

CHAPTER 14

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

ToR (D)

INTRODUCTION

14.1. Plainly, this Term of Reference overlaps with others previously considered in this Report, particularly Chapters 8, 9, 10 and 11. Therefore, we shall not discuss in detail, matters referred to in those Chapters save and except for the purposes of context, continuity, coherence and comprehension of the conduct of the security forces in May 2010. This Chapter and those mentioned above must be read together for a total appreciation of the mandate of Term of Reference (D).

14.2. With that *caveat* in mind, we discuss in this Chapter under Parts A, B, C, and D –

- record keeping;
- the investigatory process undertaken by the JCF;
- the collection and treatment of dead bodies;
- house clearing exercises and searches.

14.3. However, before discussion of those three broad heads, we desire to make the following findings absolutely clear:

- (a) By 23 May 2010, there was a severe and unprecedented threat to the security of the State and its security forces which justified the declaration of a State of Emergency.**
- (b) The security forces, and especially the JDF as the lead Force, faced unusually fierce resistance in many areas in the course**

of executing their mission to gain control of Tivoli Gardens and related areas in order to execute the warrant of arrest. Such heavy resistance was encountered by 1JR especially and significantly delayed Bravo Company under the command of Maj. Henry.

- (c) Once control of the three sectors was secured, there was little hostile fire against the security forces. The majority of the criminal gunmen retreated or escaped.**

PART A

RECORD KEEPING

14.4. As a consequence of the hostilities and as a necessary requirement of the investigatory process, it was incumbent upon the security forces, especially the JCF as the civil power, to make and keep records of the operation in several facets.

Possible Crime Scenes – Mr. Witter’s Concerns

14.5. At Appendix 30 of his Interim Report, Mr. Witter annexed a letter of 31 May 2010 addressed to ACP Granville Gause, the officer commanding the BSI, in which he expressed surprise “that, curiously, none of the venues of alleged killings were being treated as, or as potential crime scenes.” He pointed out that-

“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.”

14.6. Mr. Witter made the following urgent recommendation -

“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.”

14.7. In the course of his oral evidence, Mr. Witter said this -

“I had reason to believe that BSI had complaints about killings and those which took place inside buildings. It was therefore necessary that they be treated as crime scenes especially in light of allegations that the security forces had been involved. I learnt that none of them had been treated as crime scenes.”

14.8. On 2 June 2010, Mr. Witter was constrained to write CoP Ellington because it seemed to him that venues were not being treated as actual or potential crime scenes. The letter stated in part -

“The matter is further 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.”

14.9. Mr. Witter mentioned allegations that Tivoli Gardens was the site of alleged extra-judicial killings. Importantly, he sent CoP Ellington a chart in relation to alleged crime scenes in Tivoli Gardens and urged the Commissioner “to cause thorough investigations to commence forthwith”. Appended to this Report at Appendix 27 is a copy of the chart.

14.10. The next day, 3 June 2010, Mr. Witter issued a Press Release expressing astonishment that “despite representations and recommendations made to the Police High Command, the venues of certain alleged extra-judicial killings by the security forces in Tivoli Gardens during the recent incursion, none of them is being treated as, or as potential crime scenes.” See Appendix 28 for the full text of the Press Release.

14.11. Mr. Witter elucidated his evidence under cross-examination and said that in the week of 24 May, he would have orally made known to the JCF,

"the venues of apparent crime scenes". He said "I may well have indicated to Mr. Gause that there were allegations of extra-judicial killings".

14.12. He also said –

"I would have expected crime scenes to have been established by the JCF with alacrity. Not to have done so, may have been a dereliction of duty."

14.13. No police officer who testified at the Enquiry gave any evidence that crime scenes were established "with alacrity". SSP Winchroy Budhoo said –

"Where bodies were located and notes made would have been an indication of a possible crime scene. In a normal operation, you would secure the scene and call the Scenes of Crime officers to come and do their processing. This was not a normal operation."

Det. Insp. Devon Harris

14.14. Det. Insp. Devon Harris was attached to Area 4 Scenes of Crime Section in May 2010. His two witness statements are distinctly devoid of any useful evidence as to why actual or potential crime scenes were not processed speedily.

14.15. Only during his oral evidence was Det. Insp. Harris more forthcoming. Thus, he said –

"I was aware by 25 May of persons killed in Tivoli Gardens either by the security forces or gunmen. In the normal course of things, there would have been processing of scenes. We were not required to process scenes but it is important to do processing as soon as possible."

14.16. He further said –

"Up to 26 May, I was not told of any locations to be treated as crime scenes. The BSI personnel did not know the specific addresses of bodies. They did not know where they were collected from...During the week of 24 May, it would not have been safe to do scenes of crime processing. To

process a household would require the occupants to be evacuated. A crime scene originates with a report. A body itself is not a crime scene. There has to be an allegation.”

14.17. Under cross-examination by Mr. McBean, Det. Insp. Harris testified

–

“We got no requests to go into Tivoli Gardens to process any scenes until 4 June.”

