6 o'clock in the morning, the police came beating down the door. I showed them my picture and explain that **Mr. Seaga** had called the first time I was detained and **as a result I was released** without **detention papers**. They said they **did not care 'bout that**. I was taken to Mobile Reserve. My picture and finger print was taken. I was released in the

night after I explain that **I did not want to miss training**. Richie, a **policeman I know**, took me home and at that time **I was given detention papers**" (which indicated that he had been formally released after "processing".)

**Complaints re malicious destruction of/damage to property;  
assault, looting etc.**

- 50.0.0** The categories of complaint under investigation are listed at p.4 *ante*. The complaints **suggest** that in the purported exercise of Emergency powers, the State Security Forces —
- i. subjected the civilians they encountered to indiscriminate **rough handling**;
  - ii. conducted a search for weapons, ammunition or other contraband which "**left no stone unturned**", particularly in **Tivoli Gardens**;
  - iii. were **hardly concerned** or **sensitive** about **destruction** of or **damage** to real or personal property whilst carrying out the searches which, amounted to a **thorough** "shake-down";
  - iv. required the occupants of houses and apartments to evacuate temporarily, **under guard**, whilst the searches were conducted; that in their **absence** or that of other residents, who for various reasons had fled from their residences (**Tivoli Gardens in particular**), members of those Forces **looted** cash and other valuables, e.g. jewellery and small

electronic items, treating such property as the “**spoils of war**” and further that,

- v. there was a noticeable **lack of supervision**, leaving the troops and rank and file policemen to operate with **carefree abandon**, thereby —

demonstrating the axiomatic truth that “when the **ordinary laws** framed for the suppression of wrong-doing and the protection of the well-doer, are, for a time **suspended**” the circumstances justifying their suspension are “almost sure to ... **excite** both fear and passion; and some **injustice**” and that “some **cruelties** will be **certain** at such times to be **perpetrated.**” (*See pp. 211-12 post.*)

The following nine (9) complaints, randomly selected, are generally illustrative. (See too the **dormant** complaint made re the Tivoli Gardens marching band and drill team — *pp. 4-5 ante and 200 post.*)

#### 50.1.0

#### Complaint No. 1

A restaurant cashier alleges that on May 18, 2010 she locked up her home in Tivoli Gardens and went to a rural St. Ann district to visit her mother. On May 22, 2010, as tension heightened, her brother joined her there. She returned home on May 29, 2010 and found her front door split into two pieces. The glass at the top of the door was shattered. She entered the house and found it ransacked. Clothing was thrown all over the floor and furniture removed from their original position. She discovered several gunshot holes in the freezer

section of her refrigerator and one in the lower section of it. Her washing machine also was punctured by gunshot holes to the back of it. A glass table was shattered into pieces; so too the mirror of her dresser. Her television set was damaged. There were also gunshot holes in three sets of metal louvre blades. An entire section of the wall at the back of her apartment was riddled with bullet holes.

**50.1.2 N.B.** *Occupation of Tivoli Gardens by State Security Forces practically began on the night of May 23, 2010. It may be answered or argued that persons other than members of those Forces had the opportunity, during the absence of complainants, to have caused the damage and/or loss complained of. But those grievances have been investigated and considered in light of the multitude of similar complaints of abuse made against members of those Forces and which purport to have been witnessed and are corroborated by others. This category of complaints suggest a pattern of misconduct by the Forces.*

**50.1.3****Complaint #58**

The complainant was a General Helper employed to the Kingston and St. Andrew Corporation. On May 24, 2010 she was at home with her son, aged 29, when three police officers came and “tear off (her) front door” and asked her “who and yu in the house?”. Before she could answer, the police grabbed her son and pulled him downstairs. She saw a soldier use a stick to hit her son across the face. Soldiers pulled him into a room. She heard him crying out for “Murder!”

One of the policemen returned to her apartment and just started to “fling down” her things on the floor. She alleges that the police threw her electric fan, blender, wardrobe and chest of drawers down on the floor causing severe damage to them. They also tore down a board partition.

**50.1.4****Complaint #158**

The complainant is a **disabled** cosmetologist. She lived alone. She walks with the aid of two metal crutches. She alleges that on May 24, 2010 she left her house and went to her neighbour's, because she was afraid. Whilst there, police officers and soldiers entered, confiscated cellular phones and ordered all present to sit on the ground. She could not do so because of her disability. Shortly thereafter, all females were ordered out of the house. Being fearful for her safety, she said, she did not return home but went to stay with a friend who lived on Derrick Path. She alleges that on Thursday, May 27, 2010 when she went back home, her entire house was in disarray. All her hair products were smashed and mixed with cement and grout, on the floor. The dining room and her bedroom were “covered in blood”. There was a trail of blood leading from the dining room to the verandah. Her bed and mattress were totally destroyed and covered in blood. There were several bloody spots on her bedroom wall. All the tiles in her bathroom had been dug from the wall and littered the floor. Her toilet tank cover was broken. Her houseware, clothing, utensils and other personal belongings were strewn all over. The sum of One Hundred and Fifty-Two Thousand Dollars (\$152,000.00) in savings was missing from a chest of drawers; stolen.

**50.1.5****Complaint No. 290A**

The Complainant is a twenty-one year-old Rastafarian higgler who resides in Tivoli Gardens. He lives with his partner, their one-year-old son and three step-

daughters, ranging in age from four to eleven years.

**50.1.6** On Monday May 24, 2010, he was at home with his family at about midday when he began to hear gun shots.

At approximately 3.00 p.m., he heard a voice shouting from the ground floor of the multi storey building: "Uno come out! Come out and throw down the gun dem!" He peeped through a window and saw soldiers dressed in army green uniforms, and bearing high powered weapons. "Their faces had on war paint and handkerchief around dem mouth, like a cowboy thing", he says. He opened his door but as he pushed open a metal grill he was fired on by soldiers from downstairs. He cried out " how uno a call we out and wan kill me? Murder! Murder!!".

**50.1.7** Fearing for his life, the complainant says he rushed back into his house.

**50.1.8** Thereafter, several gun shots were fired. The soldiers shouted "If uno don't come out we ago **bomb uno out!**" The complainant's partner screamed out: "me a come out! A mi and mi pickney dem! Don't fire; no shoot!" The complainant came out with hands on head after his partner and children had exited the house. They were all searched and their cellular telephones confiscated. They were placed in an apartment with other residents. Eventually males were separated from females and children.

**50.1.9** He was taken to an apartment on the building with approximately twenty other men. Whilst being made to lie on his stomach, face down and shirtless, he got burnt on his right hand and chest "from the spen [sic] shells fired by the soldiers who were **targeting** men downstairs." During the night, he was verbally abused by a soldier who struck him on the temple with his rifle butt.



- 50.2.0** Next day, the complainant and the other men were removed from the apartment to Justine Plaza and placed under a guard of five policemen, all armed with rifles. One of them “came from behind and kicked my legs and I fell on the ground and injured my left elbow and ribs.” Another policeman fired several shots then shouted “Run! Uno run!” He did not because “I know if I run they would shoot us.”
- 50.2.1.** The complainant and others were ordered to clear road blocks on Spanish Town Road and to pick up dead bodies. He “picked up the first dead body at Mr. Myers business place and took it to Mother White bridge and placed it on a **white truck with pure dead people.**” He had returned to Justine Plaza after clearing road blocks when a soldier came up to him and said “him no like rasta, uno a battyman and everything ungodly. He then took out a **white pill** and say ‘**this no make me feel no pain**’ and then took out a Rambo knife and proceeded to **cut off my locks.**”
- 50.2.2** The complainant has been a Rastafarian for the past seven years. He states: “After dem trim me I felt very angered, depressed; my knees felt weak and I wanted to cry. For a moment I wanted to **lash out and hit him**, but if I did dem wud a kill me and me have my youth fi live for.”
- 50.2.3** Later he and other men were ordered to board a white Coaster Police bus. While entering, a policeman struck him on his right knee with a baton. “The bus was filled with (other male detainees.) Some were sitting in other man lap. Nobody wanted to stay behind for fear of being killed by the security forces.”
- 50.2.4** They were taken to Seprod and he was made to “walk on (his) knees for about an hour.” He was kicked in his right side and region of the kidneys by a policeman, making him writhe in pain.

**50.2.5** It started to rain. He was then taken to “an old run-down, leaking building that had a foul odour.” There he was offered no food; only water. Later he was transferred to another building which did not leak. He slept on the “cold concrete” that night.

**50.2.6** The following day he was taken to the National Arena where he was fingerprinted and photographed. He was served a cooked meal and was provided with a bed and bathroom facilities. Two days later, at 4.00 a.m., he was released and given a detention certificate.

### **50.3.0**

#### **Complaint # 348.**

The complainant is a thirty-nine year-old chef who resided at Building 5, Sangster Crescent, Tivoli Gardens. On May 25, 2010 at about 1:30 p.m., she was at home with her children and other family members, huddling in fear, she says, because “loud explosions sounding like **bombs** and gunshots were heard in the area.” According to her, “the door was opened and I heard soldiers who were seen before dressed in uniform with long guns, shouting **Residents of Building No. 5 come downstairs!**” She alleges that, “two soldiers came into the house and stand on the chairs and began to **beat my brother and the rest of the men** on their heads with the butt of their guns. The soldiers asked: **“Unoo never hear say fi left Tivoli! ?. We a go kill all of you in yah!”** She said soldiers damaged the windows by hitting them with their gun butts saying, **“mek unoo Prime Minister buy them back.”**

**50.3.1** A total of fifteen cellular phones and a number of cameras were confiscated. None of them has been returned.

**50.3.2** The occupants were ordered outside to sit on the ground whilst the flat was searched. They were allowed back in after 7.00 p.m. and found the place

thoroughly ransacked. Pieces of furniture were maliciously damaged, for no apparent reason. Loss and damage was estimated at \$320,000.00.

#### 50.4.0

#### Complaint #484.

The complainant is a twenty-eight year-old plumber and rastafarian who resides at McKenzie Drive, Tivoli Gardens, Kingston 14.

**50.4.1** According to him, on Tuesday May 25, 2010, he was taken away from his mother's house by members of the Security Forces. While being taken away, he alleges, **"a police officer slapped me twice with a machete across my back close to my side; my skin was not cut but my skin was wailed."** He was taken inside the quadrangle area of the Tivoli Gardens community centre and put to lie on his belly. Sometime later, he was moved to the Seprod compound. Along the way, a soldier used his helmet to strike him on the head.

**50.4.2** The complainant alleges that while at Seprod, he "was made to **sleep on the ground** which got wet by the rains which fell overnight." He continued: **"While at Seprod I was kicked in my mouth and my two front teeth are shaking. I was kicked because the soldiers found out that I had a cell phone after they seized all the other cell phones."** Next day, he was taken to the National Arena where he was detained up until Friday, May 28, 2010. His Nokia camera phone has not been returned to him.

**50.4.3** During his detention he ate only bread and drank water. He could not eat the meat provided, due to his religious beliefs.

**50.4.4** Upon his release, he went to stay with a cousin at East Road, Waltham Park, Kingston 11, for some five days, returning to Tivoli on June 3. He was denied entry to his house. He returned again next day, this time being allowed to enter. Thereupon, he discovered that "the door had been cut out in the region of the

lock.” The ceiling had been ripped out. The speaker boxes of his component set had been cut open. A radio had been pulled apart. A television set was also damaged. A settee and mattress were cut open. A “brand new” pair of Timberland shoes was missing.

### **50.5.0 Complaint #516**

The complainant is a thirty-three year-old hairdresser who operated her business from her home at Building 21, Seaga Boulevard, Tivoli Gardens Kingston 14. She also ran a stall in the Coronation Market.

**50.5.1** On May 24, 2010 at about 4.00 p.m., she was sitting on a settee at home with her three-year-old daughter when her door **“fly in and then shattered into pieces.”** About seven soldiers now stood at the entrance door. “They asked me several times who I was home with”, she says. “I responded telling them ‘no one’. Shortly after, a soldier said **‘if me eva cum si nuh man in deh, yu a go si weh mi du wid yuh’** ”. They forcefully ordered her to go to the first floor of the tower block.

**50.5.2** According to the complainant, she, the toddler and twelve other residents were detained by soldiers in another flat for three days under heavy guard. On the third day, at her request, she was escorted back to her home by soldiers to fetch her electric fan.

**50.5.3** On entry, she found furniture and other items smashed or badly damaged. She described the scene and gave details of loss and damage suffered during her absence:

**50.5.4** A three-piece glass dining set lay shattered on the floor. A flat- screen television set had two gunshot holes in it. Another television set connected to a DVD player was also damaged. So too was a chest of drawers, all drawers having

been taken out and broken into pieces, leaving only the frame. All three mirrors of a dresser had been smashed by gunshot.

**50.5.5** Hair products used in her hair-dressing business were also shot up. Items used for grooming her baby were destroyed and strewn on the floor. Clothing belonging to her daughter, her “baby father”, two other children and herself were also shot up. A four burner gas stove was also damaged by gunfire.

**50.5.6** There were a number of items missing including a Sony digital camera — “a gift from overseas” which had been stored in the dresser. A 17” laptop computer belonging to her fourteen-year-old son was also missing. So too were three cellular phones — a Blackberry, a Samsung and a Motorola brand. Savings of \$88,000.00, in five-hundred and one-thousand dollar denominations was looted from a dresser drawer. A saving pan with coins was also missing.

**50.5.7** The metal window of her bedroom and bathroom, the walls of her bedroom, bathroom, kitchen and living room were shot up. A face basin was broken into several pieces apparently by gunshots. The lid and bowl of her toilet were also damaged, apparently by similar means.

**50.5.8** There were a number of other items missing. The total cost of replacing lost or damaged items is estimated at \$920,000.00.

**50.5.9** The complainant alleges also that she suffered loss estimated at \$220,000.00, as a result of the fire at the Coronation Market. The fire completely destroyed her stock of escallion, onions, garlic, pepper, tomatoes and thyme, she says.

## **50.6**

### **Complaint # 559**

The complainant is a small businesswoman who operated a “registered” game shop.

**50.6.1** She alleges that along with her children, she left their Tivoli Gardens home securely locked up on May 17, 2010 to stay with an uncle in rural St. Andrew, because she feared for their safety. She returned home on June 2, 2010 and found her front door “kicked” off its hinges. There was evidence of a boot mark on the door. Upon entering, she saw all the family’s clothes littering the floor. Her refrigerator door was twisted and the handle of the freezer section broken off and lying on the floor. As a result, the refrigerator door could not be closed. All food items were now spoilt. Four panes in the “storm window” of her children’s rooms were badly damaged. All her settee cushions had been ripped open, apparently by a sharp instrument.

**50.6.3** There were several items of personal property missing, including her component set, liquor, cologne, a digital camera and jewellery.

**50.6.4** She had secured all contents of the game shop before leaving on May 17, 2010. However, on her return, she found that that entrance door also had been forced open. The coin boxes for each game had been prised open and the contents stolen. All the games along with their hard-drives were missing, leaving only the cabinets in which they had been stored, she says.

**50.7**

**Complaint #898**

The complainant’s wife was admitted to the Kingston Public Hospital in early February 2010. Since that time their home in Tivoli Gardens had remained locked-up. He alleges however, that upon returning home on June 18, 2010 and on opening his door he saw a glass table smashed. So too were his bedroom and kitchen windows and dresser. His 15 cubic ft. refrigerator had been shot up. A plyboard partition in the house was also destroyed.

## BSI'S CRIMINAL INVESTIGATIONS

**51.0** Criminal investigations into allegations of atrocities committed during the 'incursion', or 'siege' made against members of the JCF and the JDF, have been conducted by the BSI which was the JCF Division charged with investigation of matters which now properly come under the purview of INDECOM. The BSI functions are now subsumed in the INDECOM remit.

**51.1** The BSI collected witness statements from JCF personnel and civilians. The former detail pre-'incursion' meetings to settle matters relating to strategic and tactical plans both for the arrest/capture of Christopher Coke and taking control of Tivoli Gardens, held between the JCF High Command and senior officers of the JDF. There are accounts, mainly from low-ranking policemen (ISCF personnel in particular), relating hostile encounters with illegal snipers and the origin of the fire which severely damaged the Coronation market. The civilians narrated accounts of Coke's reputation as **crime boss** and his prior **criminal activities** in West Kingston. Their accounts also relate Coke's movements on May 24, in the company of **illegally armed men**, although he himself is said to have carried no weapon.

### **52.0.0 The JDF and its stance on the OPD/BSI investigations**

**52.1.0** To a considerable degree, the **delimiting** provisions of the (Interim) Act have operated as a **check** on the extent of the Public

Defender's 'Tivoli' investigations. By reason of the provisions of **S.13(2)(b)(ii)**, those investigations have been greatly impacted by an *ipse dixit* of the JDF which may be summarized as follows:

At all material times the Government required that its members be deployed in support of the JCF and its auxiliaries in—

- (a) **apprehending** the fugitive Coke, and
- (b) wresting control of West Kingston (in particular **Tivoli Gardens** and **its environs**), from armed combatants or other unlawful elements;
- (c) that it **got the job done**, sustaining **one** fatality, personal injuries and damage to its materiel but, **did no wrong**;
- (d) that in fact, (very serious allegations to the contrary notwithstanding,) its manoeuvres were **surgical** and **antiseptic**.

**52.1.1.** In both **West Kingston** and, the assault on the home of Mr. Keith Clarke, operations were **spearheaded** by the JDF. For operational purposes, JCF and ISCF personnel were absorbed or integrated into the JDF ranks. Regarding the former operations, a JDF catalogue of its **lone fatality**, injuries sustained by army personnel and damage to equipment is attached as **Appendix 12**.



**[N.B. —**

1. The circumstances of the soldier's death, the infringement of his **right to life** and the Government's **obligations** to him call to mind the *obiter dicta* in a decided case — *R. (on the application of Gentle) & Anr. v. The Prime Minister & Ors.* (2008) (UKHL) 20; (2008) 1 AC 1356; (2008) 3 All ER 1 (concerning deployment of British troops in the Iraq war) viz.—

“ Those who **serve** in the **armed forces** do so upon the knowledge that they may be called upon to **risk their lives** in the defence of their country or the country's **legitimate interests** and that the ... State's duty to **protect military personnel** should be viewed in light of the **characteristics of military life**, the nature of the activities that they are required to perform and of the **risks** to which they give rise.” *per* Lord Hope.]

2. The JDF stance is to be **contrasted**, *inter alia*, with
  - (a) its **attitude** regarding **similar investigations** in respect of earlier operations in the said same **Tivoli Gardens (of 1997 and 2001)** and/or
  - (b) with respect to the **Keith Clarke operation**, as it may be called.

**In those instances, “witness” statements were or have been collected by the BSI from military personnel involved. In fact, according to the BSI, the JDF had always cooperated fully, in relation to its investigation of cases of killings in which the JDF was implicated.]**

- 52.1.2** In the result, the JDF was not at all eagerly forthcoming in relation to endeavours **by the BSI** (to say nothing of the Public Defender) to have its members **answer** questions or provide **accounts** of the execution of its role in **the West Kingston** operations; in particular the proximate circumstances of the killing of **seventy-five (75) civilians**.
- 52.1.3** The JDF has neglected or refused to comply with requests or entreaties from the BSI to cooperate with its investigations. It was implacable in its insistence that that cooperation be “**evidence-driven**”: that it must **first be informed** of the **crimes** and/or other **unlawful** action of which its members are **accused** or are **suspected**, before any or any due compliance. Initially, it refused or neglected to deliver up weapons as and when required for the purpose of ballistic testing.
- 52.1.4** That intransigent JDF posture is illustrated by a letter dated January 10, 2011 to the BSI from Lieutenant Colonel Patrick A. Cole (for the Chief of Defence Staff,) a true copy of which is attached hereto as **Appendix 13**. The letter **purported** to express a **readiness** “to put mechanisms in place to ensure that the **sterling cooperation** which ... existed between the BSI and the JDF is **continued**.” Nevertheless, it persisted with requests for “**specifics of any allegation** made against members of the JDF, so that these allegations may be noted and appropriate (sic) the

assistance given to the BSI in regards (sic) to their investigation of any allegation made.” The letter **repeated** an earlier “request for the BSI to state the following:

- a. ...**the allegations** made against members of the JDF;
- b. **the crime** being investigated;
- c. **the place** it is alleged to be committed;
- d. and also the **date** and **time** of the allegation.”

**52.1.5** This letter elicited a prompt response to the Chief of Defence Staff from ACP Gauze, then the Officer Commanding the BSI, (attached hereto as **Appendix 14.**) The ACP’s letter laid out the basis of the BSI investigations and the necessity for forensic ballistic examination of relevant JDF weapons. It directly addressed the JDF’s “**evidence-driven**” paradigm thusly:

“... the position taken by **the BSI** is that in execution of (its) mandate, it is **entitled** to have **access** to any and **all firearms alleged** or **suspected to have been used** in the course of any operation, **particularly** where **death results**, for ballistic **examination and comparison** in order to **determine** whether or not **bullets discharged** from any **such firearms caused** or **contributed to the death** of anyone. In these circumstances it is our view that for these purposes our **requisition** for access to relevant JDF weapons is **sufficiently**, ‘evidence-driven’, if, as happens to be the case, **there are allegations**, or **reasonable suspicion** exist (sic) that bullets discharged by JDF personnel may either have proven fatal or otherwise inflicted injury.

Moreover, addressing the content of (**Appendix 13** ), we consider it **quite adequate** for the legitimate purpose of our investigation to inform you that the allegations we are investigating against members of the JDF as well as the JCF is (sic) that **bullets discharged** by them on and in the week of May 23, 2010 **in Western Kingston** may have **caused** or **contributed** to the **death** of persons. The ballistic examination and comparison will of course, engaged (sic) bullets or fragments recovered from the corpses of the deceased during the autopsies as wells (sic) as spent shells recovered from various scenes. It is **absolutely essential** therefore that the firearm examiners be **allowed access** to such firearms as may be described by them at the conclusion of phase one (1) of the **agreed** Protocol for the Examination of the Tivoli (**and related**) Events.”

**52.1.6** The BSI’s position was reinforced in another letter to the Chief of Defence Staff of **January 14, 2011 (Appendix 15)** which reminded him that –

“The protocol for the examination of the weapons was **already agreed** on by the Ministry of National Security and the concerned parties”

who, certainly included the JDF.

**52.1.7** That BSI letter (**Appendix 15** ), overtook another from Lieutenant Colonel Cole to ACP Gauze, **hand-dated** January 13, 2011 (**Appendix 16** ) and received **after delivery** of **Appendix 15** which, (in all the circumstances) **curiously** suggested that the–

“... **tone** of (the letter of January 11) seems to indicate that you might have **misinterpreted** the **tenor** of the letter dated January 10, 2011 to mean that the JDF **was unwilling to cooperate** in this matter. This is to categorically state that this is **not** the case.”

plainly evidencing, as it did, a shift, softening or wavering in the JDF posture.

**52.1.8** That letter (**Appendix 16**), it will be observed, actually **now** suggested a **procedure** for examination of JDF weapons.

**52.1.9** Quite notably also, in the letter of January 10 (**Appendix 13** ) the JDF had maintained its months-long **hesitation** or **refusal** to furnish the BSI with “**the names of all JDF persons** involved in the (West Kingston ) operation” contending that -

“...because of the nature of this operation **the entire Force** was involved in the operation. To fulfil (the BSI's) request would be to send the **entire** list of **personnel** in the **JDF**. We are accepting the fact that this could not have been your intention so therefore we are requesting that this request be **more specific**.”

**52.2.1** But then intriguingly, in his letter of January 13 (**Appendix 16**) suggesting the ballistics examination regime, Lieutenant Colonel Cole stated -

“To achieve this aim (of ballistic testing of JDF weapons) I have affixed to this letter a list of the **soldiers who fired** their weapons and **the serial numbers** of the weapons so used.”

**52.2.2** In the circumstances therefore and, because of the vacillation exhibited, it becomes highly desirable that the JDF's *bona fides*, in relation to the **list eventually handed over**, *inter alia*, should be **rigorously** tested.

**52.2.3** Two other **material** issues -

- i. the use by the JDF of **mortar ordnance** and,
- ii. the **tactical assistance** afforded by overflights of United States of America Department of Homeland Security **surveillance aircraft**

have left the JDF **mired in controversy**, due largely to **conflicting** official responses.

#### 52.2.4 i. **The mortar ordnance**

The mortar is an **indirect** fire weapon which fires explosive projectiles (known as "**mortar bombs**") at low velocities, short ranges and high-arcing ballistic trajectories. It is typically muzzle-loading.

52.2.5 Initially, public pronouncements by the JDF in reply to **insistent allegations** by Tivoli citizens that "**bombs**" were trained on the community, were less than frank or, obfuscatory.

52.2.6 In the face of widely publicized allegations by residents of Tivoli Gardens that the community had been "bombed", no **candid** admissions were made by the JDF. In fact, a high-ranking military spokesman has been reported as having declared publicly that he was "**unaware**" of it.

52.2.7 But following upon publication of news reports that based upon facts coming to light through USA information access facilities, official USA sources had **confirmed** that the JDF had indeed fired mortars, **those admissions** came in early **June, 2012**. In a Press

Release dated June 7, 2012 under the rubric "JDF **CLARIFIES U.S. CABLE REPORT**" (**Appendix 17**) the Military confirmed the use of mortars. The release continued –

"Mortar rounds were **fired into open areas** as part of a **diversion**. At **no time** were **persons** or **buildings** targeted. This **diversionary tactic** created **confusion** and **disorientation** among the **entrenched gunmen**, and allowed the JDF to use bulldozers to **breach** the barricades and enter the community.

The mortar rounds that were fired were **well targeted and directed** and the **JDF is satisfied** that the **use of these munitions** was not only **accurate** and **effective**, but **justified** and **necessary** in order to achieve the **operational objectives.**"

According to the JDF, the Press statement was issued –

"...given the **potential for speculation** and **misunderstanding** surrounding this matter ..."

**52.2.8** In view of this surprising development, the Public Defender, (following up on earlier telephone conversations) wrote to Brigadier Rocky Meade, Deputy Chief of Defence Staff by letter dated August 23, 2012 (**Appendix 18**) formally requesting that he provide information both in relation to the West Kingston 'incursion' and the killing of Mr. Keith Clarke regarding -

- a. "... precisely what were **the types of incendiary** devices (mortars or **other**) discharged, as well as the tactical nature, targets and strategic objectives of their discharge" (**Appendix 18**, p.2, **sub-para. iii.**) and,

b. “the reason why discharge of these devices was thought to be **appropriate.**” (**Appendix 18**, p.2, **sub-para. iv.**)

**52.2.9** A JDF response came through Captain C. A. Crooks (for the Chief of Defence Staff) in a letter dated **August 28, 2012 (Appendix 19.)** Not foregoing its **ubiquitous** reliance on the (Interim) Act, **S.13(2)(b)(ii)** and, after noting, **gratuitously**, that “the questions in your letter have **already been addressed in the public domain**”, the replies to the requests at **a.** and **b.** above were stated as follows –

Re. **a.** :

“The types of **incendiary** devices that were used were **mortars**. These mortars were used as a **diversionary** tactic with the **aim** of **confusing** the highly armed gunmen who were **targeting the troops** including the manning of **barricades** which were **erected to prevent** the security forces from **entering** Tivoli Gardens. **The use** of these mortars was **supervised** by **highly trained** and **competent** JDF personnel who **ensured** that the mortars were targeted at **open areas**, thus minimizing the possibility of casualties.” and,

Re. **b.** :

“The use of these devices was **thought** to be **appropriate** based on the **information** which suggested that there were **hundreds of armed gunmen** in **West Kingston** prior to the entry of the security forces. In addition to **distracting** and **creating confusion** among these **highly armed gunmen**, it minimized **the potential** for **loss of life** among the **civilians** and **also** the



**security forces** who were facing **direct gun fire** and the very real possibility of being **ambushed** at rigged barricades.”

**52.3.0** Again, it will be observed that **Appendix 19** alleges that the “armed gunmen” were in “**West Kingston**”, **not** the particular **locales** of **Tivoli Gardens** and **Rasta City** where, **only**, the mortar munitions were targeted; undoubtedly.

**52.3.1** (Cf. the “**information**” regarding the mass of “**hundreds of armed gunmen** in West Kingston” (**Appendix 19**) and the “**intelligence**” which “indicated that there were significant numbers of heavily armed gunmen massing **inside** the community” of Tivoli Gardens (**Appendix 17**) and, regarding the whereabouts of ‘**Dudus**’, leading to the assault on the **Keith Clarke** household. The former expression is comparatively **banal** whilst the latter is more imposing and implies or suggests a high level of **sophistication**. But how **reliable** was the **substance of either** ?.)

**52.3.2** As regards the killing of **Mr. Clarke**, the letter stated that the issue of the use of mortar bombs did not “relate to” his death.

**52.3.3** But the veracity of the JDF’s assertions that the mortar rounds —

- i. were “fired into **open areas**”;
- ii. were “**well targeted and directed**” and,
- iii. that “their use was **accurate** and effective, ... **justified** and **necessary**”

may be challenged on the basis of irrefutable evidence of the seriously deleterious discharge of ordnance described by Tivoli residents as “**bombs**”.

**52.3.4** In particular —

- i. at least one related killing is **directly attributable** to the discharge of an explosive device resulting (according to **autopsy findings**) in —
  - a. thirteen **penetrating lacerations**, including one “rectangular shaped penetrating laceration 1.5 cm x 2.5 cm seen on top of (the) fronto-parietal region...”, the projectile **penetrating** “the underlying tissues, **perforating** the skull cap” and lodging on the “dura on left parietal lobe.”
  - b. haemorrhage and shock and,
  - c. a perforating **shrapnel** wound to the abdomen;  
(**No evidence** of **gunshot trauma** was reported by the pathologists in relation to this killing)
- ii. autopsy reports also disclose injuries which may have been inflicted to the bodies of **three (3)** other related deceased by exploding rounds;
- iii. one survivor “**felt a force lift (her) into the air**” rendering her unconscious;

- iv. a number of dwelling houses (and all contents) was **completely destroyed** by fire **sparked** by **mortar rounds**, (members of the Security Forces allegedly dismissing appeals to summon the Fire Brigade) and, a coop of tame pigeons standing **inside** a **yard**, was completely destroyed, killing birds owned by an occupier who had fled as the 'incursion' drew near;
- v. the "**well targeted and directed**" aim of mortar rounds discharged into "**open areas**" included a **narrow cul de sac** in which an expensive high-end motor truck reputedly the property of **Christopher Coke** was burnt down to the frame;
- vi. the related killing, burning of the houses, pigeon coop and vehicle, all took place in close proximity, some distance **removed** from the barricaded **entrances** to Tivoli Gardens and,
- vii. a particular area of Levy Path/Chang Avenue, i.e. deep **inside** Tivoli Gardens and in close proximity to a reputed **residence** of **Christopher Coke**, was the area or vicinity at which **mortar bombs** were **targeted, mainly**; that the high-end motor vehicle was burnt to the frame; that the related killing at i. above took place and that four houses and a small grocery shop were burnt to their skeletal concrete walls. (Was that area specifically **targeted** by

reason of “**information**” gleaned ?. Or by some species of “**intelligence**” ?.)

**52.3.5** (A catalogue of persons and property impacted by **explosive** or **incendiary** devices during the Tivoli ‘incursion’/siege is attached as **Appendix 11** and a selection of photographs as **Appendix 39**.)

**52.3.6** The JDF in an **unsolicited** follow up letter dated **August 31, 2012** (**Appendix 20**) contradicted its own response at **a.** above, **now claiming** that the type of mortar rounds discharged “were **explosive** and **not incendiary**.” Be it noted however, that the fires reported (as regards which there is abundant evidence) were **ignited by mortar bombs**.

The controversy surrounding ordnance use is fuelled further by allegations of “**something**” falling from the sky “followed by a **loud explosion**” and of a device described as a “grenade” being “thrown” on a house igniting a fire which spread to others.

**52.4.0**                    **ii.            USA Homeland Security surveillance**

The Public Defender’s letter at **Appendix 18** also sought information from the JDF regarding —

- a.** “the **nature** and **effect** of assistance at material times which the JDF derived from the **surveillance** flights relating to **general imagery communications** or **otherwise** and,

b. “whether or not the **JDF** is in **possession** of **surveillance footage**” (in which case, a viewing of that footage was requested).

**52.4.1** The reply at **Appendix 19** stated —

Re. **a.** :

“A United States (US) surveillance aircraft was deployed over the area of operation in West Kingston **with a view** to providing the JDF with **general imagery** assistance and **communications** during the May 2010 operations. This move was designed to **gather information** to assist the **safe movement** of the **troops**” and,

Re. **b.** :

“The JDF is **not in possession** of any **useful footage** from the US surveillance aircraft as due to **technical challenges** no **usable** imagery was obtained that could be **effectively utilized** by the JDF”.

**52.4.2** The Public Defender resists all temptation to comment on the assertion relating to “**technical challenges**” but will say that whatever may have been the perceived (or intended) **tactical** advantage or, **justification** for the use of **mortar rounds** and or heavy explosive devices in such a densely populated residential area, its **appropriateness** requires **close** judicial **evaluation**. Forensic scrutiny would also help to determine how the aircraft assisted “**communications**” as well as the “**information**” gathered, (if any) and as regard which, the JDF has volunteered **nothing**. (Perhaps its silence may be due to “**national security**” considerations.)

**52.4.3** At all events, having regard to –

- A. the distinction between the **types** of mortars identified by the JDF in **Appendix 20**, i.e. between the **explosive** and **incendiary** variety;
- B. the **conflicting claims** concerning which **type** was discharged during the ‘Tivoli’ operation;
- C. the irrefutable evidence of death, injury and damage caused;
- D. the **omission** or **initial failure** on the part of the JDF to **own up** to the use of mortar rounds, followed, belatedly, by **conflicting** admissions, prompted or provoked by contrary information being made public and,
- E. allegations of the use of munitions **other than** mortar rounds,

there is **reasonable** if not **great doubt** regarding the explosive devices actually **employed** by the JDF during the ‘Tivoli’ operation.

**52.4.4** The question may therefore be posed: Putting the best face on their responses as recounted at Re. **b.**: (p. **109**, *ante*) and at Re. **a.**: (p. **109**, *ante*,) in the **planning** and moreso the **execution** of its manoeuvres, (particularly those involving the use of mortars,) did the JDF personnel really **balance** concern for the **safety** of its members with the **duty** to prevent injury, damage or loss (“**collateral damage**”) to **innocent** civilians ?. In this respect, the dicta of Lord Hope, a leading appellate Judge, in *R. etc. & Anr. v*

*The Prime Minister* (op. cit., p. 102, ante) provide a **timely reminder** of the characteristically **risky** nature of **volunteer** military life and **service**.

### **Accountability of Chief of Defence Staff and Police Commissioner**

**52.5** In relation to both the West Kingston and Keith Clarke operations, the Public Defender submits that the **heads** of the State Security Forces, the Commissioner of Police and the Chief of Defence Staff, (since retired) and other senior personnel concerned, should be **required** to testify about their **oversight** of the operations, before a **thorough-going** judicial enquiry. The respective roles of those **heads** in the **planning** and **execution** of both operations require to be examined in line with the modern trend of official accountability and transparency as well as for **historical purposes**.

Obviously, the same is to be said of the Prime Minister, Minister of Defence and Chairman of the Defence Board of the day, Mr. Golding, as well as the erstwhile Minister of National Security, Mr. Nelson. [As respectfully submitted later in this Report, a duly constituted commission of enquiry is **the only** appropriate forum.]

#### **52.6.0 Recommendation for 'alteration'/amendment of The (Interim) Act**

**52.6.1** Having regard to all the foregoing and in accordance with the (Interim) Act, S.16(11)(b), the Public Defender **urgently**

*recommends* that the provisions of **S.13(2)(b)(ii)** of the (Interim) Act be **“altered”** or amended, expressly to **exclude** investigations related to allegations of infringement of any **constitutionally protected right** or freedom or, any **criminal** action.

**52.6.2** For there appears to be no or no rational or logical basis upon which to circumscribe the Public Defender’s remit in relation to those two areas of investigation, as presently obtains. Moreover, the projected **alteration** or **amendment** would —

- i. **re-affirm** the **supremacy** of the **Constitution** as well as the **subordinate** status of “service” or Military law, procedures and practices;
- ii. shore up the **protection** of **fundamental rights** and freedoms, (in particular the pre-eminent **right to life**) as well as **deter** criminal conduct;
- iii. promote **respect** for and **adherence** to the JCF Policy (rules of engagement);
- iv. **strengthen** democratic governance.
- v. **enhance** the viability and **effectiveness** of the Public Defender and,
- vi. further demarcate and distinguish the roles of two complementary commissions of Parliament — INDECOM and the Public Defender.



**53.0.0 THE KILLING OF MR. KEITH OXFORD CLARKE**

**53.1.0** The Public Defender's investigation into the circumstances surrounding the killing of **Mr. Keith Clarke** have at all times been coupled with that being conducted in respect of the West Kingston/Tivoli 'incursion'. The two events are **inextricably** connected by one stated common objective: **arrest** of the fugitive **Christopher Coke**.

**53.1.1** Mr. Clarke was killed in the early morning of Thursday, May 27, 2010 at his home situated at 18, Kirkland Close, Red Hills P.O., in an operation led by the JDF. He was aged 63.

**53.1.2** The **ostensible** objective of the operation was Coke's capture.

**53.1.3** According to military "**intelligence**", 'Dudus' was hiding out in that house, along with no fewer than seven "heavily armed bodyguards". In order to prevent information leaking, the troops involved were briefed at virtually the last minute. **Details** of the mission were given to them later still. As with the West Kingston operations, instructions/briefings appear to have been given and information disseminated on a strict "**need-to-know**" basis.

**53.1.4** Mr. Clarke was a highly respected citizen and chartered accountant. He was a partner in a reputable firm of accountants and auditors. His widow is a Regional Director in the Ministry of Education and, a Justice of the Peace. Mr. Clarke was one of three brothers. One, now deceased, was a learned Judge of the Supreme

Court of Judicature. The other is a former Minister of Government, entrepreneur and newspaper commentator. His sister-in-law, Mrs. Mary Clarke was the first Children's Advocate of Jamaica and is the widow of the Judge.

- 53.1.4** Mr. Clarke was the licenced owner of a .38 calibre pistol.
- 53.1.5** Kirkland Close is an **upscale** residential community. The Clarkes' house is appointed on a slope and built on several levels, consisting of five bedrooms, lounge areas and a gazebo. It afforded a commanding view of distant hills, the Liguanea plains, West Kingston and beyond. Not surprisingly, it was tastefully furnished and exhibited subdued, not ostentatious luxury. The Clarkes occupied the house with their daughter, then an eighteen-year-old lower sixth form student of a leading high school. By all accounts theirs was a happy home and family.
- 53.1.6** [The residence presented **stark contrast** with the **humble dwellings** of **inner-city West Kingston**, (the comparatively **tiny apartments** of Tivoli Gardens in particular), occupied in the main by **low income** artisans, and trades-people, higglers, **hundreds** of **unemployed** persons and, their **thousands** of offspring.]

#### **Course of a ferocious military assault**

- 53.1.7.** The operation was mounted by two platoons (about sixty men) wearing bullet-proof vests and ballistic helmets. It began at or

about 2:00 a.m. – the dead of night. They rudely awakened the Clarke household as well as others in that tranquil locale, far removed from the turbulence and tensions of inner-city Western Kingston then prevailing.

**53.1.8** Mrs. Clarke says that in the course of it all, she made frantic but fruitless calls and **appeals for help** to 119 (the Police emergency telephone number,) to neighbours and to friends. The JDF asserts that (true to the rules of engagement) they had, at the outset, **dutifully** and **loudly** announced themselves; that they were met with “**flashes of light, seen coming from the house**” suggesting, presumably, that they had been fired on.

**53.1.9** Mrs. Clarke says further that at the beginning of their ordeal, her daughter and herself, both shuddering fearfully, hunkered down in the bathroom of the **master bedroom**, whilst Mr. Clarke ensconced himself on top of a clothes closet. Soldiers **burst** in on them. Mrs. Clarke alleges that whilst descending backwards from his high perch, he was ruthlessly cut down before their eyes.

**53.2.0** His post-mortem report records **twenty-one (21)** gunshot **entry** wounds, **sixteen (16)** of them to **the back**, (mainly left lower) indicating **automatic** rifled weapon fire.

**53.2.1** Did anyone give the **order** to fire at him ?. **Or**, did the shooter(s) act on **his/their own judgement** made **on the spot** ?. (See also pp. **217** and **221**, *post.*)

**53.2.2** The Clarke's house was virtually laid waste after entry. Not a single room or area escaped the ravages of high-powered gunfire or other explosive devices. The blackened, pockmarked walls and floors littered with chips or chunks of concrete, shards of glass, splintered wood and other debris, wrecked furniture, tapestry, furnishings and grillwork bore unmistakable evidence of that. It was a scene of systematic destruction rendering the premises almost uninhabitable. Naturally, the **jaw-dropping** experience left Mr. Clarke's widow and daughter shaken and greatly traumatized. In **stunned bewilderment**, they took refuge with neighbours.

**53.2.3** Mr. Clarke's firearm was seized after his demise.

**53.2.4** The operation went on past daybreak. The manoeuvres appear to have been well planned and coordinated. There was ample logistical support including a helicopter with arc lights. In the process, the house was **heavily** cordoned. If the fugitive Coke or any of his "bodyguards" had in fact been holed up in that house, their **escape** would have been **most unlikely**, if not miraculous.

