

CHAPTER 1

INTRODUCTION

Appointment of Commission of Enquiry

1.1. By Proclamation (Appendix 1), dated 21 February 2014, the Governor-General of Jamaica, the Most Excellent Sir Patrick Linton Allen ON, GCMG, CD, KSt.J, appointed a Commission of Enquiry pursuant to the provisions of the Commissions of Enquiry Act 1873 as amended, to inquire into certain events which occurred in Western Kingston during the month of May 2010.

1.2. The following persons were appointed as Commissioners to conduct the Enquiry:

- Sir David Anthony Cathcart Simmons, K.A., B.C.H., Q.C., (Chairman)
- Mrs. Justice Hazel Harris J.A. (Ret) C.D.
- Professor Anthony D. Harriott Ph.D.

1.3. The Terms of Reference of the Commission of Enquiry were to enquire into:

- (a) the situation in Western Kingston and related areas in May 2010 prior to the attempt to execute a provisional warrant in extradition proceedings relating to Christopher "Dudus" Coke, and the reasons and circumstances surrounding the declaration of a State of Emergency in that month;
- (b) whether, and if so under what circumstances, state officials and law enforcement officers came under gunfire attacks during May 2010 in incidents connected to the attempts by law enforcement officers of Jamaica to arrest Christopher "Dudus" Coke;
- (c) the circumstances under which, and by whom, several Police Stations and other state property (including police or military vehicles) were attacked and damaged or destroyed by firebombs, gunfire or other means during or around the period of the State of Emergency declared in May 2010;

- (d) the conduct of operations by the security forces of Jamaica in Tivoli Gardens and related areas during the said State of Emergency in the month of May 2010;
- (e) the allegations that persons were especially armed to repel any law enforcement effort to capture the fugitive Christopher "Dudus" Coke and, if so, by whom;
- (f) what were the circumstances under which, and by whom, embattlements and barriers were set up in Tivoli Gardens, and whether efforts were made, and by whom, to restrict ingress and egress of law enforcement officers or to prevent the arrest of Christopher "Dudus" Coke;
- (g) what arrangements were made, and what precautions were taken, to protect citizens in Tivoli Gardens and other affected areas from unnecessary injury or property damage during the law enforcement action in the State of Emergency, and the adequacy and appropriateness of those arrangements and precautions in the prevailing circumstances;
- (h) whether, and if so under what circumstances, civilians, police officers and soldiers of the Jamaica Defence Force were shot and killed or injured during May 2010 in connection with the security forces seeking to effect the arrest of Christopher "Dudus" Coke on a provisional warrant in extradition proceedings;
- (i) the circumstances under which, and by whom, private property was damaged or destroyed during or around the period of the State of Emergency declared in May 2010;
- (j) whether the rights of any person or persons were violated in any of the affected or related communities by either law enforcement officers or by anyone else and, if so, whose rights were violated, and the manner and extent of such violations, and by whom such violations were perpetrated;
- (k) the chain of command in relation to the decisions concerning the operations by the security forces in Tivoli Gardens and related areas during May 2010, and the respective responsibilities of each person in that chain of command;
- (l) whether any dereliction of duty or unlawful conduct is attributable to any person or persons in that chain of command in connection with the decisions concerning or the

execution of the operations by the security forces in Tivoli Gardens and related areas during May 2010 and, if so, to which person or persons, and the nature and extent of such dereliction of duty or unlawful conduct;

- (m) the circumstances concerning the recovery of illegal firearms and other munitions in Western Kinston or any related or affected areas;
- (n) whether there was any direct or indirect communication between the fugitive Christopher "Dudus" Coke, and any Jamaican Government Official (or Officials) or any agent thereof, during the period between when the Request for Extradition was first communicated to the Jamaican Government or any of its agents or officials and when the fugitive Christopher "Dudus" Coke was arrested; and if so, by which Officials and or agents thereof, the nature of any or all such communications, by what means and for what purpose;
- (o) whether copies of affidavits and other confidential supporting documents attached to or related to the Request for Extradition of Christopher "Dudus" Coke, were found in Coke's offices, and the circumstances under which and the purposes for which those documents came to be there;
- (p) the circumstances under which the fugitive Christopher "Dudus" Coke managed to elude arrest during and after the operations by the security forces of Jamaica in Tivoli Gardens and related areas in May 2010, and the circumstances of his capture;
- (q) whether monies, benefits or compensation were provided by the State to compensate residents of Western Kingston including Tivoli Gardens and, if so, how much was actually paid or distributed, the manner and recording of such payment or distribution, and the adequacy of such compensation.