14.18. He said that his section was directed to locations by BSI personnel and he took a team of investigators to Tivoli Gardens.

“Mr. Ezra Stewart told us of 15 addresses of allegations of excessive force. I deployed persons to those addresses. I investigated locations submitted by the Office of the Public Defender (OPD) of allegations of excessive force.”

14.19. To Mr. Linton Gordon, Det. Insp. Harris said –

“I do not dispute that 6 of the 15 scenes were not visited. We visited 9 scenes. I have 9 scenes that were visited on 4 June.”

Sgts. Waugh and Pratt

14.20. We have already reviewed the evidence of Sgt. Steve Waugh and Sgt. Mario Pratt and made findings thereon in Chapter 10. Accordingly, we merely stress here that the purport of their evidence was that, on 24 and 25 May, they collected 27 bodies from various locations but made no notations of the locations. Both testified that Cons. Maxwell was detailed to make notes of the locations of bodies. Sgt. Waugh said in cross-examination:

“No one asked me how, where or when the bodies were discovered. I did not volunteer the information.”

14.21. Sgt. Pratt made no reference in his written statement that Maxwell had died or had asked persons, mostly women, about the identities of deceased persons. Under cross-examination, however, he gave evidence of those omissions from his witness statement.

"In my statement, I did not mention that Maxwell had died or that he asked people about the identities of the bodies."

SSP Winchroy Budhoo

14.22. This officer arrived at Seprod, where he was to be positioned, about 4.00 p.m. on 24 May. He said in evidence that, about 5.30 p.m., he received a call from Police Control that bodies were seen in Tivoli Gardens. He spoke to Supt. Tabannah and told him to retrieve the bodies. He said –

"I told him to make a note of where bodies were found and to take them to KPH. I told him to use a truck. I spoke to Sgt. Waugh and told him to make notes or cause notes to be made. Waugh told me that he found two bodies in Java. I watched Sgt. Waugh's evidence to the Enquiry."

14.23. According to SSP Budhoo, Sgts. Waugh and Pratt continued to pick up bodies on 25 May. He said SSP Graham gave those instructions and he heard radio transmissions. He said –

"My understanding was that Maxwell was assigned to make notes along with Sgt. Pratt and Sgt. Waugh... Pratt and Waugh picked up 25 bodies."

14.24. In answer to the Chairman, SSP Budhoo said –

"DSP Tabannah told me that he had instructed Maxwell to record the locations of bodies. This was on the evening of 24 May. I do not recall following up with Supt. Tabannah...I don't recall giving Sgt. Pratt any instructions on 25 May...On the evening of 24 May I spoke to Supt. Tabannah and I told Sgt. Waugh that I had done so. I got a call on my phone that there were bodies seen in the Java area. I told Supt. Tabannah to check and, if there were bodies to ensure that notes were made and he was to have the bodies taken to KPH. I called Waugh and told him I had spoken to Supt. Tabannah who said he had detailed Waugh. I did not tell Waugh to pick up 2 bodies."

14.25. Under cross-examination by Lord Gifford, SSP Budhoo said –

"I gave clear instructions to DSP Tabannah about recording the locations of bodies and he told me they were carried out. I never checked to follow up with DSP Tabannah...He and Waugh told me that bodies were found by barricades on the morning of 25 May all over Tivoli Gardens...It was a formal order I gave DSP Tabannah and I was told it was carried out by Maxwell. I did not ask for Maxwell's notes. He was under the command of a Supt."

14.26. SSP Budhoo gave oral evidence on 26 and 27 November 2015. Sgt. Waugh gave evidence on 2 November 2015. In the course of his oral evidence, SSP Budhoo sought and was allowed to make 4 corrections to his witness statements. He admitted that he asked to make three corrections "after seeing Sgt. Waugh's evidence at the Enquiry on television". Apart from internal inconsistencies or discrepancies in his evidence, there were discrepancies or inconsistencies in SSP Budhoo's evidence vis-à-vis other police witnesses. For example, whereas Sgt. Waugh said that SSP Budhoo called him and told him to go and retrieve two bodies on 24 May, SSP Budhoo said he did not give Sgt. Waugh those instructions. Further, on 27 November 2015, SSP Budhoo gave this evidence at the start of the day's sitting:

"After the sitting yesterday, DSP Turner called me to say that Insp. Linroy Edwards was not the driver of an APC and he was not assigned to him (Turner)."

14.27. He therefore sought to correct earlier evidence that Insp. Edwards "was the driver of one of the APC's. An APC is used to insert or extract troops. I don't know if an APC was used on 24 May...I was told an APC was used on 24 May."

14.28. There is one other discrepancy to which we wish to refer. During his evidence-in-chief, SSP Budhoo testified that he saw a JDF truck on 27 May and he was "told that it was collecting bodies". He said –

"I spoke to Lt. Col. Ogilvie and he told me they found 17 bodies in the Denham Town area."

14.29. Lt. Col. Ogilvie's evidence is:

"By the end of 25 May, I had reports of 16 bodies within 1JR's area of operation. They were removed on 26 May. I had been pressing for their removal on 25 May."