**53.3.0** **An investigator's need for caution**

**53.3.1** In this as well as the 'incursion' matter, the Public Defender is primarily **an investigator**. Because of what is or may be in the offing, he must therefore be mindful of the **constitutional** and **legal** rights and privileges of **persons charged**; or of those whose conduct should be the subject of searching judicial enquiry. Such

persons would all be entitled to a **fair** and **impartial** hearing, uninfected by the vice of **prejudicial** pretrial or, pre-hearing publicity. Indeed the mandate requires the Public Defender to **protect** these other constitutionally guaranteed **rights** and **privileges, inter alia.**

**53.3.2** de Smith, *Judicial Review of Administrative Action*, Ed. 4<sup>th</sup>, p. 257 puts the position this way:

“The case-law on the point is thin, but on principle it would seem that where a **report** or determination **lacking final effect** may nevertheless have a seriously **prejudicial** effect on the legally protected **interests of individuals**, (e.g. when it is a necessary prerequisite of a **final** order) the **person making the report** or preliminary decision **must not** be affected **by interest** or **likelihood of bias**. In short, the same principles as those governing the *audi alteram partem* rule should apply.”

[See *R. v. Kent Police Authority, ex p. Gooden* (1971) 2Q.B. 662; p 254]

**53.3.3** The “rule” referred to (literally – ‘**hear** the **other** side’) is a **fundamental** principle of **natural justice**.

Nevertheless, there is no gainsaying that -

- the **handling** of Mrs. Clarke and her daughter by the invading JDF soldiers was **coarse** and **frightening**;

- there was wanton, **indiscriminate** destruction of furniture, fixtures, etc.; the house was near trashed;
- the **military assault** on the house was carried out using **heavy calibre** weaponry;
- the invaders gained **forced entry** to the house and **master bedroom** by using **powered** saws to cut through **sturdy** grill work and **heavy-duty** padlocks and,
- a **judicial** enquiry should **unravel every stitch** of the planning and execution of this operation as well as the supposed "**intelligence**" which led to it.

## 53.4

## Unanswered Questions

53.4.1 The raid at Kirkland Close and a grieving widow's account of how her husband was killed (if believed) give rise to many unanswered questions. Some examples are -

1. Despite the **ostensible** objective, what was the real purpose of that invasion ?. Was it the **capture** of Coke or his **liquidation** ?. Put another way: was it intended to **silence** him ?.
2. Assuming that Coke had really been holed up in that house, was it beyond the **ingenuity** or **capacity** of the JDF to have devised a plan to wait him out, smoke him out, flush him out, make him surrender, take him out **alive** ?.
3. Is it at all likely that the attitude and mindset, the approach and **conduct** of the invaders was **any different** from that which propelled those who planned or, who **participated**, in the '**incursion**' or '**siege**' ?. Is it **probable** that, by **contrast**, their treatment of the West Kingston dead or aggrieved was **humane**, gentle or **respectful** ?.
4. Making the **connection** between the **two operations**, precisely what were the actual **orders** or **instructions** given to **foot soldiers** of the JDF and **rank and file members** of the JCF, who must have been expected to make their **personal judgements**, on the spot, mindful of the **legal**

**duties** imposed by **the rules of engagement** ?. (See pp. **154-165** *post.*) Obviously, merely insisting that they “respect human rights” during the operations would have been **entirely inadequate**, particularly in light of the attendant circumstances.

5. Were the **planners** and the **commanders** themselves sufficiently aware, alert or **regardful** of the requirements of the **JCF Policy**, let alone **inculcate** its values ?. In all the **excitement** of the times, did the operatives simply **shove the JCF Policy provisions aside**, in the interest of an overriding objective - to take Coke, **dead or alive** ?.
6. The invaders struck with **awesome suddenness**, again, in the dead of night; as a contented household **slept**. Is it likely that Mr. Clarke was rudely surprised by a **shocking, confusing, mindboggling scenario** ?. In those particular circumstances therefore, of what relevance and application would have been the ancient **common law** right of Mr. Clarke and every man [preserved by the Jamaica (Constitution) Order in Council, 1962, S.4 and the Constitution, S.26(8)] to **defend** his “castle” and its occupants, be it **well-to-do** or humble habitation, against attack which he may **honestly** (more so reasonably) have **thought** unlawful ?. Indeed, was the assault **lawful** at all ?.



7. On the other hand and **in those circumstances**, how do State law enforcement agents lawfully practise the “**right**” of “**self defence**” contemplated by the Constitution, common law and the JCF Policy ?. (See *Weaver v. Bush* (1798) 8 TR 78 and *Beckford v. The Queen* (1987) 24 JLR 242; (1988) AC 130; (1987) 85 Cr. App. R.378 (PC) (a Privy Council appeal from **Jamaica** pronouncing on a controversial police killing in the parish of Manchester.)
8. **Who is to be believed**: the **JDF** who claim that they had **loudly** announced themselves and their mission ?. That in response they were fired upon ?. Or **Mrs. Clarke**, who says that she made numerous telephone calls in a desperate endeavour to **find out** just what had **overtaken** her **household** and **why** and to **get help** urgently **from the police** ?.

**TWO LEGAL ISSUES: SELF DEFENCE AND  
SUPERIOR ORDERS**

**54.0** It is convenient at this stage to deal with two issues of law – **self-defence** and **superior orders** — which arise or may do, in relation to the conduct of the State Security Forces, during both the **Keith Clarke** and **West Kingston** operations.

**Self-defence**

**54.1** Interestingly, two appeals from **Jamaica** to Her Majesty in Council provided the Judicial Committee of the Privy Council (the Board) with occasions for classic pronouncements, in the **modern era**, on the **ancient** common law doctrine of **self-defence**, preserved by the Constitution and **entrenched** in the *repealed* Cap.III, viz. *Beckford's case (supra)* and *Palmer v. R* (1971) 12 JLR 311; (1971) AC 814.

**54.2** In *Palmer's* case Lord Morris, delivering the judgement of the Board, propounded the principle in these terms —

“It is both good law and good sense that a man who is **attacked** may defend himself. It is both good law and common sense that he may do, but may **only** do, what is **reasonably** necessary. But everything will depend upon the particular facts and circumstances. Of these a (tribunal of fact) can decide. It may in some cases be only sensible and clearly possible to take some simple avoiding action. Some attacks may be **serious** and dangerous. Others may not be. If there is some relatively **minor** attack, it would not be common sense to permit some act of **retaliation** which was wholly **out of proportion** to the **necessities**

of the situation. If an attack is serious so that it puts someone in **immediate peril**, then immediate defensive action may be necessary. If the moment is one of **crisis** for someone in immediate danger, he may have to avert the danger by some **instant** reaction. If the **attack is over** and no sort of peril remains, then the employment of force may be by way of **revenge** or **punishment** or by way of paying of **an old score** or may be pure **aggression**. There may be no longer any link with a necessity of defence. Of all these matters the good sense of the (tribunal of fact) will be the arbiter ... If there has been an attack so that defence is reasonably necessary, it will be recognised that a person defending himself cannot **weigh to a nicety** the exact measure of his defensive action. If the (tribunal of fact) thought that in a moment of **unexpected anguish** a person attacked had only done what he **honestly** and instinctively thought necessary, that would be the most **potent** evidence that only reasonable defensive action had been taken..."

**54.3** That statement of principle was approved and followed by the English Court of Criminal Appeal in *R v McInnes*, 55 Cr. App. R.551; (1971) 3 AER 295.

**54.4** In *Beckford's case*, the Jamaican Court of Appeal certified the following question as of "**exceptional public importance**" requiring determination by Her Majesty in Council:

"Must the test to be applied for self-defence be based on what a person reasonably believed on reasonable grounds to be necessary to resist an attack, or should it be what the accused honestly believed?"

The Board responded as follows:

“An **honest** belief in facts which, **if true**, would **justify** self-defence constitutes a **defence** to a crime of personal violence [in (that) case, murder]. The issue of the **reasonableness** of the belief is relevant **only** to the question whether the accused’s **mistaken** belief was **honestly** held.”

**54.5** Prior to that judgment, the **test** had been thought to turn on “**reasonableness**” of the belief, not its **honesty**.

**54.6** It should be noted also that —

- i. the old rule of law that a person attacked must show a **disinclination** to fight by **retreating** as far as possible has disappeared;
- ii. there is no rule of law that a man must wait until he is struck **before** striking in self-defence; he is **entitled** to get his blow in first, if it is **reasonably necessary** to do so in self-defence: *R v Deanna*, 2 Cr. App. R. 75 CCA; 25 TLR, 399 and,
- iii. before the issue of self-defence is left to a tribunal of fact, **there must be evidence**, whether from the **Prosecution** or the **Defence**, which, if accepted could raise a *prima facie* case of self-defence; if there is such evidence, the issue must be left to the tribunal of fact, whether it is relied on by the Defence or not: *DPP (Jamaica) v. Bailey*, 1995, 1 Cr. App. R. 257, PC. (another case of police killing);

- iv. if self-defence is raised, the burden of **negating** it rests on the Prosecution: *R v Lobell* (1957) 1 QB 547; 41 Cr. App. R. 100, CCA;
- v. whenever self-defence is put forward as **justification**, e.g. in a case of homicide (extra-judicial killing), it is not any “defence” casting an **onus of proof** upon an **accused**, but a matter to be **disproved** by the **Prosecution** as an **essential** part of its case before a verdict of guilty is justified: *R v. Wheeler*, 52 Cr. App. R. 28; 30;
- vi. the owner (or occupier of land with a superior title) commits no **punishable** battery or assault if he uses such reasonable force as he **honestly** believes to be necessary in defence of his land or house, its occupants or his possessions in resisting an **unlawful** entry: *2 Rolle Abr.* 548, 1. 25; *Weaver v. Bush*, *op. cit.* and
- vii. if the entry to land or house is unlawful and therefore a *trespass*, then the owner or occupier having superior title may oppose the trespasser “force to force”: *Weaver v. Bush*, *op. cit.*

### Superior Orders

**54.7** The extent to which **obedience** to an **order**, given to a military man by a **superior**, which leads to or causes **criminal** action by the former, is somewhat unsettled. Failure to carry out some classes of **superior orders** is punishable under service law for offences triable by courts martial. But the serviceman is sometimes confronted with the dilemma of **refusing** to obey an apparently **unlawful** command, thereby avoiding criminal liability or, **executing** an apparently **lawful** order which, turns out to be **illegal**. The better view appears to be that he may **not** properly be **required** to execute an **unlawful** order and will be personally liable for any consequential criminal act.

**54.8** According to Dr. Barnett —

“it is now generally accepted that the fact that the soldier had acted in accordance with a command which was **not** manifestly illegal **may**, particularly in times of **emergency**, negative the *mens rea* (sic) (guilty intention) required in most criminal charges.” (*op. cit.*, p. 159) [And see *Keighley v. Bell* (1886) F. & F. 763, 790 *per* Willes, J. and *The Queen v. Smith* (1900) 17 CGH Sup. Ct. Repts. 561; **cf.** *Manual of Military Law*, Ed. 11<sup>th</sup>. (1965) Part 1, p.153.]

**54.9** The common law of England, Australia and the United States of America does not recognize a **general** defence of **superior orders** or of Crown or executive *fiat*: *Archbold, Criminal Pleading, Evidence*

*and Practice*, Ed. 2004, ¶ 17-134. The learned authors cite *Lewis v. Dickson* [1976] RTR 476, DC; *R v. Howe* [1987] A.C. 417, HL, *per* Lord Hailsham, at p. 427; *A. v. Hayden (No. 2)* (1984) 156 CLR 532, High Court of Australia (a seven-member Bench) and, *Yip Chiu-Cheung v. R.* [1995] 1 A.C. 111, PC.

**54.10** But in Jamaica, the soldier on active **law-enforcement duty** is now **bound** by the JCF Policy which, —

- i. acknowledges the **supremacy** of the Constitution;
- ii. provides that **lethal** force may only be used as a **last resort**, i.e. after other options have been reasonably eliminated, and
- iii. emphasizes **individual** responsibility as well as that of **supervisors**, for the **criminal** conduct of those who were or ought to have been supervised.

**55.0****BALLISTICS****55.1**

“The forensic examination of firearm related physical evidence, from a laboratory perspective, typically involves the examination of fired bullets (or fragments thereof), fired cartridge cases and firearms. Each firearm is manufactured using a variety of machining processes. Inherent in the manufacturing process is the introduction of numerous **small microscopic flaws** on all of the **working surfaces** of the firearm. The **combination of microscopic flaws** introduced during the manufacture of a **particular firearm** render (sic) that firearm **unique** (at a microscopic level) from **every other** firearm, due to the **randomness** of the **accidentally** introduced microscopic flaws.

**55.2**

“When a firearm is discharged, the **unique** microscopic flaws from that firearm can be **translated** onto the **ammunition** that is being fired. The **firing pin, breech face, chamber and barrel** (among other components) are all in **direct contact** with the fired cartridge and at the time of the high pressure discharge can **translate** the **microscopic** flaws **from the gun onto the bullet** and cartridge case. In the laboratory, a **trained examiner** can **compare** the **microscopic signature** of **recovered** bullets/fragments and **cartridge cases** from scenes (**unknowns**) to samples generated by test firing submitted firearms (**knowns**).

**55.3**

“When **sufficient matching** information between a known and unknown is **observed, the examiner** can **document** and report **these findings** as a **positive association** that a **particular firearm** was used to fire the recovered components. **This is the type of work that will be necessary in the laboratory examination of the Tivoli (and related) events”.**

(The words **“and related”** incorporate the associated **Keith Clarke** investigations.)



## 56.0.0                    **Crucial Importance of ballistic examinations**

56.1.0 From the foregoing it will be clear that the **important issue** of **determining** whether **persons allegedly killed** in course of the Tivoli/West Kingston 'incursion' met their deaths **at the hands of** members of the **State Security Forces** (JCF, ISCF or JDF) or **any other**, (such as armed combatants/illegal gunmen) can **only be settled** by the **forensic examination of firearms**. There is **no evidence** of **visual identification** of the shooters. Of course, the issue of **criminal liability** (in particular, whether at any material time a member or members of either Force acted in **self-defence** or not) is altogether a different matter.

## 56.1.2                    **Public Defender ballistics expert**

56.1.3 In this regard, the Public Defender was fortunate to have had the assistance of Mr. Matthew Noedel, a forensic scientist, firearms examiner and ballistics expert, made available by the USAID, also through the UNDP. Mr. Noedel holds membership in leading professional associations in the United States of America. He is a graduate of the University of Montana in Microbiology and Medical Technology and California State University, in Forensic Science. He holds **certification** in firearms, tool marks, and gunshot residue examination from the Association of Firearms and Tool Marks Examiners (AFTE). He has over twenty-five (25) years experience in these branches of Forensic Science.

(The exposition on ballistics quoted above is culled from a Preliminary Draft Report presented by him at the end of a “scoping mission” to Jamaica in November, 2010. It accords with statements of principle contained in other **authoritative professional and academic works** on the subject.)

**56.1.4** Mr. Noedel was **accepted** by the Ministry of National Security as an **expert in the ballistic sciences** and was afforded access to the Government Forensic Science Laboratory at Hope, St. Andrew. He **assisted** in the **training of JCF personnel** awaiting certification as firearms examiners. He also conducted an **evaluation** of the laboratory, covering **essential operational issues**, laboratory capacity, security, the physical space and, most importantly, the **availability of equipment**. In the result, he was able to identify **critical deficiencies**. His evaluation concluded in part —

“**IBIS** – The lab system has a fully functional ‘Integrated Ballistic Imaging System (IBIS)’. This system is comprised of a computer driven digital camera that can take high resolution images of the microscopic marks left on fired **cartridge cases**. The instrument then stores these images and constantly compares the entries to all other entries in the database. This equipment, if utilized for the Tivoli evidence, will be **very useful** in helping to **sort out** and **screen** potential recovered (**unknown**) and test fired (**known**) cartridge cases. Because of the **irregular** shapes of **fired bullets and fragments**, the system is **not useful** to sort out **fired bullet** evidence. Any positive association indicated by the IBIS technology must

be confirmed by **direct microscopic examination** of the physical evidence by a **fully trained** firearm examiner”.

**56.1.5** In relation to that vital forensic tool, **the comparison microscope**, he stated —

“A comparison microscope is a system of two microscopes that are bridged together to one set of eye pieces. An **essential tool** for any ballistic laboratory, this instrument allows the examiner to place the **unknown** sample on one microscope stage and the **known** sample on the other stage and directly **compare** the two objects through the eye pieces. As stated earlier, the types of marks that translate onto bullets and cartridge cases are microscopic and **cannot** be readily **compared** without this design of microscope. Currently the ballistic lab has **three** comparison microscopes, **two** of which are **incomplete** and **not working at all**, and **the third** while functional, must be **shared** between **the three examiners** (and a fourth independent examiner for Tivoli evidence.”)

**56.1.6** Since delivery of Mr. Noedel’s “Draft Report”, the Government Forensic Science Laboratory has acquired **two** new and fully functional comparison microscopes. A third is **partly functional** and may be used for **preliminary** sorting of **spent shells** only.

**56.2** **Staffing, tooling of Firearms Laboratory;  
chronic output backlog, etc.**

**56.3** The recent acquisitions do not adequately address the demand for trained firearms examiners or, a notorious equipment deficit. These deficiencies are the root causes of a chronic backlog of cases, (**presently put at 1,300**) a feature which has bedeviled the

Laboratory's output for many years past. That feature has militated against the timely administration of criminal justice. It contributes significantly to systemic delay of trials. The fact is that increases in staffing and equipment have not complemented the rise in firearm-related offences. It is expected that four (4) trainee examiners will have qualified for certification by year-end, bringing their number to eight (8) — including a retiree re-engaged on contract. But another four (4) fully functional comparison microscopes are urgently needed.

(Particular attention is also drawn to the **summary** compiled by Mr. Noedel in the Preliminary Draft Report on his findings, attached hereto as **Appendix 21.**)

#### **56.4.0 JDF position re ballistic examinations**

- 56.4.1** Up to or about early January, 2011, the JDF maintained a stance of non-co-operation with the Bureau of Special Investigations in relation to the Tivoli 'incursion', insisting that ". . . the **testing of weapons**, should be **evidence driven**. In light of this fact it is of paramount importance that the **nature** of the **allegation(s)** against the Jamaica Defence Force is disclosed in order that the **required assistance** can be given to ensure that the process goes ahead in the manner agreed". ( See **Appendix 13.**)
- 56.4.2** What was meant to be conveyed by the phrase "**in the manner agreed**" remains partly shrouded in mystery. But this much has

since become clear: the author was purportedly alluding to an “agreement” reached between representatives of the JDF and the JCF at the Ministry of National Security called to discuss or iron out the question of the JDF refusal to cooperate with the BSI ‘Tivoli’ investigations. The Public Defender was neither **party** nor **privy** to the meeting but very much doubts that any “agreement” on the matter was arrived at; more likely a case of the JDF’s representatives convincing themselves that the BSI would acquiesce in their stubborn refusal to cooperate. This conclusion is supported by the fact that the letter at **Appendix 13** prompted the BSI to write to the Chief of Defence Staff by letter dated January 11, 2011, clearly outlining the basis for **requiring** the JDF to submit firearms for ballistic testing. (**Appendix 14.**)

## 57.0

### **The Ballistics Road Map**

## 57.1

A “Protocol for the Examination of the Tivoli (**and related**) Events” (“the firearms Protocol”), drafted by Mr. Noedel was proffered by him in a Preliminary Draft Report (**Appendix 21.**) It also governed **examination of physical evidence** associated with the killing of **Mr. Keith Clarke**. It was a ballistics **road map** accepted and approved by the BSI and the Ministry of National Security. Lieutenant Colonel Patrick Cole (a former assistant Crown Counsel in the Department of Public Prosecutions) for the JDF, **belatedly** and **reluctantly** but **unequivocally**, agreed to the Protocol in

November, 2010. Moreover, he stated in **Appendix 16** that the JDF “endorse (**Appendix 21**) as the **best framework** for the testing of weapons.”

- 57.2** Nevertheless, the fact of the agreement was doubted in a letter sent by the former acting Permanent Secretary in the Ministry of National Security, Ms. Diane McIntosh, **dated** April 30, 2012 (**Appendix 22**) replying to an earlier oral request for confirmation of it made by the Public Defender, backed by letters dated May, 1 and 8, 2012 (**Appendices 23 and 24**). The agreement was **eventually affirmed** by the Ministry however, in a letter dated September 3, 2012 (**Appendix 25**). The agreement provided for the ballistics work to proceed in phases.
- 57.3.** Thereafter the **Government** bore the **responsibility** of organizing **the system and programme** by which the ballistic work should have been undertaken and, completed, **in collaboration** with an **independent expert or experts** made available to the Public Defender by the UNDP. (A true copy of the firearms Protocol is attached hereto as **Appendix 26.**)

## 58.0.0 INDECOM: ROLE AND FUNCTION

**58.1.0** INDECOM was established by the Independent Commission of Investigations Act, 2010, (the ICI Act) S.3(1). The ICI Act took effect on **April 15, 2010** and a Commissioner was sworn in on **July 29, that year**. Its independence is secured by S.5. The Commissioner has **security of tenure**. The exercise of his powers are subject only to the provisions of the Constitution and thus, to the directions of the Director of Public Prosecutions (DPP) only. He may investigate any complaint in the nature of those made to the Public Defender in the **'Tivoli'** and **Keith Clarke** matters. He is also empowered to "manage, supervise, direct and control" the BSI 'incursion' investigations [S.14(2)]

**58.1.2** The following are other **pertinent** Sections of the ICI Act, viz.—

"2. .... unless the context otherwise requires—

**"relevant Force"** means any one of the Security Forces—

- (a) **involved in an incident**; or
- (b) in relation to which a complaint is made, or **an investigation** is carried out, under this Act;

**"relevant public body"** means the public body—

- (a) **involved in an incident**; or
- (b) in relation to which a **complaint** is made, or an **investigation** is carried out, under this Act;

**"responsible head"** means the **head** of a relevant Force;

**"responsible officer"** means the **officer in charge** of a

relevant **public body**;

**“Security Forces”** means—

- (a) .....
- (b) **the Jamaica Defence Force**;
- (c) .....
- (d) .....
- (e) .....

4.—(1) Subject to the provisions of this Act, the functions of the Commission shall be to—

- (a) .....
- (b) .....
- (c) take such steps as are necessary to ensure that the **responsible heads** and responsible **officers** submit to the Commission, **reports** of incidents and complaints concerning the **conduct** of **members** of the Security Forces and specified **officials**.

(2) In the exercise of its function under subsection

- (1) the Commission shall be **entitled** to—
  - (a) have **access** to **all reports, documents** or other **information** regarding **all incidents** and all other evidence relating thereto, including any **weapons**, photographs and **forensic data**;
  - (b) **require** the **Security Forces** and specified **officials** to **furnish information** relating to **any** matter specified in the request;
  - (c) .....
  - (d) .....



- (3) For the purpose of the discharge of its functions under this Act, the Commission shall, subject to the provisions of this Act, be **entitled** —
- (a) upon the authority of a warrant issued in that behalf by a Justice of the Peace—
- (i) to have **access** to all **records, documents or other information** relevant to any complaint or other matter **being investigated** under this Act;
- (ii) to have **access** to any **premises** or other location where the Commission has reason to believe that there may be found any **records, documents or other information** referred to in subparagraph (i) or any property which is **relevant** to an **investigation** under this Act; and
- (iii) to **enter** any **premises** occupied by any person in order to **make such enquires** or to **inspect** the **documents, records, information or property** as the Commission considers **relevant** to any matter being **investigated** under this Act;
- (4) For the purposes of subsection (3), the Commission shall have power to **require** any person to **furnish** in the manner and at such times as may be specified by the Commission, **information** which, in the

**opinion of the Commission**, is **relevant** to any matter being **investigated** under this Act.

5.—(1) **Subject to** the provisions of the **Constitution**, in the exercise of the powers conferred upon it by this Act, the Commission **shall not** be **subject** to the **direction** or **control** of any other **person** or **authority**.

10.—(1) A complaint may be made to the Commission by a person who alleges that the conduct of a member of the Security Forces or any specified official—

- (a) **resulted** in the **death** of or **injury** to any **person** or was **intended** or **likely** to result in such death or injury;
- (b) .....
- (c) involved **assault** (including threats of harm, reprisal or other **intimidatory acts**) or **battery** by the member or official;
- (d) resulted in **damage** to **property** or the **taking** of **money** or of other property;
- (e) although not falling within paragraphs (a) to (d), is, in the opinion of the Commission an **abuse** of the **rights of a citizen**.

11.— (1) The responsible **head** or the responsible **officer**, having been made aware of an incident which involves the relevant public body or the relevant **Force**, **shall** make a report to the Commission of the incident—

- (a) **forthwith**, where the incident **involves**
- (b) **conduct** that **resulted** in the **death** of or **injury** to any person; and

- (c) not later than twenty-four hours, in any other case.
  - (2) It shall be the **duty** of the responsible **head** or the responsible **officer**, as the case may require, to **take such steps** as are necessary to **ensure** that measures are implemented so that **reports** of incidents involving **members** of the relevant **Force** or relevant public body are **duly** made to the **Commission**.
  - (3) A **member** of the **Security Forces** or a specified official who, in the **course** of his **duties**—
    - (a) becomes **aware** of; (or)
    - (b) is **involved** in,any incident, **shall** take the **steps** as are necessary (including **reporting the facts** thereof to the responsible **head** or the responsible **officer**) to **ensure** that a **report** is made to the **Commission** in accordance with subsection (1).
12. Where the Commission is satisfied that an incident is of such an **exceptional nature**, that it is likely to have a **significant impact** on **public confidence** in the **Security Forces** or a public body, the Commission **shall** require the relevant Force or the relevant public body to **make a report of that incident to the Commission**, in the form and containing such particulars as the Commission may specify.
13. An investigation under this Act may be undertaken by the Commission **on its own initiative**.

- 14.— (1) The Commission shall, for the purpose of deciding the most appropriate method of investigation, make an assessment of—
- (a) the **seriousness** of the case;
  - (b) the **importance** of the investigations;
  - (c) **public interest** considerations;
  - (d) the **particular circumstances** in which the incident occurred.
- (2) The Commission may manage, supervise, **direct** and **control** an **investigation** carried out by the Security Forces or the relevant public body in relation to an incident, where, **in the opinion of the Commission**, it is **necessary** to direct and oversee that investigation.
- 21.— (1) Subject to subsection (5), the Commission may at any time **require** any **member** of the **Security Forces**, a specified **official** or any other person who, in its opinion, is **able** to give assistance **in relation to an investigation** under this Act, to **furnish** a **statement** of such information and **produce any document or thing** in connection with the investigation that may be in the **possession or under the control** of that member, **official** or other person.
- (2) .....
- (3) Subject to subsection (4), the Commission may **summon** before and examine **on oath**—
- (a) any complainant; or
  - (b) any **member** of the **Security Forces**, any specified official or any other person who, in the

opinion of the Commission, is able to **furnish information** relating to the investigation.

(4) For the purposes of an investigation under this Act, the Commission shall have the **same** powers as a **Judge** of the **Supreme Court** in respect of the **attendance** and **examination** of witnesses and the **production** of documents.

(5) A person **shall not**, for the purpose of an investigation, be **compelled** to give any evidence or produce any document or thing which he could **not be compelled** to give or produce in proceedings in any **court of law**.

(6) **Section 4** of the Perjury Act **shall apply** to proceedings under this section in relation to an **investigation** as it applies to **judicial proceedings** under that section.

[S.4 prescribes **criminal sanctions** of **imprisonment** at hard labour of up to seven (7) years or a fine, or both **imprisonment** and **fine**, upon conviction for **perjury** which, is the offence committed by a **witness** who, "...being lawfully **sworn**.... in a judicial proceeding, **wilfully** makes a statement, **material** in that proceeding, which he **knows** to be **false** or **does not** believe to be true,...."]

**58.1.3** It will be clear from the foregoing that **in relation to the JDF**, INDECOM has an investigative capacity (buttressed by much **greater** resources and **coercive** powers) which the Public Defender **does not**. In particular, it may **require** the retired **Chief of Defence Staff** and other **army personnel** to deliver detailed reports and accounts of the conduct of the Security Forces during the State of Emergency.

**58.1.4 The Independent Commissioner being far better equipped to do so, may therefore yet succeed in securing the necessary JDF cooperation in the ‘Tivoli’ investigations, where neither the BSI nor the Public Defender was able to.**

**58.2.0 INDECOM and the ‘incursion’/Keith Clarke investigations**

**58.2.1** It is a matter of public record that at the outset of his tenure, the Independent Commissioner of Investigations declared repeatedly that he did not intend to investigate the **West Kingston** or **Keith Clarke killings**. The investigation of both matters by the BSI (now downgraded to a section within the Inspectorate of the Constabulary) was too advanced, he said; although his remit subsumes and superseded the BSI’s functions. Since then however, there has been a *volte face* by INDECOM. It has purported to investigate the circumstances of **Mr. Clarke’s killing** but, as far as is known, and apart from informal advice, not **the West Kingston** fatalities.

**58.2.2** The very first intimation of this came, rather matter of factly, during a meeting with the Public Defender requested by the Independent Commissioner, in October, 2011. No agenda had been agreed or even suggested. It was to have been something of a “courtesy call.” The Public Defender was somewhat taken aback by this surprising development. It aroused his apprehension for two reasons:

- (a) the Commissioner announced that he “should be in a position to **indict** two or three **soldiers** by early (2012)” and,
- (b) that his **Keith Clarke** investigations would be or were being spearheaded by a former **JDF Intelligence Officer** recruited to his staff. The impartial observer may well conceive the possibility of a **latent** conflict of interest.

**58.2.3** Besides, in fact and in law, bias may be **conscious** or **unconscious**. With respect, it seemed to the Public Defender that it was at least desirable that in the particular circumstances of the **Keith Clarke** case, a former **JDF Intelligence Officer** should not be leading the investigations. For it was important to avoid the **appearance** of bias, conscious or unconscious.

**58.2.4** It is important to observe here as well that up to the time of the October, 2011 meeting, INDECOM had given no indication to the Public Defender that ballistics work on the **Keith Clarke** case –

- (a) had begun or,
- (b) was underway or
- (c) in relation to the stage reached in the examinations which, it is now apparent, had in fact been started or, was at least being contemplated.

- 58.2.5** The Public Defender therefore comforted himself with the belief that the **ballistics road map** would have been **adhered to**; that that being the case, he need entertain no fear that any attempt would have been made to indict foot soldiers **prior to their superiors' role** in the matter being evaluated **judicially**.
- 58.2.6** More than two years have elapsed since conclusion of Mr. Noedel's Technical Report regarding **Phase 1** of the firearms **Protocol**, as well as on weapons "**recovered** and visually assessed **from the Tivoli event**" but, **not** including "**law enforcement firearms**". There the matter rests, as regards the "**Tivoli**" investigations, as far as the Public Defender is aware.
- 58.3.0** Now the Public Defender's 'Keith Clarke investigations' may also be thought unduly protracted. In the meantime, INDECOM has embarked upon its own investigations, without any, or any proper regard for the binding **ballistics road map**; without the necessary Public Defender **oversight**. In all the circumstances, was or is this sharp **departure** from the **agreed ballistics Protocol** excusable ?.
- 58.3.1** Purporting to have completed its investigation, INDECOM submitted a file to the Director of Public Prosecutions (the DPP) for a ruling, in May, 2012. The file was returned for further investigations to be done.



**58.3.2** Since that time the DPP has not only ruled but has preferred a **voluntary bill of indictment** charging **murder**, against a **lance corporal** and **two privates** of the JDF. They have appeared before the Home Circuit Court and have been awarded bail.

**58.3.3** But, since that time also and, curiously, the Independent Commissioner has informed the DPP and defence counsel that he has directed that **further** ballistic examinations should now be conducted on two spent heavy calibre bullets. How will this development impact **the pending trial** or the integrity of the Prosecution's case ?

**58.3.4** In the **Keith Clarke** case also, **ballistics evidence** is a *sine qua non*: **absolutely essential** for determining the individual **identity** of the soldier or soldiers whose bullets killed him. There is **no evidence** of **visual** identification. In prompting the DPP's ruling, did INDECOM act **precipitately** ? Should it's submission have been preceded by **consultation** or **collaboration** with the Public Defender ?

**58.3.5** In whatever event however, it is the considered and respectful opinion of the Public Defender that trial of the three accused should **abide** the **outcome** of a **Commission of Enquiry**.

**58.3.6** **Accountability of senior JDF/JCF personnel**

**58.3.7** Of course, the idea that **three lowly infantrymen** may be **indicted, tried** and even **convicted** of the **murder of Mr. Clarke**

and thereby **bring closure** to a **military operation** gone **terribly wrong**, is patently **untenable**. For the bizarre invasion of the gentleman's pristine abode is, manifestly, **not the case** of an **audacious** assault **conceived** and **carried out** by a detail of **renegade** foot soldiers. Moreover, whilst Jamaican jurisprudence enshrines a *presumption* of innocence in relation to alleged or suspected criminal conduct, there is **no** "presumption of regularity" concerning the conduct of State Security personnel known to law. **All** officers of the **JDF** and **JCF** involved in the planning and execution of this ill-fated exercise (particularly those in the **highest echelons**) should therefore be **made** and, **held** to account.

**58.4.0            Ballistic examination of "Keith Clarke" weapons etc.  
                         Breach of Ballistics Road Map**

**58.4.1** Most significantly however, the ballistic examination of some **sixty-nine (69)** firearms, including the .38 Special Colt model Agent dual action revolver said to have **belonged** to **Mr. Clarke** and, **numerous** spent bullets, fragments and shells connected to the assault on his house, has been conducted by a **retired** Government ballistics expert. This examination was done in **palpable breach** of the firearms Protocol. **The independent observer firearms examiner representing the Public Defender (Mr. Noedel) was neither present nor invited to observe the examination.** No **prior notification** of any sort whatsoever was

given to the Public Defender. The exclusion of the Public Defender from this process **requires explanation**. Either INDECOM **ignored**, or the Ministry of National Security (more particularly, the former acting Permanent Secretary) **failed, neglected** or **elected** not to **apprise** INDECOM of the Protocol. Whatever may have been the case, the *about face* and its consequences also **need to be explained**.

**58.4.2** And whilst, of course, the Public Defender may give no “**directions**” to INDECOM, for patently obvious reasons it is **most desirable** that where appropriate, these two parliamentary commissions **collaborate** in their respective but **independent** investigations. In this respect, the Public Defender enjoyed a good working relationship with the BSI and covets a similar and closer relationship with INDECOM. There are propitious and encouraging signs of such a relationship developing.

**58.4.3** In contrast to the **Keith Clarke case**, however, no detailed ballistic work is known to have commenced in relation to the **Tivoli/West Kingston** ‘incursion’ or ‘siege’.

**58.5.0 Absolute necessity of completing ballistics work**

**58.5.1** The **Government** (or INDECOM, if it has supplanted the BSI in all the pertinent investigations) should now, **with all deliberate dispatch**, ensure that **outstanding ballistic work** is completed. **A ballistics expert/firearms examiner, representing the Public**

**Defender, should have observer status during the completion of this work, in accordance with the agreed Protocol.**

- 58.5.2** Any further delay will obviously prolong the agony of grieving dependents and relatives. It would also provoke growing public **skepticism** about the **Government's resolve** in confronting **reasonable suspicion** that the State Security Forces **far exceeded** their lawful authority and acted in **wanton abuse** or **disregard**, of the JCF Policy during the 2010 State of Emergency.
- 58.5.3** **Non-completion** of the ballistic work **prevented** the BSI **wrapping up its investigations** and **continues** to **hamper** that of the Public Defender. **Completion** of this work would clear the way for a decision concerning the appointment of a Commission of Enquiry to be made. (See pp. **188 - 93**, *post*.)

## 59.0.0

**THE JAMAICA CONSTABULARY FORCE  
POLICE USE OF FORCE AND FIREARMS POLICY  
(THE JCF POLICY)**

59.1.1 The JCF Policy “incorporate(s) the **fundamental rights** and **obligations**” enshrined in the Jamaica **Constitution** and international **human rights** instruments. In particular, these **rules of engagement** reflect the principles set out in:

- “ i. The United Nations Code of conduct for Law Enforcement Officials, 9G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (no. 46) at 186, U.N. Doc. A/34/46-1979); and
- ii. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, (Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, - Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF. 144/28/Rev, 1 at 112-1990).”

59.1.2 By Article 1. of i. above, the term “Law Enforcement Officials” **includes** members of the **JDF**, (being members of the State Security Forces) and certainly when, as in the instant case, they are **deployed** in **support** of **the JCF** during “law enforcement” operations. **In principle** therefore, JDF personnel engaged in activities **related** to **the State of Emergency** are or would be **as culpable** as JCF members for any **infringement** of the Policy, the Constitution or relevant international human rights instruments.

Faithful **adherence** to **the Policy** or the **lack** of it must therefore be a **central focus** of any investigation or **judicial enquiry**.

59.1.3 Certain key provisions of the Policy are attached hereto as **Appendix 27**.

59.1.4 It will be clear from those provisions that

1. the **primary** responsibility of law enforcement is the **protection of life** and the **right** to it **guaranteed** by the Constitution;
2. the use of **lethal** or **deadly force** must be **proportionate** in all the circumstances;
3. **lethal force** may only be employed in **self defence**;
4. the use of **deadly force** must be **strictly** necessary and only **after** other options have been **reasonably discounted**; it must be a matter of **last resort**;
5. accountability and **responsibility** rest with **the individual** member of the Security Forces whose action is called into question as well as with his **supervisor**;
6. officers in **supervisory** positions have **especial responsibility** to ensure **adherence** to the Policy;
7. **medical assistance** and treatment for the **injured** must be provided **promptly** and,
8. **unlawful orders** must **not** be obeyed.

The **judicial enquiry** contemplated by the Public Defender's *recommendation* should **gauge** the degree of **adherence** to or, the scale of **disregard** for, the **rules of engagement**, as the case may be. In this context the JDF use of **mortar rounds** or other **explosive/incendiary** devices in the **civilian theatre** of Tivoli Gardens at the onset of the 'incursion' or during the 'siege' should be very **closely** examined.

**59.1.5            The JCF Policy and the incidence of "Shootouts"**

59.1.6 For decades, Jamaica has been plagued by the rampant **scourge** of murder committed by **illegal gunmen**. Despairing citizens are often tempted to turn the blind eye at, or even tolerate, instances of **extra-judicial** killings, (unjustifiable homicide) actual or reasonably suspected. They rationalize this indifference: the country is a **safer** place without illegal gunmen. But it is often **reasonably suspected** or is frequently suggested that this quiescent attitude has emboldened frontline JCF personnel to kill then proffer an opiate of **false** accounts about "**shootouts**".

59.1.7 A Table showing official data of '**Persons Allegedly Murdered**' (the overwhelming majority by the use of firearms,) '**Fatal Shootings by (the) Police**' and '**Police Personnel allegedly Murdered**' (all by gunshot) during the years 2000 – 2010, is attached as **Appendix 28**.

59.1.8 Now, consciously or sub-consciously, did the **commanders** and **tacticians** responsible for drawing up **or**, the **State Security personnel** engaged in **executing** operational and strategic plans for the West Kingston/Tivoli 'incursion', contemplate or bank on a probable perception of the **fiercest** of all "**shootouts**" with gunmen having taken place ? Did they hope or were they satisfied that a **credulous** people would trust their *bona fides* ?

**59.2.0 Questions/Issues to be answered/resolved judicially**

**59.2.1** The following questions and issues also arise for due judicial consideration:

- i. Despite their orders which may have counseled, even emphasized **strict** regard for the rules of engagement and, the necessity of avoiding the death of innocents (collateral damage;) did the State Security personnel engaged **run amok** ?
- ii. Were there any and if so what proportion of them, **excited** by the chance of killing a band of "gunmen" encamped in Tivoli Gardens/West Kingston ?
- iii. So **excited** and sadly **misguided** that they perceived a kind of "**open season**" on "gunmen" ? or,
- iv. Were they all among the **bravest** of the brave, gallantly **risking** their own lives in taking on **armed** combatants in





**Appendix 10** did not provoke the speedy response desired and anticipated, the Public Defender dispatched the letter to the Commissioner of Police at **Appendix 31**, expressing astonishment and indicating that his surprise was —

“...aggravated by allegations made .... by residents of (Tivoli Gardens), that they (had) been told by members of the security forces that they should **clean their houses:** activities that would irretrievably **destroy probative evidence...**”

**59.4.2** The “probative evidence” referred to particularly related to blood and sero-sanguineous stains and other trace evidence deposited by the deceased in alleged extra-judicial killings – crucial circumstantial evidence. Public Defender personnel were therefore directed to countermand the Security Forces instructions in order to preserve that evidence.

**59.4.3** But up to mid-day June 3, JCF/BSI investigations had still not been started. This generated deeper disquiet. Independent forensic experts/scene of crime analysts from Caribbean Genetics (CARIGEN) had also been engaged to assist in the Public Defender’s investigations. They were standing by, determined not to inspect or take blood samples, etc. from any alleged crime scenes, for fear that they may have been accused of interfering with or contaminating those scenes. The Public Defender therefore

released copies of **Appendices 5** and **31** to the news media in a Press Release issued later that day. What effect all this may have had is left to be determined. But next morning, June 4, JCF Scene of Crime personnel entered Tivoli Gardens for the first time since the start of the 'incursion', followed by an inspection of the home of Mr. Clarke and, BSI investigations got underway.

59.4.4 As soon as the JCF Scene of Crime unit had completed their activities, the CARIGEN experts and analysts were deployed.

**59.5.0 The JCF Policy, illegal gunmen and “due process”**

**59.5.1** Despite the foregoing however, let no one doubt that for **too many years past**, the police have had to **confront** fearless but fearsome **gunmen** in the line of duty. Many of them are said to be members of marauding **criminal gangs**, themselves part of larger criminal **networks** - the lot being elements of **“organized crime”**. (See the Epilogue.)

**59.5.2** It is the **sworn** duty of the State’s law enforcement agents to —

- arrest and charge those **reasonably suspected** of criminal conduct;
- administer the **statutory caution**;
- take them before an **“impartial** court appointed by **law”** by virtue of which they are **guaranteed** a **“fair trial”**, based upon a **presumption of innocence**;
- the Prosecutor (a ‘minister of justice’) bears the heavy burden of **proving** them guilty, **“beyond reasonable doubt”**, in which case, they may be sentenced to undergo
- **condign** punishment including imprisonment of varying length or, **legal** execution and,
- if incarcerated and thereby committed to the **humane** care of “correctional officers”, the latter should **conscientiously** demonstrate their **awareness** that



### 59.6.2 **The Cadaveric Spasm**

59.6.3 Those stories often strain belief, not least by reason of their **monotony**. For the **cadaveric spasm**, a phenomenon regarded in the scientific world as a relatively **rare** occurrence has, according to the CCN, long been a quite **commonplace** feature of police killings in Jamaica.