1.4. There are no rules of procedure made under the Commissions of Enquiry Act. In exercise of their powers under section 9 of the Commissions of Enquiry Act, the Commissioners drafted Procedural Rules (the Rules) to govern the conduct of proceedings. The Rules were published in the *Jamaica Gazette*

Supplement of Monday, 1 September 2014. A copy of the Rules appears as Appendix 2 to this Report.

Hearings and Sessions

1.5. Public hearings of the Commission of Enquiry began on 1 December 2014 and were conducted in 9 sessions on the dates mentioned below:

Session #1	-	1 to 12 December 2014
Session #2	-	9 to 20 February 2015
Session #3	-	10 to 24 April 2015
Session #4	-	26 May 2015 to 4 June 2015
Session #5	-	22 June 2015 to 6 July 2015
Session #6	-	7 to 23 September 2015
Session #7	-	20 October 2015 to 5 November 2015
Session #8	-	23 November 2015 to 4 December 2015
Session #9	-	8 to 19 February 2016

1.6. As circumstances warranted, the Commission received evidence in private. Ninety-four persons gave evidence. A list of witnesses who testified at public hearings appears as Appendix 3 to this Report. In accordance with the Procedural Rules, witness statements were received as part of the evidence-in-chief of those witnesses who gave oral evidence. We feel bound to say that, owing to the mass of documentation to be read, analysed and collated by Counsel, it was impossible to conduct this Enquiry over a period of 90 consecutive days. Sitting in sessions from time to time, provided an opportunity for Commissioners to peruse the transcripts of proceedings and prepare preliminary drafts of Chapters, and Counsel were afforded space and time to return to their private practices.

Structure of the Report

1.7. At an early stage of the Enquiry, the Commission determined that the Terms of Reference required discussion and treatment in separate Chapters. However, because of the inter-relationship and overlapping of themes inherent in several of the Terms of Reference, it became obvious that the combination of certain Terms of Reference in a single Chapter was more preferable and appropriate. Nevertheless, a few of the Terms of Reference are dealt with in separate Chapters.

1.8. Generally, we have adopted a formulaic structure to the Chapters namely:

- (a) An Introduction, consisting of brief statements indicating the broad issues discussed in the Chapter.
- (b) A Review of the evidence relevant to the themes of the Terms of Reference discussed in a narrative that eschews editorialising while giving prominence to the actual testimony of witnesses.
- (c) Our Findings on issues raised by the Terms of Reference usually follow after a review of evidence. As a Commission of Enquiry that received a large volume of evidence, we have endeavoured to ensure that our Findings bear fidelity to the evidence before us.

Footnotes and Cross-References

1.9. Footnotes and cross-references are useful tools. They assist in reducing or avoiding repetition in the text of a narrative. But they may also cause disruption in the flow of reading. In this Report, we have decided against using footnotes and have chosen to allow the narration of evidence space for

freer flow especially in view of the overlapping of themes. To that extent, and having regard to the overlapping of themes, some repetition was, however, unavoidable.

Approach of the Commissioners to Particular Matters

1.10. We think it appropriate to elucidate our approach to four key matters.

(i) The Purpose and Objective of a Commission of Enquiry

1.11. The Commissioners saw its function as trying to search for truth about the various matters mandated by the Terms of Reference. Having regard to the limited time-frame given us, it was neither prudent nor practical to call as a witness every person who supplied a witness statement. As between civilians and members of the security forces, there were approximately 1138 witness statements.

1.12. Accordingly, the approach we adopted was to enlist the support of all Counsel to examine, analyse and collate evidence of those witnesses who appeared most likely to assist us in a determination of the several issues inherent in the Terms of Reference. We sought to find the truth as best we could from a careful consideration of those witness statements which seemed most likely to shed light on the issues in the Terms of Reference.

1.13. A Commission of Enquiry is, of course, inquisitorial, not adversarial. There are and were no parties as is the case in litigation in the courts of law. Admittedly, the actual procedure used during the Enquiry may have resembled a court of law in which testimony is given and tested by examination-in-chief, cross-examination and re-examination. But those procedural similarities assisted in having evidence presented in a coherent manner, while freeing Commissioners of the task of asking too many questions themselves. As in all Commissions of

Enquiry, we were not bound by strict rules of evidence. Throughout the Enquiry, we sought to investigate carefully, diligently, patiently and thoroughly.