14.30. Documentary evidence produced on behalf of KPH by Dr. Natalie Whyllie shows that only one body was taken there on 27 May, viz. Keith Clarke – whose death the Commission did not enquire into, in view of the pending criminal proceedings. Similarly, the records of Madden's Funeral Home show that only the body of Mr. Clarke was received on 27 May.

PART B

THE INVESTIGATORY PROCESS

Processing Possible Crime Scenes and Starting Investigations

Ret. ACP Granville Gause

14.31. ACP Gause was the head of the BSI at the time of the internal security operation and demitted office on 1 April 2012. BSI was responsible for investigating "all shootings fatal and otherwise, and public sector corruption". It reported directly to the Commissioner of Police within 24 hours of such incidents, and copied an interim report to the DPP.

14.32. On 25 May, ACP Gause accompanied CoP Ellington to the Community Centre in Tivoli Gardens about 10.00 a.m. Lt. Col. Sewell and a party of about 15 JDF personnel were also there. CoP Ellington instructed ACP Gause "to commence investigations as soon as the atmosphere was conducive to such an investigation" and then he and his party left.

14.33. ACP Gause returned to his office and spoke with SSP Ezra Stewart and SSP Gladys Brown-Ellis. ACP Gause said he gave these SSPs the following instructions:

"Select a team and proceed to KPH and UHWI, make an assessment of all the persons that actually entered the institutions, persons that were shot, hospitalised, treated and sent home, if anything, and tell me about the bodies that supposed to be there. Basically, those were my directives to them."

14.34. ACP Gause said it was not possible to commence investigations on 25 May because "the atmosphere was not cool and calm. There was hostility towards the security forces." He returned to Tivoli on 26 May in the company of SSP Stewart, Supt. Hinds, DSP Wellington and others comprising "a hot team". A post was established in Tivoli Gardens the same day at the Community Centre simultaneously with one at Denham Town Police Station. In Tivoli, OPD also had a desk and BSI and OPD shared information and worked together.

14.35. Meetings were held after 25 May with the Public Defender himself and other persons at which protocols were developed about how bodies were to be treated, post mortems, treatment of firearms, fragments from bodies, *inter alia*.

14.36. On 26 May, ACP Gause gave SSP Stewart a directive that –

"henceforth BSI personnel, somebody from Scenes of Crime, somebody from the photo section, somebody from Denham Town be there until further orders to primarily hear complaints, take statements, visit the particular areas.....This continued at least 3½ to 4 weeks."

14.37. In respect of the scenes of possible extra-judicial killings, ACP Gause said –

"I recall Mr. Witter indicating to me that there were certain scenes in Tivoli that he believed extra-judicial killings would have taken place... and he subsequently forwarded a list of 15 addresses to me..."

14.38. He said in answer to the question whether he gave the list to SSP Stewart or Det. Insp. Harris –

"Mr. Stewart, Mr. Hinds, Wellington, they are to go get Scenes of Crime personnel, whether it is from MIT or CIB and deal with that... It was delegated work and, to the best of my knowledge, it was carried out."

14.39. ACP Gause confessed that he could not assist the Commission with information as to where persons died and bodies were found. "I could not assist the Commission with that at all." He said KPH should have information about who brought in bodies. He explained the procedure thus:

"KPH and UHWI, whenever a vehicle enters with injured persons or deceased, they have their own record, the number of the vehicle, sometimes the person who drives the vehicle. There are records at KPH as to who would have been bringing in bodies."

14.40. The Chairman put questions to ACP Gause: "Would not BSI be required to find out where a body came from, who found it, and when it was found? Was there a gun near the body when it was found, did anyone make a written note of all that information?"

14.41. He replied: "Mr. Chairman, those are basic preliminary investigations...basic, basic." ACP Gause testified that "BSI was not allowed to conclude that investigation...We did not reach that stage before the investigation was handed over elsewhere ... to INDECOM in early 2011". It was later agreed that handover to INDECOM was in June 2012.

14.42. However, ACP Gause said that between May and October 2010, (when Cons. Maxwell died), BSI had no documentary evidence showing "where bodies were found, what date they were found, what date they were removed or whether anything illegal was found near the bodies. It was the responsibility of Maxwell's commanding officer to insist that Maxwell's notes be made available to BSI as soon as possible after 24 May". He said –

"I would expect that the commanding officer, more so the SOi/c (sub-officer in charge), say well then you have to hand over all these notes that you would have made to BSI."

14.43. Videotaping of surroundings took place from 26 May. ACP Gause said –

“The Scenes of Crime personnel who were with me on 26 May got directives to photograph and videotape the general condition of surroundings. The recordings are in the possession of Scenes of Crime personnel.....Not only the appearance of the place – the general area, the specific location, houses. There were actually recording on 26 May in the community.”