59.6.4 On the other hand and **almost invariably**, the citizens' versions of those killings allege cold-blooded murder.

59.6.5 Professor J. K. Mason, CBE, MD, FRCPath, DMJ, Regius Professor of Forensic Medicine, University of Edinburgh, explains that -

“(The **cadaveric spasm**)..... is a contraction of the muscles which is probably **mediated** by the central nervous system when death occurs in conditions of high emotional tension; it is instantaneous and **permanent** until **putrefaction occurs**. The most common manifestation is seen in the **hands** which may be found **grasping** some object, particularly one that gives some **hope of support**. Cadaveric spasm may **occasionally** involve the hand which has held a firearm used **suicidally**. The medico-legal importance of this is that, while the absence of spasm is of no significance, **cadaveric spasm** cannot be **simulated** after death in an attempt to disguise a homicide. It should be **stressed** that this phenomenon is **uncommon**.” (Forensic Medicine for Lawyers, Ed.2<sup>nd</sup>, 1983, p.50)

59.6.6 Most significantly however, no instance of the **spasm** occurring **during** the ‘**incursion**’ has been reported. And quite noticeably, in **recent** months CCN accounts make **fewer**

“clutching” allegations: more and more the suggestion is that firearms were **“recovered”** at the scene of “shootouts” or confrontation with gunmen.

59.6.7 Over the years, also, persistent **allegations** of police excess and abuse have led to the establishment of a number of units and institutions, including special units and departments of the JCF, a Police Public Complaints Authority, the BSI, the PCOA and latterly, INDECOM - all mandated to tackle the intractable problem of killings by State Security Forces (the police in particular) and other misconduct.

#### **59.7.0 Public Defender’s 2010 – 12 ‘Strategic Plan’**

59.7.1 The year 2012 was the last of a three-year **strategic plan** of the Office of the Public Defender. One of the central objects of the plan is to monitor the enforcement by the Police Commissioner of the JCF Policy.

59.7.2 In March, 2012, following a spike in police killings, the Commissioner announced that he had been moved to consider amendments to and refinements of the JCF Policy, intended to promote adherence to it. He was driven to seek **“support”** from the Officer corps of the Constabulary as well as the Jamaica Police Federation, representing the rank and file members. He said that the Officer corps would thenceforward be **held to account** for the

conduct of deviant personnel: an important term of the Policy long more honoured in the **breach** than in the **observance**.

**59.7.3** The Public Defender has welcomed the Commissioner's announcement and offers his fullest support for ongoing efforts (despite resource constraints) to -

- reform the Constabulary;
- expel those found not fit to "**serve**" the citizenry;
- recruit only the "**finest**" from amongst the thousands of volunteers;
- drill them all daily in the tenets of self-discipline and **respect** for all and,
- communicate **candidly** with the Jamaican people who, the constable **swears** to "Serve, Protect and Reassure."

**59.7.4** Members of the JCF are sometimes required to serve under appalling physical conditions which are themselves dehumanizing. Policing in Jamaica is fraught with challenges and **stress**, particularly for those on the frontline, where, personal danger frequently lurks. The Public Defender acknowledges and takes the opportunity formally to thank all conscientious personnel for their patriotic service. So should all citizens (the ones policed) who, bear a civic duty to support them but **only** in the **lawful** execution of their duties. For the law cannot be enforced **unlawfully**.



**60.0.0 THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)**

The ICCPR is a multilateral treaty. It was adopted by the United Nations General Assembly on December 16, 1966 and has been in force since March 23, 1976. The treaty commits State Parties to respect of individual civil and political rights including the **right to life**, the right to **due process** and **fair trials**. As of March 2012, the ICCPR had seventy-four (74) signatories and one hundred and sixty-seven (167) Parties.

**60.1.0** The ICCPR is a constituent part of the International Bill of Human Rights, the others being the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR). The ICCPR is monitored by a *Human Rights Committee (HRC)* (a body separate from the UN Human Rights Council), which reviews regular reports of States Parties on how the rights are being implemented.

**60.1.1** **Jamaica's signature** was **affixed** to the Covenant on **December 19, 1966**. The date of deposit of the instrument of **ratification or accession** was **October 3, 1975** (the year before Proclamation of a State of Emergency last before that of May, 2010 and the second since the attainment of political independence in 1962.)

**60.1.2** The following Declaration was made to the HRC on June 1, 2010:

“ ...in accordance with Article 4 (3) of (the Covenant) **(Jamaica)** has the honour to inform that on 23<sup>rd</sup> May 2010, the Governor-General

of Jamaica issued a proclamation declaring a State of Public Emergency in the island.

The State of Public Emergency has been imposed in the parishes of Kingston and St. Andrew as a result of a threat to public safety and shall exist for a period of one month unless extended by the House of Representatives or terminated at an earlier time.

The Proclamation issued by the Governor-General is in strict compliance with the provisions of the International Covenant on Civil and Political Rights and with the Constitution of Jamaica. There may be derogation from the rights guaranteed by Articles **12, 19 and 21** of the Covenant.....

The Government of Jamaica hereby requests that the Secretary-General in his capacity as depository of (the Covenant) inform all Parties ... on the provision (sic) from which it may derogate and the reason for possible derogation.”

(Articles **12, 19 and 21** of the Covenant cover the freedoms of movement, expression and the right of peaceful assembly, respectively.)

**60.1.3 Article 4** of the Covenant provides:

1. In time of *public* emergency which *threatens the life of the nation* and the existence of which is *officially proclaimed* , the States Parties ..... may take measures *derogating* from their obligations under (the) ..... Covenant to the extent *strictly* required by the exigencies of the situation, provided that such measures are *not*

*inconsistent* with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or *social origin*.

2. No **derogation** from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall *immediately* inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of *the provisions* from which it has *derogated* and of the *reasons* by which it was actuated. A further communication shall be made, through the same intermediary, on *the date* on which it *terminates* such derogation.

**60.1.4** The protection stipulated for under Article 4. may only be limited “*in time of public emergency which threatens the life of the nation.*” Even then, **no derogation** from the **right to life, freedom from torture** and the **right to personhood** (*inter alia*) is permissible [Article 4(2)].

**60.1.5 Article 6** provides :

1. *Every human being has the inherent right to life.* This right shall be protected by law. No one shall be **arbitrarily deprived** of his life.

**60.1.6** The allegations of extra-judicial killings by members of the security forces raise **presumptive evidence** of derogation from Article 6.

**60.1.7 Article 7** provides (in part) :

No one shall be subjected to torture or to *cruel, inhuman or degrading* treatment or punishment.

There is *prima facie* evidence of unlawful derogation from this Article. There are allegations of persons being subjected to what may be considered “*inhuman or degrading treatment*”. Persons who were detained claim to have had no access to toilet facilities, food, and water or been made to kneel in gravel, while in detention.

**60.1.8 Article 8:**

Proscribes slavery, the slave-trade and **servitude**. It provides, by paragraph **3** that —

(a) — No one shall be required to perform **forced** or **compulsory** labour.

By the provisions of sub-para. (b), the performance of “**hard labour**” (in the countries of State Parties in which it may be imposed) “in pursuance of a **sentence** to such **punishment** by a competent **court**” is **not** precluded by Article 8.

But by sub-para. —

(d) For the purpose of this paragraph, the term “**forced** or **compulsory** labour” shall **not** include

- (i) Any work or service not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a **lawful order** of a **court, ...**
- (ii) ...
- (iii) Any service **exacted** in cases of **emergency** or **calamity** threatening the **life or well-being** of the community
- (iv) ...

There were several complaints by detainees that they were **forced** by State Security personnel to pick up dead bodies and load them onto Government-owned vehicles, obviously **not** by virtue of any, or any “lawful order of a court.” This exercise made them most **uncomfortable**. They were fearful of the consequences for their well-being if they had refused to perform this unpleasant chore which, they greatly resented. Presumably however, and on account of the supposed exigencies then prevailing, the Government could seek to justify the relevant orders given by members of the Security Forces, by reliance on paragraphs **3(d)(iii)** of this Article, in answer to complaints that detainees were subjected to “**servitude**”, “**forced**” or “**compulsory**” labour”.

**60.1.9 Article 9** provides :

1. Everyone has the right to *liberty* and *security* of the person. No one shall be subjected to *arbitrary* arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are *established by law*.
2. Anyone who is arrested shall be informed **at the time of arrest**, of the reasons for his arrest and shall be **promptly informed** of any charges against him.

**60.2.0** Hundreds of male residents of West Kingston and elsewhere were taken from their homes and detained during the ‘incursion’, without explanation or apology and without being informed of the reason for their detention; nor were any charges laid against them.

There is therefore *prima facie* evidence of unwarranted derogation from Article 9 which, (sub – para.3) confers an “*enforceable*” right to compensation.

**60.2.1 Article 10 provides :**

1. All persons deprived of their liberty shall be treated with *humanity* and with respect for the *inherent dignity* of the human person.

Again, there is *prima facie* evidence of infringement of this protection.

**60.2.2 (Articles 11, 15, 16 and 18 —**

variously **proscribe** imprisonment “merely on the ground of inability to fulfill a contractual obligation” as well as the pronouncement of guilt by reason of retrospective criminalization of any act and **confer** the “right to recognition everywhere as a person before the law” and, the “right to freedom of thought, conscience and religion”.)

**60.2.3** In his address to Parliament of May 25, 2010, then Prime Minister Golding announced that the “most thorough investigation” would have been carried out into the joint police/military operation in West Kingston. The Government provided special funding to the Public Defender, an independent Commission of Parliament, (not a Government agency) to facilitate investigations which that Commission proposed to undertake. It is submitted that that funding would be no more than a partial discharge of the

Government's obligations under the ICCPR, in particular Article 7. It needed to secure the most diligent probe by its law enforcement arm, the JCF, which, it will be recalled, hardly responded with dispatch and in any event, did not enjoy the unstinting cooperation of the JDF.

**60.2.4** The Government's treaty obligations now **require** that at the very least, outstanding ballistic examinations be completed, consistent with the Road Map and, that a **public judicial enquiry** be commissioned.

**60.2.5** The alleged misconduct of military personnel during the 'incursion' or 'siege' identifies the need for the incorporation of human rights standards in Jamaican military doctrine, policy and Standing Orders, as well as the proper training of soldiers to inculcate respect for human rights. A judicial enquiry may yet determine whether army personnel should stand trial for civil offences or proceedings taken by way of courts martial.

**70.0 COST; ECONOMIC AND SOCIAL IMPACT OF STATE OF EMERGENCY**

**70.1** The macro socio-economic impact of events related to the State of Emergency was the subject of a special study undertaken by the PIOJ which published reports in October, 2010 and April, 2011. The following is an extract from the **executive summary** of a report prepared by the United Nations Economic Commission for Latin America and the Caribbean, (ECLAC) at the request of the Government of Jamaica (PIOJ):

“The **total cost** of the fall-out from the civil unrest was determined by, among other factors, the **severity and duration of losses** to affected sectors and activities, the **cost of physical assets damaged** and the extent of **contingency spending** occasioned by its impact. Influenced by these factors, the **total effect** of the unrest **on the economy** of Jamaica was **estimated at J\$22,515.8 billion, equivalent to US\$258.8 million**. The **total impact** represented some **2.1% of 2009 current GDP** and **50.0% of tourism GDP**.

The primary affected population was found in the parishes of Kingston and St. Andrew, in an area collectively defined as the **Western Kingston Area** comprising **Denham Town, Central Downtown, Tivoli Gardens, Fletchers Land, Hanna Town and West Downtown**. Together these communities possessed a population of some 39,332 persons. **Some 41% of that population** could have been found in the community of **Tivoli Gardens**, which was the home of Christopher ‘Dudus’ Coke. The report identifies the magnitude of the primary affected population which accounts for only 2% of the total population of Jamaica. **The secondary population** was defined as those who formed part of the employed labour



force who worked in the parishes of Kingston and St. Andrew and who **accounted for 11%** of the population. The **report concludes**, therefore, that **349,674** or **some 13%** of the **Jamaica population** may have been **directly affected** by the events.

It is important to note that while Western Kingston was the locus of the event, **several** other communities were **severely** affected in terms of **livelihoods lost** and **dried up liquidity** due to their **sympiotic relationship** with Western Kingston.

Other segments of the population were affected as well, such as **farmers** in **rural** communities whose sale of goods through Coronation Market were (sic) disrupted. **Students** at the **secondary** and **primary** levels of education were another group. Because of the **timing** of the event a **significant number** of students undertaking **Caribbean Advanced Proficiency Examination** and **Caribbean Secondary Education Certificate** had their education **disrupted** and a number of significant **national standardized tests** across the country also had to be **postponed**. Approximately **2,500 children** from ages **one** to **four years** old in the communities of **Tivoli Gardens, Denham Town, Fletchers Land and Hannah Town** would have **witnessed** the events in Western Kingston and may have been **exposed** to **some degree** of **psycho social trauma** and required appropriate counseling.

Another group affected by the event was **the tourist** (sic) who **stayed away** from the country and **cancelled reservations** for fear regarding their safety. On 24 May 2010 Air Jamaica announced the cancellations of three flights (two out of Kingston to Fort Lauderdale and New York and one from Fort Lauderdale to Kingston). The **civil unrest** and the **intermittent blockage** of **access roads** to the Norman Manley Airport were cited as reasons for cancellation.

**Travel advisories/alerts** were **issued** for the island from the foreign affairs departments of the **Canadian, United States, United Kingdom** and **Australian Governments**. Many of these advisories were still in place at the time of the assessment, albeit under revised terms. These advisories were revised between 23 June and 10 August. Potential revenue from tourism was also lost due to the **moving** from **Jamaica** to **Trinidad** of the **West Indies' fifth one-day and first test** against **South Africa** because of the security situation in Kingston.

The sectoral composition of the impact indicate that the **productive sectors** suffered the bulk of the impact (**93%**), with **tourism** suffering **most** of the **losses** due largely to **loss of business** and the **outlay** on **marketing** and **advertising** to **encourage** visitors to **return**. The **distribution** sector suffered 3.5% of impact, nevertheless, **the social fall-out** in the sector would have been **considerable**, as a number of independent vendors were badly affected. The **infrastructure** sector suffered 4.8% of the total impact, with the bulk of the fall-out in **transportation**, reflecting in part the **disruption** of operators on the route **from Kingston** to a number of areas. **Productivity** losses represented 0.9% of the total and stemmed from morbidity and loss of life, social distancing resulting in lost labour productivity. Costs to the **health** sector were also contained (US\$1 million), while the **fall-out** in **communication** services amounted to **US\$2.5 million**. The **initial estimate** for the cost of **security operations** was **US\$2.7 million**, made up of US\$1.5 million for the Jamaica Constabulary Force and over US\$1 million for the Jamaica Defence Force and **US\$0.16 million** for Office of the **Public Defender**.”

The report concludes that the events that unfolded in West Kingston are not new to Jamaican society. However, arriving at the “**overall** effect of such events, in terms of its **impact** on growth and development,” is **novel**. The report suggests that knowledge about the **socio-economic** cost of **violence** and **unrest** should influence **development policy** and shape the **reconstruction** efforts for West Kingston.

**70.2** In this regard the report proffers conclusions and recommendations.

**70.3** The **main conclusion** is that there is the need for a **medium** to **long-term rehabilitation** and **revitalization** programme for the affected communities to functionally **integrate** them into the **Jamaican society**; that the **central focus** of any programme of renewal should be to create the **institutions** and **incentives** for persons in the communities to **generate wealth** from **productive** activity.

**70.4** The report, therefore, recommends that:

- a. A **benchmarking analysis** should be undertaken of the **assets** and **resources** in the communities and any major development deficits to inform the programme of action.
- b. Given the specific competitive advance of the area, **an integrated cluster** could be developed around **food** and dry goods vending, **music** and **sport**.

- c. **Special** social welfare programmes for supporting livelihood development **may be necessary**.
- d. Micro-credit facility for **Female Headed Households** should be introduced
- e. A campaign for the **reduction of stigma/discrimination**, which had resulted in **social exclusion**, should be implemented and,
- f. A **regeneration** plan for the **Western Kingston** area which utilizes the **creativity** of the people to generate **cultural heritage** products that can be offered as additional **tourism products**, utilizing **the creativity** of the population in **dance, theatre, food** and the **music history** of the communities should be the **outcome** of the process of **revitalization**.

**70.5** The Public Defender unequivocally endorses these recommendations and commends them to the Government again. Their efficacy depends **in part** upon the **availability** of fiscal resources but moreso, upon **political will** and the resolve of a **responsive** and **responsible** Government.

**70.6** The Public Defender is **especially** attracted to the recommendation at **letter f.** above. Because of the ground-breaking work of social transformation pioneered by the Agency for Inner-City Renewal (the AIR) and the Institute for Social Entrepreneurship & Equity (I-SEE), headed by the thoughtful Dr. Henley Morgan, Ed.D., he was therefore invited by the Public Defender to submit a brief paper to be incorporated into this **Interim Report**. The note which follows anticipates the rigours of a pending Agreement with the

International Monetary Fund for the grant of an Extended Fund Facility. (The co-authors are Professor Emeritus Neville C. Duncan, Ph.D and Dr. Michael Rosberg, Ph.D.)

### The Note

#### “ ACHIEVING RENEWAL OF THE HUMAN SPIRIT IN TIVOLI THROUGH ECONOMIC REVITALIZATION: A SOCIAL ENTREPRENEURSHIP MODEL

In Jamaica, there is little or nothing in the IMF package to stimulate sustainable growth among the **bottom 40%** of the population. Therefore, there is a need to look **within** Jamaica for lessons on how to assist this body of persons in increasingly trying economic times.

Jamaica owes **Tivoli** a **special** effort of **reincorporation** in the wider Jamaican **mainstream**, building socio-economic competence. This is not the first time that **Tivoli Gardens** has been the butt of the exercise of state power. Models need to be built that create a deep sense of social esteem based on **individual** entrepreneurial development (i.e. **non-patronage** based).

We haven't got far to look for a potential **alternative model** that can be **custom-tailored** to the **Tivoli** situation. It would be a model starting with an I-SEE **investigation** of the social and economic competencies now **existing** in the community and an identification of **people's preferences** for economic activity. Based on that kind of analysis, there is already an activity of the USAID/I-SEE model that expedites a **comprehensive** way of bringing the people back to a **productive** life (wherever they are in Jamaica).

People in Trench Town are now very positively engaged in **bottom-up** economic activities such as **food production** through **greenhouses**, **recording studios**, and **ceramic production**. With I-SEE's deployment

of MBA students in Trench Town shops, a Grace Kennedy Business Expansion Grant (\$500,000), and First Heritage Co-operative Credit Union loans for new, shopkeeper members' purchases of Grace Kennedy products, the potential for better productivity and higher income becomes possible [i.e. a self-replicable (sic) model with other counterparts, e.g. Berger Paints and house painters from targeted communities]. This is only one example of the kinds of activities that can be supported by the I-SEE model of social entrepreneurship with **social equity**, and can be extended to all major corporations in Jamaica wanting to '*do well by doing good*' (sic).

The I-SEE MBA students, currently at University College of the Caribbean, are being trained to direct small business development centers, soon to be established across Jamaica. Ones promoted by I-SEE (now working with Jamaica Co-operative Credit Union League and the National Union of Co-operative Societies of the co-operative sector) will operate on an expandable and **self-financing** basis. The model also extends benefits to workers likely to be laid off in the public and private sectors with severance benefits who may elect to join a programme like this for their own **self-development**. One great advantage of these **self-funded**, entrepreneurial activities among the **lowest 40%** is that it is a **low cost, dynamic approach** to increase **occupational** growth, and tax benefits to Government **without** excessive additional expense. The model can be adopted by other systems (e.g. Banks, Churches, NGOs)."

**70.7** The Public Defender therefore gratefully adopts and endorses those ideas. The paper offers something of a template for sustainable social and economic development of Tivoli Gardens and West Kingston. It aims to promote self-reliance by tapping into the

energy, muscle, creativity and ingenuity of the people. Application of the AIR/I-SEE model would be comparatively cost-effective, requiring minimal State financial outlay. Its success would greatly weaken the pervasive influence of political 'Dons', rendering them increasingly redundant.

**70.8** The Public Defender therefore *recommends* to the Government that as a **beginning**, I-SEE be asked to investigate the “social and economic competencies now **existing in the community**” with a view to identifying the “people’s preferences for economic activity.” Purposeful Government support of what will likely be practical recommendations for a “**custom-tailored**” model of self-sustainable social and economic development of Tivoli Gardens and West Kingston i.e., which is not **patronage-based**, would quite probably help to reverse chronic stagnation.

## 71.0 BEHIND JAMAICA'S POLITICAL "GARRISONS"

71.1 The following excerpts of the July 1997 Report of the *National Committee on Political Tribalism*, chaired by the first Political Ombudsman and, a former Chief Parliamentary Ombudsman, the Honourable Mr. Justice James Kerr, O.J., (ret'd) and now deceased, are pointedly *apposite*.

“ **Garrison** communities are created by:

- (i) the development of large-scale **housing schemes** by the State and the location of the houses therein to **supporters** of the party in power;
- (ii) **homogenization** by the **dominant** party activists pushing out **the minority** from within and **guarding** against **invasion** from **outside**; and
- (iii) the expelled setting up a **squatter community**.

The **hard core** garrison communities exhibit an element of **autonomy**, in that they are **states** within a **state**. The Jamaican State has **no authority** or **power** except in as far as its forces are able to **invade** in the form of **police** and **military raids**. In the **core** garrison, **disputes** have **been settled**, matters **tried**, offenders **sentenced** and **punished**, all **without reference** to the institutions of the **Jamaican State**.

The following extract from Mr. Mark Figueroa's important contribution on the topic speaks eloquently for itself and merits quotation **in full**:

‘Encompassed in this process are all those activities that are associated with the **establishment**, the strengthening, and the **extension** of the **influence** of garrisons and their associated psychology. In using the notion of a **garrison process**, I am



linking the presence of the **large scale** garrisons such as Jungle, Payne Land, Rema, **Tivoli** and other less known strongholds, to a **political culture**. This political culture extends **well beyond the boundaries** of the communities which have come under the tight control of **politicians**, their **thugs**, and/or **local enforcers**.

Those who promote the garrison process seem intent on extending its dominance over **larger** and **large** (sic) sections of the country yet to date there are **few** constituencies where the vast majority of the territory has been garrisoned. To focus on constituencies alone is to miss the **significance** of the **garrison phenomenon** as a whole. The presence of a **relatively small garrison within a constituency** or the presence of a garrison in a neighbouring constituency can **fundamentally alter the course of an election** in a constituency that is relatively **garrison free**. The ability of the garrisons to do **'outreach work'** greatly enhances their significance. My central concern is therefore with the concept of a **garrison community** not a garrison constituency.'

Mr. Mark Figueroa therefore emphasized, and **we accept**, that the **creation, development, and maintenance** of garrisons are neither accidents of history nor geography, but part of a process **deliberately** fostered for **political** ends. Equally important is his focus on the concept of the **garrison community**, rather than a garrison constituency, the point being that the existence in a constituency of a **garrison community** can have as significant an **impact** on the **electoral process** as the garrison constituencies themselves, and an **impetus** to transform the garrison **community** into a garrison **constituency**."

71.2 Later, the Committee observed —

“ Dr. Barry Chevannes described the **common features** in this way:

‘Just as the political tribe of ancient **Greece** and **Rome** was under the leadership of a **demagogue** so in Jamaica the **garrison** towns are **controlled** by the **Dons**. **Entry** and **exit** to and from these communities are controlled by the so-called ‘top ranking’ and **gang leaders** who have **close relationships** with the constituency **Member of Parliament**, get **preferential** access to contracts and jobs and function as **key elements** of the local level community political leadership in **both parties** in these inner city **poor areas**. These constituencies are made up preponderantly of these “**garrison communities**” where **organized political gangs** with **high powered M-16** and **A.K. 47** assault rifles and **sub-machine guns** control clearly **defined political boundaries** and territories where **political protection** insulates them from the reach of **the security forces.**’

We interpret this to mean that on occasions **political influence** has **impeded the Security Forces** in the performance of their duties.”

**71.3** Under the rubric ‘**Poverty**’ the Committee stated -

“ The **living conditions** of the people in most of the ‘**tribalised**’ communities (some of which we visited) reek of **abandonment** and **neglect**. Sub-standard housing, **poor sanitation**, and numerous **environmental hazards** are immediately visible. The National Inner City Committee highlighted these conditions in its 1993 Report on **Strategy for the Revitalisation of Blighted Youth**. Similar observations were made by the Centre for Population, Community, and Social Change in its Study on Urban Violence and Poverty in Jamaica (**They Cry Respect**) published in 1996.

**Poverty** facilitates the development of **political tribalism**. The slum communities around the parish capitals, particularly, **Kingston, St. Andrew, and St. Catherine**, continue to grow as **unemployed** and **under-educated** youths migrate from rural communities in search of a better opportunity.

The fact is that **the Jamaican economy** has **not performed well** over the past 35 years and therefore the country has **not been able to provide** enough jobs to meet the needs of a **growing** population.

The conditions in the communities also reflect the **failure** of the **education process**, where young people, the **regenerative capacity** of the future, are **graduated** from schools **without** the **basic skills** required to perform in the **formal** economy.”

**71.4** The Public Defender considers that the report of this high-powered Committee **deserves** to be and, should now be urgently **dusted off** and **revisited**. For it identifies a debilitating and inhibiting **symbiotic** relationship between **crime, politics and poverty**. The Public Defender gratefully adopts and endorses the **insightful** and **felicitous** observations of the Committee. The work of the National Inner City Committee and the seminal study on Urban Violence and Poverty in Jamaica remain quite instructive.

**71.5** The Kerr Committee accepted the opinion of a noted social scientist that **Tivoli Gardens** was a **“large scale”** garrison. (Not a relatively “small garrison within a constituency”?) They reflect on the dominant influence of the **‘Don’**; on how **parlous** performance of **the economy** derives from the **inefficacy** of **“the education**

**process”** leading, ineluctably, to **low job growth** and unemployment and, on the **“close” relationship** between the **gang leader** and **member of Parliament**.

**71.6                    The crime/politics/poverty symbiosis and the State of Emergency, etc.**

**71.7**    Two questions in particular arise for **judicial** determination, viz. –

- How, and if so to what extent, if at all, was the garrison phenomenon **dramatized**, was a causative factor or **impact** the Government’s **protracted** handling of the Christopher Coke **extradition request** and/or propelled the **events of May, 2010 ?** and,
- Was there a contaminating and characteristic **“close”** relationship between **‘Dudus’** and his member of Parliament, former **Prime Minister Golding** and if so, how did it influence matters ?.

**71.8**    The Public Defender is very **interested** in the answers to these questions, not least because the **symbiosis** and scenario both affect the **matrix** of his **mandate**; complicate and burden it. But beyond that and of even greater moment, the answers will determine **how** the symbiosis **may** have led to or accelerated the **death** of no fewer than **seventy-six (76) citizens**. Conversely, how its **absence** might have prevented the **cataclysm** being investigated.

## 72.0.0 INQUEST OR COMMISSION OF ENQUIRY ?

72.1.0 In deciding on the way ahead the relative advantage of two alternatives (an **inquest** or **commission of enquiry**) needs to be considered.

### 72.1.1 The Inquest

72.1.2 The Director of Public Prosecutions has indicted three **low ranking foot soldiers** for murder in connection with the **death of Mr. Clarke**. Ordinarily, the killing of the other **seventy-five (75) deceased** could be made the subject of inquests, by virtue of the provisions of the Coroners Act, 1900. Under a 2009 amendment to that Act, an Office of **Special Coroner** was created [S.5A. -(1)] and—

“5B.-(1).....shall exercise the jurisdiction and functions of the Coroner in respect of **any death occurring at any place** in Jamaica where there is reasonable cause to suspect that the death occurred as a result of the act or omission of an **agent of the State.**”

72.1.3 The expression “**agent of the State**” includes members of the JCF, JDF, the ISCF and the Rural Police (S.3).

Coroner’s juries of “not less than five” **lay persons** (usually seven) are sworn to hear evidence given on oath and “diligently to enquire **touching the death** of the person on whose body the inquest is ... held and a true verdict to give **according to the evidence.**” [S.19.-(1)]

**72.1.4** S.19.—(5) of the Act provides —

“ After hearing the evidence the jury shall give their verdict, and certify it by an inquisition in writing, setting forth, so far as such particulars have been proved to them, **who the deceased was, and how, when and where the deceased came by his death**, and, if it appears to the jury that, *prima facie*, (sic) the circumstances of the death indicate that the crime of murder or manslaughter has been committed, **the persons**, if any, whom **the jury charge** with murder or manslaughter.”

**72.1.5** If the Coroner’s inquisition charges a person with the offence of **murder** or **manslaughter**, the Coroner issues a warrant for the arrest or detention of that person [S.20. – (1)].

**72.1.6** In the event of a Coroner neglecting or refusing to hold an inquest or where “it is necessary or desirable in the interests of justice that another inquest should be held”, a Judge of the Supreme Court may, on the application of an interested party, order that an inquest be held [S.21.– (1)].

**72.1.7** The Coroner may order the production of documents and issue summonses or warrants to **compel** the attendance of witnesses who, however, enjoy protection against self-incrimination. [SS.22A.–(6); 22B.–(1)]. Written statements (including firsthand hearsay) are admissible in evidence (SS.23A. ; 23B.)

**72.1.8** Thus the **purposes** of an inquest are for a jury **merely** to —

- (a) “diligently to enquire **touching the death**” of any relevant deceased;
- (b) to establish the **identity** of the deceased;
- (c) to determine **how, when and where** the deceased came by (his/their) **death**;
- (d) to indicate whether the crime of **murder** or **manslaughter** has been committed and,
- (e) to name **the person(s)**, if any, whom **they charge** with either offence.

**72.1.9** It will be clear that the various **other** areas of **necessary** enquiry identified in this Interim Report are plainly **not matters within the competence** of a Coroner’s jury. Those areas include —

- A.** the **sybiosis** or **nexus** between **crime, politics and poverty** in Jamaica and how it **may** have led to **the events of May, 2010** particularly the related killings, **including** that of **Mr. Keith Clarke**; (See pp. **192** and **213-215 post**)
- B.** the **political** links and patronage, **if any**, enjoyed by **Christopher Coke** and how either linkage or patronage **may** have affected matters **leading** up to or connected with declaration of the State of Emergency 2010, and/or the related **deaths**;

- C. an **evaluation** (assessment) of the overall **conduct** of the State Security Forces during the **State of Emergency**, examined particularly in light of —
- (a) the ‘marching orders’/instructions/‘briefing’ **actually given**, prior to the launch of operations;
  - (b) the provisions of the relevant —
    - i. **rules of engagement** - the JCF Policy and,
    - ii. powers conferred by the **Emergency Proclamation**;
  - (c) such evidence as there may be of State Security Forces’ **‘profiling’** of civilians, (particularly males), consciously or unconsciously —
    - i. during the **‘incursion’** or **‘siege’** or, in the assault on the **Keith Clarke** household;
    - ii. as a **causative** factor in relation to the killings and other **alleged atrocities** and/or
    - iii. by virtue of which those Forces may have retaliated against the earlier attacks on members of those Forces or police stations or practised a **vendetta** on **residents** of Tivoli Gardens, the suspected perpetrators or their cohorts;



- (d) the **"intelligence"** which inspired, as well as the circumstances which led to and/or surrounded the **killing of Mr. Keith Clarke**;
- D.** the **level of resistance** actually encountered by the State Security Forces during the **'incursion'** or **'siege'**, (whichever it was) and the assault on the **Keith Clarke** household;
- E.** the **precise body count/death toll** related to the State of Emergency and the attendant circumstances of **all** related killings;
- F.** as far as is ascertainable, the **number of known** deceased (see **Appendices 1 and 2**) who were killed by members of the State Security Forces and/or by **others** e.g., illegal **gunmen/armed combatants**;
- G.** the **role** played by and **assistance derived** from the over-flight of United States Department of Homeland Security surveillance aircraft (with or without the **collaboration** of the **Civil Aviation Authority**;) during the **'incursion'** or **'siege'** and/or the assault on the **Keith Clarke** household;
- H.** as regards the use of **munitions** during the Tivoli Gardens operations –
- (a) the **advisability/justifiability** of that use;
- (b) the precise **type(s)** deployed, in particular, the variety of mortar rounds – "incendiary" or "explosive";

- (c) the **number** of mortar rounds discharged/and the **extent** of their use;
  - (d) the **injuries/death** caused by that use (i.e., other than by **gunshot** trauma) and,
  - (e) the **damage** or loss resulting;
- I.** the **role** in the **planning** of and, the demonstrable **oversight** of ‘**incursion**’/‘**siege**’ activities and the “**Keith Clarke operation**,” played or effectuated by the **Commissioner of Police**, the **Chief of Defence Staff (ret’d)** and **senior officers** of the JCF and the JDF;
- J.** the **role** played by and, the **involvement** of former Prime Minister Golding and former Minister of National Security, Mr. Nelson, in **matters connected** with **I.** above;
- K.** a **judicial** examination of —
- (a) **how** the reluctance, failure or refusal of the JDF to **cooperate** in **investigations** by the BSI and the Public Defender, into the **conduct** of its members during the ‘**incursion**’ or ‘**siege**’, **impeded** those investigations and,
  - (b) the legal **justifiability** and/or **reasonableness** of that failure or reluctance;
- L.** a **granular** examination of the **Who, Where, When** and **How** etc. concerning the alleged “**discovery**”, “**recovery**” or

**"finding"** etc. **of illegal weapons**, by the State Security Forces -

- (a) during the 'incursion'/'siege',
- (b) after cessation of hostilities as well as
- (c) the **precise number, make and calibre** of those weapons;

**M.** as regards the **Keith Clarke** matter in particular -

- i. the
  - (a) source
  - (b) **precise details**
  - (c) purport
  - (d) **authenticity** and
  - (e) **reliability**

of the **"intelligence"**, so called, which led to the **assault** on his household and his **death**;
- ii. the participation of the **heads** of the State Security Forces in the **planning** and **execution** of that operation: **what** did they know ? and, **when** did they know it ? and,
- iii. **the palpable** breach of the **agreed** Firearms Protocol (the ballistics **road map**) and its consequences and,

**N.** the system, **oversight** and **quality** of record keeping by the KSAC relating to interments in **paupers'** graves at the May

Pen cemetery, examined in light of **obligations** imposed by the provisions of the Kingston and Saint Andrew (Cemeteries) Act, 1874 and regulations made thereunder.

### **Unsuitability/Inefficacy of Inquests**

- 72.2.1** It follows therefore that the inquest device is **not suited** to the instant case. It is **inadequate** and lacks the necessary efficacy. In any event, it would be **highly impracticable** (and is obviously undesirable) to commit **so many** deaths (**75**) to enquiry by a Coroner already struggling to cope with **a chronic backlog** of well over **three hundred (300)** cases and growing.
- 72.2.2** Moreover it is notorious that, not by reason of inertia, coroners and the Special Coroner preside over an **inquest system** neither equipped nor noted for due expedition. In fact, that system has for many years past itself been **plagued by delay** and institutional malaise due in no small part also to the well-known **unwillingness** of citizens to **serve as jurors**.
- 72.2.3** With the greatest respect, to commit those deaths to the hands of coroners therefore would be to **condemn** and **inhume** the deaths in a veritable **sinkhole**. But worse, the resort to inquests would condemn the Government to reasonable **suspicion** of seeking to **cover up** alleged wide-scale atrocities as well as deny timely enquiry into the matters adumbrated herein.

### 72.3.0 **The Commission of Enquiry**

72.3.1 The **inquest** mechanism or **option** must therefore be contrasted with proceedings under the **Commissions of Enquiry Act, 1873**. By S.2 of that statute, the Governor-General, “whenever he shall **deem it advisable**” may lawfully appoint commissioners “to enquire into ..... the **conduct** of any **public .... officers....** or into **any matter** in which an enquiry would in (his) opinion ..... be for **the public welfare.**” His Excellency may direct whether the enquiry shall or shall not be held in public. In relation to the appointment, constitution, and **terms of reference** of commissions of enquiry, the Governor-General acts **not of his own motion**, but upon the **advice** of the **Government**.

72.3.2 Commissioners must subscribe an oath or affirmation “**faithfully**, fully, **impartially** and to the **best of their ability**, (to) discharge the trust” reposed in them (S.5). They “have the powers of a Judge of the Supreme Court to summon witnesses and to call for the production of books, plans and documents and to examine witnesses and parties concerned **on oath...**” - (S.10)

72.3.4 The **efficacy** of the commission of enquiry was recently well illustrated in relation to the May, 2009 fire at the Armadale Juvenile Correctional Centre, Alexandria, Saint Ann, in which five **adolescent female wards** of the State perished. Two others died

later at hospital. That was another case in which the Public Defender **initiated** investigations and was therefore able to furnish the sole commissioner, Mr. Justice Paul Harrison (ret'd), (a former President of the Court of Appeal,) with most of the statements taken from witnesses who testified. (In that matter the Government **rightly opted** for a **commission of enquiry in preference** to a Coroner's inquest.) In a masterly report, the learned Judge made telling **findings, far-reaching and wide-ranging** recommendations, including **criminal prosecutions** and disciplinary action. (Disappointingly, the State is **yet to compensate** the estate of the deceased, whose death was caused by negligence, breach of statutory duty and/or criminal misconduct.)

**72.3.5** Without hesitation, but with what appears to have been a proper grasp of the scope of the debacle of May, 2010, Prime Minister Golding indicated to the Public Defender that **he** would advise the setting up of a commission of enquiry if so *recommended* by the Public Defender. In a covering letter to Mr. Golding dated **May 28, 2010, (Appendix 29)** [which accompanied his copy of another **(Appendix 5)** sent the day before to Commissioner Ellington and Major General Saunders,] the Public Defender **did just that**. He *recommended* that the terms of reference encompass "the circumstances leading up to the declaration of the State of

Emergency as well as the **discharge** by all **relevant authorities** and **security personnel** of their **statutory** or other **legal duties**".

The Public Defender respectfully **repeats** and has strengthened that *recommendation* by the several reasons given herein.

#### 72.4.0

#### The 'Manatt' Commission

72.4.1 By a Proclamation published in the **Jamaica Gazette** of Tuesday, October 19, 2010, (**Appendix 32**) the Governor-General, issued a Commission under the 1873 Act, with the following terms of reference:

"1. To enquire into and report on the issues relating to the **extradition request** for Christopher Coke by the Government of the United States of America, the **manner** and **procedure** in which the said extradition request was handled by the Government of Jamaica, the circumstances in which the services of the law firm Manatt, Phelps and Phillips were engaged and its role in relation to the said extradition request and the role and conduct of various public officials and private persons and organizations in relation to any or all of the aforesaid matters more particularly set out in the terms of reference hereunder:

- (a) The **issues** relating to the **extradition request** for Christopher Coke by the Government of the United States of America;
- (b) The **manner** and **procedure** in which the said **extradition request** was handled by the Government of Jamaica and the **role** and **conduct** of the various **public officials** who handled the **extradition request**;

- (c) The circumstances in which the services of the law firm Manatt, Phelps and Phillips were engaged in relation to any or all of the matters involved, by whom were they engaged and on whose behalf they were authorized to act;
- (d) Whether there was any **misconduct** on the part of any person in **any of these matters** and, if so, to make recommendations as the Commission sees fit for the referral of such persons to the relevant authority or disciplinary body for appropriate action.”

**72.4.2** After due consideration, the Chairman of the Commission, Mr. Emil George, Q.C. and the Public Defender, concurred in the opinion that those terms of reference did **not encompass** the conduct of the **State Security Forces during the ‘incursion’, nor** in relation to the circumstances surrounding **the killing of Mr. Clarke**. (True copies of relevant correspondence are attached hereto as **Appendices 33 – 36**) The report, findings, and recommendations of that Commission are matters of public record. They require no further reference or comment.

**72.4.3** Quite surprisingly however, Mr. Golding’s successor as Prime Minister, Mr. Andrew Holness, (now leader of the Opposition,) **equivocated** or was **non-committal** when the issue was put to him during a television interview of **December, 2011**. Plainly alluding to the proceedings before the Manatt tribunal, Mr. Holness was skeptical in referring to what he said was the tendency (of Counsel) to “star” at such hearings; for him, too much



time had intervened. ( Cf. the **Bloody Sunday** Saville enquiry, pp. 208-9 and 216-29 *post.*) He even felt able to suggest that perhaps the work of a commission were best relegated to **investigative journalism**. With respect, that is or would be a **flippant** or **feckless** response to matters of great moment and historical importance.

**72.4.4** But in the result, there is a troubling **divide** between two former Prime Ministers regarding the appropriate method of **getting to the bottom** of what actually transpired, during the 'incursion' or 'siege'; **how** and **why**.

**72.4.5** A distressing development is the sideshow starring none other than Mr. Golding's own cynical **successor** as **Member of Parliament** for West Kingston, Mr. Desmond McKenzie. At all material times he was the **Mayor** of Kingston, **Chairman** of the **KSAC** and the duly elected **Councillor** of the Tivoli 'division'. Like "**Dudus**" he grew up in Tivoli Gardens but has long since moved out. His Waterworks, Manor Park, Saint Andrew residence was one of the many premises raided by the Security Forces (without warrant) during the State of Emergency. [Taking obvious pride in the experience, he has more than once publicly declared that he and others were flogged by Mr. Seaga (their affectionate but stern "Uncle Eddie") during the late teens of his "formative" years.]

**72.4.6** Mr. McKenzie weighed in at **the height** of the furore. (see the Apologia, p.1 ). On Friday, February 1, 2013 he told the *Gleaner/Power 106 News* (later **personally** confirmed by him in a telephone exchange with the Public Defender) that –

**A.** He was “**convinced** from the **onset** that the (**Public Defender’s**) investigation **wouldn’t bear fruit** based on the **manner** in which **information was gathered** by the Public Defender’s office.”