(ii) Approach to Conflicts in Evidence

1.14. Conflicts and discrepancies in evidence are commonplace in proceedings of a legal nature. This Commission of Enquiry was no different. In dealing with conflicting evidence among witnesses, we adopted the approach well-known to judges and adumbrated by **Harrison JA** in **R. v. Carletto Linton, Omar Neil and Roger Reynolds (Cr.Appeals Nos.3, 4, 5 of 2000)**. First, we sought to determine whether the discrepancy was major and went to the root of an issue. If in our view it was not major, we did not pay it any particular attention. Secondly, if we considered that the discrepancy was major, we sought to find whether there was a satisfactory explanation for it. Thirdly, where there was no or no credible explanation, we determined whether we could accept the evidence of the witness on the point or at all.

(iii) Standard of Proof Applied

1.15. Notwithstanding the gravity of certain allegations made during the Enquiry and the gravity of certain consequences, we applied the civil standard of proof i.e. proof on a balance of probabilities, in finding facts. We were not constituted as a Commission of Enquiry to try a case or charge a person with any offence. Our ultimate purpose is to inform the Governor-General and the public of the facts concerning the several matters which we were mandated to enquire into.

1.16. Our application of civil standard of proof to this Commission of Enquiry is supported by the approach of other Commissions of Enquiry or Tribunals in the Commonwealth Caribbean, as well as House of Lords authority in **Re: D [2008] 1 WLR 1499, Re: B [2008] 4 All ER 1 and Lawlor v Tribunal of Inquiry [2008] IEHC 282**. In accordance with the principles set out in

Lawlor, we applied a higher level of probability “when dealing with more serious” allegations.

(iv) Compliance with the 2013 Amendments to the Commissions of Enquiry Act

Adverse Comments

1.17. The ***Commissions of Enquiry Act, 1873***, was amended in 2013. Inter alia, the amendments now make it mandatory that, before making an adverse finding against a person identifiable in a report, a Commission must give the person a written notice containing a copy of the proposed adverse comment and seek the person’s written response within 14 days after the notice is received – section 7A of ***The Commissions of Enquiry (Amendment) Act, 2013***. We have complied with the statutory imperatives in respect of 18 persons who testified. We were unable to locate one person for service. One other person did not respond. We have included in Appendices specially marked “**AC1 - AC14**”, the full responses of those persons against whom we have maintained adverse comments and/or findings. Within the text of the Report, we summarize the responses of these persons and make such comments and/or findings thereon as we consider appropriate.

The Guiding Principles

1.18. The work of the Commission was guided by five basic principles *infra*.

- (i) The search for truth.* Almost as a mantra, all Counsel frequently referred to the Chairman’s opening remarks that the Enquiry should search for the truth. Establishing the facts with a high degree of confidence, separating fact from fiction and myth from reality was but a first step. Finding the truth also requires explaining how various sets of events came about and why. For the families of civilians and members of the security forces who lost their lives, the

circumstances surrounding those losses assist in revealing the truth. There were certain difficulties that presented themselves. We sensed a certain reluctance among some witnesses to take responsibility for their acts or omissions. There was an obvious fear of culpability. Our capacity to investigate all circumstances was sometimes limited not least by an unavailability of information. We recognised that some persons embellished their evidence in the hope, for instance, of greater compensation than was warranted by the damage to their properties. Above all else, an apparent code of silence among both the residents of West Kingston and some members of the security forces bore directly on our search for the truth. At a different level, an absence of critical expert ballistic and forensic evidence and analysis was an impediment. Nevertheless, we were able to resolve some of these problems, but others may have left their mark on this Report. Because of certain findings which we make however, this Report is not necessarily the last word on some of the matters which we were required to investigate. It need not be the end of the search for the truth.

(ii) Participation. We sought to facilitate the freest expressions of the voices of all parties who were, in various ways, involved in the events of May 2010, most of all, the voices of residents and victims. We saw it as our duty to ensure that they were encouraged to vent their experiences. We granted standing to appear before the Commission to persons and organisations besides the security forces in order to afford an opportunity for participation by diverse interests.

(iii) Openness. Issues related to the security of the State are often shielded from public scrutiny. Such practices conduce to a deficit in public trust of the institutions or agencies responsible for the

security of the State. To counter this deficit, the public must be trusted with access to information. On the other hand, openness signifies confidence and maturity. Accordingly, we resolved that, within the limits of the law and overarching considerations of national security, public confidence in the work of the Commission would be directly related to the degree of openness with which we conducted the Enquiry. All persons, willing to be of good behaviour, were welcomed to attend the sittings of the Commission.

(iv) Respectful treatment and consideration for all witnesses. We endeavoured to ensure that all witnesses were accorded the dignity that they ought to expect from the Commission, no matter their station in life.