14.44. In answer to Mrs. Mayhew in cross-examination, ACP Gause agreed that “under ordinary circumstances, it is most desirable to preserve what may be crime scenes as soon as possible after an event”. But he insisted that, on 25 May, BSI could not “do a proper and good job in that atmosphere”. He did not recall any gunfire in Tivoli Gardens on 25 May while he was there. “The little area where I was, was relatively calm and seemed to be under the control of Police personnel” but he did not know what was happening in the area of Coronation Market. He said that his men on the ground would have told him that it was not time to start processing crime scenes on 25 May.

14.45. In answer to the Chairman, ACP Gause said that, before handing over the investigation to INDECOM, BSI had taken statements from 29 police officers indicating that they had fired a total of 1,226 rounds. He said to Mrs. Mayhew:

“It is not correct that the Scenes of Crime team did not commence their investigations or were not called upon to do anything until 4 June... I requested assistance from the Major Investigative Unit (MIT) and Scenes of Crime Unit prior to 4 June.”

14.46. ACP Gause spoke of receiving “200 and a whole heap” of statements from civilians prior to handing over to INDECOM.

Record of Locations of Bodies

14.47. We have discussed the absence of a record of the locations of bodies. Thus, there is no need to treat to this matter further in this Part.

Record of Deployment and Identities of Officers

14.48. Although Commission Counsel requested this information in writing, we received no documentation setting forth the locations to which officers of the JCF were deployed or their identities. We received much evidence from some of the civilian witnesses that some members of the security forces were masked. This allegation was denied by witnesses for the JCF. However, at para.10.2.6 of his Interim Report and in oral evidence, Mr. Witter spoke of seeing members of the security forces wearing masks when he visited Tivoli Gardens on 25 May and he testified to being jostled by a member of the JCF who was masked. On 8 February 2016 when he testified, ACP Gause said that, prior to his retirement, he never saw a list particularising where every officer of the JCF was in Tivoli Gardens on 24 May. He was definite that -

"there was a policy in respect of 24 May that required the deployment of officers to various locations to be recorded. It would have been recorded at Mobile Reserve."

We were assured that the JCF could provide information concerning the deployment of officers in Tivoli Gardens, from what stations and the approximate time of deployment. In spite of a ruling by the Commission that this information be provided by 15 February 2016, it has not been provided.

Number of Firearms Found/Recovered

14.49. The totality of evidence before us is not consistent in accounting for the number of firearms found or recovered during the first phase of the State of Emergency (i.e. to 22 June 2010). Two appendices to the document produced by former Prime Minister Golding give two different numbers, namely

Appendix "F" (115), Appendix "H" (110). Supt. Michael Phipps gave a figure of 141. See also Chapter 5 for a fuller account of the evidence in relation to firearms recovered.

14.50. However that may be, when it is remembered that no evidence was adduced that any member of the security forces testified that any gun was found in the vicinity of any deceased person, and that there was no evidence of gun powder residue on the hands of deceased persons who were swabbed, the issue of the number of guns recovered assumes significant importance. And no guns were found in the custody of any of the persons arrested or detained.

14.51. Only 21 firearms were found in Tivoli Gardens according to the evidence. Most of the weapons were recovered outside of that community and some considerable time thereafter. The JDF's situation log mentions that, within the first 5 days after the operation, 28 guns were found/recovered. So that, whereas by 27 May, the records of KPH show 70 persons killed (but not all from the area of operation), on the other hand, by 29 May, only 28 guns had been recovered.

14.52. We also think that it is worth mentioning that there is no evidence of the security forces admitting to killing anyone save and except for a person shot at the Blood Bank by a soldier. Equally, there is no direct evidence before us of any criminal gunmen shooting and killing civilians. We saw videos of live action between criminals and security forces. A terrifying sight. Yet none of the footage showed any person being actually injured or killed. In fact, no photographs of bodies *in situ* were tendered.

Evidence of Hamish Campbell

14.53. Assistant Commissioner of INDECOM, a former Detective Chief Superintendent of Police in England, testified on 12 February 2016. He had

served for 38 years as a police officer. In his witness statement of 18 November 2015, he states at para.28 and 29:

“28. A central aspect of the investigative strategy (of INDECOM) was to establish a link, if any, between the deceased, the location at which they were recovered, the recovery of any ballistic material, (e.g. spent casings or bullets/bullet fragments), and the *locus* of members of the security forces who may have fired their weapons, and members of the public (witnessed).

29. This approach required an examination of records relating to the bodies, the ballistics and the witnesses – whether security forces or civilians.”

14.54. Mr. Campbell said that INDECOM faced three challenges when the investigation was handed over by BSI, i.e. *(i)* body recoveries; *(ii)* ballistic material; and *(iii)* witness statements.

14.55. *As to recovery of bodies*, Mr. Campbell said that the materials supplied to INDECOM –

“did not include any written or photographic documentation which showed the locations from which any bodies were recovered.”

In Mr. Campbell’s opinion –

“the absence of a deceased’s location can make it extremely difficult to determine any person’s responsibility for a death when seeking to make inquiry of the person firing.”

14.56. *With respect to ballistics material*, Mr. Campbell stated at paras.32 and 33 of his witness statement –

“32. The documentation supplied by BSI in June 2012, did not include any evidential material regarding the recovery of spent casings. Some bullet fragment recovery evidence was available from the post mortem examination statements that were provided.