[What is it about that ‘**manner**’ that irks him ?. In the many months since commencement of the Public Defender’s investigations, he did not (even remotely) indicate any dissatisfaction over it. On the contrary, he was instrumental in facilitating arrangements for **identification** of the dead and the **detailed** recording of complaints from aggrieved persons (the overwhelming majority of them his constituents) at the Tivoli Gardens community centre. Mercifully though, he has not, or not yet, joined those demanding the Public Defender’s “resignation”.]

B. He "notes that there are still **many** residents who have **not yet** been interviewed by investigators from Witter's (sic) office and a **lot of details** that have not yet been **uncovered.**"

(Who are these "**residents**" ?). Why did they not attend at the Tivoli Gardens and City Mission Church Public Defender's **outposts** in West Kingston, quickly established to facilitate the recording of complaints ?). Not even after two weeks' notice of closure of the outposts scheduled for October 31, 2010 ?). Or attend at the Public Defender's office in all the time since ?). Has Mr. McKenzie, as M.P., advised or encouraged **any of them** to give statements ?). **Taken** or **encouraged** the taking of any steps to revive any **dormant** complaint ?). Not even the **itemized** claim made in respect of the Tivoli Gardens marching band and drill team ?). **Why not ?**. But more importantly, just **what** are the "**details**" **known** to him which "have **not yet** been **uncovered**" ?). He has not even attempted to communicate any

such to the Public Defender. He certainly has a **solemn duty** to do so: **the sooner the better**. For evidently, he **knows** more than he is letting on.

- C. He “hopes that (this **Interim Report**), when submitted.... will bring **closure** to residents of West Kingston”.

(Whatever he conceives “**closure**” to be, can it come **before**, or **without**, a Commission of Enquiry ?. He has a **duty** to explain how it possibly could.)

- D. A “commission of enquiry would only **serve** to open **old** wounds and act as a **reminder** of the **sorrow** that residents experienced **almost three years ago**.”

(Really ?. Those “wounds” are comparatively **quite fresh**, not at all “**old**.” They **directly** affected an estimated **thirteen per cent (13%)** of the Jamaican population and in some respects the **entire** body politic. They will for **years on end**. In fact, their infliction should **never be forgotten**. Moreover, the M.P. needs to be made aware that his constituents’ “sorrow” is **enduring**.)

- E. He is urging the **“relevant bodies”** to move to **“compensate** those who **suffered losses”** during the ‘incursion’.

(Upon what **rational** or **legal** basis could any of the **“relevant bodies”** to which he alludes **“compensate”** any person aggrieved, **at this time** ?. Without the **judgement of a court** of competent jurisdiction ?. Without a **persuasive recommendation** made by the Public Defender ?. Or should compensation be **dished out** as some form of **largesse** ?. And how would the **recipients** be identified ?. On **his** or **whose** nomination ?.)

- F. Finally, he calls “for the **Public Defender** to be **held accountable** for his **failure** to submit (this) Report and for **deceiving** the public, in particular, the **residents of Tivoli Gardens.**”

[The Public Defender **is accountable** for the delay, has apologized for and offered an explanation for it. Thus the **“failure”** has been mitigated. But what of the utterly **wild** and **offensive** allegation of **“deceiving** the public, in **particular**, the **residents** of Tivoli

Gardens”, his **constituents** ?. That suggestion is simply breathtaking. So much so that the Public Defender asked Mr. McKenzie to explain the highly mischievous and inflammatory assertion. Avoiding **the issue** raised in that question **altogether**, he referred to the time last year when he told the Public Defender of some intention to pose certain relevant questions to **“the Minister.”** For the record, the Public Defender then advised him that his Office did not fall under **the portfolio** of any Minister of Government but was a Commission of Parliament – a fact of which he, a legislator, was surprisingly quite oblivious. (His suggestion that the Public Defender **“begged”** him not to put the “questions” to “the Minister” is both **mischievous** and, **mendacious**. But made the wiser, he appears to have resiled from his misconceived intention.) Now comes the M.P.’s artless, mainly ignorant and most unworthy contribution to the discourse. In particular, his attempt to shoot down the idea or *recommendation* of a judicial enquiry

is not at all edifying. Rather it embarrasses the **“residents”** of Tivoli Gardens and **himself** as well.]

**72.5.0** All or any naysay notwithstanding, the Public Defender respectfully submits that, neither **“budgetary constraints”**, **“tight fiscal spaces”**, nor **the lapse of time** should prevent or impede **public judicial examination** of the matters adumbrated earlier (pp. ), (in particular, the **conduct** of the State Security Forces and the **resistance** from illegal gunmen or criminal elements which they allegedly encountered,) during the events of **May, 2010**.

(**Cf.** the United Kingdom Government’s handling of and the guidance to be derived from the **Bloody Sunday Massacre**, in Northern Ireland, January, 1972, considered later herein (pp. **216 – 227** post.)

**72.5.1** The appointment of a commission of enquiry must not be fettered by parsimony. For the issue is not whether the country **can afford** such an enquiry but rather, whether it **can afford not to** have one.

**72.5.2** As regards the **procedural** obligation to appoint a commission of enquiry, some assistance may be derived from R (*on the application of Gentle*) & Anr. (op. cit. p. **116**, *ante*) in which it was **HELD**:

Article 2 of the European Convention on Human Rights provided, in relevant part, that **‘(e)veryone’s** right to life shall be protected by law’ ; as a result of interpretation given to Art. 2 by the European Court of





[The approach helpfully suggested by the learned Judge throws into relief one hare-brained idea constantly bandied about by a censorious charlatan and meddlesome sea lawyer. He is associated with an irritant anonymous faction calling itself the 'Tivoli Committee'. He suggests that the whole sorry business should long ago have been laid before the International Criminal Court, ('the ICC'), by the Public Defender.

That idea, for which there appears to be some support, may be quickly put to rest. **The ICC has no jurisdiction in the matter.** Jamaica has **not** acceded to the Rome Statute establishing the Court and is **not** a '**State Party**'; nor has it otherwise accepted the jurisdiction of the Court. And even if it were otherwise, the Statute's dominant '**Principle of Complementarity**' would require that the **domestic** legal system first deals with the "situation". (Although plagued by notorious delays, that system is at work, and is capable of handling matters, which, should be accelerated by the **commission of enquiry** process. That process would be triggered by the **completion of investigations**: practically, faithful adherence to the ballistics **road map**.) Lastly, the United Nations Security Council has not referred the 'Tivoli' events to the Prosecutor of the Court and in the

circumstances, appears unlikely to do so.]

**72.6.2** In an article published contemporaneously, Judge Robinson argued (in part) that—

“To find deaths **comparable in numbers** to those in Tivoli Gardens, Jamaicans would have to revisit two of the three events which provided **the furnace** in which **our independence** was **forged**. In Sam Sharpe's Christmas Rebellion of 1831 over 500 persons were killed; in **the 1865 Morant Bay Rebellion** some 400 persons were killed. In the most recent of these events, the 1938 Labour Strikes, some 15 persons were reported as killed. These deaths resulted from action taken by the **colonial** government to protect what it considered to be Jamaica's **national interests**, which of course meant **the interests** of **Britain**. After each of these crucially significant events **an inquiry** was conducted. No doubt, those inquiries were prompted more by concern for **British** property and **security interests** than for the loss of **black** Jamaican lives...

...The simple, plain truth is that in no country with a **Constitution** that **entrenches** the **right to life** can 70 people be **killed in peacetime** in a single incident, whether by the **security forces** or by **private persons**, and **national life** and **affairs** continue as though **nothing unusual** has taken place.

**Independence means nothing** if we cannot do **better** than the **British** and **inquire** into not only **the threat** to **national security** to which the security forces responded, but also the **terrible loss** of **human lives**. Fail to inquire and we fail those who died in 1831, 1865 and 1938 to secure the independence we now have, and we also **fail ourselves**.

The three historic events were **critical markers** on our road to independence: the **Tivoli Gardens incident** must be **cathartic** and

**catalytic in galvanizing us into strengthening our young democracy.**

**Two things must happen** in relation to the security forces' operation in Tivoli Gardens.

Apart from the legal obligation, there is, more importantly, a **moral duty** to investigate the lawfulness of the **death of every single person** that is **known** to the authorities. If the traditional methods of doing this are not adequate – my information is that there is a backlog of cases for Coroner's inquests – **special** systems should be devised...

Secondly, no less pressing is the need to **explain** the operation **as a whole**. This may require an inquiry that would seek to explain the **threat to national security** posed by the presence of **criminals and thugs** in Tivoli Gardens and the **force** needed to counter it. But the inquiry should go **beyond** that dimension to examine the **socio-economic foundations** of the Tivoli Gardens phenomenon which, though extreme, is not unique in Jamaica. For that purpose the inquiry should hear from witnesses who can address that **social condition** and include in its membership **social scientists**, such as sociologists or criminologists."

**72.6.3** The Public Defender gratefully **adopts** and **endorses** this postulation in its **entirety**.

**72.6.4** **Handling of the "Morant Bay Rebellion" and "Bloody Sunday Massacre" Compared**

**72.6.5** A consideration of the British **colonial** response to the 1865 Rebellion is therefore appropriate here. Some guidance may also be derived from the Westminster handling of the **"Bloody Sunday**

**Massacre**” in Londonderry, Northern Ireland of January, 1972 in which **fourteen** (14) persons died at the hands of British paratroopers, during the modern era of armed confrontation with Irish Republican Army (IRA) nationalists.

**72.6.7** The official response to the two events will be reviewed in turn. It is submitted that the **perspective** they offer should greatly inform any present decision regarding the wisdom and necessity for a **judicial enquiry**.

**72.6.8** A **common thread** emerges from analysis of the two events: **the propensity** of State Forces to commit atrocities during **periods of emergency** when **ordinary laws** are **suspended**, leading inevitably to widespread injustice.

**72.7.0** **The “Morant Bay Rebellion”**

**72.7.1** The ‘Rebellion’ of October 1865 began with an outbreak of peaceable protests in the eastern parishes of Jamaica by an underclass of lowly paid and landless black manumitted slaves, led by the Baptist, Paul Bogle, now elevated to National Hero. Their “emancipation” in 1838 ended a six-year period of “apprenticeship”. But “freedom” had brought little relief from harsh, dehumanized servitude. The protests were **ruthlessly suppressed**, arousing great apprehension and discussion at Westminster and in far-flung parts of the former British Empire — at a time when the means of mass communication were

comparatively primitive. Accounts of the upheaval left the sovereign Queen Victoria quite shaken. Within weeks she appointed a Royal Commission to enquire into the –

- a) origin
- b) nature and,
- c) circumstances of the “**grievous disturbances**” and to “collect evidence” regarding
  - i) the measures and **means adopted** to **suppress** “the disturbances” as well as
  - ii) the **conduct of those concerned** in “the disturbances” and **their suppression** and,
  - iii) to express any opinions thought fit.

**72.7.2** The Commission was comprised of two Recorders (Judges presiding over **superior courts** of England) and, the colonial Governor of the island of Malta.

**72.7.3** The outbreak of those “disturbances” had resulted in the Governor of Jamaica, [acting under statutory powers, (a local Act of 9 Vict. Cap. 35)] summoning a thirty-man **Council of War** upon whose advice he declared **martial law**. The declaration covered the entire County of Surrey, excluding Kingston. **Ordinary laws** were **suspended**. Hundreds of trials of accused persons typified by hasty courts martial were held. Many of them were “drumhead” , i.e. before **rough** and **ready** tribunals. The trials took place at disparate locations – Up Park Camp, Kingston; Spanish Town,

Morant Bay, Port Antonio, Manchioneal, Monklands and Falmouth.

**72.7.4** In its report (following more than four months of “**diligent enquiry**”), the Commissioners focused particular attention upon the **loss of life** (by legalized execution or otherwise) occasioned by the martial law measures. They put **the number** executed at **three hundred and fifty-four (354)**, the majority being in the Morant Bay and Plantain Garden River districts. But in relation to the **total number** who **perished**, the Commissioners declared:

“We believe that **the return** given ..... furnishes **as accurate an account** ... as the circumstances of the event admit of, **without** affecting a **precision** which it is **impossible** to command.”

**72.7.5** Nevertheless, in reviewing “**the means** used for the suppression of the **insurrection**” the Commissioners determined not to shut their eyes

“... to the fact that among the **sufferers** during the existence of martial law there were many who were **neither directly** or (sic) **indirectly parties** to the **disturbances** which it was the object of those placed in authority to suppress” i.e., **innocent bystanders**.

**72.7.6** They continued:

“We fear that this to a certain extent **must ever be the case** when the **ordinary laws** framed for the suppression of wrong-doing and the protection of the well-doer, **are** for a time **suspended**. The circumstances which are supposed to render **necessary** their suspension are **almost sure** to be such as to **excite** both **fear** and **passion**; and

some **injustice**, and we fear some **cruelities** will be **certain** at such times to be **perpetrated**; but we think that much which is now lamented might have been avoided if **clear** and **precise** instructions had been given for the **regulation** of the **conduct** of **those engaged** in the **suppression**, and every officer had been made to understand that he would be held responsible for the **slightest departure** from those instructions. It does not seem reasonable to send officers upon a very difficult, and perfectly novel, service without any instructions, and to **leave** everything to **their judgment**. But as **under any circumstances**, however carefully instructions may be prepared, and however **implicitly** obeyed, **the evils** of **martial law** must be **very great**,..." (Cf. Emergency powers.)

**72.7.7** The Commissioners also remarked upon

“the tone of **levity** which is to be found in the ... **language** of some of the officers while **engaged in serious and responsible duties**.”

**72.7.8** Much of what those Commissioners **said** or **found** seems to **have their echo** or was **replicated in the events of May, 2010**. The Commissioners’ salutary comments and observations have a **clarion resonance**, providing **helpful criteria** and **bases** for comparatively **more searching** judicial enquiry today.

**72.7.9** Even so, the Commissioners glossed over wide-scale wrongdoing, appearing to treat it cursorily; as the **inevitable outcome** of a martial law regime; viewing things through the hazy lens of a long gone political era of empire, since replaced by the anxious aspirations of an independent people, released from the shackles of chattel slavery.

72.8.1 The 1865 Commissioners were invested with powers to enforce the attendance of witnesses and to examine them upon oath. They gave a “patient hearing” to -

“...the **negroes** (who) were for the most part **uneducated peasants**, speaking in accents strange to the ear, often in phraseology of their own...”

72.8.2 They observed –

“If we have erred on the side of a too great facility in **giving audience** to all persons, of **whatever class**.....we have yet the satisfaction of feeling that the Inquiry had been both **thorough** in fact, and thorough likewise in the **estimation** of the **persons most concerned** ..... (in pursuit of) the object which throughout we have regarded as paramount, - that of the **fullness, thoroughness** and **impartiality** of the inquiry.”

72.8.3 Despite their endeavours however, the Commissioners were only able to -

“...offer as near **an approximation** to the number of **lives lost** and **houses destroyed** in the course of the suppression, as (they believed) the nature of the case” admitted.

72.8.4 These excerpts of the report disclose an approach to their forensic duties by a nineteenth century colonial Royal Commission upon which, Judge Robinson has opined (and the Public Defender agrees) independent twenty-first century Jamaica **should improve**. In particular –

**A.** no mere **approximation** of the number of West Kingston



dead can possibly suffice: **the precise body count** must be settled;

- B.** the quite serious complaints of atrocities and abuse made against the State Security Forces should be considered in light of the provisions of
- i. Cap. 3 of the Constitution (since *repealed*),
  - ii. the JCF Human Rights And Police Use Of Force And Firearms Policy (the JCF Policy);
  - iii. the twentieth century United Nations International Convention on Civil and Political Rights (the ICCPR), to which Jamaica has acceded and,
  - iv. the Emergency powers.
- C.** the **Who, When;** the **Where, What** and the **How** concerning allegations of the “**discovery**”, “**finding**” etc. of **firearms**, significantly long **after** the alleged combatants had been **routed** and the **suggested hostilities** had **ceased** or, **in response** to **public disquiet** over the **ratio** of **deceased** to **firearms “recovered”**, should be fully explored under sworn testimony;
- D.** the supposed “**intelligence**” which propelled the planning and execution of the assault on Mr. Keith Clarke’s house should be fully explored and,

E. “the **socio-economic foundations** of the Tivoli Gardens phenomenon” referred to by Judge Robinson and so ably already considered by the *National Committee on Political Tribalism* should be examined **in context**, without replicating the labours of that *Committee*, but digging down into the **origins** of the proliferation of illegal firearm possession in Jamaica and, to determine the connection, if any, between **partisan** politics and those **origins**.

**72.8.5** In the meantime however, this much is already clear: there is a striking **coincidence** in the nature of allegations or of fact regarding **the conduct** of the **colonial militia** and maroons, following the declaration of martial law in 1865 on the one hand and, that of **the State Security Forces** during the period of public emergency of **May 2010**, on the other. The conduct of the Security Forces during the latter requires no less diligent inquiry but **more forthright, fearless** and **discriminating evaluation** and treatment of atrocities and abuse, found to have been perpetrated during the State of Emergency.

**72.8.6** A commission of enquiry should therefore approach its work mindful of an **over-riding obligation** to help ensure far more conscientious future regard for the rules of engagement, (the JCF Policy) than appears to have been exhibited during the ‘incursion’ or ‘siege’.

## 72.9.0 **The Bloody Sunday Massacre**

**72.9.1** On Sunday afternoon, January 30, 1972, British army paratroopers shot **fourteen** (14) peaceful demonstrators in Londonderry, Northern Ireland. Thirteen (13) of them died on the spot. The other succumbed to his gunshot injuries whilst hospitalized. Three days before, **two (2)** members of the Royal Ulster Constabulary had been shot and killed by the rebel Irish Republican Army in Londonderry. They were the first police officers killed in that city during what was known as 'The Troubles' and which up to then spanned more than four years. One-third of the city had become a **"no-go" area** for both the Constabulary and the British Army, which had been deployed there on "counter-terrorism" duties from 1969. A British Conservative Government appointed Lord Chief Justice Widgery to investigate the killings, which came to be dubbed the **"Bloody Sunday Massacre"**.

**72.9.2** Within three months, Lord Widgery concluded —

- "1. There would have been no deaths in Londonderry on 30 January if those who organized the illegal march had not thereby **created a highly dangerous situation** in which a **clash** between **demonstrators** and the **security forces** was **almost inevitable**.
2. The decision to contain the march within (two districts of the city) had been opposed by the Chief Superintendent of Police in Londonderry but was fully justified by events and was successfully carried out.

3. If the Army had persisted in its "low key" attitude and had not launched a **large scale operation to arrest hooligans** the day might have passed off without serious incident.
4. The **intention** of the **senior Army officers** to use (a certain paratroop unit) as an **arrest** force and not for other **offensive** purposes **was sincere**.
5. An **arrest operation** carried out in battalion strength in circumstances in which the **troops** were **likely to come under fire** involved **hazard to civilians** in the area which (a Brigade Commander) may have **under-estimated**.
6. The order to launch the arrest operation was given by (the Brigade Commander.) The tactical details were properly left to (an elite unit commander) who did not **exceed** his orders. In view of the **experience** of the unit in **operations of this kind** it was not necessary for (the unit commander) to give orders in **greater detail** than he did.
7. When the **vehicles** and **soldiers** ..... appeared in Rossville Street they **came under fire**. Arrests were made; but in a very short time the arrest operation took **second place** and **the soldiers** turned to **engage their assailants**. There is no reason to suppose that the soldiers would have opened fire if they had not been **fired upon first**.
8. Soldiers who **identified** armed gunmen **fired upon them in accordance with** the **standing orders** in the Yellow Card (the rules of engagement.) **Each** soldier was **his own judge** of whether he had **identified a gunman**. Their training made them **aggressive** and **quick in decision** and some showed more **restraint in opening fire** than others. At **one end of the scale**, some soldiers showed a

**high degree of responsibility**; at the other .... firing **bordered on the reckless**. These distinctions reflect **differences** in the **character and temperament** of the soldiers concerned.

9. The standing orders were satisfactory. Any further **restrictions** on opening fire would have inhibited (soldiers) from taking **proper steps for (their) own safety** and that of (their) comrades and **unduly hamper** the **engagement of gunmen**.
10. None of the **deceased** or **wounded** was proved to have been **shot whilst handling a firearm or bomb**. Some (were) wholly acquitted of complicity in such action; but there (was) a **strong suspicion that some others had been firing weapons or handling bombs** in the course of the afternoon and that yet **others had been closely supporting them**.
11. There was **no general breakdown** in discipline. For the most part the **soldiers acted as they did** because they **thought** their orders **required it**. **No order and no training** can **ensure** that a **soldier will always act wisely**, as well as bravely and with initiative. The individual soldier **ought not** to have to bear **the burden of deciding** whether to **open fire** in conditions prevailing in Northern Ireland, however, this is often inescapable."

### 72.9.3

#### **Complaint of a Widgery whitewash; Appointment of a fresh judicial enquiry**

**72.9.4** The ink was barely dry on the report of the Lord Chief Justice before it came to be denounced as a **whitewash**. His conclusions provoked **agitation** across national borders which **dragged on for years** - through the streets, in the news media, the Westminster Parliament and the Courts, up to 1998. In that year, finally, a

British Labour Party Government appointed a Tribunal to **re-examine** the matter, by way of an **independent judicial enquiry**. In announcing appointment of the Tribunal the British Prime Minister said —

“ The terms and powers of any new inquiry would need to be such as to **inspire widespread public confidence**; that it would have access to all the relevant official material and otherwise **enjoy full official support and cooperation**; that it would operate independently; that it would **investigate thoroughly and comprehensively**, and would genuinely and impartially seek to establish what happened on Bloody Sunday; **why it happened** and those who must bear **the responsibility for it.**”

**72.9.5** The Tribunal comprised Lord Saville, (a Law Lord) Chairman; a retired Chief Justice of the Province of Ontario, Canada and a retired Judge of the Court of Appeal of Australia, its highest Court. At the outset of those hearings Lord Saville vowed to fully investigate 'Bloody Sunday' and events leading up to it. That the enquiry was **named** the '**Bloody Sunday Inquiry**' was viewed as being most significant: a symbolic move to **detach** the **new investigation** from the discredited Widgery proceedings. After years spent taking evidence and deliberating, the Tribunal reported in **2005**.

**72.9.6 Findings of two enquiries contrasted**

**72.9.7** Whilst **Lord Widgery's** report **largely exonerated** the British

paratroopers, the **Saville Tribunal condemned the soldiers** and **exonerated** their **victims** who, they found were **not** posing a threat of causing **death** or **serious injury**. The Saville report **diverged significantly** from its forerunner as illustrated by the following:

**On the use of the Paratroopers -**

***Widgery:***

“ It was suggested that (the elite unit) had been specifically brought to Londonderry because they were known to be the **roughest** and **toughest** unit in Northern Ireland and it was intended to use them in one of two ways: either to **flush out** any **IRA gunmen** ... and **destroy them** by **superior training** and **firepower**; or to send a punitive force ... to give the residents a **rough handling** and **discourage them** from making or supporting **further attacks on the troops** ... (but) there (was) **not a shred of evidence** to support these suggestions.”

***Saville:***

“ [ Major General Robert Ford, then Commander of Land Forces in Northern Ireland] referred in particular to the ‘Derry Young Hooligans’ as a factor in the continued destruction of the city, and expressed the view that the **army** was ‘**virtually incapable**’ of dealing with

**them.** He also expressed the view that he was coming to the conclusion that the **minimum** force required to deal with the 'Derry Young Hooligans' was, after clear warnings, **to shoot selected ringleaders.**" (C/f the JCF and criminals said to be roaming about the Corporate Area or **gunmen** alleged to have (been) **assembled** in **West Kingston/Tivoli Gardens**, in May, 2010.)

**On discipline -**

**Widgery:**

" In the events which took place on 30 January the soldiers were **entitled** to **regard themselves** as **acting individually** and thus **entitled to fire** under the terms of Rule 13 **without waiting for orders** ... the (soldiers') **training** certainly **required** (them) to **act individually** in such circumstances and **no breach of discipline** was thereby involved."

**Saville:**

" In this belief soldiers reacted by **losing their self-control** and firing themselves, **forgetting** or **ignoring their instructions** and **training** and **failing** to satisfy themselves that they had identified targets posing a **threat of causing death** or **serious injury** . . . our **overall conclusion** is that



there was a serious and **widespread loss of fire discipline** among the soldiers of Support Company.”

**On who shot first -**

**Widgery:**

“ To those who seek to apportion responsibility for the events of 30 January the question “who fired first?” is vital. I am **entirely satisfied** that the **first firing ..... was directed at the soldiers.**”

**Saville:**

“ Despite the **contrary evidence given by soldiers**, we have concluded that **none of them fired in response to attacks** or threatened attacks by nail or petrol bombers. No one threw or threatened to throw a nail or petrol bomb at the soldiers on **Bloody Sunday.**”

**On false accounts -**

**Widgery:**

“ Those accustomed to listening to witnesses could not fail to be **impressed** by the **demeanour** of the soldiers of (the unit.) They gave their evidence with **confidence** and **without hesitation** or **prevarication** and withstood a rigorous cross-examination without contradicting themselves or each other. With one or two exceptions **I accept**

that they were telling the truth as they remembered it.”

**Saville:**

“ In the course of the report we have considered in detail **the accounts of the soldiers** whose firing caused the casualties, in the light of **much other evidence**. We have concluded, for the reasons we give, that apart from (one paratroop private) **many of these soldiers** have **knowingly** put forward **false accounts** in order to seek to **justify** their firing. ”

**On the order to arrest -**

**Widgery:**

“ It is understandable that these circumstances have given rise to **suspicion** that the (unit commander, Colonel Wilford) **exceeded** his orders, but **I do not accept this conclusion** in the face of the **sworn evidence** of the **three officers** concerned.”

**Saville:**

“ (The unit commander) either **deliberately disobeyed** (the Brigade Commander's) order or failed for no good reason to appreciate the **clear limits** on what he had been **authorized to do**. He was **disturbed** by the **delays** in responding to his request to mount **an arrest operation** and had concluded that, by reason of the delay, the only way to effect a

significant number of arrests was to deploy  
Support Company in vehicles.....”

## 72.9.8

**Re a judicial enquiry and the “lapse of time”**

**[Observe:** the comparative plenitude of its resources and acumen notwithstanding, it took the Great British establishment all of **thirty-three (33) years** to **get to the bottom** of what **actually transpired** on Bloody Sunday. The Saville enquiry was perhaps the **longest lasting** and **most expensive** of its kind in **British** history. In fact, the tribunal’s report was not released up until 2010 — nearly **thirty-eight (38) years** after the event. No one imagines that Jamaica should mirror such indolence. But that **delay** should inform and sharpen the **misguided perspective** of those who contend or may, that **“too much time has elapsed”** to allow any meaningful enquiry into the events of May, 2010. For as Judge Robinson argues, **Jamaica** must **“do better than the British.”** Besides, the recall of witnesses, when details are still fresh in the mind, greatly minimizes the **danger of memory fading** over time. Witnesses only need to **refresh** themselves from narratives **contemporaneously** recorded, **(as in the instant case)** in order to deliver admissible, **credible** and **probative** oral evidence. The law affords quite **ample** means of testing the

credibility of witnesses, the veracity of their accounts and of **coping with memory lapse**. The fear of fading memories diminishing the utility of a judicial enquiry therefore, **does not** have much, if **any** merit.]

#### **72.10.0 British Government's acceptance of responsibility; apology**

##### **72.10.1** Prior to publication of the Saville enquiry report (in ten volumes)

the British Prime Minister told the House of Commons —

“. . . there is no point in trying to soften or equivocate what is in this report. It is clear from the Tribunal's **authoritative** conclusions that the events of Bloody Sunday were **in no way justified**. I know some people wonder whether **nearly forty years** on from an event, a Prime Minister needs to issue an **apology**. For someone of my generation, this is a period we feel we have learned about rather than lived through. But **what happened should never, ever have happened**. The families of those who died should not have had to live with the pain and hurt of that day – and a lifetime of loss. Some members of our Armed Forces acted wrongly. **The Government is ultimately responsible for the conduct of the Armed Forces**. And for that, on behalf of the Government – and indeed our country – I am **deeply** sorry.”

##### **72.10.2** The Prime Minister himself referred to other atrocities declaring—

“ What happened on Bloody Sunday was both **unjustified** and **unjustifiable**. It was **wrong**. Lord Saville concludes that the soldiers of Support Company who went into Bogside ‘did so as a result of an order . . . which should not have been given by their

commander ..... on balance **the first shot** in the vicinity of the march was fired by the British Army. . .'; that '**none of the casualties shot** by soldiers of Support Company **was armed with a firearm**'... that 'there was some firing by republican paramilitaries...but ...**none of this firing** provided any **justification** for the shooting of **civilian casualties**' ...and that 'in no case was any warning given before soldiers opened fire.' He also finds that Support Company 'reacted by **losing their self-control**... forgetting or **ignoring** their instructions and training' with 'a serious and **widespread** loss of fire discipline'. What's more – Lord Saville says that some of those killed or injured were clearly **fleeing** or **going to the assistance** of **others** who were dying. The Report refers to one person who was shot 'while **crawling...away** from the soldiers'... another was shot, in all probability, 'when he was **lying mortally wounded** on the ground'... and a father was 'hit and injured by Army gunfire after he had gone to ... **tend his son.**'

For those looking for statements of innocence, Saville says:

The **immediate responsibility** for the **deaths** and injuries on Bloody Sunday **lies with** those **members** of Support Company whose **unjustifiable firing** was the **cause of those deaths and injuries**'...and – crucially – that '**none** of the casualties **was posing a threat** of causing death or serious injury or indeed was doing anything else that could **on any view justify** their shooting'..."

**72.10.3** From as early as 1974 (albeit without formally accepting liability) the British Government **paid over monies** by way of **amends** to

some victims, their dependents, or families. But quick on the heels of the Prime Minister's unqualified apology, the Ministry of Defence opened negotiations with solicitors "to **fully compensate** their clients for the **loss** of their loved ones, the **wounding** of **others** and, the shameful allegations which besmirched their good name for many years."

**72.11.1 Parallels and guidance offered by the  
"Bloody Sunday" imbroglio**

**72.11.2** The allegations recorded by the Public Defender in these investigations (see e.g. pp. **58 – 62**, *ante*) should be looked at in light of the British Government's belated handling of the Bloody Sunday affair and, the Saville findings. **There are many instructive parallels, some of them quite remarkable.**

**72.11.3** The 'Tivoli' complaints suggest that in course of the 'incursion', some security personnel "showed **more restraint** in opening fire **than others**"; more exceptionally, some showed a "**high degree of responsibility**". But there were others whose firing was quite "**reckless**." (One male deceased is alleged to have been shot when he attempted to rescue his partner blown off her feet by a JDF "bomb". Another is said to have been finished off as **he lay mortally wounded**.) As on Bloody Sunday, so during the 'incursion': these distinctions "reflect differences in the **character and temperament** of (those) concerned" — i.e. members of the

State Security Forces.

**72.11.4** Training makes soldiers **aggressive**, the world over. However skeptically the conclusions of Lord Widgery may be viewed, it must be accepted that “(no) order and no training can **ensure** that a **soldier** will **always** act wisely, as well as **bravely** and with **initiative**.” The same is true of **frontline** Jamaican policemen who, have long been conditioned and hardened by the rigours of **confrontation** with callous **gunmen**. The quite **smug** attitude or position of the JDF that its members **did no wrong** during the ‘incursion’ is therefore also **manifestly** untenable.

**72.11.5** It therefore needs to be determined and, with relative certitude, **which** of the **seventy-six (76) civilian deceased** or the many wounded, **if any**, were **shot** whilst **handling** a **firearm** or other **weaponry**: so too the **level** of **armed resistance** actually encountered by the Security Forces. What justification was there for **carnage** on such a comparatively massive scale but the belated “**discovery**” of such relatively few firearms ?

**72.11.6** The inquiry must **be fair** and, **be seen to be fair** both to and, in “the estimation of the **persons most concerned**” in the execution of the **emergency powers** which may have caused the death of so many during the State of Emergency (i.e., the State Security Forces) as well as in the opinion of the dispassionate observer. The actual **operational** instructions —

- i. given to JDF foot soldiers and JCF rank and file and,
- ii. their “**departure**”, if any, from those instructions must be considered in light of **available evidence** and the prevailing **rules of engagement**.

**72.11.7** Of no less importance is the necessity of ensuring that:

- i. the constitution, “terms and powers of any (judicial) inquiry (are) such as to inspire **widespread public confidence**”;
- ii. that commissioners “have access to all the **relevant official material**”;
- iii. that they enjoy “**full official support and cooperation**” and no less from former Prime Minister Golding, former Minister Nelson and the **heads** of the State Security Forces, **servicing or retired**;
- iv. that their **independence, fearlessness and impartiality** be assured;
- v. that the enquiry be **thorough and comprehensive** and, that it
- vi. “establish **what happened** (during the ‘incursion’ and the assault on the Clarke household,) **why and how what happened** (did) and, those who must **bear responsibility**,” according to law and the Constitution.



**73.0****LIST OF PRINCIPAL RECOMMENDATIONS**

1. That the Government cause the Forensic Science Laboratory to be adequately equipped and staffed to facilitate completion of outstanding ballistics work in accordance with the agreed Protocol.
2. That a thoroughgoing Commission of Enquiry be appointed to conduct a judicial enquiry into the activities of the State Security Forces and illegal gunmen during the State of Emergency, 2010.
3. That the Public Defender (Interim) Act, 2000, S.13(2)(b)(ii) be altered or amended expressly to exclude investigations related to allegations of infringement of any constitutionally protected right or freedom or, any criminal action.
4. That the Kingston and Saint Andrew Corporation takes immediate steps to ensure due and sustained compliance with the provisions of the Kingston and Saint Andrew (Cemeteries) Act, 1874 and Rules promulgated thereunder, concerning interments at the May Pen Cemetery.
5. That the Government initiates such a study as is suggested by the Agency for Inner-City Renewal (AIR) and the Institute for Social Entrepreneurship & Equity (I-SEE) as precursor to designing an entrepreneurship model to drive economic and social development of Tivoli Gardens/West Kingston.

April 29, 2013

**EPILOGUE**

This **Interim Report** is necessarily short on detail in some regards. Understandably, it may have posed more questions than it has provided answers. Hopefully, however, it will have focused attention on the big picture: not minutiae. If nothing else, it draws attention to the high **duty** of the **Government** in what might be a seminal year in Jamaican history: the Jubilee of political independence. The year 2013 also marks the one-hundred-and-seventy-fifth anniversary of “emancipation” from chattel slavery.

This is therefore an auspicious juncture in national life – a time for both retrospection and forethought. As a troubled nation yearns for social stability, even as it carries on an unequal struggle for economic independence; for social peace and stability, this much is clear: there is need for a bold and **seismic shift** in the mode of tackling the intractable problems of **crime, politics** and **poverty**. It is time to put **Love** to work.

The events of May, 2010 are, of course, no mere **nine-day wonder**, best soon forgotten. On the contrary, they herald an **epoch**. For they bring a tide in Jamaica’s affairs which, “taken at the flood”, may help ensure that we **never** pass that catastrophic way again. “Omitted, all the voyage” of the next fifty years may be “bound in the shallows” of misery. Jamaica should therefore now “take the current as it serves” or **flounder**.

Immediately, that current “serves” up the urgent **necessity** for a thorough-going **judicial** enquiry into the tumultuous events of that month. It also serves the opportunity to initiate an **ethos** of **Love**.

The findings and recommendations of the commission of enquiry here *recommended* (if endowed with **effectual** terms of reference,) may be expected to help define and shape a **framework**; can help **enlighten** a pathway to the future, in which a beleaguered but resourceful people might **flourish**, through the adoption of that ethos.

Unlike the first, the next fifty years of independence must mirror the ideal of **common** regard for **the rule of law**, more particularly, universal **respect** for fundamental rights and freedoms. The period must also witness an unwavering devotion to the pre-eminent responsibility of **Government** to **ensure justice**, not only between **citizen** and **citizen** but above all, **against itself**. This **Interim Report** seeks to assist the Government in its discharge of that pivotal burden.

There is a corollary: the ennobling **civic** duty also to **respect human life** and the rights of **all others**. For the constant demand for “**Equal** rights and justice” and the persistent refrain of “**We want justice !**” almost invariably ignore the reality: that the task of ensuring that “**equality**”, of bringing home the “**justice**”, cannot

be the duty of or be left up to the Government alone. That task **begins** with the individual citizen – with he who makes the demand; with she who constantly chants the refrain.

Years of making demands and singing the refrain have not brought much relief. But without a doubt, our situation would have been much the better, had there been greater **respect** for the **rights** and civic **responsibilities** conferred by the Constitution – the fundamental law.

The **mutuality** of **rights** and **responsibilities** is a guiding but greatly abused principle of a young yet not unstable democracy. It denotes a culture of **civilized** conduct which the fresh Charter itself rightly seeks to establish. For the abuse of human **rights** is caused **only** through the vice of human **wrongs**.

Thus the Charter enacts a simplified and expanded Chapter III of the Constitution. **Section 13.-(1)** recites a preamble which **proclaims** that –

- “(a) the (State) has an **obligation** to **promote** universal **respect** for, and observance of, human **rights** and **freedoms**;
- (b) **all persons** in Jamaica are entitled to **preserve** for themselves and **future generations** the fundamental rights and freedoms to which they are **entitled** by virtue of their inherent **dignity** as persons and as **citizens** of a free and democratic society; and
- (c) **all persons** are under a **responsibility** to respect and **uphold** the **rights** of **others** recognized in (the) Chapter, (and that its) provisions ... shall have effect for the purpose of affording

**protection** to the **rights** and **freedoms** of persons as set out in those provisions, to the extent that those rights and freedoms **do not prejudice** the rights and freedoms of **others.**"

The "provisions" referred to delineate the various entrenched rights and freedoms **guaranteed** by the Constitution and the Government. Those rights and freedoms, "**shall** have effect..... to the extent that (they) **do not prejudice** the rights and freedoms of **others.**" And (subject to certain safeguards) they may only be abrogated, abridged or infringed in ways or manner "**demonstrably justified** in a free and democratic society" [ss.(2)].

Indeed, respect of human rights by all, enhances the quality of life of all. Jamaicans should therefore begin to see themselves as a nation **family** of **brothers** and **sisters** and be each other's "**keeper**". In that scenario, there will and can be **no comfort** for organized crime and **gunmen** who gnaw at the flesh or for State Security personnel who **disregard** the **sanctity** of **human life** or neither serve, protect nor reassure the citizen.

In the process, all become '**public defenders.**' It is respectfully submitted that there is no better way of strengthening or preserving our **democracy.**

The **foremost** duty of Government is the protection of the **life** and **personal security** of the citizen. The Government is **guarantor** of the **right to life** as well as the enjoyment of all aspects of freedom

of the person, unfettered in any way, save as may be necessary for preservation of the **rule of law**.

Government effectuates its **guarantees** or fails to, largely by the action of its servants and agents; in these times, the **State Security Forces** in particular. It is the **conduct** of those Forces that is now in question and which requires **granular** review. For it is that conduct that is alleged to have caused the **death** of **so many**, over so **short a time** and, provoked the lingering grievances of **hundreds** of others.

On the other hand and, for too many years past, **barbaric** criminal acts have been perpetrated by **brutish** citizen against **despairing** citizen. The offenders are mainly rampaging, shiftless young Black males, **poorly** educated, at best **semi-literate**, steeped in **unreason** and **depravity**; unemployed, or “unemployable”, having **no vocation** and abandoning hope. They are **indiscriminating** in their choice of victims, not sparing the very young, the very old, pregnant women or **the disabled**: right across the economic, social and age spectra. The Honourable Omar Davies, M.P., Minister of Transport, Works and Housing once described some of them as **“irredeemable”**. He did **not** say that **all** of them were; nor are they.

Irredeemable or not, they constitute the overwhelming majority of those incarcerated in decaying, hugely over-crowded “correctional”

institutions, sections of which are **veritable dungeons** and all of them **dens of unremitting decadence**. Their degenerate condition is very much a part of the colonial legacy. They are in desperate need of **emancipation** from **mental** slavery. Many of them may be rehabilitated, reclaimed and redeemed: whether they be convicts serving time or, wandering at large, enjoying the constitutionally guaranteed **freedom of movement**, even as they go about wreaking havoc. Together, as that band of armed cowards headed or head for personal ruin, they have **ruined whole families**, brought untold hardships upon the **children** of their fallen victims and, **lasting** pain and suffering upon adult survivors.

But whatever are the disparate reasons they turned out the way they have, the **fundamental** cause of their indiscipline and situation is that they were neither **nurtured** in, nor **nourished** by **Love**; where necessary, **tough** Love. They are the issue of fecund breeding and the product of poor parenting, mainly absentee fathering or no fathering at all. Concomitantly, indolent mothers abandon, delegate or relegate the unexcelled civic **duty** to secure their children's proper upbringing, foisting that responsibility upon severely overburdened educators. That phenomenon is now sought to be addressed by a Children's Advocate, appointed under the provisions of the Child Care and Protection Act, 2004, — a measure which seeks to restore the lost tradition by which the

child is brought up by “the village”; a tradition by which all adult citizens take a responsible “parental” interest in the proper rearing of the nation’s young and impressionable.

The beast which reigns in the mind and breast and heart of the **gunman** whose “avocation” is **murder** and mayhem may be tamed by **Love**. Being a real “enemy of the State”, he must be overpowered. *Mahatma Gandhi* offers one approach – “Whenever you are confronted with (sic) an opponent, **conquer** him with **love**.” For “it is possible that a man may be so **changed** by **love** as hardly to be recognized as the same person.”