(v) Respect for the rights of all. Some matters for investigation by the Commission were also the subject of ongoing litigation. We therefore avoided discussion of those matters in the interest of securing a fair trial of those matters in the courts.

References to Ranks of Officers

1.19. Since May 2010, many of the officers who testified on behalf of the JDF and the JCF have been promoted to ranks higher than those they held in 2010. Without intending any disrespect to these officers, we have referred to them by the ranks they held in May 2010 because, for the most part, those were the ranks to which witnesses referred during the Enquiry.

The Commission's Secretariat

1.20. The Secretariat of the Commission was located at the Jamaica Conference Centre, Ocean Boulevard, Kingston. Mrs. Maria Jones was appointed as Secretary to the Commission. We wish publicly to compliment Mrs. Jones on

the discharge of her duties and the leadership she gave to the other staff of the Secretariat. At all times, Mrs. Jones discharged those duties with diligence, sensitivity and equanimity. She handled a massive assignment with great skill. We pay tribute also to the support staff who assisted in the organisation and day to day management of the Secretariat. They were excellent.

The Ministry of Justice

1.21. Although we had very little interaction with the Ministry of Justice, we are aware that that Ministry, led by Permanent Secretary, Mrs. Carol Palmer, provides continuing administrative support and oversight to the Secretariat of such a quality as ensured that the Commission functioned smoothly. We thank the Ministry for providing expert technological support services to the Secretariat and during the hearings. We especially thank the Ministry for providing the services of the Victim Support Unit to offer psychological and other assistance to those witnesses who are still psychologically and emotionally scarred by recall of their experiences in May 2010.

Counsel to the Commission

1.22. Mr. Garth McBean Q.C. and Mrs. Symone Mayhew were appointed as Commission Counsel to assist us. That we were able to conduct the Enquiry in an orderly and organised manner, with little disruption, is in no small measure due to the efforts of Commission Counsel and the Secretariat in their preparation of materials for use at our sessions. We are profoundly grateful to Commission Counsel for their unstinting dedication and commitment to their tasks.

Other Counsel

1.23. We also place on record our profound gratitude to all other Counsel who participated in the Enquiry. They cooperated well with Commission Counsel and the Secretariat and contributed meaningfully to the Enquiry. It is not always

appreciated that Counsel's appearances at a Commission of Enquiry necessarily impacts on the conduct and maintenance of their private practices. This Commission of Enquiry entailed a very heavy workload for Counsel but all Counsel appeared before us with regularity and punctuality. They displayed a healthy commitment to the business of the Enquiry.

Acknowledgments

1.24. We wish to acknowledge the assistance rendered to us during the Enquiry by the persons mentioned hereunder at (i) to (v):

(i) Office of the Public Defender (OPD)

During the short preparatory stage of the Enquiry, the Office of the Public Defender (OPD) made available to Commission Counsel and the Secretariat all the statements and documentation relevant to the Enquiry which were in their custody. The OPD also assisted in locating and securing the attendance of civilian witnesses. Counsel for OPD worked together with Commission Counsel to assist in the exercise referred to para.1.12 and, for that initiative and cooperation, we are most grateful.

(ii) Commissioner of Police

The police officers provided by the Commissioner of Police as security at the Conference Centre ensured that the proceedings of the Commission of Enquiry were conducted in a safe and orderly environment. The JCF also organized and managed the security arrangements for the Commission's visit to Tivoli Gardens on 24 April, 2015. Only once (2 December 2014) was it necessary to seek the assistance of the JCF in maintaining order during the public hearings. On that occasion, the police officers dealt with the matter firmly and swiftly.

(iii) The Computer-Aided Transcriptionists

The proceedings of the Commission of Enquiry were recorded and transcribed verbatim by a dedicated and proficient team of reporters. We are indebted to Ms. Joyce James and her team of transcriptionists who produced the daily transcripts, amounting to more than 15,000 pages.

(iv) The Media

Reports of the proceedings of the Enquiry were carried daily in the Gleaner and Observer newspapers and on television. We are grateful to those media houses for the coverage which enabled the public to follow the Enquiry. Above all else we thank the Jamaica Information Service for providing the electronic feed that facilitated the daily broadcast by the media houses, and JNN for filling the breach in the singular absence of the JIS.

(v) Authors of Memoranda of Recommendations

In an effort to involve the wider public in the work of the Commission, we invited members of the public to submit memoranda of recommendations. We received memoranda from 13 persons and organisations – see Appendix 4. We are, again, extremely grateful to those persons for their public-spiritedness and the quality of their recommendations which have been very helpful to us.