33. Recovered spent casings may enable a match to be made between the casing and a fired weapon and may

provide evidence of where a person firing a weapon was located, especially as it relates to Security Force personnel, who had allocated and identifiable weapons. Equally, recovered bullet fragments ... can, in some instances, enable a match to be made to specific weapon.”

14.57. The Government Forensic Laboratory’s ballistic report indicated a total of 36 spent casings and two bullet fragments recovered, and 28 of the 36 spent casings were recovered in one location. The report showed that the casings did not match any of the weapons submitted to the Laboratory nor could any of the fragments be identified with a particular firearm.

14.58. There were 38 witness statements received by INDECOM from police officers who acknowledged firing their weapons. Eight reported firing on 23 May and the other 30 reported firing on 24 May. There were no statements submitted which acknowledged firings after 24 May. No statements from JCF officers mentioned injuring or killing anyone. The JDF provided a document titled “Record of Arms and Ammunition Expenditure – Operation Garden Parish May – July 2010”, recording weapons issued, soldier receiving, the amount of ammunition supplied and the number of rounds discharged.

14.59. The JDF expended, for that period, 7,610 rounds. The JCF seems to have expended a total of 1,516 rounds. Only 36 spent casings were recovered and submitted from Tivoli for analysis.

14.60. In evidence-in-chief Mr. Campbell expressed the opinion that “there is no evidence that best practice was observed between 24 May and 4 June 2010”. He said that there is a great disparity between the number of rounds fired and the number of spent shells recovered.

14.61. He testified that he has in his possession a –

“written response from the Commissioner of Police that they have no record of where officers were in the area of

operation...There should have been a record of where personnel were deployed, especially in Tivoli Gardens.”

14.62. In answer to a question from the Chairman, Mr. Campbell said –

“On 25 May, proper procedures should have been established. The Police and Army had full control of the area.”

Analysis of Post Mortem Reports

14.63. Mr. Campbell’s analysis of the post mortem reports appears in his second witness statement dated 2 February 2016. He has found that 74 persons died as a result of gunshot injuries. Nineteen persons received one shot. One person received as many as 12 shots. In total, 236 gunshot injuries were inflicted on 74 persons. Twenty-five received injuries to the head or neck; 39 received injuries starting in the back and traversing to the front of the body. Four persons were killed by 9 or more gunshots and 82% of those shot, received 1-4 injuries. In Mr. Campbell’s opinion, if a person was shot within one foot of the shooter, gunpowder residue could be expected on the body. On the other hand, if the distance exceeded one foot, residue would not usually be found.

PART C

COLLECTION, IDENTIFICATION AND TREATMENT OF DEAD BODIES

24 May – Tivoli Gardens

14.64. With respect to bodies found in Tivoli Gardens, as reported earlier, DSP Tabannah said that, as his team approached the Clinic in Tivoli Gardens, he was told that two bodies were seen. Because of gunfire, the team did not get close to the bodies as they were “lying flat”. About 15 minutes later, some of the team picked up the bodies and brought them to a truck where he was able to look at them and he saw what appeared to be gunshot wounds. He instructed Sgt. Waugh to take the bodies to KPH and Sgt. Waugh left. According to

Sgt. Waugh, he took the two bodies to KPH on 24 May and doctors pronounced them dead. He could not take them to Madden's because he encountered gunfire on North Street. He returned to the Tivoli High School with them that evening.

14.65. On 24 May, Lt. Col. Ogilvie was shown one body in Coronation Market by Maj. Henry. He also saw two other bodies in the Oxford Mall/Coronation market area. These were two young men in jeans and shirtless. Both had gunshot wounds. Lt. Col. Ogilvie said that he passed the information to the JCF.

25 May

14.66. Collection of bodies began in earnest on 25 May about 5.30 a.m. when DSP Tabannah sent Sgt. Waugh to Madden's with the two bodies. Sgt. Waugh took the bodies to Madden's and returned to Tivoli Gardens. About 7.30 a.m. DSP Tabannah and two teams went inside Tivoli Gardens in response to telephone calls from SSP Graham and SSP Budhoo that bodies were seen "all over the place". DSP Tabannah said –

"Pratt and Waugh told me that Mr. Graham had called them to assist with removing the bodies. This was about 8.00 a.m. Waugh told me that he picked up twelve (12) and Pratt said he picked up thirteen (13) from the entire Tivoli Gardens."

Cons. Maxwell was to record the location of bodies.

14.67. DSP Tabannah did not know whether a record was made. He said –

"Normally, there should have been a record of where bodies were found made in the station diary. I do not know if it was done. It ought to have been done. At Mobile Reserve, on completion of an operation, all activities of the day are recorded."

DSP Tabannah said that Waugh and Pratt collected 27 bodies.

Sgt. Waugh and Sgt. Pratt

14.68. In Chapter 10, we have reviewed the evidence of Sgts. Waugh and Pratt and it is unnecessary to repeat it here except to mention that Sgt. Pratt said that he received no reports of persons being shot and put on a truck on 25 May.