Indeed, there is no prospect of lasting social stability and security in Jamaica if its people (particularly **the young**) are not fully grounded in the tenets of **Love**: the foundation of **all justice** – social, economic or, according to law. The jurist may consider the notion something of a stretch but **Love** actually is a sentiment which undergirds a great limb of the law, founded on **fairness** and known as **Equity**. The hortatory words of **Mr. Garvey** are apposite – “Let us in **shaping** our **Destiny**, set before us the qualities of human Justice, **Love**, Charity, Mercy and Equity.”

**Love** is no mere palliative; rather, the **eternal light**. There is nothing naïve or simplistic about ideas of its efficacy. It is the hallmark of all well regulated families.



**Love** dwarfs the pillars of religious dogma. It is the **essential** message of the Christian gospel which proclaims that God **is** Love. It is part of the creed of Buddhists, Hindus, Jews, Muslims, Rastafarians and others alike – the embodiment of the believer’s faith. It is something of a **cure-all**; a balm for so many of Jamaica’s present and looming worries. (A collection of inspiring thoughts on the subject appears at **Appendix 37**.)

It may be argued however, that it is preferable to insist on the Security Forces being **restrained by law** from committing extra-judicial killings, malicious assaults or destruction of property; that they should be made to adhere to **rules of engagement** and the command and control of superior officers: not **inculcate** the principles and **culture** of **Love**. For military men and police officers are **not trained** to love, so the argument goes. They are trained to carry out their duties (particularly in times of armed conflict) according to the precepts of domestic and international humanitarian law. In the discharge of their duties therefore, they need only be mindful of the situation of innocent civilians or non-combatants: not be unduly concerned about anything else. Further, that they must obey **operational commands**; be guided by the exigencies of **necessity** and **proportionality** and should prevent or minimize “collateral damage”. In times of imminent **danger** to themselves or innocent civilians, they should not be

guided by religious dogma but by professional **codes of conduct** and the direction of ground commanders.

Put succinctly: military men and police officers engaged in armed combat should strive for the **highest standards** of professionalism and humanitarian conduct and not be **distracted** by the emotion or sentiment of **Love**. This is a powerful argument. It is redolent of practicality and innate common sense.

Nevertheless, the Public Defender insists that the tenets of **Love** supersede everything; that in the **peculiar** Jamaican circumstances, not any time soon will adequate "resources" - human, fiscal or other - ever be able to work the solutions to the nation's travails which only **Love** can. It is an overarching sentiment. Its **compelling** appeal to the human **conscience**, is capable of ensuring **obedience** to the rules of engagement, where the command of superiors has failed to rein in a **propensity** to kill or **abuse** and infringe fundamental **human rights**. For as was said by *W. R. Alger* - "**Love** makes **obedience** lighter than liberty." Thus in the **execution** of duty consistent with the **JCF Policy**, there is ample scope or room for **Love**.

An **indigenous** Jamaican thematic take is the mantra of "**One Love**". The concept is much **commercialized** and too often **trivialized**. Its unimagined potential is waiting to be unleashed and activated. Ironically therefore, the concept desperately needs

to be **indigenized**. In fact, only **Love** can **animate** the lofty National Motto – “Out of Many One People”.

As the Most Honourable Sir Patrick Allen has said repeatedly however, first we must **believe!** Passionately and compassionately **believe** in all ourselves and our boundless possibilities.

This **Interim Report** is tabled in Parliament soon after what of recent times has become a mainly romantic celebration of ‘**Black History Month**’. There is poignancy in the remembrance and the moment.

According to the latest (2011) population *census*, resident Jamaicans are 92.1% **Black**, being of **African** descent. But there are ethnic minorities of **Chinese**, Caucasian (**White** and **Indian**), ‘West Indian’, Middle Eastern, ‘Mixed’ and ‘Other’ origins. Each is a citizen of a country riven by **inequality**; with a ‘People’ who need to be made and become **more equal**.

As **Mr. Garvey** explains – “It is only a question of sheer **accident** that we happen to be **fellow citizens** today with the descendants of those who, through their advocacy, laid the **foundation** for human rights.” (And see **Appendix 38**.) That “**accident**” has also created the **advantages** of ethnic and cultural diversity which inspired the Motto. But it is no **accident** that a National Heroine and three Heroes were Blacks, the others being ‘mixed’. Their sacrifice and contribution to nation building is well documented

but their noble example is honoured more by **lip service** than by replication.

Even now, that living majority of Blacks, (ever the labouring class for the most part) is still in need of an **awakening**. That awakening can only come from **within**. The road to the awakening is well delineated by **Mr. Garvey** in his Philosophies and Opinions. That majority can accomplish what they will by **lawful** means.

[**Garveyism** will be introduced into a continental curriculum of secondary education for Black Africa this year. In 2012, came the long overdue introduction of the doctrine at the early childhood through secondary level in Jamaica. We should now take the doctrine “to the world” and not wait for its repatriation before it wins universal local acceptance.]

The country’s ethnic minorities largely control the material resources and means of production of the nation. Many of their number are cut from the same cloth as the “**absentee** landlord” of a bygone colonial era. And there are amongst them latent pockets of holdover racism. Those minorities must embrace the **mantra** of “**One Love**”, not just mindlessly sing along or dance to the mesmeric lines and tempo of the namesake “Song of the (20<sup>th</sup>) Century” popularised by the Right Honourable Robert Nesta Marley, OM.

Those ethnic minorities have it in their gift and ingenuity to adapt those resources and means of production to demonstrably patriotic and profitable purposes. For they are a privileged, **not** a marginalized class, as are other minorities rightly regarded as “vulnerable”. They should heed the counsel of **Confucius** and “fix (the) mind on truth, hold firm to virtue, rely on **loving** kindness ...” For as with all positions of **privilege**, their **status** bears particular **responsibilities**, in this case to help make **life-changing** contributions to the commonweal. As Confucius puts it: “Consideration for others is the **basis** of a good life, a good society.” (The Analects.) HIM Emperor Haile Selassie I is himself persuaded that “there is **nothing** more worthwhile and **rewarding** in life, than to **work** for the benefit of others. One can derive more pleasure from **giving** than from receiving.”

In the meantime, a passionate Public Defender can be expected to protect and enforce their rights as **minorities**, in accordance with the Constitution and the ICCPR.

Jamaica is no nation of “samples” but of great or potentially great achievers. We should seize the opportunity afforded by our diversity and of our size or “smallness” which is, the ability and capacity to become polished **models** of much that becomes mankind.

**Love** bespeaks **respect** – the great yearning of the hapless horde of **Black** urban poor. It is they who bore the brunt of atrocities said to have been committed during the State of Emergency; they who, in their unrequited yearnings, turned to ‘**Dudus**’ as ‘godfather’. They need purposeful and legitimate help to help themselves; to be empowered to **help others** and thereby help to **secure** the nation’s future.

The alleged perpetrators – rank and file police and foot soldiers – spring from the same **ethnic** and **social** class. They have been recruited from that class for over one hundred years. The deviants amongst those Forces are not, (because they do not **consider** themselves) restrained by the Constitution, the law or rules of engagement. They constitute **another** minority whose elements continually embarrass and shame their conscientious colleagues by their misconduct. They are a minority who need to be **reined in**. They need to be converted to the transformative call of **One Love**. Because they too enjoy a **privileged status**, (that of law enforcement agents,) they must be reminded continually, that **the law** cannot be enforced **unlawfully** — a *modus* which betrays an oath and renounces responsibility.

The *modus vivendi* therefore, also requires **perpetual** and **purposeful** evaluation. The anti-social class of marauding

**gunmen** and, their kind as well, must be properly factored into all **normative** agendas and processes of transformation.

The foregoing sets down the fundamentals of a **credo** of the Public Defender, a parliamentary Commission uniquely placed to **help** create an environment of relative **peace** in which the **rule of law** can thrive. Wiser men are at liberty to fill in the blanks. But the credo might help us **work** our way out of most, if not all problems. It envisages no Utopia but a **journey** to 'paradise' on earth: on a tropical island blessed with what some say is incomparable natural beauty. *The Mahatma* has a few wise words for those who would be leaders of the process – "The day the **power** of **love** overrules the **love** of **power**, the world (even Jamaica) will know **peace**." And according to the Hindu icon, that is because – "**Love** is the **strongest** force the world possesses and yet, it is the **humblest** imaginable." It is also the most **humbling**.

Indeed, the **civilizing** characteristic which best becomes the living generation of leaders and "elders" (and all those to follow) is **humility**, a heavy dose of which, applied at this time, would signal the dawn of atonement. And there is a great deal for which the living generation needs to atone, e.g., the declining standards of **morality** and rising mountain of public debt which it bequeaths to the **young**. The smart and necessary thing for us to do therefore is

to change course now and head for **Love** - the road not yet travelled; the enlightened pathway to progress.

The **credo** contemplates no **overnight** fix but a **process** of **moral, social, political** and **economic** transformation by which the country can **work** out its way to emancipation of all kind. It envisages an end to "tribal" politics; a severing of the nexus between **crime, politics** and **poverty** and the dawning of economic independence.

The credo also contemplates acceleration of a process by which only, we may dramatically **reverse** that other process through which, by dehumanizing **himself**, the Caucasian slave-master and his cohorts, (some of them Blacks,) attempted to dehumanize Black slaves and so whip them into a hard-labouring force of unprecedented teeming millions who came to be regarded as "the wretched of the earth," toiling over hundreds of years without recompense or reparation.

A diabolical attempt also to dehumanize the slave facilitated the means by which forced labour facilitated exploitation of a so-called "New World", generating untold wealth for Europe, whilst deliberately under-developing a Black Motherland. The objective always was to perpetuate **privilege**, social and economic **injustice**, more recently engineered by dividing up Earth into a First, Second and Third World, Jamaica being a part of the latter.



The necessary **transformation** will therefore not likely be accomplished by this generation or the next. It is the **work** of **all** coming generations - everlasting **work** that will perpetually return bountiful social and material dividends. For, as has been said, "**love is love's reward.**" The only way to **deserve** and **earn** it however, is to **work** at **Love**. Thus it is "a thing to be *learned*." Resort to that *learning* process is also long past due.

Obviously, that transformation will never be achieved unless first a start is made. **Today**. Made by every living Jamaican. So how ?.

First the citizen **aroused** resolves: "I am **Jamaican**. I **love** or will start **learning** to **love** my country", meaning: each other, as 'neighbour'. For the country is its people; **all** of the people.

**Love** of country is **the** motivating passion of the **patriot**. That love will quicken appreciation of President John Kennedy's dictum - "Ask not what your country can **do** for **you**, but what **you** can **do** for your country." Doing for one's country is doing for one's self. Jamaica now needs a great host of patriots, not a parade of pundits, protestors and naysayers; rather, a citizen army of **doers** determined to **undo** wrongs and make fulgent **models** out of misfits and malcontents, being ever mindful of the poor who we shall have with us always.

Next: "I will **do** unto others as I would have them **do** unto me".

**That** is putting **Love** to **work**. Thereafter, the people labour to keep **Love** at **work**.

Those are the first essential steps on the road to moral, social, economic and political transformation. **All** generations, (starting with the present) should therefore train up their young in the way they should go: with **Love**. In time they should likely do the same with theirs. The results of that remodeled '**Brand Jamaica**' would amaze mankind !

In sum, it is well within the capacity of the Jamaican people to **work** their way out of the chronic miasma of social and economic misery and eventually "overcome" in the way **Martin Luther King** meant it – **overcome** all impediments to **civilised** human relations by the expedient principles of **Love**. By the universal practice of those principles we may **disarm** the **gunman**, reduce crime to **manageable** proportions and lessen the likelihood of **replicating** the emergencies of May, 2010. That would hasten fulfillment of the dream of those who we have made a National Heroine and Heroes. At last.

Live by the concept of **One Love** and we might one day hold out ourselves to the world as a **model** of rightly proud, civilized and accomplished people. Fail to and there will likely be no chance of Jamaica ever becoming the "*place of choice to live, work, raise families and do business.*"

So now, let all Jamaicans, aspiring to be “**one** People”, start putting **Love** to **work** and thus initiate a sea change in social relations by which only, Jamaicans may co-exist peaceably — through equity and justice, according to **law** and the **Constitution**.

**One Love!**

# **BUNDLE OF APPENDICES**

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## Appendix 1

### State of Emergency 2010 - List of Known Related Deceased

No.	Name of deceased	Sex	Age	Occupation	Address of Deceased
1	Allison, Kirk	M	36	Painter	Building 1 Flat 22, Levy Path, Tivoli Gardens, Kingston 14.
2	Brown, O'Connor	M	30	Labourer	11 Dee Cee Avenue, Tivoli Gardens, Kingston 14.
3	Brown, Orlando aka "Giffy"	M	31	Unknown	11 Dee Cee Avenue, Tivoli Gardens, Kingston 14.
4	Bryan, Adrian	M	23	Unknown	Lot 16, Block 5 Upper Regent Street, Kingston 14.
5	Burke, Junior aka "Dogface"	M	30	Unemployed	Stanton House Scheme, St. Thomas.
6	Chusney, Carlos	M	37	Unknown	Building No. 17, Flat H, Keith Avenue, Tivoli Gardens, Kingston 14.
7	Clarke, Keith	M	64	Chartered Accountant	18 Kirkland Close, Upper Kirkland Heights, Red Hills, St. Andrew.
8	Clarke, Sydney	M	23	Higgler	Building 34, Flat 1, Drecketts Place, Tivoli Gardens, Kingston 14.
9	Cooper, Kelvin	M	19	Cook Shop Worker	64 Charles Street, Kingston 14.
10	Dacres, Mervin	M	76	Labourer	46 Bond Street, Kingston 14.
11	Davidson, Akiyeem	M	21	Unknown	32 Fenbrook Avenue, Maverley, Kingston 20.
12	Davis, Barrington Andre	M	24	Higgler	White Hall P.A, St. Thomas.
13	Davis, Dexroy	M	24	Vendor	2 Ebenezer Lane, Kingston 14.
14	Davis, Gary aka "Sheldon"	M	29	Unemployed	Apt. 29, Building C, Block 5, Regent Street, Kingston 14.
15	Dawkins, Jermaine Ricardo	M	23	Higgler	14 Wellington Street, Denham Town, Kingston 14.
16	Dennis, Taniel aka "Teets"	M	27	Unknown	"No fixed address"
17	Duhaney, Michael	M	Unkn own	Unknown	Unknown
18	Duncan, Anthony Donovan	M	46	Vendor	12 Fong Yee Terrace, Tivoli Gardens, Kingston 14.



## State of Emergency 2010 - List of Known Related Deceased

No.	Name of deceased	Sex	Age	Occupation	Address
19	Edwards, Petrena	F	36	Teacher	40 Chestnut Lane, Denham Town, Kingston 14.
20	Ellis, Deveen	M	20	Unknown	"Tivoli Gardens"
21	Freeman, Radcliffe	M	42	Carpenter	Building No. 2, Flat N, Chung Avenue, Kinston 14.
22	Garrison, Damion	M	23	Unemployed	51 Pink Lane, Kingston
23	Gordon, Dwayne Anthony	M	30	Unemployed	61 Dee Cee Avenue, Tivoli Gardens, Kingston 14.
24	Gordon, Jermaine aka "Kevin", "Porridge Man"	M	31	Self Employed Chef	27 Dee Cee Avenue, Tivoli Gardens, Kingston 14.
25	Grant, Fabian Andre	M	20	Unemployed	25 Dee Cee Avenue, Tivoli Gardens, Kingston 14.
26	Grant, Fernando	M	17	Student	25 Dee Cee Avenue, Tivoli Gardens, Kingston 14.
27	Harrison, Ishawni aka "Stabber"	M	32	Unknown	13 Plantain Avenue, Kingston 11.
28	Harrison, Sandrae	M	20	Casual Worker	Hampshire District Riversdale, St. Catherine.
29	Henry, Carl aka "Kettie"	M	32	Unknown	21 Levy Path, Tivoli Gardens, Kingston 14.
30	Higgins, Calvin	M	52	Security Guard	Lot 15, Block 40, Upper West Street, Kingston.
31	Josephs, Barrington	M	54	Unemployed	No fixed Address
32	Lindsay, Damion Dwayne aka "Lion King", "Kem"	M	28	Higgler	1 McKenzie Drive, Tivoli Gardens, Kingston 14.
33	Lindsay, Martin Anthony	M	25	Higgler	11 Wilton Hill Drive, Tivoli Gardens, Kingston 14.
34	Malcolm, Anthony	M	33	Unknown	135 Orange Street, Kingston C.S.O.
35	Mason, Roshean Narcott	M	25	Mason	Lot 707 Seaview Gardens, Phase 2, Kingston 11.
36	McFarlane, Matthew	M	23	Labourer	1 McKenzie Drive, Tivoli Gardens, Kingston 14.
37	McKenzie, Ian aka "Smith", "Skinny", "Skinny Guy"	M	45	Upholsterer	"Wellington Street, Denham Town, Kingston 14."

## State of Emergency 2010 - List of Known Related Deceased

No.	Name of deceased	Sex	Age	Occupation	Address
38	Melford, Dwite aka "Wayne", "Shortman", "Moony"	M	37	Unknown	34 Fong Yee Terrace, Tivoli Gardens, Kingston 14.
39	Miller, Rodrick aka "Rodane"	M	22	Labourer	"Justin Block Factory on Spanish Town Road"
40	Mitchell, Errol	M	49	Security Guard	Mark Lane, Kingston.
41	Mitchell, George Alphanso	M	25	Labourer	68 Dumfries Street, Denham Town, Kingston 14.
42	Mitchell, Patrick aka "Fireball"	M	41	Unknown	"No fixed address"
43	Murphy, Jomain	M	17	Student	2 Savannah Road, Independence City, Portmore, St. Catherine.
44	Murphy, Lundi	M	20	Vendor	2 Savannah Road, Independence City, Portmore, St. Catherine.
45	Neath, Garfield	M	35	Unknown	"Unknown, somewhere in Tivoli"
46	Nelson, Kesley	M	45	Security Guard	3-7 Race Course Lane, Denham Town, Kingston 14.
47	Nelson, Oral Richard aka "Remison"	M	33	Construction Worker	3 Little King Street, Denham Town, Kingston 14.
48	Nelson, Paul	M	44	Handyman	Building No. 16 Flat J, Bustamante Highway, Tivoli Gardens, Kingston 14.
49	Osbourne, Kenroy	M	32	Vendor	111 Charles Street, Denham Town, Kingston 14.
50	Page, Dashard	M	20	Unemployed	1 McKenzie Drive, Tivoli Gardens, Kingston 14.
51	Parker, Alfred	M	29	Labourer	35 Regent Street, Kingston 14.
52	Riley, Michael Anthony	M	26	Unknown	Building 4, 1 Bustamante Highway, Tivoli Gardens, Kingston 14.
53	Rochester, Bojon	M	21	Welder	Building No. 24, Flat G, Tivoli Gardens, Kingston 14.
54	Rose, Joseph	M	67	Unknown	78 Charles Street, Kingston 14.
55	Samuels, Carlton aka "Feel Good"	M	37	Unknown	"Used to live with a girl in Papine."
56	Samuels, Linton	M	54/55	Labourer	Lot 7, Block 6, Building E, Blount Street, Denham Town, Kingston 14.

## State of Emergency 2010 - List of Known Related Deceased

No.	Name of deceased	Sex	Age	Occupation	Address
57	Smith, Andre	M	25	Unemployed	Building No. 22, Flat F, Seaga Boulevard, Tivoli Gardens, Kingston 14.
58	Smith, Gloria aka "Beverley"	F	49	Unknown	Unknown
59	Smith, Ian St. Martin	M	28	Unknown	Unknown
60	Smith, Kenton O'Neil	M	34	Labourer	Milk Lane, Denham Town, Kingston 14.
61	Smith, Leroy aka "Cocoa"	M	45	Labourer	32 Tulip Lane, Kingston 14.
62	Smith, Mark Anthony	M	36	Caretaker	172 King Street, Kingston C.S.O
63	Spence, Errol aka "Collu"	M	22	Barber	Block A Building No. 27, Seaga Boulevard, Tivoli Gardens, Kingston 14.
64	Stern, Rohan aka "Asquit"	M	23	Higgler	47 Bond Street, Denham Town, Kingston 14.
65	Thomas, Adam	M	53	Vendor	28 Metcalfe Street Denham Town, Kingston 14.
66	Unidentified Male GZ 07	M			
67	Unidentified Male GZ 23	M			
68	Unidentified Male GZ 29	M			
69	Unidentified Male GZ 38	M			
70	Unidentified Male GZ 41	M			
71	Walker, Oshane	M	18	Higgler	11 Wilton Hill Drive, Tivoli Gardens, Kingston 14.
72	Whitter, Gregory aka "Whitter Spice"	M	29	Unknown	91 North Street, Denham Town, Kingston 14.
73	Williams, Levar	M	19	Unknown	18 Dolphin Square, Harbour View, Kingston 17.
74	Wilsey, Laviania	M	20	Unknown	41 Dee Cee Avenue, Tivoli Gardens, Kingston.

**State of Emergency 2010 - List of Known Related Deceased**

<b>No.</b>	<b>Name of deceased</b>	<b>Sex</b>	<b>Age</b>	<b>Occupation</b>	<b>Address</b>
75	Wilson, Nicholas	M	29	Unknown	3 Wilton Hill Drive, Tivoli Gardens, Kingston 14.
76	Wright, Decorey	M	30	Carpenter	1 Columbus Road, Kingston 12.

## Appendix 2

### OFFICE OF THE PUBLIC DEFENDER STATE OF EMERGENCY 2010 LIST OF ALLEGED EXTRA-JUDICIAL KILLINGS

No.	Name of deceased	Sex	Age	Occupation	Address of deceased
1	Allison, Kirk	M	36	Painter	Building 1 Flat 22, Levy Path, Tivoli Gardens, Kingston 14.
2	Brown, O'Connor	M	30	Labourer	11 Dee Cee Avenue, Tivoli Gardens, Kingston 14.
3	Brown, Orlando aka "Giffy"	M	31	Unknown	11 Dee Cee Avenue, Tivoli Gardens, Kingston 14.
4	Bryan, Adrian	M	23	Unknown	Lot 16, Block 5 Upper Regent Street, Kingston 14.
5	Chusney, Carlos	M	37	Unknown	Building No. 17, Flat H, Keith Avenue, Tivoli Gardens, Kingston 14.
6	Clarke, Keith	M	64	Chartered Accountant	18 Kirkland Close, Upper Kirkland Heights, Red Hills, St. Andrew.
7	Cooper, Kelvin	M	19	Cook Shop Worker	64 Charles Street, Kingston 14.
8	Davis, Barrington Andre	M	24	Higgler	White Hall P.A, St. Thomas.
9	Davis, Dexroy	M	24	Vendor	2 Ebenezer Lane, Kingston 14.
10	Davis, Gary aka "Sheldon"	M	29	Unemployed	Apt. 29, Building C, Block 5, Regent Street, Kingston 14.
11	Edwards, Petrena	F	36	Teacher	40 Chestnut Lane, Denham Town, Kingston 14.
12	Freeman, Radcliffe	M	42	Carpenter	Building No. 2, Flat N, Chung Avenue, Kingston 14.
13	Gordon, Jermaine, aka "Kevin", "Porridge Man"	M	31	Self Employed Chef	27 Dee Cee Avenue, Tivoli Gardens, Kingston 14.
14	Grant, Fabian Andre	M	20	Unemployed	25 Dee Cee Avenue, Tivoli Gardens, Kingston 14.
15	Grant, Fernando	M	17	Student	25 Dee Cee Avenue, Tivoli Gardens, Kingston 14.

**OFFICE OF THE PUBLIC DEFENDER  
STATE OF EMERGENCY 2010  
LIST OF ALLEGED EXTRA-JUDICIAL KILLINGS**

No.	Name of deceased	Sex	Age	Occupation	Address of deceased
16	Henry, Carl aka "Kettie"	M	32	Unknown	21 Levy Path, Tivoli Gardens, Kingston 14.
17	Lindsay, Damion Dwayne aka "Lion King", "Kem"	M	28	Higgler	1 McKenzie Drive, Tivoli Gardens, Kingston 14.
18	Lindsay, Martin Anthony	M	25	Higgler	11 Wilton Hill Drive, Tivoli Gardens, Kingston 14.
19	McFarlane, Matthew	M	23	Labourer	1 McKenzie Drive, Tivoli Gardens, Kingston 14.
20	McKenzie, Ian aka "Smith", "Skinny", "Skinny Guy"	M	45	Upholsterer	"Wellington Street, Denham Town, Kingston 14"
21	Melford, Dwite aka "Wayne", "Shortman", "Moony"	M	37	Unknown	34 Fong Yee Terrace, Tivoli Gardens, Kingston 14.
22	Miller, Rodrick aka "Rodane"	M	22	Labourer	"Justin Block Factory on Spanish Town Road"
23	Mitchell, Errol	M	49	Security Guard	Mark Lane, Kingston.
24	Mitchell, Patrick aka "Fireball"	M	41	Unknown	"No fixed address"
25	Murphy, Jomain	M	17	Student	2 Savannah Road, Independence City, Portmore, St. Catherine.
26	Murphy, Lundi	M	20	Vendor	2 Savannah Road, Independence City, Portmore, St. Catherine.
27	Nelson, Kesley	M	45	Security Guard	3-7 Race Course Lane, Kingston 14.
28	Nelson, Oral Richard aka "Remison"	M	33	Construction Worker	3 Little King Street, Denham Town, Kingston 14.
29	Nelson, Paul	M	44	Handyman	Building No. 16 Flat J, Bustamante Highway, Tivoli Gardens, Kingston 14.

**OFFICE OF THE PUBLIC DEFENDER  
STATE OF EMERGENCY 2010  
LIST OF ALLEGED EXTRA-JUDICIAL KILLINGS**

No.	Name of deceased	Sex	Age	Occupation	Address of deceased
30	Osbourne, Kenroy	M	32	Vendor	111 Charles Street, Denham Town, Kingston 14.
31	Page, Dashard	M	20	Unemployed	1 McKenzie Drive, Tivoli Gardens, Kingston 14.
32	Parker, Alfred	M	29	Labourer	35 Regent Street, Kingston 14.
33	Rochester, Bojon	M	21	Welder	Building No. 24, Flat G, Tivoli Gardens, Kingston 14.
34	Rose, Joseph	M	67	Unknown	78 Charles Street, Kingston 14.
35	Samuels, Carlton aka "Feel Good"	M	37	Unknown	"Used to live with a girl in Papine"
36	Smith, Andre	M	25	Unemployed	Building 22, Block D. Seaga Boulevard, Tivoli Gardens, Kingston 14.
37	Smith, Gloria aka "Beverly"	F	49	Unknown	Unknown.
38	Smith, Leroy aka "Cocoa"	M	45	Labourer	32 Tulip Lane, Kingston 14.
39	Smith, Mark Anthony	M	36	Caretaker	172 King Street, Kingston C.S.O.
40	Spence, Errol aka "Collu"	M	22	Barber	Block A Building No. 27, Seaga Boulevard, Tivoli Gardens, Kingston 14.
41	Stern, Rohan aka "Asquit"	M	23	Higgler	47 Bond Street, Denham Town, Kingston 14.
42	Walker, Oshane	M	18	Higgler	11 Wilton Hill Drive, Tivoli Gardens, Kingston 14.
43	Whitter, Gregory aka "Whitter Spice"	M	29	Unknown	91 North Street, Denham Town, Kingston 14.
44	Wright, Decorey	M	30	Carpenter	1 Columbus Road, Kingston 12.

### Appendix 3

Breakdown of Completed Investigations of Claims Awaiting Assessment of Damages/Compensation		
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3.	Malicious Damage to Real Property	337
4.	Loss/ Malicious destruction of Personal Property	520
5.	Looting (Larceny)	182
	<b>TOTAL</b>	<b>1295</b>

Breakdown of estimates of compensation claimed per Complaint in Categories v. - vii.		
1.	Malicious Damage to Real Property	\$14,620,471.49
2.	Loss/ Malicious destruction of Personal Property	\$84,575,629.76
3.	Looting (Larceny)	\$11,610,603.19
	<b>TOTAL</b>	<b>\$110,806,704.44</b>



# Appendix 4

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KINGS HOUSE

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## THE JAMAICA GAZETTE SUPPLEMENT

PROCLAMATIONS, RULES AND REGULATIONS

43

Vol. CXXXIII

THURSDAY, MAY 13, 2010

No. 21

Proclamation No. 4/2010

JAMAICA



### THE CONSTITUTION OF JAMAICA A PROCLAMATION

By His Excellency The Most Honourable  
Professor SIR PATRICK LINTON ALLEN,  
Member of the Order of the Nation,  
Knight Grand Cross of the Most  
Distinguished Order of Saint Michael and  
Saint George, Commander of the Order of  
Distinction, Governor-General of Jamaica.



PATRICK LINTON ALLEN,  
*Governor-General.*

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KINGS HOUSE

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PROCLAMATIONS, RULES AND REGULATIONS

[MAY 13, 2010]

WHEREAS by virtue of paragraph (h) of subsection (4) of section 26 of the Constitution of Jamaica, the Governor-General may make a Proclamation declaring that a state of public emergency exists:

AND WHEREAS, subsection (5) of section 26 of the Constitution of Jamaica provides that a Proclamation made under section 26 shall not be effective for the purposes of subsection (4) of the section unless it is declared therein that the Governor-General is satisfied that action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life:

AND WHEREAS, I am satisfied that, consequent on certain decisions of the Government, action has been taken or is immediately threatened by a person or body of persons therein of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community specified in the Schedule, of supplies or services essential of life:

AND WHEREAS, I am satisfied that a state of public emergency exists in the community, or any substantial portion of the community specified in the schedule as a result of aforementioned circumstances.

AND WHEREAS, pursuant to subsection 6 of section 26, a Proclamation made by the Governor-General for the purposes of and in accordance with section 26 shall, unless previously revoked, remain in force for one month or for such longer period not exceeding twelve months, as the House of Representatives may determine by a resolution supported by the votes of a majority of all the members of the House:

NOW, THEREFORE, I PATRICK ALLEN, Member of the Order of the Nation, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Commander of the Order of Distinction, Governor-General of Jamaica, in exercise of the power conferred upon me by section 26 of the Constitution of Jamaica and of every other power heretofore enabling, DO HEREBY DECLARE that—

- (a) a State of Public Emergency exists in Jamaica in the substantial portions of the community specified in the Schedule; and
- (b) this Proclamation shall, unless previously revoked, remain in force for one month with effect from 6:00 p.m. May 23, Two Thousand and Ten or for such longer period not exceeding twelve months, as the House of Representatives may determine by a resolution supported by the votes of a majority of all the members of the house.

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KINGS HOUSE

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MAY 13, 2010] PROCLAMATIONS, RULES AND REGULATIONS

45

SCHEDULE

*Portions of Community in which a State of  
Public Emergency Exists:*

The parishes of Kingston and St. Andrew

Given under my hand and the Broad Seal of Jamaica at King's House this 23rd day of May  
in the year of Our Lord Two Thousand and Ten and the Fifty-ninth Year of the Reign of Her  
Majesty Queen Elizabeth II.

GOD SAVE THE QUEEN

**Appendix 5**

May 27, 2010

**URGENT AND IMMEDIATE  
BY TELEFAX AND HARDCOPY**

Mr. Owen Ellington  
Commissioner  
Office of the Commissioner of Police  
103-105 Old Hope Road  
KINGSTON

Major General S.E. Saunders  
Chief of Defence Staff  
Headquarters  
Jamaica Defence Force  
Up Park Camp  
KINGSTON 5

Sirs:

Following upon the conference this morning with the Prime Minister and the Deputy Prime Minister, Bishop Herro Blair and your good selves, I write to record issues of grave concern to this Office regarding the execution of the ongoing State of Emergency declared for the Corporate Area, as it affects the locality of Western Kingston. I also wish to make relevant recommendations. In doing so, I readily acknowledge that the personnel under your command are called upon to boldly confront, clear and present dangers to their lives and limbs. A caring country offers sincere condolences to the families of those who have fallen or been injured, in the line of conscientious discharge of duty. Nevertheless, it appears desirable or necessary that you bring home to those under your command that the declared State of Emergency does not herald any open season, permitting unlawful departure from the tenets and principles of the rule of law; that the extraordinary powers of cordon and search, seizure, arrest and detention without warrant conferred, must be strictly adhered to and applied with compassion and restraint.

2/.....

Mr. Owen Ellington – Commissioner  
and  
Major General S. Saunders  
Chief of Defence Staff

- 2 -

May 27, 2010

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I draw particular attention to the following:

1. There is a curious and quite alarming disparity between the number of civilian dead and the number of firearms said to have been recovered in the respective theatres of operation: no fewer than seventy-three deceased and a mere five firearms. Armed attacks upon state security personnel must be effectively repulsed. No one should expect them to act with disregard for necessary self defence. But the evident disproportionality between deceased and firearms recovered gives the appearance, if it does not support the inference, that there has been excessive use of deadly force. I consider your joint view that the ratio of fatalities to firearms is "not unusual" to be most disquieting.

I therefore recommend that personnel under your command be forthrightly reminded that the State of Emergency does not by any means displace the mandated Jamaica Constabulary Use of Force and Use of Firearm policy. In the present circumstances, it also applies to the Military. Under that policy, the use of lethal force is a last resort; the present emergency provides neither opportunity nor occasion for unlawful activity in the name of law enforcement; nor for carrying out extra judicial killings by way of revenge or expression of grief over the slaying of colleagues.

2. As I said with respect, I found the explanation given for the severe restriction of the freedom of movement of citizens of Tivoli Gardens, Denham Town and Hannah Town (continued up to this afternoon,) to have been unjustified and unacceptable. Keeping women and children confined round-the-clock to the cramped condition and circumstances of their humble habitation, was unwarranted by the security considerations which you articulated. For having thoroughly searched and "cleared", as many housing blocks in Tivoli Gardens as you had, there could have been no reasonable justification for denying them egress and re-entry under reasonable control. Nor again, can it have been beyond your ingenuity to establish sterile areas around barricades not yet dismantled and so ensure that no harm befell any civilians, particularly children. In any event, seventy-two hours and more seemed quite sufficient time to have "cleared" all housing blocks in what is, after all, a relatively small community.

Mr. Owen Ellington  
Major General S. Saunders

- 3 -

May 27, 2010

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I now observe that in reaction to my representations, freedom of movement has been restored in all affected areas. The alacrity of your response is noteworthy.

3. Residents who remained in Tivoli Gardens neither having fled nor been detained, have been subjected to demeaning and highly disrespectful verbal abuse, particularly from personnel in the lower ranks, who are the ones most often having personal contact. They certainly need to be subjected to greater supervision and control, in order to prevent inhumane or degrading treatment of citizens and to reduce trauma and disaffection.
4. A total of twenty-three bodies were taken to the May Pen Cemetery today. They were laid out on the bare ground for the purpose of performing autopsies. It was suggested that this scenario was justified because of the state of decomposition. It may yet transpire that claims are made on the State by the estates of so many. It will therefore be essential to establish identity. Quite obviously, the bodies were taken there with the intention of proceeding to their burial, following the autopsies. Unvarnished wooden boxes lay at hand. Once again, I note that following representations, there was no interment.

In the event that unidentified or unidentifiable remains have to be interred, it is expected that the permission of the appropriate authority, the Kingston and St. Andrew Corporation, will be obtained in the usual way so that gravesites may themselves be identifiable and properly recorded. This is a requirement of the Kingston and St. Andrew (Cemeteries) Act which, no attempt should be made to circumvent. No pretence of reliance upon Emergency powers can be availing.

5. Please be good enough to apprise me, in writing, of the system, means and methods by which it is proposed to establish the true identification of all deceased. Grieving relatives, who wish to make their own arrangements to bury their dead with dignity, must be afforded all reasonable assistance in doing so. It is my devout hope that you do not propose to condone or authorize the interment of any remains until all reasonable steps to establish identity have been exhausted. I raise this particular matter to forestall further suspicion or complaints that the security forces are minded to dispose of bodies in mass graves and or individually in order to conceal evidence of atrocity.

Mr. Owen Ellington  
Major General S. Saunders

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May 27, 2010

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6. The security forces need to move with all due dispatch systematically to ascertain the identity and medical needs of all citizens who have been confined night and day to their residences and thus have not been able to access medical attention and care. This Office has received numerous complaints in this regard and they persist.
7. By now, all bodies which have been left lying in thoroughfares or premises of whatever description, ought to have been collected and taken to morgues. If, in the intolerable event any remain, these should be collected without any further delay in order to preserve human dignity and prevent the generation of health risks. I so recommend.
8. As I have indicated to you, this Office is prepared to assist in the process of the identification of the deceased and compilation of a roster of missing persons. In this regard, I note your agreement to our request that you establish adequate quarters at your operational base inside Tivoli Gardens for the convenience and ease of persons who wish to file complaints, express their concerns or, be furnished with advice by this Office.

Finally, I assure you that we remain prepared and committed to assist you in any way that we can, in order to restore peace and good order to the affected communities. I await your suggestions.

In the public interest, I am releasing copies of this letter to the news media.

Yours faithfully,

W. EARL WITTER, Q.C., J.P.  
PUBLIC DEFENDER

cc: The Honourable Bruce Golding  
Prime Minister  
Bishop Herro Blair  
Chairman, Peace Management Initiative

## Appendix 6

### **Special and *vired* funding re: 2010 State of Emergency Investigations**

#### **How funds expended**

1. Employing sixteen (16) temporary investigators; two (2) temporary supervisors (including Ms. Florizelle O'Connor, former Director of the Independent Jamaica Council for Human Rights, who laboured on voluntarily for two weeks after the funds ran out) and three (3) temporary typists (including Ms. Palmer, ) over the period **June, 2010 - March, 2011.**
2. Effecting urgent repairs to bathrooms at the Tivoli Gardens community centre for the convenience of PD personnel
3. The purchase of -
  - a portable vault
  - a multi-purpose computer printer
  - three (3) computers and tables
  - three (3) cellular telephones
  - a photocopier
  - filing cabinets
  - electric fans
  - stationery and,
  - miscellaneous items, e.g. PD ID bibs



## Tivoli Investigations

<b>Particulars</b>	<b>To Date (June 2010 – Mar. 2011)</b>
21- Compensation of Employees	\$15,055,173.87
22- Travelling Expenses	\$ 3,929,661.51
25- Purchase of Goods & Services	\$ 6,824,000.00
31- Purchase of Capital Goods	\$ 683,524.96
<b>Total</b>	<b>\$26,492,360.34</b>

Head No. 0300  
 and Title: Office of the Public Defender

FIRST SUPPLEMENTARY ESTIMATES 2010-2011  
 5000

Activity/ Project No.	Service & Object of Expenditure	Approved Estimate 10/1/2011	PROPOSALS			Approved New Estimate	Remarks & Object Classification
			Provided by Law (Statutory)	Supplementary Estimates	Savings or Under Expenditure		
0963	Office of the Public Defender  FUNCTION 01 - GENERAL GOVERNMENT SERVICES SUB-FUNCTION 03 - OTHER GENERAL GOVERNMENT SERVICES PROGRAMME 13 - PROTECTION OF THE RIGHTS OF CITIZENS SUB-PROGRAMME 20 - INVESTIGATION OF COMPLAINTS FROM THE PUBLIC	72,053.0		16,845.0		88,898.0	Additional requirement to facilitate an investigation of the recently forced incursion into West Virginia and other operating expenses.  Additional 21 Compensation of Employees 10,211.0 22 Travel Expenses and Subsidies 346.0 25 Purchases of Other Goods and Services 2,694.0 28 Retirement Benefits 3,554.0 <hr/> 16,845.0
TOTAL HEAD 0300		72,053.0		16,845.0		88,898.0	

## Appendix 7

Autopsy protocol  
June 14, 2010

### AGREED PROTOCOL BETWEEN DR. DINESH RAO AND DR. MICHAEL POLLANEN FOR THE POSTMORTEM EXAMINATION OF BODIES RECOVERED FROM WEST KINGSTON, JAMAICA IN MAY 2010

#### 1. PURPOSE

- 1.1. The purpose of this protocol is to:
  - 1.1.1. Ensure that the postmortem examinations meet accepted international norms in forensic pathology.
  - 1.1.2. Define the role of the observer forensic pathologist(s) who will witness the postmortem examinations.
- 1.2. It is recognized that the protocol needs to be practically achievable within the existing infrastructure and available resources. However, the lack of resources is not considered a barrier to conducting complete postmortem examinations.

#### 2. PARTICIPANTS

- 2.1. The participants in the postmortem examinations will be:
  - 2.1.1. Government forensic pathologist(s) acting in their official capacity.
  - 2.1.2. Photographer from the Bureau of Special Investigation.
  - 2.1.3. Autopsy assistants.
  - 2.1.4. Observer forensic pathologist(s) will provide professional expertise to the Office of the Public Defender.
- 2.2. Other participants or attendees must be approved by authorities.

#### 3. ROLE OF THE OBSERVER FORENSIC PATHOLOGIST

- 3.1. The observer forensic pathologist(s) will observe the postmortem examinations performed by the Government forensic pathologist(s) and provide commentary on the following, for each body:
  - 3.1.1. State of the body.
  - 3.1.2. Reliability of identification.
  - 3.1.3. All the injuries present. If gunshot wounds are present: the number and locations on the body of the entry and exit wounds, the number of bullets in the body, the path of the gunshot wounds in the body and range of discharge of the firearm(s).
  - 3.1.4. The cause of death.
  - 3.1.5. Completeness of the postmortem examination.
  - 3.1.6. Any other findings deemed to have medicolegal relevance by the observer forensic pathologist.
- 3.2. Observer forensic pathologist(s) will provide reports to the Office of the Public Defender and the agency that retained the observer forensic

Autopsy protocol  
June 14, 2010

pathologists. The observer forensic pathologists but will retain a copy of their own reports and documents.

#### **4. STANDARDS FOR POSTMORTEM EXAMINATIONS**

- 4.1. The postmortem examinations will be conducted using the standards in this protocol.
- 4.2. Each postmortem examination will be performed by a Government forensic pathologist and will be observed by the observer forensic pathologist.
- 4.3. A complete postmortem examination will be performed on each body.
- 4.4. Postmortem radiographs will be obtained in each case.
- 4.5. The postmortem examination will be documented by photography in each case.
- 4.6. The postmortem examination will be documented by videography in each case.
- 4.7. All projectiles will be recovered from each body.
- 4.8. The name of the deceased (as reported to the pathologist), age, sex, case number, date of examination, place of examination should be recorded.
- 4.9. The names of the Government forensic pathologist, photographer, observer forensic pathologist and other witnesses should be recorded.
- 4.10. The postmortem changes of the body, clothing, jewellery, personal effects should be described and photographed.
- 4.11. A comprehensive external examination should be performed to document: apparent age, sex, height & weight, body habitus, hair, eyes, face, mouth & teeth, torso, back, limbs and genitals. Photographs of all body surfaces and the face should be obtained.
- 4.12. Specific identifying features, such as scars, tattoos and other unique features such as deformities should be documented and photographed.
- 4.13. Postmortem radiographs should be reviewed prior to dissection and all projectiles visible on radiographs should be described. Other radiographic observations should be recorded.
- 4.14. Signs of recent injury should be documented and described – this applies to all injuries that are present.
- 4.15. If gunshot wounds are present, the gunshot wounds will be described in an arbitrary order that may not reflect the order of infliction. Wound paths and directions should be described in the anatomical position (upright frontal position with palms facing forward). The gunshot wounds should be described using the standard proforma:
  - 4.15.1. The gunshot wounds should be described in continuity from the entrance wound to the exit wound or from the entrance wound to the site of lodgement of the projectile, as appropriate.
  - 4.15.2. Entrance wounds should be described by referring to the location on the body and position (measurement from the top of the head and from the midline). The size and shape should be described. The presence of an abrasion collar, blackening of margin, stippling and other

Autopsy protocol  
June 14, 2010

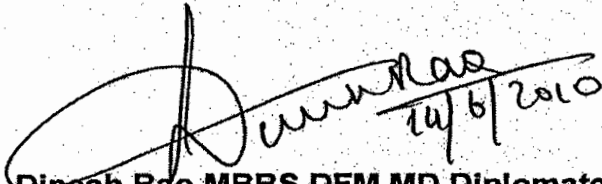
observations should be recorded. An opinion should be proffered on the range of discharge of the firearm.

- 4.15.3. The path of bullet with internal injuries and associated hemorrhage should be described. The volume of hemothoraces or hemoperitoneum should be recorded.
- 4.15.4. Exit wounds should be described by referring to the location on the body and position (measurement from the top of the head and from the midline). The size and shape should be described. If the bullet has not exited, the placement of the bullet should be recorded. The projectiles should be described (e.g., deformed, fragmented).
- 4.15.5. The direction of the wound path in the body should be determined.
- 4.15.6. All entrance and exit wounds should be photographed with a scale.
- 4.15.7. If multiple gunshot wounds are present and wound paths associated with entry wounds cannot be uniquely associated with lodged bullets or exit wounds, then entry and exit wounds and bullets do not need to be described in continuity.
- 4.16. The internal examination of the body should include examination of the cranial contents, removal of the brain and examination of the thoroacoabdominal organs. The thoroacoabdominal organs and neck organs should be removed and dissected ex situ.
- 4.17. A complete musculocutaneous and musculoskeletal dissection and dissection of the soles of the feet will be performed in all cases.
- 4.18. Histology will be performed at the discretion of the Government forensic pathologist.
- 4.19. Excision of entry wounds will be performed at the discretion of the Government forensic pathologist.
- 4.20. Samples of body fluids and liver will be collected for toxicology at the discretion of the Government forensic pathologist.
- 4.21. All physical exhibits (e.g., projectiles) and biological samples should be recorded in the report of postmortem examination. A window of femoral shaft should be retained in all cases for possible DNA extraction.
- 4.22. In each case, the observer forensic pathologist will prepare and sign an observer's report, using the proforma in annex 1.

Autopsy protocol  
June 14, 2010

In addition, the undersigned take notice of the Minnesota Protocol for the purposes of the postmortem examinations.

Signed in Kingston, Jamaica on June 14, 2010



**Dinesh Rao MBBS DFM MD Diplomate in Forensic Medicine  
Acting Director, Legal Medicine Unit  
Ministry of National Security**



**Michael S. Pollanen BSc MD PhD FRCPath DMJ (Path) FRCPC  
Chief Forensic Pathologist  
Ontario Forensic Pathology Service  
Observer Forensic Pathologist to the Office of the Public Defender**

Witnessed by:



**W. Earl Witter QC  
Public Defender**

Autopsy protocol  
June 14, 2010

## ANNEX 1: PROFORMA FOR OBSERVER FORENSIC PATHOLOGIST'S REPORT

### PREAMBLE

CASE #	
NAME OF DECEASED AS REPORTED TO PATHOLOGIST	
AGE/SEX	
DATE OF EXAMINATION	
PLACE OF EXAMINATION	
PATHOLOGIST	
PHOTOGRAPHER	
OBSERVER PATHOLOGIST	

### PURPOSE

To provide independent commentary on:

1. State of the body.
2. Identification.
3. All the injuries present, including gunshot wounds. If gunshot wounds are present, then to comment on: the number and locations on the body of the entry and exit wounds, the number of bullets in the body, the path of the gunshot wounds in the body and the range of discharge of the firearm(s).
4. The cause of death.
5. Any other medicolegally relevant findings.
6. Completeness of the postmortem examination.

### STATE OF THE BODY

LABELS AFFIXED TO BODY	
RIGOR MORTIS	
HYPOSTASIS	
DECOMPOSITION	

### IDENTIFYING FEATURES

APPARENT AGE	
SEX	
HEIGHT & WEIGHT	
BODY HABITUS	
HAIR	

Autopsy protocol  
June 14, 2010

EYES	
SCARS	
TATTOOS	
OTHER UNIQUE FEATURES	

**POSTMORTEM RADIOGRAPHS (X-RAYS)**

LABELS ON RADIOGRAPH(S)	
NUMBER OF RADIOGRAPH(S)	
NUMBER AND PLACEMENT OF PROJECTILES (E.G., BULLETS OR FRAGMENTS) VISIBLE ON THE RADIOGRAPH(S)	
OTHER OBSERVATIONS	

**SIGNS OF RECENT INJURY**

**GUNSHOT WOUNDS**

<b>Gunshot wound of x</b>	
<b>Entry wound</b>	
Location:	
Position:	x cm from the top of the head and x cm from the midline
Size and shape:	~ x cm
Range of firearm discharge:	
Other observations:	
<b>Path of bullet</b>	
Internal injuries:	
Hemorrhage:	
<b>Exit wound</b>	
Location:	
Position:	x cm from the top of the head and x cm from the midline
Size and shape:	~ x cm
<b>Projectile (if present)</b>	
Appearance of projectile:	
Location:	
<b>Direction in body</b>	



Autopsy protocol  
June 14, 2010

### OTHER INJURIES

1.

### CAUSE OF DEATH

1(a)	
------	--

### COMMENTARY

### IDENTIFICATION

How was the body identified?	
How reliable is the identification?	
Was a femoral bone sample retained?	Yes / No

### COMPLETENESS OF THE POSTMORTEM EXAMINATION

Where radiographs prepared?	Yes / No
Where autopsy photographs prepared?	Yes / No
Was a satisfactory examination undertaken?	Yes / No
Where all the projectiles recovered?	Yes / No

### SUMMARY OF INJURIES

How many times was this person was shot and in what locations?	
Did the gunshot wounds show evidence of contact, close-range or intermediate range discharge of the firearm(s)?	Yes / No. If yes, specify.

### OTHER INJURIES

Are any injuries caused by stabbing or cutting?	
Are any injuries caused by blunt impact?	
Are any burns present?	
Are any ligatures present?	

### OTHER COMMENTS

1.

Autopsy protocol  
June 14, 2010

***I certify that I have made a true statement of my findings and opinion:***

## Appendix 8

Mr. Witter, June 15, 2010

1

June 15, 2010

W. Earl Witter QC  
Public Defender  
Office of the Public Defender  
Kingston, Jamaica

Dear Mr. Witter:

**RE: INTERIM OBSERVATIONS ON THE POSTMORTEM EXAMINATIONS OF BODIES FROM THE INCIDENT AT TIVOLI GARDENS AND ENVIRONS IN KINGSTON, JAMACIA, MAY 2010**

At your request I am sharing my findings based on my attendance at the mortuary at Spanish Town Hospital today. I witnessed ten (10) postmortem examinations conducted by Dr. Dinesh Rao of the Legal Medicine Unit, Ministry of National Security.

Let me start this letter by stating that I recognize that Dr. Rao has taken postgraduate training in the forensic pathology. My commentary is not intended to be unfair to him personally.

All bodies examined today were adult men (and one elderly man) in a moderately advanced state of decomposition. All bodies were visually identified by relatives. This identification was made directly to Dr. Rao. The main findings in all cases were gunshot wounds – these injuries accounted for death. Radiographs (x-ray films) had been prepared and were reviewed before each postmortem. The radiographs were high quality and greatly facilitated the postmortems. However, all clothing had been previously removed from the bodies and was not presented for examination.

I observed that not all of the postmortem examinations met the standards that were agreed by Dr. Rao and me on June 14, 2010. Dr. Rao himself performed the first postmortem of the day; he did a relatively complete examination. However, after that one case, all subsequent dissection and retrieval of projectile fragments was delegated to his assistants. In addition, autopsies were performed simultaneously in adjacent rooms. In one room, Dr. Rao observed his assistants dissecting the body. But, in the adjacent room, the assistants worked unobserved and performed dissections and retrieved projectile

Mr. Witter, June 15, 2010

2

fragments. In many cases, retrieval of projectile fragments occurred without the direct observation of Dr. Rao or me.

At the beginning of the day's work, all bodies had complete musculo-cutaneous dissections to determine if any concealed blunt injuries were present. However, toward the end of the day, as the staff tired, these dissections were not completed and heads were not opened (i.e., the undersurface of the scalp and the brain were not examined for injuries). In one case (GZ19), a stereotyped projectile fragment in the left lower extremity (identified on radiographs) was not retrieved.

I believe that the actual applied standard for the postmortem examinations was to concentrate on documenting fatal or potentially fatal gunshot wounds and to retrieve foreign bodies visible on the radiographs that were relatively simple to locate and remove. Stated alternatively, it is my belief that the agreed protocol did not have any significant practical influence on how the postmortems were performed. Furthermore, I am finding it difficult to keep accurate notes of the injuries due to the simultaneous postmortem examinations, rapidity of the examinations, and the fact that many dissections are occurring in an adjacent room.

Due to the current state-of-affair I must inform you that I am not confident that I will be able to discharge all my observer functions, as outlined in the agreed protocol of June 14, 2010. If the standards do not change and the examinations do not progress at a slower pace, my report may be of limited value on: (1) the exact number and nature of all the wounds present on the bodies; and (2) a reliable assurance that all retrievable projectile fragments have been recovered. This reflects the problems entailed by the speed of the examinations, the standards, and the conditions in which the work is being undertaken.

On a slightly different issue, I observed that the bodies have not been placed into body bags or wrapped in sheets. After the postmortems, some of the bodies are piled together in a heap on the floor of the mortuary due to lack of gurneys. The stretchers that are used to convey the bodies are dirty and soiled in blood and decomposed tissue. To transport the bodies between the adjacent rooms, two bodies are often placed on the same gurney. The working conditions are also a far departure from satisfactory. Furthermore, the families are required to enter the autopsy room to visually identify the body on the autopsy table. Although the body was covered with a sheet when the identification took place, the face was often decomposed and soiled in dried blood. Many relatives needed to view other parts of the body for distinctive tattoos or scars to be certain it was their family member.

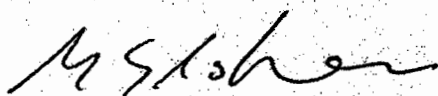
Mr. Witter, June 15, 2010

3

The lack of a purpose-built medicolegal autopsy facility with proper equipment, an x-ray machine, refrigeration units, and proper autopsy tables has severely hampered the current efforts. Apparently, the fact that any x-ray films are available at all is a departure from the usual standard of practice in Jamaica.

Lastly, it would be inappropriate for me not to mention some positive aspects of today's work. I believe that the police, autopsy assistants and Dr. Rao are all committed to working hard, despite the poor working conditions and the high daily case volume. In addition, the radiographs were helpful in retrieving several projectile fragments. These projectile fragments have been transferred into the custody of the investigators and will provide important data about the ammunition discharged by the firearms.

Sincerely,



Michael S. Pollanen BSc MD PhD FRCPath DMJ (Path) FRCPC  
Forensic Pathologist

**Appendix 9****OFFICE OF THE MINISTER OF NATIONAL SECURITY**

June 18, 2010

Mr. Earl Witter  
Public Defender  
Office of the Public Defender  
78 Harbour Street  
P.O. Box 695  
Kingston

Dear Mr. Witter,

**Protocol Standards for the Post-mortem Examination of  
Bodies Recovered from West Kingston, Jamaica in May 2010**

Further to letter dated June 17, 2010 on the matter at caption, please see attached amended protocol standards as recommended.

Sincerely,

A handwritten signature in black ink, appearing to be "D. Nelson".

Senator the Hon. Dwight Nelson CD, JP  
Minister

**MINISTRY OF NATIONAL SECURITY**  
NCB TOWERS- NORTH TOWER  
2 OXFORD ROAD  
KINGSTON 5  
JAMAICA  
PHONE: (876) 906-2411/2406  
FAX: (876) 906-5104

**PROTOCOL STANDARDS FOR THE POST-MORTEM EXAMINATION OF BODIES RECOVERED FROM WEST KINGSTON, JAMAICA IN MAY 2010**

---

The purpose of this protocol is to:

- ❖ Ensure that the post-mortem examinations meet accepted international norms in forensic pathology
- ❖ Define the role of the observer forensic pathologist (s) who will witness the post-mortem examinations

It is recognized that the protocol needs to be practically achievable within the existing infrastructure and available resources. However, the lack of resources is not considered a barrier to conducting complete post-mortem examinations.

- ❖ The participants to the post-mortem examinations will be:
  - Government Forensic Pathologist (s) acting in their official capacity
  - Photographer from the Bureau of Special Investigations
  - Autopsy assistants
  - Observer Forensic Pathologist (s) will provide professional expertise to the Office of the Public Defender
  - Other participants or attendees must be approved by authorities
  - Observer Forensic Pathologist(s) will observe the post-mortem examinations performed by the Government Forensic pathologist
- ❖ Where there is a dispute on any procedure in conducting an autopsy the Government Pathologist shall note the objection in the final post-mortem report and the observer Forensic Pathologist shall state his objection and the basis of such objection in his report
- ❖ Each post-mortem examination will be performed by a Government Forensic Pathologist
- ❖ A complete post-mortem examination will be performed on each body

MINISTRY OF NATIONAL SECURITY  
 NCB TOWERS - NORTH TOWER  
 2 OXFORD ROAD  
 KINGSTON 5  
 JAMAICA

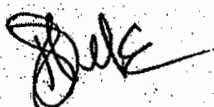
PHONE: (876) 906-2411/2406  
 FAX: (876) 906-5104

*[Handwritten signature]*

- ❖ Post-mortem radiographs will be obtained in each case
- ❖ The post-mortem examination will be documented by photography in each case
- ❖ The post-mortem examination will be documented by videography in each case
- ❖ As far as is possible all projectiles will be recovered from each body
- ❖ The name of the deceased (as reported to the pathologist) age, sex, case number, date of examination, place of examination should be recorded
- ❖ The names of the Government Forensic Pathologist, Photographer, observer Forensic Pathologist and other witnesses should be recorded
- ❖ The post-mortem changes of the body, clothing, jewellery, personal effects should be described and photographed
- ❖ A comprehensive external examination should be performed to document: apparent age, sex, height & weight, body habitus, hair, eyes face, mouth & teeth, torso, back, limbs and genitals. Photographs of all body surfaces and the face should be obtained
- ❖ Specific identifying features such as scars, tattoos and other unique features such as deformities should be documented and photographed
- ❖ Post-mortem radiographs should be reviewed prior to dissection and all projectiles visible on radiographs should be described. Other radiographic observations should be recorded
- ❖ Signs of recent injury should be documented and described – this applies to all injuries that are present
- ❖ If gunshot wounds are present, the gunshot wounds will be described in an arbitrary order that may not reflect the order of infliction. Wound paths and directions should be described in the anatomical position (upright frontal position with palms facing forward). The gunshot wounds should be described using the standard proforma

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- ❖ The gunshot wounds should be described in continuity from the entrance wound to the exit wound or from the entrance wound to the site of lodgement of the projectile, as appropriate
- ❖ Entrance wounds should be described by referring to the location on the body and position (measurement from the top of the head and from the midline). The size and shape should be described. The presence of an abrasion collar, blackening of margin, stippling and other observations should be recorded. An opinion should be proffered on the range of discharge of the firearm
- ❖ The path of bullet with internal injuries and associated haemorrhage should be described
- ❖ The volume of hemothoraces or hemoperitoneum should be recorded
- ❖ Exit wounds should be described by referring to the location on the body and position (measurement from the sole of the feet and from the midline). The size and shape should be described. If the bullet has not exited, the placement of the bullet should be recorded. The projectiles should be described (e.g., deformed, fragmented)
- ❖ The direction of the wound path in the body should be determined. All entrance and exit wounds should be photographed with a scale
- ❖ Where multiple gunshot wounds are present and wound paths associated with entry wounds cannot be uniquely associated with lodged bullets or exit wounds, then entry and exit wounds and bullets do not need to be described in continuity. This is to be done at the discretion of the Government Forensic Pathologist and within the limits of decomposition
- ❖ All body cavities, i.e. the cranial cavity, thoracic cavity and abdominal cavity must be opened for examination
- ❖ All dissections and removal of internal organs will be done at the discretion of the Government Forensic Pathologist

*D. J. Kelly*

- ❖ A complete musculoskeletal dissection will be performed by the Government Forensic Pathologist in all cases.
- ❖ Histology will be performed at the discretion of the Government Forensic Pathologist
- ❖ Excision of entry wounds will be performed at the discretion of the Government Forensic Pathologist
- ❖ Samples of body fluids and liver will be collected for toxicology at the discretion of the Government Forensic Pathologist
- ❖ All physical exhibits (e.g., projectiles) and biological samples should be recorded in the report of post-mortem examination
- ❖ Reference samples for DNA examination shall be retained by the Government Forensic Pathologist in all cases in which the body is unidentified or unidentifiable

**MINISTRY OF NATIONAL SECURITY**  
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• • • • •  
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FAX: (876) 906-5104

## Appendix 9A



TELEPHONE: 906-4908-31  
FAX: 906-5098

MINISTRY OF NATIONAL SECURITY  
NCB TOWERS  
2 OXFORD ROAD  
KINGSTON 5  
JAMAICA

June 24, 2010

Mr. Earl Witter  
Public Defender  
Office of the Public Defender  
78 Harbour Street  
Kingston

Dear Mr. Witter:

Re: Protocol Standards for the Post-mortem Examination of Bodies Recovered from West Kingston, Jamaica in May 2010

Reference is made to correspondence dated June 23, 2010 on the matter at caption. Please see below revised Annex 1 which reflects the recommended modifications.

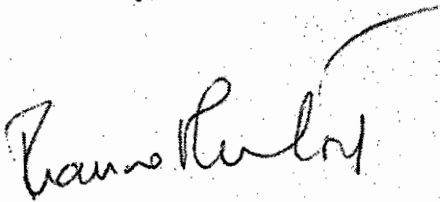
Annex 1: Amendments to the protocols for the conduct of post-mortem examinations agreed and established as at June 22, 2010.

- ❖ Bodies in an advanced state of decomposition ought not to be shown to families or friends for identification process as they have been already identified through use of extensive forensic data collection inclusive of pictures, fingerprints, clothing, tags, videos and DNA samples.
- ❖ Bodies should be placed into body bags and labeled with waterproof tags and indelible ink. This will be implemented once such items are made available to the responsible parties.
- ❖ Post-mortems are to be conducted in a prioritized manner based on the four (4) categories that exist:
  1. Bodies that have not yet been affected by decomposition
  2. Bodies that are slightly decomposed
  3. Bodies that are in an advance state of decomposition on which no post-mortem procedures have been performed and,
  4. Bodies that are in an advance state of decomposition on which partial post-mortem procedures have been performed.

- ❖ The number of autopsies conducted per day on decomposed bodies should be at the discretion of the Government Forensic Pathologist(s) however this should not exceed a total of five (5) per day.
- ❖ All autopsies should be performed in the presence of an Observer Forensic Pathologist and as such it is incumbent on the Office of the Public Defender to ensure that an increased number of such Observers are acquired to facilitate a more timely completion of the post-mortems.
- ❖ Post-mortems will be performed six (6) days per week with one (1) day being allotted for rest. Saturdays or Sundays will be agreed and decided upon by the Government Pathologist and JCF Bureau of Special Investigation and such decision communicated to the Permanent Secretary of the Ministry of National Security and the Office of the Public Defender.
- ❖ An Interim Mortuary should be established at the Norman Road establishment managed by Maddens Funeral Home to facilitate the post-mortems on bodies that are in an advanced state of decomposition i.e. markedly decomposed or skeletonized bodies. The establishment of an Interim Mortuary has been endorsed by the Office of the Public Defender and will be undertaken by the JCF, Bureau of Special Investigation and
- ❖ For the 18 bodies on which initial post-mortem procedures have already commenced and are in advanced state of decomposition it is agreed that they will be subjected to a supplementary examination where the skull will be opened and brain examined for signs of blunt trauma and efforts made to retrieve all fragments with the aid of x-rays previously taken. Additionally any other information of forensic value will be retrieved and documented at the discretion of the Government Pathologist.
- ❖ Evidence database should be properly maintained and should include pictures, fingerprints, clothing, tags, videos and DNA samples for all of the 69 bodies which have been accounted for by the responsible parties.
- ❖ DNA samples will be taken from the sternum consistent with the procedures of the JCF Forensic Laboratory and will be stored for future analysis.
- ❖ Careful linkage between unidentified bodies that are buried by the State and their related forensic data i.e. pictures, fingerprints, clothing, tags, videos and DNA samples is to be maintained in cases where future requests are made for exhumation.

- ❖ Supporting documentation for the Observer Forensic Pathologist(s) required to facilitate the registration process with the Medical Council of Jamaica are to be submitted prior to arrival and performing any duties within such capacity. Proof of registration should also be submitted to the Permanent Secretary of the Ministry of National Security by hand delivery.

Sincerely,



Dianne McIntosh  
Acting Permanent Secretary

**Appendix 10**

May 31, 2010

**URGENT AND IMMEDIATE  
BY TELEFAX AND HARD COPY**

ACP Granville Gause  
Officer Commanding Bureau of Special Investigations  
12 Ocean Boulevard  
KINGSTON

Dear ACP Gause:

**GROUND ZERO**

I understand that the appellation above is, or was attributed by the security forces to the area of their operation encompassing Tivoli Gardens and its environs, Denham Town and Hannah Town, Kingston, during the present State of Emergency. Manifestly, scores of firearms of varying type and calibre were discharged by security personnel in the theatre referred to, during the course of operations. It is a matter of record also, that a number of persons, security personnel as well as civilians, were fatally injured by gunfire in the operations; their corpses or bodily remains have been recovered and will not be released or interred until autopsies are done.

I formally record our further understanding that this Office will be apprised in good time beforehand, of the dates, times and places scheduled for the autopsies. This is to ensure that we are represented by an observer team, including forensic pathologists.

You will recall the surprise I expressed at the revelation that, to the best of your knowledge, none of the firearms referred to above (save some twenty five assigned to certain members of the Jamaica Constabulary Force,) had been taken out of service for the purpose of ballistic examination. For you will be aware that in the event that any spent bullets, shells or fragments etc. are recovered from the bodies of deceased, or from the area of operation, that it would be essential to establish, if possible, whether they were discharged from any weapons issued to security personnel.

2/.....

DJP Granville Gause  
Bureau of Special Investigations

- 2 -

May 31, 2010

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The integrity of that process would be severely compromised, if not rendered useless, unless **all weapons** used at times contemporaneous to the infliction of fatal injuries, are in fact examined by ballistics experts. Otherwise, it would be difficult if not impossible to resist the suggestion or conclusion that relevant weapons were deliberately excluded, in order to suppress evidence of nexus with questioned killings.

I also expressed surprise that, curiously, none of the venues of alleged killings at Ground Zero were being treated as, or as potential crime scenes. Undoubtedly, forensic evidence, such as blood or serosanguineous stains deposited in unsheltered places, will have been washed away during last weekend's rainfall. But the venues included housing blocks inside Tivoli Gardens itself. I therefore make the following **urgent** recommendations:

1. That steps be taken **immediately** to remove all relevant weapons from service; the identity of personnel to whom they were issued duly recorded in the normal way and the weapons be properly stored for the purpose of ballistic testing. This is of especial importance in relation to identification of personnel, many of whom wore masks at material times.
2. That steps be taken to identify and preserve **all or all potential** crime scenes to facilitate forensic evaluation. In this regard, we will make all relevant information coming to our attention, available to you.

Yours faithfully,

W. EARL WITTER, Q.C., J.P.  
PUBLIC DEFENDER

WEW\*cap

cc: Commissioner of Police  
DCP (Ag.) i/c Crime

Persons and property impacted by explosive or incendiary devices during the Tivoli Gardens  
'Incursion' of May 2010

FATAL IMPACT

No.	Name of Deceased	Location at time of Impact, etc.	Source of Information/Allegations	Comment/Allegations
1	Carl Henry	Levy Path, Tivoli Gardens.	Post-mortem Report and Statements of witnesses	According to a witness, Mr. Henry was standing at his gate in Levy Path on May 24, 2010, when he was thrown into the air by an explosion resulting in him receiving personal injuries. Mr. Henry "crawled" to a home on Levy Path and "bawled" for help, but received none, due to prevailing gunfire. An informant told the witness that, "after the bomb drop that flick 'Kettie' (Carl Henry) up in the air, after him drop is pure blood him see coming from 'Kettie' head." Eventually, the informant sought to

Appendix 11



ii

No. Deceased	Name of Deceased	Location at time of Impact, etc.	Source of Information/Allegations	Comments/Allegations
				<p>assist Mr. Henry. He was taking him out of harm's way but had to abandon him in the pathway, due to gunfire. Mr. Henry crawled to a lady's yard and, "he continue to bawl out until him bleed out and dead," it is alleged. A post-mortem examination conducted on his body concluded that the cause of Mr. Henry's death was, i. "a perforating wound (shrapnel wound) to the abdomen and ii. haemorrhage and shock." No bullet fragments were retrieved from his body; only metal fragments. An example of <b>thirteen</b> injuries sustained by the deceased is "a penetrating laceration 2.5 x 3cm on left mid posterior abdomen 64cm below top</p>

iii

No.	Name of Deceased	Location at time of Impact, etc.	Source of Information/Allegations	Comments/Allegations
				<p>of head and 1cm from mid line. Oval in shape with irregular margins. The projectile passed through the underlying tissues, abdominal cavity lacerating lower pole of left kidney, passing through retro-peritoneal tissue on omentum, lodged in left abdominal cavity anteriorly on omentum. The recovered metallic fragment 3.7cm x 2 cm handed over to police for necessary action." Another witness stated that she was on the verandah of a neighbour's house when she saw Mr. Henry on the ground. According to the witness, "he was laying down bleeding all the way from waist</p>

iv

No.	Name of Deceased	Location at time of Impact, etc.	Source of Information/Allegations	Comments/Allegations
				<p>down and a hole in his head, his teeth lick out. He draw himself on the verandah from the street down by my gate (front one), overnight. He bled to death on the verandah." The witness saw an injury to the head of Mr. Henry, confirmed in the post-mortem report which states: "A rectangular shaped penetrating laceration 1.5 x 2.5 cm seen on top of head on fronto-parietal region 2.5 cm left of mid line and 14 cm above root of nose. The projectile penetrated the underlying tissues, perforating the skull cap lodged on dura on left parietal lobe."</p>

v

No.	Name of Deceased	Location at time of Impact, etc.	Source of Information/Allegations	Comments/Allegations
2	Fabian Grant	"Reportedly shot by the Police on 25//05/10 at 11 Dec Cee Avenue, Tivoli Gardens and his body thrown into a truck."	Post-mortem Examination Report	A post-mortem examination was conducted on June 18, 2010. According to the report, the body was discovered, "between the 23 <sup>rd</sup> and 25 <sup>th</sup> May, 2010. Ground Zero." External injuries are described as — "i. <b>Multiple irregular punctured</b> lacerated wound(s) present over left knee; each on average measured 1 x 0.5cms over an area of 12 x 16cms. Situated 21 cms above sole. Some fragments of the stone (sic) found at the base of the wound.

No.	Name of Deceased	Location at time of Impact, etc.	Source of Information/Allegations	Comments/Allegations
				<p>ii. A penetrating lacerating wound of splinter (sic) present over right abdomen measured 4 x 2mm situated 127cms above sole and 11 cms from midline. A track established through the intestines and mesentery to embed in the tissues and is retrieved.”</p> <p>The Government pathologist expressed the opinion that “the presence of <b>splinter like metal fragment</b> in the right side abdomen is suggestive of <b>possible explosion</b>”</p>

No.	Name of Deceased	Location at time of Impact, etc.	Source of Information / Allegations	Comments / Allegations
3	<b>Adrian Bryan</b>	<b>Unknown</b> (N.B. Relatives of Mr. Bryan had not seen him alive since May 24, 2010. His body was identified on June 4, 2010, from photographs made available by the Police at the Denham Town Police Station.)	Post-mortem Examination Report	Post-mortem examinations were conducted on <b>May 27, 2010 and June 28, 2010</b> . The body was, "discovered at Madden's Funeral Home by the Police 23-25 May 2010. Ground zero." One external injury observed was "a penetrating lacerated wound of entrance present front of right chest. Measured 1 x 1cm situated 97cms above sole x 8cm from midline. A track was established upwards and forwards through liver, right 6 <sup>th</sup> space to exit front of right chest situated 112cms
				injuries and the presence of multiple puncture lacerated wound(s) over the left knee <b>confirms</b> the same."

No.	Names	Location at time of Impact, etc	Source of Information/Allegations	Comments/Allegations
4	Taneil Dennis	Unknown	Post-mortem Examination Report	<p>above sole x 4cm from midline. Measured 1.2 x 1.1cm. Two fragments retrieved along (sic) the track." A "perforating wound through the right chest is deviating from ... routine firearm wounds (sic) due to the amount of damage and the retrieval of splinter like fragments from the track confirms the possibility of explosion injuries."</p> <p>The post-mortem report records that Mr. Dennis had a "contused lacerated wound present over the left leg and dissection revealed splinter like metal fragment." Also, that "the surface (epidermis) of the</p>

No.	Name of Deceased	Location at time of Impact, etc	Source of Information/Allegations	Comments/Allegations
				<p>front of the body, chest, face, upper and lower limbs and abdomen sparing the genital region showed unformed (sic) burns and blackening." The report also records that "the deceased received superficial burns over the front of the body sparing the back surface of the body besides (sic) a splinter like metal object was retrieved from the left leg and the presence of lacerated wound over the chin damaging the mandible are suggestive of explosive injuries."</p>



x

Persons and property impacted by explosive or incendiary devices during the Tivoli Gardens  
'Incursion' of May 2010

NON-FATAL IMPACT

No.	Complaint No.	Location at time of Impact	Source of Information/Allegations	Comments/Allegations
5	178	Levy Path, Tivoli Gardens.	Statement of Victim	The victim sent her three children to stay with a niece in Portmore as the 'incursion' drew near. She remained at home with her partner and "baby father." On May 24, 2010, she went outside in search of her partner but did not see him. She alleges that whilst returning home she, "felt a force lift me off the ground and I was thrown in the road. I think it was a 'grenade/bomb' because I was thrown in the air." It is alleged that when her "baby father" rushed to her assistance and was lifting her from the ground he was ordered by a policeman to put her down and struck in the face by him.

xi

No.	Complaint No.	Location at time of Impact	Source of Information/Allegations	Comments/Allegations
				<p>She was rendered unconscious over two days and was hospitalized at the KPH for two weeks. She returned home after discharge from hospital. In the meantime, she alleges, her partner had been shot and killed. It is alleged further that the small grocery shop she operated was looted of tinned food, flour, rice, cornmeal and salt fish. A deep freezer was damaged and food in a refrigerator was also looted. The ceiling of the shop was torn down. The sum of Two Hundred Thousand Dollars (\$200,000.00), that had been in a suitcase belonging to her partner, as well as three cellular phones, were stolen.</p>

No.	Complaint No.	Location at time of Impact	Source of Information/Allegations	Comments/Allegations
6	C-340/12	6, Chang Avenue, Tivoli Gardens.	Statements of Complainant, Witness	<p>A witness was at home at 86, Lewis Path, Tivoli Gardens on May 24, 2010, when he heard a loud explosion and saw a large cloud of dust in the complainant's yard. On June 29, 2010, the complainant returned home and found a pigeon coop in his yard destroyed and all his pigeons killed. The place stank. He saw what appeared to him to be "fragment-damage" to the wall of his house and its windows. According to the complainant, while cleaning up his yard, he found a metal object which he subsequently realized was a piece of a device which had fallen and had exploded in his yard. The device was handed over to the Bureau of Special Investigations after it</p>

No.	Complaint No.	Location at time of Impact	Source of Information/Allegations	Comments/Allegations
7	612	16, Chang Avenue, Tivoli Gardens	Statements of Complainants and photographs	<p>The Complainant stated that she was at home on Monday, May 24, 2010, when she heard explosions which <b>shook</b> her dwelling. Together with a number of persons present in the house, she fled outside, when it started to smoke heavily. Once outside, members of the Security Forces ordered them to lie on the dirt ground in a neighbour's yard. Complainant watched helplessly as the house was gutted by fire. The Security Forces ignored appeals to call the Fire Brigade.</p> <p>Another complainant residing at 16, Chang Avenue stated that, "On Monday, May 24,</p>

xiv

No.	Complaint No.	Location at time of Impact	Source of Information/Allegations	Comments/Allegations
8	1007	47, Baugh Path, Tivoli Gardens.	Statement of Complainant and photographs	<p>2010, at about 2 p.m., she "heard some very loud explosions like gunshots, and then a louder one like a bomb, which shake all the houses, and then a fire started immediately afterwards. This fire spread all around seven houses including mine." The complainant stated that, "the complete belongings of everyone's house was destroyed by the fire. No one was able to save anything."</p> <p>A residence located at 47, Baugh Path, was severely damaged by what is alleged to have been an explosive device. A gaping hole in the side wall of the house evidences that the wall was impacted by tremendous force. The railings on the balcony of the house and the windows</p>

xv

No.	Complaint No.	Location at time of Impact	Source of Information/Allegations	Comments/Allegations
9	142	Building 1, Levy Path, Tivoli Gardens.	Statement of Complainant	<p>located at the side of the house were bent inwards. The complainant attributes this to the sheer force of the explosive device. In the afternoon of May 24, 2010, she was at home cooking when she heard, "a loud bombing noise." According to her "there were two bombings". The first caused "movement in the building." A second "bomb" came over the house and "took out", the side steps, the door, wall and windows. All three doors on one side of the house were damaged. After the second "bombing", she and the other occupants took refuge at 41, Baugh Path.</p> <p>The Complainant stated that on May 24, 2010, she was at home when she heard, "several gunshots and loud and powerful</p>

xvi

No.	Complaint No.	Location at time of Impact	Source of Information/Allegations	Comments/Allegations
				<p><b>explosions that shook the building." She alleges that, "I heard two at first (loud and powerful explosions) and I was scared, but the third explosion jerk the building and is that time mi go pon mi belly and start bawl."</b></p> <p><b>According to the witness, "a bomb drop directly in (her) house from the outside."</b></p> <p><b>All the tiles of her bathroom fell off. The toilet tank and face basin were completely damaged by the "bomb". All windows of the house were blown out by the explosions. The front door was, "blown to pieces, all the (floor) tiles dem start lif up." As a result of the damage caused, the complainant's house became uninhabitable.</b></p>

xvii

No.	Complaint No.	Location at time of Impact	Source of Information/Allegations	Comments/Allegations
10	387	26, Chang Avenue, Tivoli Gardens	Statement of Complainant and photographs	<p>The complainant was at home with her eighty-one year-old grandmother and a seven-year-old son on Monday May 24, 2010, when a helicopter was seen circling the area. She "heard something fall from the helicopter on the roofs (sic) of the houses that sounds like nails dropping" making her run inside for cover. Then there was beating on a shop door in the yard. Members of the Security Forces came to the gate. A voice was heard saying "who live in here mi a give oonu ten fi come out!" Upon hearing this, the witness ran out with her seven-year-old child and pleaded with them saying "Don't shoot. Only my grandmother is in there." They were all taken to another yard by members of the Security Forces. She</p>



xviii

No.	Complaint No.	Location at time of Impact	Source of Information/Allegations	Comments/Allegations
11	704	86, Lewis Path, Tivoli Gardens.	Statements of Complainants, witness and photographs	<p>The complainant was at home at 86, Lewis Path on May 24, 2010 when she "heard a loud explosion, and the roof of my bedroom and other parts were shattered as a result." He ran to the home of the witness and did not return until four days later.</p> <p>The witness was at home when she "saw a white plane in the sky circling the community of Tivoli Gardens as well as</p>
				<p>alleges that she saw when "a soldier throw a grenade on a house about three houses from mine and the houses started to burn then fire was spreading to my father's shop. My father's shop burn down clean, clean."</p>

No.	Complaint No.	Location at time of Impact	Source of Information/Allegations	Comments/Allegations
12	789	10, Chang Avenue, Tivoli Gardens.	Statement of Complainant	<p>green JDF helicopters. "The plane I saw <b>drop something</b> this I assume were (sic) bombs." The witness "saw the complainant who was my neighbour come out of his house to look what was happening. As soon as (the complainant) step out of the room, I saw something <b>drop from the sky</b> straight through complainant's roof and <b>exploded inside</b>. I could see <b>fragments</b> from the explosion mess up the roof and <b>flying all over</b> the place." According to the witness, the explosion "separated the (complainant's) room" from the rest of his house.</p> <p>The complainant was at her home on May 24, 2010 when "a bomb" fell in the front</p>

XX

No.	Complaint No.	Location at time of Impact	Source of Information/Allegations	Comments/Allegations
				<p>of her yard. She alleges: "When I heard the explosion in the front, mi bawl out seh Jesus Christ dem a throw bomb and mi grab the four kids (boys) and me and dem start to run, as we were running out mi hear the window of the washroom (glass) splinter up and I pushed them to the corner in my daughter's room in the back of the house and brace them to the wall. I was in front of them." Her son sustained an injury "during the time the bomb drop." He was taken to the doctor at the Tivoli Community Centre and according to her, "they gave him an injection to prevent him from getting poisoned by the (shrapnel) things from the bomb."</p>

## Appendix 12

### SOLDIERS KILLED/INJURED RE JOINT OPERATION WEST KINGSTON COMMENCING ON 24 MAY 2010

SRL	SOLDIER	NATURE OF INJURY	WHERE TREATED
01	A	Gunshot wound to the head	Deceased
02	B	Gunshot wound to right arm	Surgery Andrews Memorial
03	C	Gunshot wound to right upper back	JDF Medical Company
04	D	Gunshot wound to right arm and leg	JDF Medical Company
05	E	Gunshot wound to left hand	JDF Medical Company
06	F	Multiple Gunshot wounds to right thigh, left groin and left scrotum	JDF Medical Company
07	G	Gunshot wound to left buttocks	JDF Medical Company
08	H	Gunshot wound to neck	JDF Medical Company
09	I	Gunshot wound to left hand	JDF Medical Company
10	J	Blast injury to left leg, resulting in an above knee amputation	KPH then Andrews Memorial
11	K	Gunshot wound right arm	JDF Medical Company
12	L	Gunshot wound left hand and forearm	JDF Medical Company
13	M	Shrapnel wound to the side of head	Regimental Aid Post
14	N	Gunshot wound	Regimental Aid Post
15	O	Shrapnel to left side of face	JDF Medical Company
16	P	Gunshot wound to left foot	Andrews Memorial
17	Q	Gunshot wound to left knee	Andrews Memorial
18	R	Gunshot wound to left upper arm	JDF Medical Company
19	S	Gunshot wound to left foot	JDF Medical Company

### SIGNIFICANT PROPERTY DAMAGED RE JOINT OPERATION WEST KINGSTON COMMENCING ON 24 MAY 2010

SRL	TYPE OF EQUIPMENT	EXTENT OF DAMAGE
01	Front End Loader	Windscreen Shattered

## Appendix 13

501



Headquarters  
Jamaica Defence Force  
UP PARK CAMP  
KINGSTON 5  
JAMAICA

Tel: (876) 926-8121-9 Ext 2314-17  
Fax: (876) 926-8243  
[www.jdfmil.org](http://www.jdfmil.org)

JAMAICA DEFENCE FORCE

FACSIMILE TRANSMISSION COVER SHEET

Date: 10 January 2011

SEND TO

Organisation : Bureau of Special Investigations

Attention : ACP G GAUSE

Fax No. : 924-9123

FROM

Name : P A COLE

Rank : Lieutenant Colonel

Appointment : SO1 J8 (Legal)

Official (\*) Private ( )

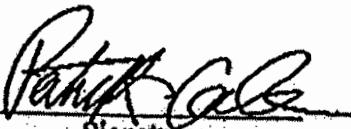
Page Number 1 of page(s)

For queries, please contact the Chief Clerk at (876) 928-4313.

MESSAGE

Attached please find the reply to your request.

This document contains information which is not restricted or sensitive

  
Signature



**HEADQUARTERS  
JAMAICA DEFENCE FORCE  
UP PARK CAMP  
KINGSTON 5  
JAMAICA**

Tel: (876) 926-8121-9 Ext 2314-17  
Fax: (876) 926-8243  
www.jdfmll.org

January 2011

The Jamaica Constabulary  
Bureau of Special Investigations  
Office Centre Building  
5<sup>th</sup> Floor,  
12 Ocean Boulevard  
Kingston Mall

**ATTENTION: ACP G L GAUSE**

**RE: REQUEST FOR JDF FIREARMS - INCURSION INTO TIVOLI GARDENS  
BY THE SECURITY FORCES ON THE 24<sup>TH</sup> AND 25<sup>TH</sup> MAY 2010**

References:

- A. Your letter dated 19 August 2010.
- B. Meeting at the Office of the Commissioner of Police dated 23 August 2010.
- C. Meeting at the Ministry of National Security dated 05 January 2011.