14.69. In his witness statement of 18 November 2010, Sgt. Pratt stated –

“Cons. Marlon Maxwell who was part of the team made a note of the number of bodies that we found and the locations where they were found and also the name of the doctor and the time he pronounced them dead.”

Lt. Col. Jaimie Ogilvie

14.70. On 25 May, Lt. Col. Ogilvie visited the troops of 1JR at their locations. It was at this time that he saw “a number of bodies in Darling Street, by MPM, Coronation Market, Regent Street, Beeston Street and behind Denham Town School”. Lt. Col. Ogilvie said under cross-examination –

“By the end of 25 May, I got reports of 16 bodies within 1JR’s area of operation. They were removed on 26 May. I had been pressing for them to be removed on 25 May. But on 25 May, there was still gunfire in Hannah Town and Denham Town. The bodies were removed in my area by the funeral parlour. I was not satisfied with the pace of removal. At the Regent St/North St area, I saw a dog trying to smell a body and I instructed that a truck be got to drive around, collect bodies and take them to Madden’s. By mid-afternoon no bodies were in the area. Where the bodies were found were not marked or delineated as crime scenes.”

Supt. Gladys Brown-Ellis

14.71. Supt. Brown-Ellis was a police officer and an attorney-at-law attached to the BSI as a legal officer in May 2010.

14.72. Supt. Brown-Ellis' witness statement is a clear account of the approach of the JCF to the treatment of deceased persons during the operation. It is helpful to summarise Supt. Brown-Ellis' activities on the days following the operation.

25 May

14.73. On her way to KPH to process 40 bodies allegedly killed by the security forces, Supt. Brown-Ellis and others in her team met gunfire at Hanover Street causing them to abort the visit to KPH.

26 May

14.74. On Wednesday morning, the team was subdivided. Supt. Ezra Stewart led one team to UHWI and Supt. Brown-Ellis led the other to KPH. Since bodies had been transferred to Maddens, both teams assembled there at 10.00 a.m. They saw a number of unidentified bodies and decided to name the particular operation as "Ground Zero".

The Process towards Identification

14.75. Supt. Stewart gave instructions that these bodies were to be photographed and fingerprinted. Their clothing was removed and placed in labeled bags.

14.76. Notes were made of clothes, complexion, measurements, approximate age and any distinguishing marks. Each body was assigned a number pending identification (e.g. GZ1) and tagged. There were in excess of 40 bodies at Madden's and the procedure continued until 5.00 p.m.

14.77. At that time, information was received that bodies had been taken to May Pen Cemetery where the Government's pathologist was conducting *post mortem* examinations. A team was sent from Madden's to the Cemetery but

Dr. Rao was forced to abandon his examinations as a result of gunfire directed towards the Cemetery. The bodies were left overnight at the Cemetery in boxes.

27 May – At the Cemetery

14.78. Supt. Brown-Ellis went to the Cemetery to process the bodies left in boxes. She was able to do so without interruption. She said –

“[There were] 23 bodies in an advanced state of decomposition. Of the 23, three were burnt beyond recognition.”

14.79. It was alleged that the three were killed by gunmen on Whitfield Avenue on 24 May after they refused to assist in blocking a road. These 3 cases were referred to the Major Investigations Task Force (MIT) and were never processed by Supt. Brown-Ellis’ team. These men were: Randame Mitchell of Hawthorne Road, Cecil Nevin of Whitfield Avenue and George Baker also of Whitfield Avenue.

28 May

14.80. Supt. Brown-Ellis testified that, on this day, she returned to the Cemetery and was assailed by bullets from gunmen who believed that she and her team were attempting to burn the bodies. Soldiers rescued the JCF officers. Arrangements were made for Madden’s to collect the bodies but, owing to a lack of space at the Funeral Home, those bodies were not collected on Friday.

Weekend of 29 May

14.81. Over the weekend, the bodies in the Cemetery were placed in wooden boxes, and taken for storage in an air-conditioned facility at Norman Road belonging to Madden’s. Mr. Madden also arranged with the owner of Taylor’s Funeral Home to keep some of the bodies in storage. In fact, Supt. Brown-Ellis went to Taylor’s about 12.15 p.m. to process the bodies at that

Funeral Home. At Taylor's, the settled process that obtained at Madden's was employed.

Attempts at Identification

14.82. In the following week, two centres were established at the Community Centre in Tivoli Gardens and the Denham Town police station, to facilitate family members' viewing of photographs of bodies. This exercise lasted 7 days. On completion, 67 bodies were identified, 6 were not identified – giving a total of 73 bodies.

11 June 2010

14.83. On 11 June, all bodies were x-rayed at the hospital. A temporary mortuary was set up at Norman Road for post mortem examinations to be conducted on decomposed bodies by Dr. Rao "in the presence of Dr. Marcia Mendonca, an independent observer secured by Mr. Witter." Simultaneously, Supt. Stewart was at the Spanish Town Hospital mortuary in charge of bodies there. Two other overseas independent observers, Dr. Maria Morcillo and Dr. Michael Pollaman were with Supt. Stewart. Dr. Morcillo subsequently joined Supt. Brown-Ellis' team. The whole process took two weeks.

5 June to 11 July

14.84. During this period, "73 bodies were autopsied". At Norman Road, nine (9) bodies had to be re-autopsied because the name tags placed on them after identification by relatives, had disintegrated.

Numbering after Second Autopsy

14.85. The nine bodies were given temporary GZ numbers as follows:

- (i) GZ TA – Unidentified
- (ii) GZ 10 – Lavinia Wilson

- (iii) GZ TB – Garfield Neath
- (iv) GZ TC – Barrington Josephs
- (v) GZ TD – Gregor Witter
- (vi) GZ TE – Carlos Chusney
- (vii) GZ TH – Patrick Michelle
- (viii) GZ 57 – Ian Smith
- (ix) GZ TF – Carlton Samuels

1 July

14.86. Supt. Brown-Ellis' witness statement gives a body count as follows:

"By 1 July 2010, I had processed 73 bodies classified as Ground Zero bodies. Of this 73, two were reportedly murdered by gunmen, Sandray Harrison GZ 47 and Errol Mitchell, GZ 64A."

2 to 5 July

14.87. Following correspondence from Supt. Brown-Ellis to Mr. Witter on 2 July concerning the state of the 4 burnt bodies, he gave permission on 5 July for them to be buried. These four persons were not among those allegedly killed by the security forces. Supt. Brown-Ellis stated –

"At no time did I have these bodies as part of my total or as persons killed during the military incursion, as I knew through investigation and subsequent statements from family members that they were murdered because they refused to block the road and facilitate the criminal activities of gunmen."

14.88. Supt. Brown-Ellis and her team worked against great odds to be as thorough as possible in seeking to identify bodies. In oral evidence, Mr. Witter paid tribute to Supt. Brown-Ellis and her team.

One Other Body

14.89. A sixteen year old boy, Paul Holness, was allegedly “killed and burnt by gunmen in Crooks Avenue area”. His body was re-autopsied by Dr. Rao and handed over to his mother.

Early July – Four Bodies (PM)

14.90. While at Madden’s in early July, Supt. Brown-Ellis was shown 4 bodies said to have been brought in by the JCF during the operation. She gave these bodies PM (possibly missing) tags and numbers. But Supt. Brown-Ellis explained –

“Two of the four were already identified by relatives as (i) Leroy Walker (PM2) and (ii) Kelsey Nelson (PM4). I learnt later than these were murder victims and not persons who died in the incursion.”

14.91. Mr. Nelson’s body was subsequently numbered GZ 74 and Mr. Walker’s body was buried by his relatives. PM 3 was the body of Dwight Medford of Denham Town. He was given the GZ 72 number.

Three Additional Bodies at Brown’s Funeral Home

14.92. Supt. Brown-Ellis was given information in July of three bodies at Brown’s Funeral Home. It was alleged that these were injured persons who were admitted to KPH and subsequently died. They were added to the GZ statistics of 69 and were: Damion Lindsay (Lion King) of Rasta City (GZ 70), Barrington Davis of St. Thomas (GZ 71) and Carlene McKenzie of Little King St., Kingston (GZ 73). Ms. McKenzie died from a cause not related to the operation.

6 July – Seven Bodies still Unidentified

14.93. The following seven (7) bodies were still not identified as of 6 July. They were photographed, videotaped, x-rayed, fingerprinted, autopsied and

body parts were taken for DNA testing. They were GZ 7; GZ 12; GZ 23; GZ 29; GZ 24; GZ 68; GZ 38. One body, Michael Duhaney was not claimed after information on all 7 bodies was advertised. With the aid of fingerprints, the bodies of Errol Mitchell - GZ 64A and Junior Burke were identified.

12 July

14.94. Ms. Yvonne Johnson identified her nephew, Rene Miller (PM 1) at Madden's and so did his father, Henry Miller.

Facilities

14.95. The Norman Road temporary facility was inspected by a Public Health Inspector and found to be satisfactory.

Missing Boy

14.96. It was reported on radio that 16 years old Gary Ingram had been killed by the JCF during the operation. According to Supt. Brown-Ellis, the boy "turned up alive in August 2011".

14.97. At Appendix 29 is a summary of the post mortem findings in respect of persons killed during the operation.

Storage of Bodies at Funeral Homes

14.98. Mr. Witter, Bishop Blair and Dr. Salmon visited Madden's on 25 May. Mr. Witter described the scene in the morgue as "a macabre and surreal experience. There were 3 mounds of corpses piled up on the floor – many nude or scantily dressed." At least one-quarter were naked. He said that personnel at Madden's told him that there were 56 bodies. He said –

"I heard a transmission indicating that there were 16 other bodies to be picked up and 9 of them were in Darling Street.

Thus the initial count was 72...My enquiries established 76 dead and 4 missing."