This serves to address your request at Reference 'A'. To date the Jamaica Defence Force (JDF) has received no allegation of misconduct or extra-judicial killing.

In light of this situation we are again requesting specifics of any allegation made against members of the JDF, so that these allegations may be noted and appropriate the assistance given to the BSI in regards to their investigation of any allegations made.

As was pointed out by ourselves and the independent ballistic expert at Reference 'C' the testing of weapons, should be evidence driven. In light of this fact it is of paramount importance that the nature of the allegation(s) against the JDF is disclosed in order that the required assistance can be given to ensure that the process goes ahead in the manner agreed.

In regards to your specific request in Reference 'A', Item 1 requested the names of all JDF persons involved in the operation; because of the nature of this operation the entire Force was involved in the operation. To fulfill your request would be to send the entire list of personnel in the JDF. We are accepting the fact that this could not have been your

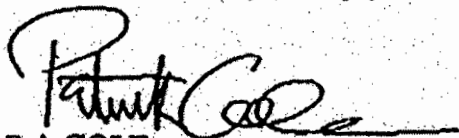
intention so, therefore we are requesting that this request be more specific. Especially bearing in mind what was said at the meeting at the Ministry of National Security on the 05 January 2011, a meeting at which we were both present.

Items 2, 3, 4 also lack specifics. In light of the above we therefore again repeat our request for the BSI to state the following:

- a. state the allegations made against members of the JDF;
- b. the crime being investigated;
- c. the place it is alleged to be committed;
- d. and also the date and time of the allegation.

We stand ready to meet with you to discuss the contents of this letter and to put mechanisms in place to ensure that the sterling cooperation which has existed between the BSI and the JDF is continued.

We eagerly await your reply



P A COLE  
Lieutenant Colonel  
for Chief of Defence Staff

## Appendix 14



ANY REPLY OR SUBSEQUENT REFERENCE TO THIS COMMUNICATION SHOULD BE ADDRESSED TO THE DEPUTY COMMISSIONER OF POLICE AND NOT TO ANY OFFICE BY NAME AND THE FOLLOWING REFERENCE QUOTED

No. 657 21/11

THE JAMAICA CONSTABULARY  
BUREAU OF SPECIAL INVESTIGATIONS  
OFFICE CENTRE BUILDING  
5<sup>TH</sup> FLOOR,  
12 OCEAN BOULEVARD,  
KINGSTON MALL

January 11, 2011

Chief of Defence Staff  
Jamaica Defence Force  
Up Park Camp  
Kingston 5

Attention: P. A. Cole – Lieutenant Colonel

REQUEST FOR JDF FIREARMS – INCURSIONS INTO TIVOLI GARDENS  
BY THE SECURITY FORCES ON THE 24<sup>TH</sup> AND 25<sup>TH</sup> MAY 2010

I acknowledge receipt of your letter of 10<sup>th</sup> January 2011 re Tivoli Gardens Operations.

I refer in particular to my letter to you of June 10, 2010 and repeat: that the mandate of the Bureau of Special Investigations (B.S.I) requires us to investigate all shooting incidents that involved the military and the police. Both are alleged to have been involved in various incidents in Western Kingston as well as at the home of Mr. Keith Clarke at Kirkland Close, Red Hills, following the declaration of the limited state of emergency effective May 23, 2010.

The purpose of the examination of firearms issued to members of the Jamaica Constabulary Force and the Jamaica Defence Force (J.C.F & J.D.F) involved in these incidents as well as the ballistic evaluation and comparison of spent shells, fragments, expended bullets, etc is to determine whether or not bullets fired from any of those firearms, caused or accelerated the death of the more than seventy (70) persons killed in the course of the incursion into Western Kingston as well as the death of Mr. Keith Clarke.

Our investigations are also directed at establishing whether bullets discharged from any illegal firearms recovered by the security forces in the course of the operation caused the death of any of the over seventy (70) persons and or members of the security forces.

In elaboration of what is stated above, the position taken by the B.S.I is that in execution of the mandate, it is entitled to have access to any and all firearms alleged or suspected to have been used in the course of any operation, particularly where death results, for ballistic examination and comparison in order to determine whether or not bullets discharged from any such firearms caused or contributed to the death of anyone. In these circumstances it is our view that for these purposes our requisition for access to relevant JDF weapons is sufficiently, "evidence driven", if, as happens to be the case, there are allegations, or reasonable suspicion exist that bullets discharged by JDF personnel may either have proven fatal or otherwise inflicted injury.

Moreover, addressing the content of your letter, we consider it quite adequate for the legitimate purpose of our investigation to inform you that the allegations we are investigating against members of the JDF as well as the JCF is that bullets discharged by them on and in the week of May 23, 2010 in Western Kingston may have caused or contributed to the death of persons. The ballistic examination and comparison will of course, engaged bullets or fragments recovered from the corpses of the deceased during the autopsies as well as spent shells recovered from various scenes. It is absolutely essential therefore that the firearm examiners be allowed access to such firearms as may be described by them at the conclusion of phase one (1) of the agreed Protocol for the Examination of the Tivoli ( and related) Events.

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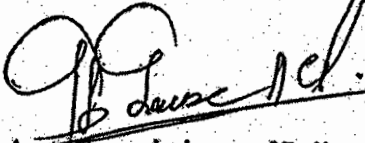


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Cont'd - Request for JDF Firearms

Finally I must tell you that the request or requisition for access which we have made and upon which we are insisting is no different from any other we have made of you in similar circumstances in the past and in relation to which the JDF has always complied except perhaps as to scale. Of course the number or potential number of firearms involved in the request would be no proper basis for not honouring it.

We therefore look forward to your fullest cooperation as usual.



~~Ast. Commissioner of Police  
Bureau of Special Investigations~~

Cc: Mr. Owen Ellington - Commissioner of Police  
Mr. Earl Witter - Public Defenders Office  
Mr. Terrence Williams - I.N.D.E.C.O.M

GG/sr.

## Appendix 15



ANY REPLY OR FURTHER REFERENCE TO THIS  
COMMUNICATION SHOULD BE ADDRESSED TO  
THE DEPUTY COMMISSIONER OF POLICE AND  
NOT TO ANY OFFICE BY NAME AND THE  
FOLLOWING REFERENCE QUOTED

No. \_\_\_\_\_

**THE JAMAICA CONSTABULARY**  
BUREAU OF SPECIAL INVESTIGATIONS  
OFFICE CENTRE BUILDING  
5<sup>TH</sup> FLOOR,  
12 OCEAN BOULEVARD,  
KINGSTON MALL

January 14, 2011

Chief of Defence Staff  
Jamaica Defence Force  
Up Park Camp  
Kingston 5

Dear Sir;

REQUEST FOR JDF FIREARMS

Jamaica Defence Force and the Jamaica Constabulary Force carried out an operation in the Western Kingston area between the 23 – 25 May 2010, resulting in the death of seventy two (72) persons and the recovery of over eighty (80) firearms.

The Post mortem Examinations were done on the bodies and bullet fragments were retrieved from the bodies. The purpose of the examination of the firearm issued to members of the Jamaica Defence Force/Jamaica Constabulary Force involved in this incident as well as the ballistic evaluation and comparison of spent shells, fragments, expended bullets, etc, will be used to determine whether or not bullets from any of these firearms caused the death of the persons killed in the course of the incursion.

The protocol for the examination of the weapons was already agreed on by the Ministry of National Security and the concerned parties.

The firearms assigned to members of the Jamaica Constabulary Force have already been test fired.

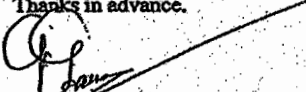
By way of comment, the protocol highlighted a preliminary screening and evaluation of the evidence of what has been recovered and what items possess value or deemed useful for further examination.

Items determined for additional comparisons and identification will require direct comparison to known firearms.

In order to facilitate the investigation, may I also ask for a list of the persons involved, weapons and ammunition issued and returned as also the section to where they were deployed.

May I also extend my personal congratulation on your appointment to the position of Chief of Staff and looking forward to working in tandem with you.

Thanks in advance.

  
Asst. Commissioner of Police  
Bureau of Special Investigations

/sr.

## Appendix 16

501



HEADQUARTERS  
JAMAICA DEFENCE FORCE  
UP PARK CAMP  
KINGSTON 5  
JAMAICA

Tel: (876) 926-8121-9 Ext 2314-17  
Fax: (876) 926-8243  
[www.jdfmil.org](http://www.jdfmil.org)

13 January 2011

Mr Granville GAUSE  
Assistant Commissioner of Police  
Bureau of Special Investigations  
Office Centre Building  
5th Floor  
12 Ocean Boulevard  
Kingston Mall

**REQUEST FOR JDF FIREARMS –**  
**INCURSIONS INTO TIVOLI GARDENS BY SECURITY FORCES**  
**ON 24 AND 25 MAY 2010**

References:

- A. BSI 735/10 dated 19 August 2010.
- B. Meeting at the Office of the Commissioner of Police on 23 August 2010.
- C. Meeting at the Ministry of National Security on 05 January 2011.
- D. BSI 21/11 dated 11 January 2011.

In any investigation it is important that there is clarity as to what is being investigated. This is what the Jamaica Defence Force (JDF) has been requesting in this matter. We also endorse the report of Mr Mathew NOEDEL Forensic Ballistic Expert as to the best framework for the testing of the weapons. The tone of your letter at Reference 'D' seems to indicate that you might have misinterpreted the tenor of the letter dated 10 January 2011 to mean that the JDF was unwilling to cooperate in this matter. This is to categorically state that this is not the case.

To this end it is suggested that we firstly test all the weapons fired by members of the JDF during the period of the captioned operation. Subsequently we can test the weapons that were not fired but were generally in the area or any other weapons on the operation. To achieve this aim I have affixed to this letter a list of the soldiers who fired their weapons and the serial numbers of the weapons so used.

The ballistics testing of the weapons would have to be done in stages therefore please indicate how many weapons per day can be tested by the Ballistic Laboratory and give us the schedule for this testing to be done. It should also be borne in mind that the JDF is presently at a very high operational level so the current practice of test firing and returning the weapons on the same day should be factored into the plans being developed. Should you wish to conduct the testing any differently, please let us know and we will facilitate same.

We eagerly await your reply.

P A COLE  
Lieutenant Colonel  
for Chief Defence Staff

## Appendix 17

1-527/1



**HEADQUARTERS  
JAMAICA DEFENCE  
FORCE**  
UP PARK CAMP  
KINGSTON 5  
JAMAICA

Tel: (876) 926-8121-9 Ext 2039  
Fax: (876) 926-8243  
[www.jdfmil.org](http://www.jdfmil.org)

07 June 2012

### PRESS RELEASE

#### JDF CLARIFIES U.S. CABLE REPORT

The Jamaica Defence Force (JDF) is aware of a recently released Cable report attributed to the United States which states that during the Tivoli Gardens Operation in 2010, "the JDF fired mortars and then used bulldozers to break through heavy barricades which Coke's supporters had erected to block entry to the fortified enclave."

We can confirm that mortars and bulldozers were used as part of the operation.

Prior to the operation in Tivoli Gardens in 2010, intelligence indicated that there were significant numbers of heavily armed gunmen massing inside the community, as well as highly fortified barricades and defensive positions, some of which were lined with explosives and other incendiary devices. This was subsequently confirmed when the troops entered the community.

Mortar rounds were fired into open areas as part of a diversion. At no time were persons or buildings targeted. This diversionary tactic created confusion and disorientation among the entrenched gunmen, and allowed the JDF to use bulldozers to breach the barricades and enter the community.

The mortar rounds that were fired were well targeted and directed and the JDF is satisfied that the use of these munitions was not only accurate and effective, but justified and necessary in order to achieve the operational objectives.

Under normal circumstances, the JDF does not discuss details regarding operational tactics or procedures, especially during an operation, but given the potential for speculation and misunderstanding surrounding this matter, the Force makes this statement.

- END -

**Captain Basil Jarrett**  
**Civil/Military Co-operation Officer**  
**Telephone 548-4768/833-3324**

## Appendix 18

**URGENT AND IMMEDIATE  
BY TELEFAX, EMAIL AND HARD COPY**

August 23, 2012

Brigadier Rocky Meade  
Deputy Chief of Defence Staff  
Jamaica Defence Force  
Headquarters  
Up Park Camp  
KINGSTON 5

Dear Brigadier:

**STATE OF EMERGENCY, 2010 -**

- 1. West Kingston Incursion**
- 2. The Killing of Mr. Keith Clarke ✓**

You will know that the Public Defender has been conducting investigations into the conduct of the State security forces during the State of Emergency of May, 2010, particularly in relation to the West Kingston incursion, so called and, the killing of Mr. Keith Clarke at Kirkland Close, Red Hills, Saint Andrew.

Information which has surfaced in the public domain (since that time confirmed by the JDF,) is that a United States Department of Homeland Security P-3 Orion aircraft conducted surveillance flights over Tivoli Gardens and other parts of West Kingston during the joint Police/Military operation. There are also allegations that the JDF discharged what has variously been described as "missiles" and/or "bombs", in course of the incursion. The JDF has confirmed that incendiary devices (said to be mortar rounds) were discharged.

I refer to our recent telephone conversations and, as I undertook to do, I now write formally to request that, both in relation to 1. and 2. above, you provide this Office with information regarding:

- i the nature and effect of assistance at material times which the JDF derived from the surveillance flights, relating to general imagery, communications or otherwise;
- ii whether or not the JDF is in possession of surveillance footage, in which case we should be obliged to be afforded a viewing;

- 2 -

August 23, 2012  
Brigadier Rocky Meade  
Jamaica Defence Force

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- iii information regarding precisely what were the types of incendiary devices (mortars or other) discharged, as well as the tactical nature, targets and strategic objectives of their discharge and,
- iv the reason why discharge of these devices was thought to be appropriate.

As I indicated to you, this information request is of especial urgency. It is intended to be factored into an Interim Report which I propose to tender to the Parliament very shortly. I am quite sure therefore that I might count on your alacrity and dispatch.

Yours faithfully

**EARL WITTER, Q.C., J.P.**  
**PUBLIC DEFENDER**

EW\*gw-c

# Appendix 19

*7. Freeman*  
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*500M*  
*28/08/12*  
*[Signature]*



Headquarters  
Jamaica Defence Force  
UP PARK CAMP  
KINGSTON 5  
JAMAICA

Tel: (876) 926-8121-9 Ext 2314-17  
Fax: (876) 926-8243  
www.jdfmil.org

## JAMAICA DEFENCE FORCE

### FACSIMILE TRANSMISSION COVER SHEET

Date: 23 August 2012

#### SEND TO

Organisation : Office of the Public Defender

Attention : Mr Earl WITTER, QC JP

Fax No. : 922-9830

#### FROM

Name : Chester CROOKS

Rank : Captain

Appointment : SO3 J8 (Legal)

Official (\*) Private ( )

Page Number 1 of page(s)

For queries, please contact the Chief Clerk at (876) 926-9665.

#### MESSAGE

#### WEST KINGSTON 2010

Please see the attached letter.

*Tuesday*  
*Aug. 28, 2012*  
TIME: \_\_\_\_\_  
BY: \_\_\_\_\_

This document contains information which is not restricted or sensitive

*[Signature]*  
Signature

501



**HEADQUARTERS  
JAMAICA DEFENCE FORCE  
UP PARK CAMP  
KINGSTON 5  
JAMAICA**

Tel: (876) 926-3121-9 Ext 2314-17  
Fax: (876) 926-8243  
www.jdfmil.org

28 August 2012

Mr Earl WITTER, QC JP  
The Public Defender  
Office of the Public Defender  
78 Harbour Street PO Box 695  
Kingston

Dear Mr WITTER,

**RE: STATE OF EMERGENCY 2010**

Please refer to your letter dated 23 August 2012 requesting information from the Jamaica Defence Force (JDF) on specific points concerning our operations during the captioned State of Emergency 2010.

It is noted that pursuant to Section 13. (2) (b) of the Public Defender (Interim) Act the Office of the Public Defender is not empowered to investigate "any action done with respect to orders or directions to the Jamaica Defence Force or members thereof, or any proceedings under the Defence Act".

Notwithstanding this provision the Jamaica Defence Force, in its continued efforts to cooperate with your office and the fact that the questions in your letter have already been addressed in the public domain, provides the following responses:

a. **WEST KINGSTON OPERATION**

Q.1. The nature and effect of assistance at material times which the JDF derived from the surveillance flights, relating to general imagery, communications or otherwise

A.1. A United States (US) surveillance aircraft was deployed over the area of operation in West Kingston with a view to providing the JDF with general imagery assistance and communications during the May 2010 operations. This move was designed to gather information to assist the safe movement of the troops.

Q.2. Whether or not the JDF is in possession of surveillance footage, in which case we should be obliged to be afforded a viewing

A.2. The JDF is not in possession of any useful footage from the US surveillance aircraft as due to technical challenges no usable imagery was obtained that could be effectively utilised by the JDF.

Q.3. Information regarding precisely what were the types of incendiary devices (mortars or other) discharged, as well as the tactical nature, targets and strategic objectives of their discharge.

A.3. The types of incendiary devices that were used were mortars. These mortars were used as a diversionary tactic with the aim of confusing the highly armed gunmen who were targeting the troops including the manning of barricades which were erected to prevent the security forces from entering Tivoli Gardens. The use of these mortars was supervised by highly trained and competent JDF personnel who ensured that the mortars were targeted at open areas, thus minimizing the possibility of casualties.



Q.4. The reason why discharge of these devices was thought to be appropriate

A.4. The use of these devices was thought to be appropriate based on the information which suggested that there were hundreds of armed gunmen in West Kingston prior to the entry of the security forces. In addition to distracting and creating confusion among these highly armed gunmen, it minimized the potential for loss of life among the civilians and also the security forces who were facing direct gunfire and the very real possibility of being ambushed at rigged barricades.

b. THE DEATH OF MR KEITH CLARKE

None of the issues raised in your questions relate to the death of Mr Keith Clarke. However please note that arising from the incident three (03) members of the Jamaica Defence Force have been charged with murder subsequent to a ruling from the Office of the Director of Public Prosecutions. This matter is presently before the Home Circuit Court and as such we will be unable to comment on any further queries in this matter.

It is hoped that the information provided will prove useful. Please advise us if we can be of any further assistance.

The Chief of Defence Staff sends his regards.



C A CROOKS  
Captain  
for Chief of Defence Staff

## Appendix 20

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Seen  
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G  
File



**HEADQUARTERS  
JAMAICA DEFENCE FORCE**  
UP PARK CAMP  
KINGSTON 5  
JAMAICA

Tel: (876) 926-8121-9 Ext 2314-17  
Fax: (876) 926-8243  
www.jdfmil.org

31 August 2012

Mr Earl WITTER, QC JP  
The Public Defender  
Office of the Public Defender  
78 Harbour Street PO Box 695  
Kingston

Dear Mr WITTER,

**RE: STATE OF EMERGENCY 2010**

Further to our letter dated 28 August 2012 concerning the use of mortars by the Jamaica Defence Force during the captioned, we hereby provide further clarification to prevent any ambiguity.

Question three (03) of your letter queried in part the types of incendiary devices that were used.

It should be noted that the mortars used are capable of firing rounds of varying types as follows:

- a. Explosive
- b. Illuminative
- c. White Phosphorus (Incendiary)

However, the rounds that were used by the JDF at the time in question were explosive and not incendiary.

It is hoped that this additional information will also prove useful. Please advise us should you require any further clarification.

The Chief of Defence Staff sends his regards.

**C A CROOKS**  
Captain  
for Chief of Defence Staff

## Appendix 21

**Noedel  
Scientific**

Puyallup, WA  
mnoedel@att.net 253-227-5880

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### Preliminary Draft Report

#### *Summary*

- There are approximately 200-300 firearm evidence packages currently stored at the ballistic lab that have been associated with the Tivoli Garden event
- The Keith Clarke incident would add another 50-75 packages to this list
- There are over 400 fragments included in those submission (from autopsy), it is unknown what else is contained in those packages until they are examined
- Screening the evidence should be conducted initially to determine what physical evidence exists. This should be conducted side-by-side with an examiner from the Jamaican lab and an independent examiner working on the same pieces at the same time
- It would likely take 10 to 20 working days to screen, catalog and document all of the submissions
- The ballistic lab does not currently have sufficient equipment in place to expedite those exams, the lab would need at least an additional comparison microscope, stereomicroscopes, computer capability, photographic ability and physical space
- There may be as many as 900 firearms that could have been involved with the event
- Should the evidence warrant further comparison additional scene and background information should be gained to focus on those firearms that have the best potential to have been involved
- Many firearms that may have been involved have already been test fired by the laboratory. These samples should be used for comparison and if an identification is found, that specific firearm may be recalled and verified to preserve the independent nature of the request for examination
- Only those firearms that could have reasonably been responsible for being the source of the physical evidence should be tested
- Firearms that are called to the lab for test firing should be done in small batches (perhaps 10 to 15 guns per day) and returned as soon as appropriate samples were collected

## Appendix 22



ANY REPLY OR SUBSEQUENT REFERENCE TO THIS  
COMMUNICATION SHOULD BE ADDRESSED TO  
THE PERMANENT SECRETARY.

TELEPHONE: 906-4908-22  
FAX: 906-5098

MINISTRY OF NATIONAL SECURITY  
NCB TOWERS  
2 OXFORD ROAD  
KINGSTON 5  
JAMAICA

April 30, 2012

Mr. Earl Witter  
Public Defender  
Office of the Public Defender  
78 Harbour Street  
Kingston

Dear Mr. Witter

Please see attached the draft protocol for ballistic examination of weapons related to the Tivoli incident. This protocol was not formally adopted by the parties involved (Ministry of National Security, Jamaica Constabulary Force (JCF), Jamaica Defence Force (JDF) and the Office of the Public Defender) hence there was no signed document.

I propose to now circulate to all for their agreement but in the interim you may use this as the draft.

Yours truly

A handwritten signature in black ink, appearing to read 'Dianne McIntosh'.

Dianne McIntosh  
Permanent Secretary

Attch.

## Appendix 23



### OFFICE OF THE PUBLIC DEFENDER

*"A Voice of the Voiceless... To Loose the Chains of Injustice"*

May 1, 2012

BY FAX AND  
HARD COPY

Miss Dianne McIntosh  
Permanent Secretary  
Ministry of National Security  
2 Oxford Road  
Kingston 5

Dear Miss McIntosh:

**AGREED PROTOCOL FOR BALLISTICS EXAMINATION OF WEAPONS,  
AMMUNITION ETC. — LIMITED STATE OF EMERGENCY — CORPORATE  
AREA, 2010 — WEST KINGSTON INCURSION — KILLING OF MR. KEITH  
CLARKE**

Thank you for your letter dated April 30, 2012 together with the attachment, which you describe as "the draft protocol for ballistic examination of weapons related to the Tivoli incident." You stated further that the protocol "... was not formally adopted by the parties involved..." and further, that you proposed "... to now circulate to all for their agreement ..." (emphases mine.)

With respect, I find your assertions in the passages quoted, inter alia, to be quite curious, not least because as recently as 4:00 PM yesterday, you had confirmed to me in our telephone conversation that the "draft protocol" had actually been agreed to by your Ministry as well as the other "parties" referred to in your letter. It was thereupon that I asked you to be good enough to confirm the fact of the agreement, by sending me a note to that effect. Hence my quandary in relation to your assertion that "the ... protocol was not formally adopted by the parties ...".

In fact, there really can be no doubt that the protocol was agreed to and, adopted at a meeting at your Ministry in or about November, 2010, presided over either by your good self or the Chief Technical Director, Mr. Vivian Brown. The meeting was also attended by the author of the protocol, (our Consultant Mr. Matthew Noedel,) Dr. Judith Mowatt, Director of the Government Forensic Laboratory, Lt. Col. Patrick Cole of the JDF (who belatedly indicated his concurrence), representatives of the UNDP, the USAID and others. Minutes were taken by personnel of your Ministry. The "draft protocol" was not only agreed by all present but was accepted as the protocol for ballistics examination, both in respect of the West Kingston incursion, so-called, as well as in relation to the killing of Mr. Keith Clarke.

..12

TELEPHONE: (876) 922-7089/7090/7109/8256  
FACSIMILE: (876) 922-9830  
E-MAIL: [publicdefender@opd.gov.jm](mailto:publicdefender@opd.gov.jm)

78 HARBOUR STREET, P.O. BOX 695  
KINGSTON, JAMAICA, W.I.  
WEBSITE: [www.opd.gov.jm](http://www.opd.gov.jm)

**OFFICE OF THE PUBLIC DEFENDER**

Miss Dianne McIntosh  
Permanent Secretary  
Ministry of National Security  
May 1, 2012  
Page 2 of 2

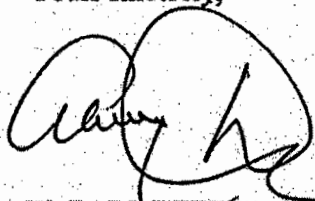
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The agreement cleared the way for Mr. Noedel's acceptance by the Government as a ballistics expert, his subsequent preliminary work and some training/assessment of trainee firearm examiners by him.

In all the circumstances, I consider your Ministry to be the repository of the Government's copy of the protocol and, the authority to which I might look for certified copies of the minutes of the meeting. As regards the latter, I ask now that you be good enough to furnish me with a certified copy.

No doubt you will be aware of the urgency and importance of the matter, in light of the purported completion of the ballistics work in relation to the killing of Mr. Clarke which, obviously, was done contrary to the terms of the protocol.

Yours sincerely,



W. EARL WITTER, Q.C., J.P.  
PUBLIC DEFENDER

WEW\*lp

**Appendix 24**

May 8, 2012

**URGENT AND IMMEDIATE  
BY EMAIL AND  
HARD COPY**

Miss Dianne McIntosh  
Permanent Secretary  
Ministry of National Security  
2 Oxford Road  
Kingston 5

*file*

Dear Miss McIntosh:

**AGREED PROTOCOL FOR BALLISTICS EXAMINATION OF WEAPONS,  
AMMUNITION ETC. — LIMITED STATE OF EMERGENCY — CORPORATE  
AREA, 2010 — WEST KINGSTON INCURSION — KILLING OF MR. KEITH  
CLARKE**

I refer to my letter to you of May 1, 2012 and continue, respectfully, to await your comments, the receipt of which I did indicate that I considered an urgent matter; moreso now.

Regards.

Yours sincerely



W. EARL WITTER, Q.C., J.P.  
PUBLIC DEFENDER

WEW\*lp

## Appendix 25

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 3/10/12  
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 7/12



TELEPHONE: 906-4908-31  
 FAX: 906-5098

MINISTRY OF NATIONAL SECURITY  
 NCB TOWERS  
 2 OXFORD ROAD  
 KINGSTON 5  
 JAMAICA

ANY REPLY OR SUBSEQUENT  
 REFERENCE TO THIS COMMUNICATION  
 SHOULD BE ADDRESSED TO THE  
 PERMANENT SECRETARY AND THE  
 FOLLOWING REFERENCE QUOTED:

September 3, 2012

Mr. Earl Witter, Q.C., J.P.  
 Public Defender  
 Office of the Public Defender  
 78 Harbour Street  
 Kingston

Dear Mr. Witter:

**Re: Proposal for Ballistics Examination of Weapons, Ammunition, etc in Relation  
 To the Tivoli/West Kingston Incursion of 2010**

Further to the letter dated April 30, 2012 from the then Permanent Secretary in the Ministry of National Security, the Ministry would like to confirm that procedures outlined in the document entitled "Preliminary Draft Report: A Protocol for the Examination of the Tivoli (and related) Events" were, in fact, the agreed protocol for the ballistics examination of weapons, ammunition, etc. in respect of the Tivoli incursion of 2010.

While it is true that there was no formally signed document, there was agreement out of our meeting of November 2010 between the principal parties – the Office of the Public Defender, the Government Forensic Science Laboratory, the Jamaica Constabulary Force, the Jamaica Defence Force and the Ministry of National Security – that the procedures arrived at would be the agreed protocol. Consistent with this the protocol was that used to carry out phase one of the examination of ballistics evidence from the Tivoli/West Kingston incursion that has already been completed. It is further expected that it will cover the subsequent phase(s) of the examination of ballistics evidence.

It is also worth noting that the ballistics protocol was not the only protocol that arose from the Tivoli/West Kingston incursion. There was also a protocol in relation to the pathological examination of the bodies of persons allegedly killed during the operations. This was arrived at in a similar manner through meetings of the parties and was used in the examinations of the bodies without there being a "formally" agreed document.

The Ministry of National Security hopes that this adequately addresses your concerns which unfortunately were left hanging.

If there are any queries please do not hesitate in contacting the Ministry.

Yours truly

Vivian E. Brown  
 Chief Technical Director (Actg.)  
 for Permanent Secretary



## Appendix 26

**Noedel  
Scientific**

Puyallup, WA  
mnoedel@att.net 253-227-5880

---

### Preliminary Draft Report

#### **A Protocol for the Examination of the Tivoli (and related) Events**

Based on the request of from the OPD, this protocol assumes that a firearm examiner from the Jamaica Constabulary Force (JCF) Laboratory system and an independent firearm examiner (mutually agreed to between the JCF and OPD) "co-work" through the physical evidence. This concept requires that coordination between the Lab and independent examiner be put in place prior to the commencement of the exams outlined. Appendix "A" at the end of this report outlines the specific mechanics of providing such an examination.

#### *Time-Frame for Examination*

Because it is currently unknown what exactly is contained in the numerous packages associated with this event, an accurate timeline to complete all examinations cannot be offered. However, breaking the examination into three distinct "phases" may provide for a better estimation of the total time required.

## Preliminary Draft Report

### A Protocol for the Examination of the Tivoli (and related) Events continued

Phase 1-This phase should be a preliminary screening and evaluation of the evidence to catalog what has been recovered and what items possess value deemed useful for further examination. This operation will likely take a minimum of approximately 10 working days and may take up to 20 working days (depending on what is contained in the individual packages).

- The summary of the autopsy reports indicates at least 445 fragments recovered from individuals. It is highly likely that a majority of these fragments will be of limited or no value for identification due to the high velocity associated with fired rifle bullets. It is unknown how many (if any) additional bullets, cartridge cases or fragments were recovered from the scenes near where these bodies were located.
- There is an additional set of physical evidence associated with the Keith Clarke event and if this exam is to include that evaluation an extra two to four days should be considered.
- Every effort should be made to initiate this phase by January of 2011. The results of this phase will dictate all other schedules, needs and time frames.

Phase 2-Any items that have been determined during phase 1 to possess value for additional comparison and identification will require direct comparison to known firearms. At this point, test firing of guns may become necessary. Because of the large number of potential firearms involved with this event, additional, external scene

information should be considered rather than "randomly" testing firearms. By associating scene proximity and documentation with the location of the recovered evidence, firearms with a higher probability of having been in that area can be targeted first and brought to the lab for test firing.

In the event that the firearm(s) in question have already been test fired and samples from that firearm appropriately collected, the comparison should be initially conducted using those previously generated test fires. Should the comparison of previously generated test fires be positively matched to physical evidence from the Tivoli event, that specific firearm may be recalled and test fired under the observation of the independent examiner to the satisfaction of the lab and OPD collectively.

In the event that the physical evidence deemed useful for comparison is not identified to a previously test fired firearm, then firearms should be test fired in smaller batches beginning with the issued firearms known to have been in proximity to the location of the collected physical evidence. Those firearms (in batches of approximately 10-15 per day) should be scheduled for submission in the morning, safety checked and test fired, the components collected and securely packaged and then the firearms returned the same day. This process assures that security force firearms are not unduly removed from service for extended periods of time or in significantly large quantities.

- Under this recommendation, the first portion of a working day should be dedicated to test firing and the second portion of the day dedicated to IBIS entry and/or comparison microscopy.

## Preliminary Draft Report

### A Protocol for the Examination of the Tivoli (and related) Events continued

- It has been estimated that there may be in excess of 800 firearms that need to be test fired and compared. This would represent approximately 60 to 80 working days to complete. I strongly suggest that the physical evidence be screened first and in conjunction with scene data, only specific firearms (those with a high probability of having been involved) be recalled for further examination.

Phase 3-Once all associations have been evaluated and documented, attempts to reconstruct that particular event can be considered. This phase would require combining the physical data generated from the laboratory with the crime scene data, witness statements, scene reports, autopsy reports, photographs, notes and data collected during the processing of the event. This would be best accomplished by working through each decedent, one at a time, to evaluate all of the data related to that individual. This process can take as few as three days per individual up to two weeks per individual (depending on how much data had been collected) representing well over a year (after phase 1 and 2 are completed) to thoroughly examine and reconstruct the shooting of each individual.

#### *Personnel Requirements*

One fully trained firearm examiner from the Jamaican Bureau of Scientific Investigation should be assigned to be involved for the entirety of the execution of this protocol. One fully trained independent firearm examiner (mutually approved by the Lab and OPD) should be equally assigned. Because the independent examiner will necessarily originate from outside the

borders of Jamaica (no resident independent firearm examiners are currently identified within the country), a second "back-up" examiner should also be secured to relieve the efforts of the primary independent examiner. The back-up examiner should be mutually recognized by the lab and the OPD as an acceptable expert in the field of firearm examination and be available to travel and stay in Jamaica for an extended time as the evidence warrants. Contact information of some independent examiners known to possess sufficient training and experience are offered at the end of this report.

#### *Work Day and Schedule Requirements*

The assigned laboratory firearm examiner and the independent examiner should plan on working through the evidence at the same time and maintain the same schedule. The independent examiner should coordinate with the existing schedule of the examiner (to include breaks and lunch as needed). As such, large blocks of time should be set aside whereby both examiners are allowed to work exclusively on the Tivoli evidence.

The arrival and schedule of the independent examiner should be distributed to the appropriate security personnel at the front guard house such that the independent examiner can gain access to the lab building. Once at the lab building, the Jamaican lab examiner should escort the independent examiner into the secure areas (as needed) and remain generally available as a liaison during the work day alongside the independent examiner.



Puyallup, WA  
mnoedel@att.net 253-227-5880

## Preliminary Draft Report

### *Summary*

- There are approximately 200-300 firearm evidence packages currently stored at the ballistic lab that have been associated with the Tivoli Garden event
- The Keith Clarke incident would add another 50-75 packages to this list
- There are over 400 fragments included in those submission (from autopsy), it is unknown what else is contained in those packages until they are examined
- Screening the evidence should be conducted initially to determine what physical evidence exists. This should be conducted side-by-side with an examiner from the Jamaican lab and an independent examiner working on the same pieces at the same time
- It would likely take 10 to 20 working days to screen, catalog and document all of the submissions
- The ballistic lab does not currently have sufficient equipment in place to expedite those exams, the lab would need at least an additional comparison microscope, stereomicroscopes, computer capability, photographic ability and physical space
- There may be as many as 900 firearms that could have been involved with the event
- Should the evidence warrant further comparison additional scene and background information should be gained to focus on those firearms that have the best potential to have been involved
- Many firearms that may have been involved have already been test fired by the laboratory. These samples should be used for comparison and if an identification is found, that specific firearm may be recalled and verified to preserve the independent nature of the request for examination
- Only those firearms that could have reasonably been responsible for being the source of the physical evidence should be tested
- Firearms that are called to the lab for test firing should be done in small batches (perhaps 10 to 15 guns per day) and returned as soon as appropriate samples were collected

## Preliminary Draft Report

### Appendix "A" Protocol for the Examination of the Ballistic Evidence— Tivoli Gardens (and related cases)

#### Examination Protocol—Phase 1-Bullets, Bullet Fragments and Fired Cartridge Cases

1. A large workspace (such as the length of ½ of the existing conference room adjacent to the ballistic lab) should be dedicated for the exam. The necessary equipment should be set up during the first day of the examinations and remain there during the entire examination.
2. The physical evidence and request forms are retrieved from the area in which they are stored each morning and returned to the secure storage each night.
3. A submission form describing the evidence is selected and the associated package(s) are retrieved from the box of Tivoli submissions.
4. Personal protective equipment (lab coats and gloves) should be available for the examiners (note— not all physical evidence will require the use of gloves and the independent examiner may provide their own lab coat). Butcher paper (or the equivalent) should be secured onto the work surface to protect the surface from contamination. *(needs include—Gloves, butcher paper, tape)*
5. A photograph should be taken of the front and back of the package. *(needs include-Digital camera, power cord, camera batteries or recharging potential, tripod*
  - a. Fired bullets and fragments should each be weighed, measured (to include land and groove impressions if present), classified by caliber (if possible), *(optional)*). A label that will follow the contents of the package should be prepared *(label maker, label tape, pens, scaled paper, rulers etc.)*
6. The package should be opened and contents sorted onto the labeled exam paper and each object individually assigned a unique identifier within that package number designation (example package 15 items a, b, c...). Each individual item should be photographed (with scale) such that the photograph also captures the label with the unique identifier assigned. Where possible, the individual item should be etched with the unique identifier in a manner that does not damage the useful features of the item. *(scissors, knife, pens, camera equipment, carbide scribe)*
7. Written notes should be maintained describing each item once it has been exposed. Prepared worksheets may expedite this process and would assist in assuring that consistent data is recorded with each object.
8. Each piece should then be examined and the result recorded on the note forms *(needs include-callipers, rulers, fine point sharpie pens, balance (scale), stereomicroscope (x2), bright desk lighting, comparison microscope)*:
  - a. Fired bullets and fragments should each be weighed, measured (to include land and groove impressions if present), classified by caliber (if possible),

## Preliminary Draft Report

- classified by design (if possible) and evaluated as to its potential for further microscopic comparison and identification.
- b. Fired cartridge cases should have a record of their head stamp and caliber recorded, be generally measured (where appropriate) and have their class characteristics documented (to include firing pin shape and breech face).
9. Upon completion of the above direct examinations, those evidence items mutually deemed (by the lab examiner and the independent examiner) as not useful for further comparison should be documented in the case file and resealed as per existing laboratory protocol and returned to the vault (*evidence tape, marking pens*).
  10. Items that are either in question about their potential usefulness or deemed to be good candidates for additional comparative identification should be documented in the case file and secured in a manner that will allow future access for such an exam. (*evidence tape, temporary tape*)
  11. IBIS entry on recovered fired cartridge cases can be initiated by the IBIS technicians. Entries of the evidence and any already generated test fired cartridge cases can be correlated by the computer to indicate potential associations. These potential associations should be verified (visually) by the examiners involved in the Tivoli examinations (*IBIS instrumentation, stereomicroscope, comparison microscopes*).
  12. Comparison of any IBIS cartridge case associations and direct comparison of bullets and fragments using a comparison microscope should be conducted and reviewed by both the government and independent examiners. Note-The single comparison scope currently available will not be sufficient for this process as well as the current casework required by the rest of the ballistic section. The results of these direct comparisons should be documented and recorded in the file along with the previously generated screening data.
  13. Test firing potential firearms should be conducted only after good candidates for comparison have been documented. Handgun test fires can be conducted into the existing laboratory water tank. Rifle test fires should be conducted into the cotton recovery box (they will be damaged if fired into water at full power). Downloading rifle cartridges (reducing the amount of gunpowder to reduce the velocity and energy) may be appropriate and should be considered on a case by case situation. (*Needs include-source of test ammunition, replacement cotton for the recovery system, a handheld metal detector to assist in locating bullets from the cotton box, good ventilation in the firearm range*).



Puyallup, WA  
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### Appendix "B" Protocol for the Examination of the Ballistic Evidence— Tivoli Gardens (and related cases)— Materials Needed

#### Recommended Equipment and Supplies

Protective Gloves  
Lab Coat(s)  
Rulers  
Calipers (x2)  
Cellophane Tape  
Sharpie style marking pens (fine point)  
Evidence Tape  
Balances (x2)  
Stereomicroscopes (x2)  
Comparison Microscope (x2) (see additional  
information on the next page)  
Butcher Paper  
Worksheets  
Carbide Scribes  
Digital camera  
Digital storage card (1 gig or greater)  
Digital card reader  
Blank CD supply  
Power cords  
Batteries  
Computer with image processing software  
and ability to write data to a cd  
Bright task lighting  
Ammunition  
Replacement cotton filler-bullet trap  
Xerox copier

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### Appendix "B" continued-Reference Information Pertaining to Comparison Microscopes

A ballistic comparison microscope is a very specialized piece of equipment. As such, high quality instruments can cost as much as \$50,000 to \$60,000 (US dollars) each. These high quality microscopes are ergonomically and optically perfectly designed to examine fired bullets and cartridge cases. Three sources of these high quality microscopes are referenced here:

<http://www.leedsforensics.com/home.asp>

<http://www.leica-microsystems.com/products/by-application/education/forensic/detail/product/leica-fs-m/>

<http://www.projectina.ch/eng/products.aspx?id=25&lang=EN>

On occasion, used or refurbished comparison scopes can be located. These are rare but when available offer the second best choice for obtaining a comparison microscope. Prices for this class of comparison scope range from \$5000 to \$20,000 (US dollars) when they can be found at all.

A third option for the Jamaican laboratory would be to refurbish the three scopes currently on site at the lab. This would require that a microscopy specialist be brought in, evaluate the scopes, obtain and repair the missing or broken parts and then certify the instruments as accurate. It is likely that this process would be cost

prohibitive for the scopes currently at the lab. (Note—the two non working comparison scopes may have some value as "parts" which can be explored to offset some of the costs).

Lastly, there have been some sources of new comparison microscopes that have been advertised via the internet.

- One source (forensicmicroscopes.com) offers a complete comparison microscope package for under \$5000 (US dollars). I have not seen an example of this scope in use or had an opportunity to evaluate this scope so I cannot recommend or refute its usefulness for daily laboratory use.
- Another source (reference EBAY online auction "Microscopes India") offers a comparison microscope for under \$3000 (US dollars). Based on the limited description and image associated with this scope, it does not have the correct lighting, ballistic stages and working features common to a *ballistic* comparison scope and does not appear to be useful for forensic firearm examination. Again, however, I have not seen an example of this scope in use or had an opportunity to evaluate this scope so I cannot recommend or refute its usefulness for daily laboratory use.



## Appendix 27

### HUMAN RIGHTS AND THE USE OF FORCE

3. The principles of 'Public Safety' and 'Police Officer Safety' are of **equal and paramount importance** and inform the concepts set out in this policy document.
  
6. It is the **aim of the JCF** to uphold and **protect the human rights of all the people** in Jamaica by providing a high quality, effective policing service in partnership with the community and in Co-operation (sic) with other agencies. In carrying out our duties, members of the JCF shall, as far as possible, apply non-violent means before resorting to the use of force. Members of the JCF will **only resort to the use of force if other means remain ineffective** and there is no realistic promise of achieving the lawful objective without exposing police officers, or anyone whom it is their duty to protect, to a real risk of harm or injury.

#### **Philosophy**

8. The use of force by police personnel is a matter of critical concern both to the public and to the JCF. Members of the JCF are involved on a daily basis in numerous and varied human encounters and, when warranted, may use force in carrying out their duties.

9. Members of the JCF must have an understanding of, and true appreciation for, **the limitations of their authority**. This is especially true with respect to officers **overcoming resistance** while engaged in the performance of their duties.

### **Policy**

11. It is the policy of the JCF that their members shall use **only** that amount of force that is **strictly necessary**, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control.
12. Any consideration of the appropriateness of a given action must allow for the fact that members of the police service are often **required to make split-second decisions** - in circumstances that are **tense, uncertain and rapidly evolving**.
13. Whenever members of the JCF resort to the lawful use of force they shall:-
- **Minimise any interference with human rights**

- **Exercise restraint** in such use and act in **proportion to the seriousness** of the offence and the lawful objective to be achieved
- Minimise damage and injury
- **Ensure that medical aid is secured** for any person requiring it at the **earliest opportunity**

14. The use of force by members of the JCF must accord with the **principles of proportionality** (i.e. the anticipated injury or harm to be prevented is equal to or greater than the harm which is likely to be caused by the use of force and that the objective cannot be achieved by a lesser degree of force). **In no case** should the use of force, which is **disproportionate** to the legitimate objective to be achieved, be used or authorised.

15. The arbitrary or **abusive use of force** by members of the JCF will result in both **criminal and disciplinary** investigation.

16. In accordance with Article 3 of the United Nations Code of Conduct for Law Enforcement, members of the JCF will apply the test using force only 'when **strictly necessary** and to the extent required for the performance of their duty'

**The commentary to article 3 states:**

*i. This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is **reasonably necessary under the circumstances** for the prevention of crime or in effecting or assisting in the **lawful arrest of offenders or suspected offenders, no force going beyond that may be used.***

*ii. National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. **In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.***

17. When police are required to use force to achieve a lawful objective (such as making a lawful arrest, **acting in self-defence or protecting others**) the method of applying force should be in **accordance with force instructions and training.**

18. When determining whether or not to apply any level of force and in evaluating whether an officer has used appropriate force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- The **conduct** of the **individual being confronted** (as **reasonably perceived** by the officer at the time).
- Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of officers vs. subjects).
- Influence of drugs/alcohol (mental capacity).
- **Proximity of weapons.**
- Availability of other options (What resources are reasonably available to the officer under the circumstance).
- Seriousness of the suspected offence or reason for contact with the individual.
- **Training and experience** of the officer.
- Potential for injury to **citizens, officers and suspects.**
- Risk of escape.
- Other exigent circumstance

19. Each member of the JCF is provided with equipment, training and skills to assist in the apprehension and control of suspects as well as protection of colleagues and the public.

20. Individual members of the JCF are required to use **well-reasoned discretion** in determining the **appropriate** use of force in every incident. It is not possible to predict every possible operational situation that members of the JCF may encounter.

#### **Right to Self Defence**

21. While it is the ultimate objective to minimize injury to everyone involved, **nothing in this policy requires officers to actually sustain physical injury before using appropriate force**, or to expose themselves to unnecessary violence.

22. Members of the JCF have **the right to defend themselves from unlawful physical violence** and, where appropriate, to **take pre-emptive action** to diffuse or avert violence.

**Obligation to Protect Others**

23. If members of the JCF do not take **appropriate and proportionate** action to **protect** others from harm they may be **violating human rights** and be in **breach** of their **duty** as a police officer.

**Obedience to the Orders**

25. **Obedience to the orders of a supervisor shall be no defence** if a police officer knew that the order to use force was **unlawful** and had a **reasonable opportunity to refuse to obey it**.

26. Responsibility will also rest with the supervisor who gave the **unlawful order**.

**Personal Responsibility**

27. The **primary responsibility** for using force rests with the **individual officer**, who is accountable ultimately to **the law** and also to the **Commissioner of Police**.

28. **Individual officers are accountable** and responsible for whatever force they use and must be in a position to justify their actions in the light of their legal responsibilities and powers.
29. Any police officer who has reason to believe that **improper force** has been used or is **about to be used** by another police officer, shall, to the best of his/her ability, **prevent and rigorously oppose** any such use of force. This officer shall, at the earliest opportunity, **report the matter** to his/her supervisor and, where necessary, to other appropriate authorities vested with responsibility for investigating such matters.
30. **Supervisory** members will be held responsible if they know, or should have known, through the proper discharge of their duties, that officers **under their command** are resorting, or have resorted, to the unlawful use of force, and they did **not take all measures in their power to prevent, suppress or report** such use.

#### **Medical Assistance**

31. **Medical assistance** will be obtained for any person(s) (sic) who has sustained **visible injury**, expressed a complaint of pain, or who has been **rendered unconscious**.



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### **Records and Reports**

32. Members of the JCF will verbally report any use of force to their immediate supervisors as soon as practicable. Any use of **physical force by a member must be documented completely and accurately** in an appropriate report, depending on the nature of the incident.
34. **Supervisors will check that a pocket book entry has been completed** by the officer(s) involved and that each pocket book entry is **inspected and signed by that supervisory officer.**
35. Members of the JCF must fully document the circumstances in which they found themselves, the reasons for their actions and the details of the supervisor to whom they subsequently reported.

### **Managing Conflict**

38. It is intended that this instruction will be **the principal reference document on which all applications of force are based.** It will become an integral part of police response to situations of conflict and will provide a **standard to be attained** by all police officers.

39. Members of the JCF are frequently required to deal with situations of conflict. The careful use of **well-chosen and appropriate words** and the management of human interaction will resolve many situations. Other situations will **necessarily involve the application of varying degrees of physical force.**
40. The use of an appropriate and 'graduated response' to conflict, including disorder and violence will help to ensure a balanced and proportionate use of force.
41. The **primary responsibility** of police officer (sic) is the **protection of life.** Members of the JCF are **not required to wait until they have been assaulted** before they take action and there are occasions when **pre-emptive action will be appropriate** to defuse a situation which may otherwise escalate and result in greater violence.

**Policing Unlawful Assemblies and Serious Public Disorder.**

43. Policing unlawful assemblies and serious public disorder raises specific issue (sic) of command and control, and requires all members to act in a **disciplined and effective manner.**

44. Everyone is entitled under the Constitution of Jamaica to participate in lawful and peaceful assemblies. Force and firearms may be used only in accordance with principles 13 and 14 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which states:

- *In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.*
- *14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.*

45. Members of the JCF shall not use firearms in such cases, except in **self-defence or defence of others** against the **imminent threat** of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to **arrest a person presenting such a danger** and resisting their authority, or to **prevent his or her escape**, and **only when less extreme means are insufficient** to achieve these objectives. In any event, the use of a conventional firearm may only be made **when strictly necessary** in order to **protect life**.

### **Less Lethal Options**

47. It is necessary to ensure that any force used is **proportionate** to the **seriousness of the apparent threat**, and appropriate options in this area assist adherence to that principle.

### **Human Rights and Police Use of Firearms**

52. Any use of firearms must be in **accordance with force instructions and training**. Only in **the most extreme circumstances**, where life is endangered or there is a risk of serious injury, may the use of **lethal force** be **justifiable**.
53. The circumstances in which lethal force can be used within the terms of Jamaican law are limited, being **restricted** to situations involving **self-defence** or **defence of others** and then only where **strictly necessary**.
54. The purpose of these instructions are:

- To highlight the principles and provisions of the Jamaican Constitution.
  - To promote an **understanding and to provide practical guidance** concerning the legal implications surrounding the use of firearms.
  - To set out Force Policy concerning the issue, deployment and training of members of the JCF issued with firearms.
  - Provide for a **system of reporting** whenever JCF members use firearms.
56. JCF members carrying out their duty, shall, as far as possible, **apply non-violent means** before resorting to the **use of force or firearms**.
57. Whenever the lawful **use of force and firearms** is unavoidable JCF members will:
- i. **Exercise restraint** in such use and **act in proportion** to the seriousness of the offence and the **legitimate objective** to be achieved;
  - ii. **Minimize damage and injury**, and **respect and preserve human life**;
  - iii. Ensure that **assistance and medical aid** are rendered to any **injured** or affected persons at the earliest possible moment;

- iv. Ensure that **relatives or closed friends** of the injured or affected persons **are notified** at the earliest possible moment.
- v. Where **injury or death** is caused by the use of **force and firearms** by any member of the JCF, they **shall report the incident promptly** to their superiors.

58. In determining whether the use of firearms is strictly necessary the following questions should be asked:

- Is the use of firearms **proportionate**, in the given circumstances, bearing in mind the **dangers to the lives of all persons** involved?
- Is the degree of force used **strictly necessary** in order to achieve **a lawful objective**?
- Have other options been considered before resorting to the use of a firearm?
- **Why were these options discounted?**

59. **Firearms are only to be fired** by members of the JCF when their use **is strictly necessary**, after conventional methods have been tried and failed, or must from the nature of the circumstances be unlikely to succeed if tried.

60. **Public confidence in the police is of the utmost importance.** It is essential that in their approach and conduct members of the JCF are **seen to be well-trained and disciplined** in handling firearms.

#### **Training and Qualification in Firearms**

64. All members of the JCF are reminded of their **personal responsibility** to identify their training needs and to bring these to the attention of their immediate supervisor. Members of the JCF are also required to maintain a **high level of competence in the use of weapons and knowledge** in relation to **Force Policy** and **current legislation** in respect of firearms.
65. Firearms may only be issued to and carried for operational duties by members of the JCF who have successfully completed an initial firearms training course in the particular weapon and who have successfully re-qualified in its use during the last 12 months.

#### **The Use of Firearms**

94. When it is considered **absolutely necessary to open fire** on a subject, members of the JCF will only **'shoot to stop'** and thereby neutralize the immediate effect.

96. The accuracy of shots fired under training conditions is generally greater than in operational circumstances. Members of the JCF are therefore normally trained to **fire at the largest part of the target** they can see which in most cases will be the central body mass.
98. The **ultimate responsibility** for firing a weapon rests with the **individual member**, who is **answerable ultimately to the law** in the courts. Individual members are accountable and responsible for **all rounds they fire** and must be in a position to justify them in the light of their legal responsibilities and powers.

### **Planned Operations**

106. The principle of **upholding the 'right to life' should be central to all armed operations**, hence proper planning is essential.
107. The European Court of Human Rights ruling, against the Government of the United Kingdom, in the case of *McCann-v-UK* (1995) considered whether or not the actions of a public authority were appropriate, and applied the principle that the **force used on behalf of the State** should be "**no more than absolutely necessary**". They determined that force is **absolutely necessary** if



it is **strictly proportionate** to the achievement of the permitted purpose.

108. The European Court of Human Rights asserted that the State must provide appropriate training, **instructions and briefing** to those who are placed in situations where lethal force may be used. The court ruled that where a particular operation/incident was planned and controlled by the authorities, it must be done so as "to **minimize, to the greatest extent possible, recourse to lethal force**". (McCann -v-UK 1995-21)

### **Planning**

109. The planning of armed operations requires **attention to detail** to ensure that the operations are undertaken safely and appropriately. In **spontaneous incidents** the amount of planning undertaken will be **commensurate with the level of threat and the time available**.

110. In order to discharge this duty of care and to comply with human rights principles the operation must:

- a) have a legitimate aim
- b) be **lawful**

- c) be proportionate
- d) be justified
- e) be the least intrusive or damaging to the rights of individuals.

111. Firearms operations must be **planned and controlled** so as to **minimize**, to the **greatest extent** possible, the need to resort to potentially lethal force (i.e. it must be **strictly necessary**).

#### **Command Structure**

124. In normal circumstances an effective command structure has three levels; Strategic, Tactical and Operational

- a) Strategy - The overall intention to combine resources towards managing and resolving an event or incident.
- b) Tactics - The way that resources are used to achieve the strategic intentions within the range of approved tactical options.
- c) Operational - Action designed to implement the tactical plan and the direction of resources.

### **Medical Assistance**

132. In pre-planned operations or in protracted incidents such as a **siege situation** where it is considered that there is a **significant risk of casualties**, contingency plans should ensure that **early medical attention will be provided** for any casualties, whether they be **police officers**, the subject or any other **members of the public**.
133. The **duty to protect life includes those who have been injured** as a result of positive police action. **Medical assistance** should always be rendered at the **earliest possible** opportunity.
134. The **provision of appropriate facilities** should always be considered at the earliest possible stage. This might involve the availability of **officers trained** in relevant **First Aid** measures and/or the placing of **an ambulance on standby**.
135. Supervisors should ensure that relatives or close friends of the injured or affected person, subject to their agreement, are notified at the earliest opportunity.

### **Debriefing**

139. Where as a result of an armed confrontation police have killed or injured a suspect or other person, it is essential that integrity (sic) of purpose can be demonstrated in respect of any debrief which is held. This may be accomplished by ensuring an independent record of the debrief.

### **Records and Reports**

142. **Supervisors will ensure that a pocket book entry has been completed** by the officer(s) involve (sic) and that each pocket book entry is **inspected and signed** by that **supervisory officer**. Initial notes should be made as soon as practicable, subject to any individual legal advice received to the contrary. The entry should be **timed, dated and signed**.

143. Members of the JCF must **fully document the circumstances in which they found themselves**, the reasons for their actions and the details of the supervisor to whom they subsequently reported.

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### **Post-Incident Procedures**

146. In implementing these procedures it is essential that **the evidential trail is not jeopardized** or officer safety compromised.

151. The police service must address two distinct responsibilities when dealing with such cases. The first is **a duty in law to ensure a full investigation** into the shooting incident. The **Bureau of Special Investigation**, in conjunction with the Police Public Complaints Authority, **will undertake this**.

### **Administrative Review and Investigation**

156. When **death is occasioned** by the use of force, an administrative and **criminal investigation** of the incident will **immediately take place**.

### **Criminal Investigation**

162. The procedures below apply to all situations in which a member discharges a firearm for the purpose of employing deadly force against a human being.

- a) The Commanding Officer for the area where the shooting takes place shall

Promptly notify the Deputy Commissioner of Police in charge Crime, the Bureau of Special Investigations and the Police Public Complaints Authority of the incident, as well as the Constabulary Communication Network.

- b) The officer in charge of the Bureau of Special Investigations shall assign a competent investigator to take over and complete the investigation under his/her direction.

- c) The detective assigned shall conduct the investigation as he/she would in any other serious investigation.

- d) With the exception of the rare extenuating circumstances, all investigations shall be completed and the file submitted to the Deputy Commissioner of Police for crime within 30 days of the incident.

- e) After review the Deputy Commissioner of Police for Crime shall promptly

Submit the investigating report file to the Director of Public Prosecutions for his review and findings, and the administrative review file to the Commissioner.

**Appendix 28**

<b>Years</b>	<b>Persons Allegedly Murdered During the Years 2000-2010</b>	<b>Fatal Shootings by Police During the Years 2000-2010</b>	<b>Police Personnel Allegedly Murdered During the Years 2000-2010</b>
2000	887	140	16
2001	1139	148	15
2002	1045	133	16
2003	975	113	13
2004	1471	108	11
2005	1674	168	13
2006	1340	227	10
2007	1583	272	19
2008	1618	224	12
2009	1683	263	11
2010	1442	309	17
<b>TOTAL</b>	<b>14857</b>	<b>2105</b>	<b>153</b>

**Appendix 29**

May 28, 2010

**URGENT AND IMMEDIATE  
BY TELEFAX AND HARDCOPY**

Honourable Bruce Golding, M.P.  
Prime Minister  
Office of the Prime Minister  
1 Devon Road  
KINGSTON 6

Dear Prime Minister:

I refer to our telephone conversation this morning and, as I undertook, I enclose a true copy of my letter sent yesterday to the Commissioner of Police and the Chief of Defence Staff.

You will observe from its contents the concern and disquiet that I have expressed in relation to matters pertaining to the conduct of the security forces in the discharge of powers conferred under or by virtue of the Proclamation of a State of Emergency for the parishes of Kingston and Saint Andrew, dated Sunday, May 23, 2010.

Beyond those contents, other concerns arise in relation to:

1. Persistent allegations regarding less than faithful adherence to the Emergency Powers Regulations, 2010, promulgated in consequence of the Proclamation.
2. Ignorance, confusion or indifference at the highest levels, to the legal requirements for the disposal of the bodies of the relevant deceased.

I welcome and am heartened by your firm assurance that this Office will be furnished with special funding for the purpose of recruiting additional staff and expertise in order to conduct the thoroughgoing investigation which is clearly required. In consultation with my Directors, I am in the process of determining the fiscal parameters of an adequate budget. In this regard, I shall apprise you appropriately, early next week.



Honourable Bruce Golding, M.P.  
Prime Minister

- 2 -

May 28, 2010

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I take note also of the instructions which you confirmed have been given in order to ensure that all corpses or bodily remains are properly preserved and that no interments will be allowed until all means of reliable identification have been exhausted.

The foregoing notwithstanding, I am satisfied that the exigencies go beyond the mere conduct of investigations. I therefore strongly recommend that a Commission of Enquiry, set up under the Commissions of Enquiry Act, be appointed in order to satisfy the demands of transparency and concerns relating to due regard for the rule of law. It is my respectful opinion that the terms of reference should encompass the circumstances leading up to the declaration of the State of Emergency as well as the discharge by all relevant authorities and security personnel of their statutory or other legal duties.

Yours faithfully,

W. EARL WITTER, Q.C., J.P.  
PUBLIC DEFENDER

WEW\*cap

**Appendix 30**

May 31, 2010

**URGENT AND IMMEDIATE  
BY TELEFAX AND HARD COPY**

ACP Granville Gause  
Officer Commanding Bureau of Special Investigations  
12 Ocean Boulevard  
KINGSTON

Dear ACP Gause:

**GROUND ZERO**

I understand that the appellation above is, or was attributed by the security forces to the area of their operation encompassing Tivoli Gardens and its environs, Denham Town and Hannah Town, Kingston, during the present State of Emergency. Manifestly, scores of firearms of varying type and calibre were discharged by security personnel in the theatre referred to, during the course of operations. It is a matter of record also, that a number of persons, security personnel as well as civilians, were fatally injured by gunfire in the operations; their corpses or bodily remains have been recovered and will not be released or interred until autopsies are done.

I formally record our further understanding that this Office will be apprised in good time beforehand, of the dates, times and places scheduled for the autopsies. This is to ensure that we are represented by an observer team, including forensic pathologists.

You will recall the surprise I expressed at the revelation that, to the best of your knowledge, none of the firearms referred to above (save some twenty five assigned to certain members of the Jamaica Constabulary Force,) had been taken out of service for the purpose of ballistic examination. For you will be aware that in the event that any spent bullets, shells or fragments etc. are recovered from the bodies of deceased, or from the area of operation, that it would be essential to establish, if possible, whether they were discharged from any weapons issued to security personnel.

2/.....

DJP Granville Gause  
Bureau of Special Investigations

- 2 -

May 31, 2010

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The integrity of that process would be severely compromised, if not rendered useless, unless all weapons used at times contemporaneous to the infliction of fatal injuries, are in fact examined by ballistics experts. Otherwise, it would be difficult if not impossible to resist the suggestion or conclusion that relevant weapons were deliberately excluded, in order to suppress evidence of nexus with questioned killings.

I also expressed surprise that, curiously, none of the venues of alleged killings at Ground Zero were being treated as, or as potential crime scenes. Undoubtedly, forensic evidence, such as blood or serosanguineous stains deposited in unsheltered places, will have been washed away during last weekend's rainfall. But the venues included housing blocks inside Tivoli Gardens itself. I therefore make the following urgent recommendations:

1. That steps be taken **immediately** to remove all relevant weapons from service; the identity of personnel to whom they were issued duly recorded in the normal way and the weapons be properly stored for the purpose of ballistic testing. This is of especial importance in relation to identification of personnel, many of whom wore masks at material times.
2. That steps be taken to identify and preserve **all or all potential crime scenes** to facilitate forensic evaluation. In this regard, we will make all relevant information coming to our attention, available to you.

Yours faithfully,

W. EARL WITTER, Q.C., J.P.  
PUBLIC DEFENDER

WEW\*cap

cc: Commissioner of Police  
DCP (Ag.) i/c Crime

**Appendix 31**

June 2, 2010

**URGENT AND IMMEDIATE  
BY TELEFAX AND HARD COPY**

Mr. Owen Ellington  
Commissioner  
Office of the Commissioner of Police  
103-105 Old Hope Road  
KINGSTON 6

Dear Commissioner:

**GROUND ZERO**

I refer to my letter to ACP Granville Gause of the Bureau of Special Investigations, dated May 31, 2010 which was copied to you and, another copy of which is enclosed. I respectfully draw your attention in particular to the subparagraphs numbered 1. and 2. on p. 2 and, tell you now that the surprise I expressed in that letter has now risen to astonishment because (as confirmed by ACP Gause,) the venues to which I referred continue not to be treated as, or as potential crime scenes. The matter is aggravated by allegations made to me today by residents of the community, that they have been told by members of the security forces that they should clean their houses: activities that would irretrievably destroy probative evidence or at least make retrieval very difficult.

My letter related to the community of Tivoli Gardens because, being the area of initial focus of investigations being carried out by this Office, allegations of extra-judicial killings alleged to have taken place there, came to us firstly. We are about to establish another temporary office to facilitate residents of Denham Town and Hannah Town. It is possible that we may receive similar complaints. In the meantime, I am enclosing for your information, a chart in relation to alleged Tivoli Gardens crime scenes, which speaks for itself. I strongly urge you to cause thorough investigations to commence forthwith. The matter is impatient of any or any further delay.

2/.....

Mr. Owen Ellington  
Commissioner

- 2 -

June 2, 2010

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I take the opportunity to advise you formally that this Office is in the process of securing the services and assistance of independent forensic experts in pathology, radiology and firearm examination. Quite obviously, it would frustrate and/or render those endeavours redundant in quite significant respects if my recommendations were not acted upon conscientiously. Worse: it would strengthen claims or suspicion of scandalous attempts on the part of the security forces to cover up atrocities.

Yours faithfully,



W. EARL WITTER, Q.C., J.P.  
PUBLIC DEFENDER

WEW\*cap

cc: Minister of National Security  
DCP (Ag.) i/c Crime  
ACP Granville Gause

**ALLEGED CRIME SCENES  
TIVOLI GARDENS**

Total # of venues of killings: 15  
Total # of persons killed: 23

Cons. No.	Name of Deceased	Age (Approx)	Venue of Alleged Killings	Contact	Relation
1. *	Andre Smith o/c Statue Man	25 years	Flat C, Building 22, Tivoli Gardens	Charlton Cunningham 967-4088, 842-6864 Shadia Cunningham	Cousin Cousin
2. *	Dwyrne Edwards	26 years	Flat F, Building 22, Tivoli Gardens	Ms. Joan McCarthy 457-3781	Son-in-law
3. *	Carlos Chusney o/c Justin	37 years	Flat F, Building 17, Keith Avenue, Tivoli Gardens	Angella Lewis 285-2791, 922-2269	Mother
4. *	2 Unidentified Men	N/A	67 Tivoli Court, Block C, Kingston 14	Audrey Whyte - 477-8587, David Richards (owners of the house) Nanasha Hinds-402-7142, 325-7863 (daughter of the owners)	No relation
5.	(a) Lavianna Wilson (b) Gavin (Surname Unknown)	20 years	41 Dec Cee Avenue, Tivoli Gardens	Joyce Thompson - 464-9299 Ann Marie Thompson	Mother of Lavianna Sister of Lavianna
6.	Rodane Miller	24 years	Along road - Dec Cee Avenue (near Block Factory)	Cecile Miller 379-2999	Sister
7. *	3 Unidentified Men	N/A	38 Dec Cee Avenue, Tivoli Gardens	Leonie Morrison (owner of the house) 433-2036	No relation

Cons. No.	Name of Deceased	Age (Approx.)	Venue of Alleged Killings	Contact	Relation
8.	Jomaim Murphy	17 years	19 Bustamante Highway, Tivoli Gardens	Ethlyn Newton 402-9067 Udon Peurizado (owner of house) 405-3105	Mother
9. *	(a) Oshaine Walker (b) Martin Lindsay (c) Unidentified Man	18 years 25 years	11 Wilton hill Drive, Tivoli Gardens, Kingston 14	Jane McFarlane (owner of house) 373-1632	Mother of Martin and cousin of Oshaine
10. *	1 Unidentified Man	N/A	51 Dee Cee Avenue, Tivoli Gardens, Kingston 14	Ms. Deleia Humnigan (owner of house) 869-3678	No relation
11.	(a) Fabian Grant (b) Fernandes Grant (c) Kevin Gordon	N/A	23 Dee Cee Avenue, Tivoli Gardens, (outside the house)	Mr. Leonard Williams - 25 Dee Cee, Tivoli Gardens	Grandfather (third party)
12. *	Oconnor Brown	32 years	52 Lenford Path	Nadine Sutherland 425-1573 Roslyn Newton (owner of house) 296-8545	Aunt
13.	Lundt Murphy	20 years	Kirkpatrick Path (in the road)	Ethlyn Newton 402-9067	Mother
14. *	Errol Spence	27 years	Building 27, Flat A, Seaga Boulevard	Michelle Davy 879-1196	Mother
15. *	Ernest Wright	30 years	Building 25, Flat 9, Seaga Boulevard	Magritte Johnson 467-1386, 967-2811	Friend

\* Houses that are identified by asterisks need to be processed by Scene of Crime Unit immediately. Owners need to retake premises for immediate occupancy.

## Appendix 32



THE

# JAMAICA GAZETTE

## EXTRAORDINARY

508D

Vol. CXXXIII

TUESDAY, OCTOBER 19, 2010

No. 41B

The following Notification is, by command of His Excellency the Governor-General, published for general information.

DIONNE TRACEY DANIEL, (MRS.)  
Acting Governor-General's Secretary.

### GOVERNMENT NOTICE

#### APPOINTMENT

Proclamation No. 15/2010

JAMAICA



#### THE CONSTITUTION OF JAMAICA

##### A PROCLAMATION

By His Excellency the Most Honourable SIR PATRICK LINTON ALLEN, Member of the Order of the Nation, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Commander of the Order of Distinction, Governor-General of Jamaica.

L.S.

PATRICK LINTON ALLEN,  
Governor-General.



TO: THE HONOURABLE EMIL GEORGE, OJ, QC  
 THE HONOURABLE ANTHONY IRONS, OJ  
 MR. DONALD SCHARSCHMIDT, QC

GREETINGS:

WHEREAS, I have deemed it advisable to issue a Commission under section 2 of the Commissions of Enquiry Act, appointing the Commissioners herein mentioned and authorizing such Commissioners:—

1. To enquire into and report on the issues relating to the extradition request for Christopher Coke by the Government of the United States of America, the manner and procedure in which the said extradition request was handled by the Government of Jamaica, the circumstances in which the services of the law firm Manatt, Phelps and Phillips were engaged and its role in relation to the said extradition request and the role and conduct of various public officials and private persons and organizations in relation to any or all of the aforesaid matters more particularly set out in the terms and reference hereunder:

- (a) The issues relating to the extradition request for Christopher Coke by the Government of the United States of America;
- (b) The manner and procedure in which the said extradition request was handled by the Government of Jamaica and the role and conduct of the various public officials who handled the extradition request;
- (c) The circumstances in which the services of the law firm Manatt, Phelps and Phillips were engaged in relation to any or all of the matters involved, by whom were they engaged and on whose behalf they were authorized to act;
- (d) Whether there was any misconduct on the part of any person in any of these matters and, if so, to make recommendations as the Commission sees fit for the referral of such persons to the relevant authority or disciplinary body for appropriate action.

NOW THEREFORE, KNOW YE that I, reposing full trust in your zeal, ability and discretion, do hereby, in exercise of the power vested in me by the Commissions of Enquiry Act, APPOINT YOU the said Honourable Emil George, OJ, QC, Honourable Anthony Irons, OJ and Mr. Donald Scharschmidt, QC to be Members of the said Commission and appoint you the said Emil George to be Chairman and do direct that any two of you the said Commissioners shall form a sufficient quorum for the discharge of the duties assigned to you:

AND I also direct that, having made and subscribed an oath or affirmation as required by law, and having deposited the same with the Governor-General's Secretary, you do proceed forthwith to make a full, faithful and impartial enquiry into the matters hereinbefore specified at such times and places as you may think fit, and that, should you find it necessary so to do, you shall summon witnesses to appear before you at such times and places as you may appoint, and examine and have them examined before you, on oath, touching the subject-matter of the Enquiry:

AND I do further direct you to hold such an Enquiry in an open and independent manner:

AND I do further direct you to hold such Enquiry and to conduct such hearings in public and private in such manner and in such locations in Jamaica as may be necessary and convenient:

AND I do further direct you to report to me in writing on or before February 28, 2011 the result of such Enquiry and to furnish to me a full and faithful report and recommendations of the proceedings:

AND I do hereby confer on you all the other rights, powers and privileges necessary for the due execution of this my Commission, pursuant to the Commissioners of Enquiry Act:

AND I do hereby enjoin all persons to aid and assist in the furtherance of your Enquiry.

Given under my hand and the Broad Seal of Jamaica at King's House, this 19th day of October in the Year of Our Lord Two Thousand and Ten and the Fifty-ninth Year of the Reign of Her Majesty Queen Elizabeth II.

GOD SAVE THE QUEEN

**Appendix 33**

January 7, 2011

file

Honourable Emile George O.J. Q.C.,  
Chairman of the Commission  
c/o The Secretary  
Jamaica Conference Centre  
Duke Street  
KINGSTON

Dear Chairman:

The Public Defender has taken note of the appointment by His Excellency the Governor General under Section 2 of the Commissions of Enquiry Act, of a Commission of which you were designated Chairman, to enquire into and report on the issues relating to the extradition requisition for Christopher Coke by the Government of the United States of America. I have also carefully considered the Terms of Reference of the Commission.

You will no doubt be aware that a limited State of Emergency was declared by His Excellency by Proclamation dated May 23, 2010. The geographical boundary delineated by the Declaration encompassed the Corporate Area.

In consequence of the Declaration there was what has been described as an incursion by State security forces in the district of Western Kingston, particularly the community of Tivoli Gardens. During that "incursion", more than seventy (70) persons were killed. The Public Defender is investigating the circumstances surrounding the death of more than forty (40) of these, as well as that of Mr. Keith Clarke, in a separate but military-led operation at Red Hills, Saint Andrew.

By letter to the Honourable Prime Minister dated May 28, 2010, I strongly recommended that he cause His Excellency to appoint a Commission of Enquiry under the Act to enquire into the conduct of the security forces during the "incursion", *inter alia*.

2/.....

Honourable Emile George, O.J. Q.C.  
Chairman of the Commission  
Jamaica Conference Centre

January 7, 2011

Page 2

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It is my considered and respectful opinion that the Terms of Reference of the Commission of which you are Chairman neither include nor, indeed contemplate, enquiry into the matters referred to above. Besides, the investigations being conducted by the Public Defender, whilst now at a stage where a protocol has been agreed, under which the processes will commence for the orderly conduct of ballistics testing, examination and comparison of firearms, spent projectiles, fragments and shells, it is not expected that these procedures will have been concluded in under nine (9) months. Any assistance which the Public Defender could render to any Commission of Enquiry could not possibly be given until the ballistics work is completed. In the result or in any event, the stipulated deadline of February 28, 2011 for the tendering of your report, would make any assistance to you from this Office utterly impracticable.

In the circumstances, I should be obliged if your Commission would be good enough to indicate to me at your soonest, that it also considers that its Terms of Reference have neither capacity nor contemplation as I have stated. Otherwise, I should welcome any comments on the contents hereof as the Commission may be disposed to offer me.

Yours faithfully,



W. EARL WITTER, Q.C., J.P.  
PUBLIC DEFENDER

WEW\*cap

## Appendix 34



### COMMISSION OF ENQUIRY

Hon Emil George, Q.C O.J., Attorney-At-Law - CHAIRMAN  
Hon Anthony Irons, O.J. Permanent Secretary (Retd)  
Mr. Donald Scharschmidt, Q.C. Attorney-At-

Jamaica Conference Centre  
14-20 Port Royal Street, Kingston  
TEL. No: 922-9638  
FAX No: 922-9638  
e-mail: -bap4u4@hotmail.com

Dr. Allan Kirton C.D., Ph.D., J.P. - Secretary

---

January 19, 2011

Mr Earl Witter, Q.C., J.P.  
Public Defender  
78 Harbour Street  
Kingston

Dear Mr Witter:

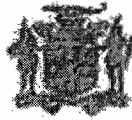
Please refer to your letter of the January 7, 2011 re the scope of Terms of Reference of the Commission. I have noted the comments in your letter.

All three of the Commissioners have discussed the matter and we are of the view that the Terms of Reference of this Commission neither include nor contemplate enquiry into matters dealing with the incursion by the State security forces in the district of Western Kingston particularly the Community of Tivoli Gardens.

Sincerely,

Emil George  
Chairman

## Appendix 35



### OFFICE OF THE PUBLIC DEFENDER

*'A Voice of the Voiceless... To Loose the Chains of Injustice'*

BY EMAIL AND HARD COPY

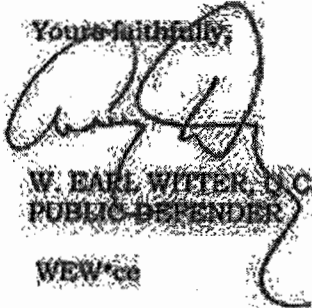
January 20, 2011

The Honourable Emile George O.J., Q.C.,  
Chairman of the Commission  
c/o The Secretary  
Jamaica Conference Centre  
Duke Street  
KINGSTON

Dear Chairman:

Thank you very much indeed for your letter of the 19<sup>th</sup> Inst., 2011, which came to hand today. I observe that the advice given to me in the second paragraph made no, or no direct reference to the circumstances surrounding the killing of Mr. Keith Clarke at Red Hills, St. Andrew, a matter quite deliberately conjoined in my own letter to you. I presume, respectfully, that for the same reasons given, your Commission will not be enquiring into that matter either and should therefore be glad of your assurances to that effect.

Yours faithfully,



W. EARL WITTER, O.C., J.P.  
PUBLIC DEFENDER

WEW:ce

TELEPHONE: (876) 922-3089/7090/7109/8256  
FACSIMILE: (876) 922-6830  
E-MAIL: [publicdefender@ond.gov.jm](mailto:publicdefender@ond.gov.jm)

71 HARBOUR STREET, P.O. BOX 695  
KINGSTON, JAMAICA, W.I.  
WEBSITE: [www.ond.gov.jm](http://www.ond.gov.jm)

Appendix 36



COMMISSION OF ENQUIRY

Hon Emil George, Q.C O.J., Attorney-at-Law - CHAIRMAN  
Hon Anthony Irons, O.J. Permanent Secretary (Retd)  
Mr. Donald Scharschmidt, Q.C. Attorney-at-Law

*Seems  
22/1/11  
[Signature]  
File*

Jamaica Conference Centre  
14-20 Port Royal Street, Kingston  
TEL. No: 922-9638  
FAX No: 922-9638  
e-mail: -bap4u4@hotmail.com

Dr. Allan Kirton C.D., Ph.D., J.P. - Secretary

January 25, 2011

W. Earl Witter, Q.C., J. P  
Public Defender  
Office of the Public Defender  
78 Harbour Street  
P.O. Box 695  
Kingston  
Jamaica W.I

Dear Mr. Witter:

Thank you for your letter dated January 20, 2011.

I wish to confirm that all three of the commissioners have discussed the matter and we are of the view that the Terms of Reference of the Commission neither include nor contemplate enquiry into the matter surrounding the killing of Mr. Keith Clarke at Red Hills, St. Andrew.

Yours Sincerely,

*[Signature]*  
Emil George, O.J., Q.C.  
Chairman

## Appendix 37

### Collection of thoughts etc., on Love

1. The **cure** for **all the ills and wrongs**, the cares, the sorrows, and the **crimes** of humanity, all lie in that one word "love." It is the divine vitality that everywhere produces and restores life. To each and every one of us, it gives the **power of working miracles if we will** – *Lydia M. Child.*
2. It is possible that a man can be so **changed by love** as hardly to be recognized as the **same person**. – *Terence.*
3. The greatest pleasure of life is love. – *Sir William Temple.*
4. We owe to the Middle Ages the two worst inventions of humanity – romantic love and **gunpowder**. – *André Maurois.*
5. All true love is **grounded** on esteem. – *Buckingham.*
6. Love **gives itself**; it is not bought. – *Longfellow.*
7. We are shaped and fashioned by **what we love** – *Goethe.*
8. Absence in love is like water upon fire; **a little quickens**, but much extinguishes it. – *Hannah More.*
9. Love is never lost. If not reciprocated **it will flow back** and soften and purify the heart. – *Washington Irving.*
10. Love which is only an **episode** in the life of man, is the **entire history** of woman's life. – *Mad. de Staël.*
11. Man while he loves is never **quite** depraved. – *Lamb.*

12. **Mutual** love, the crown of all our bliss. – *Milton*.
13. It is better to have loved and lost, than not to love at all. – *Tennyson*.
14. True love's the **gift which God hath given**, to man alone beneath the heaven. The silver link, the silver tie, which heart to heart, and mind to mind, in body and in soul can **bind** – *Walter Scott*.
15. **Love looks** not with the eyes, but **with the mind**. – *Shakespeare*.
16. Love is a thing to be *learned*. It is a difficult, complex maintenance of **individual integrity** throughout the incalculable processes of inter-human polarity. – *D. H. Lawrence*.
17. Love sought is good, but **given unsought** is better. – *Shakespeare*.
18. Love is love's reward. – *Dryden*.
19. Love is the **loadstone** of love. – *Mrs. Osgood*.
20. **Love is** a canvas furnished by Nature and embroidered by **imagination**.  
– *Voltaire*.
21. Among all the many kinds of first love, that which begins in **childish companionship** is the strongest and **most enduring**; when passion comes to unite its force to long affection, love is at its **spring-tide**. –  
*George Eliot*.
22. **Love** and cough **cannot** be hid. – *Herbert*.
23. "...**love's night is noon**." – *Shakespeare*.
24. Love makes **obedience** lighter than liberty. – *W. R. Alger*.



## Appendix 38

### "A NOTE ON THE EVOLUTION OF GARVEYISM (1972)

By Amy Jacques Garvey

Garveyism is not only a theoretical philosophy, but a working idealism, geared to the crying needs of an entire race, many millions of whom were dispersed by slavery to the United States of America, the West Indies, Europe, Canada, and as far as South America.

The Slave-masters and their kind used the most inhuman means to break the spirit of the blacks, thus reducing them to a state of frustration and dejection – handy tools used to produce wealth for white people.

The Africans at home were exploited, oppressed and brutalized by the Colonial Powers through their administrators, traders and mercenary adventurers to produce the mineral and agricultural wealth of their continent, which was transported to Europe to build up their nations.

In time chattel slavery was abolished, but these dejected and rejected people of the earth never had a unifying force; in fact they were propagandized into believing that they had no common cause. The American blacks from their sidewalk jungles called the Africans at home "heathen and uncivilized cannibals", and the West Indians were called "Monkey Chasers", living in trees. The Africans called the Western World blacks, ex-slaves- a term of contempt. Each unit was taught to stigmatize the other. The "divide and rule" methods wrought havoc in all their simple, undesigning minds. Then came the awakening by Marcus Garvey – "Up Mighty Race! We have to carve out our rightful heritage on this earth as God's children, worthy of our Creator".

The Philosophers of Europe, England and white America are the products of many sophisticated cultures, industrial and agricultural mechanized economies, politically disciplined people revering White Power. Few of them were activists, much less Reformers; invariably they preferred to do revolutionary writing. Their philosophies cannot be wholly applicable to Garveyism. Because he based his findings and movement on the historical and current black experiences all over

the globe. He plumbed the depths of our oppression and degradation, and bared them to the world.

He gave to his people a new set of values in a world where race is the criterion of human standards, and the white race considered themselves superior men. He gave black people new dimensions, new horizons that transcended national boundaries, languages and religions. He lifted their spirits to the heights of true manhood and womanhood."

[More Philosophy and Opinions of Marcus Garvey, Vol.3, Previously unpublished Papers, edited by Amy Jacques Garvey and E. U. Essien-Udom, 1977 (1987 Reprint), pp.247-8.]

### Appendix 39

Photographs showing house at 18 Chang Avenue Tivoli Gardens, Kingston 14, allegedly destroyed by an explosive device on May 24, 2010.



Figure 1: The damaged entrance to the house



**Figure 2: The living room area of the house which was completely gutted by fire**



**Figure 3**



**Figure 4**

**Figures 3 and 4: Showing photographs of the completely destroyed kitchen**



**Figure 5**



**Figure 6**

**Figures 5 and 6: Showing photographs of a completely destroyed bedroom**



**Figure 7**



**Figure 8**

**Figures 7 and 8: Showing completely destroyed roof. Note the inward collapse of the zinc roofing.**