23 Bodies in May Pen Cemetery (MPC)

14.99. We received evidence that there was a large number of bodies in MPC about 25 May. Mr. Witter's evidence is that the Director of Investigations of OPD, telephoned him to say that Dr. Rao was conducting autopsies on 23 bodies in MPC. He said –

"I insisted that no more on-the-spot autopsies be done. I called Mr. Golding and told him what had been reported. In less than 5 minutes, he called me back to say that he had instructed that no interment should take place and the bodies should be frozen."

14.100. He (Mr. Witter) arranged for 5 independent pathologists to come to Jamaica. He said he was told that Madden's had taken coffins to the Cemetery.

14.101. Mr. Witter confirmed that some of the bodies he saw at Madden's were dressed in denim jeans and some wore white Tee shirts. To Ms. Martin, he said that "the list of 76 comprised names of all persons whose deaths are known and may have been attributable to the actions of illegal gunmen and/or the security forces during the State of Emergency". He also stated-

"My report says that, up the time I demitted office, we were investigating reports that 44 of the 76 were extra-judicial killings.....At the time of my report I had had sight of the post mortem reports."

Dr. Salmon

14.102. Dr. Salmon saw "a mound of bodies in various states of decomposition". He said –

"I would have expected the bodies to have been treated with dignity and respect. There were no body bags."

Bishop Blair

14.103. Bishop Blair testified that, on Thursday, 27 May, while he was on a separate visit to Tivoli Gardens, he saw a truck driving on Spanish Town Road "towards the Cemetery and I saw 8 or 9 coffins on the vehicle". He later reported this to the Chief of Defence Staff, Commissioner of Police and the Prime Minister, and none of them knew what was happening. He said -

"I was fearful that burials were taking place and the PM instructed the CoP to halt it. I later learnt that the body count at the morgue had increased."

14.104. When the Bishop went to Madden's he counted "about 45 bodies stacked up in a heap one on top of the other". He heard that another 9 bodies were to be picked up. He said he went back to Vale Royal to report to the Prime Minister. He said -

"I was concerned that there were so many bodies in the morgue and so few weapons had been collected. Some of the bodies were not the men I saw on 25 May. Most of the men I saw on Wednesday were young men. I could not say that the men I saw were wearing any distinctive clothing."

14.105. Bishop Blair was "sure" that when he reported to Mr. Golding, CDS Saunders and CoP Ellington were present.

Madden's Funeral Home Evidence

14.106. Mr. Ferdinand Madden, director and shareholder of Madden's Funeral Supplies Ltd. gave evidence on 11 February 2016. His two witness statements set forth on a day to day basis, the treatment of the bodies brought to Madden's and the contractual arrangements between Madden's and the GoJ.

14.107. The contractual arrangements required Madden's, at the request of the JCF, to collect bodies of persons who had died or were left in public places and whose families had not arranged for their removal. Madden's was, in effect,

the public morgue and had its principal place of business at 31-32½ North Street, Kingston. It was a term of the contract that no decomposing bodies would be sent to Madden's nor was that company required to collect decomposing bodies for removal to its facilities. The standard operating procedure, so far as it related to decomposing bodies, was that –

“an on the spot post mortem is conducted by the Government Pathologist and the Police would take photographs and fingerprints of the deceased person and a burial order would be issued and the body would be buried that day, usually at May Pen Cemetery (MPC).” - See para.15 of Mr. Madden's witness statement of 4 February 2016.

14.108. Madden's was contracted to store other bodies requested by the JCF (Police Bodies) until the GoJ ordered post mortem examinations to be conducted and the bodies were processed for release to relatives. It is helpful to set out the activities of Madden's chronologically.

24 May

14.109. The roads leading to Madden's on North Street were blocked and there was gunfire. These circumstances prompted Mr. Madden to arrange with Taylor's Funeral Home (Taylor's) at 42-44 East Street, to store any bodies which might be brought in by the JCF. Taylor's had space for 40 bodies.

25 May

14.110. Mr. Madden was unable to go to his funeral home because of the unsettled, prevailing situation in Downtown Kingston but he kept in regular telephone contact with his supervisor, Mr. Langley and other staff who had been forced to remain at the Funeral Home. About 11.00 a.m. Madden's sent 6 bodies, connected to the internal security operation, from KPH and 1 from UHWI, to Taylor's. Between 3.50 p.m. and 8.45 p.m., with the help of “a soldier from within the environs of Tivoli”, Madden's sent another 10 bodies to Taylor's

following a call from Sgt. Gordon to remove those bodies from the area of Darling Street. A further 10 bodies were taken to Taylor's in a JDF vehicle "by order of Insp. Elliott".

14.111. In paras.8, 9, and 10 of his further witness statement of 4 February 2016, Mr. Madden's stated –

"8. Throughout the day a further twenty five (25) bodies were brought to Madden's by the military and constabulary forces....in various stages of decomposition.

9. Police and soldiers who brought in these bodies in haste, placed these bodies on the floor or on tables. This was a temporary situation, as our staff placed all bodies in our refrigerated storage facility as soon as they were able to do so.

10. No name of any investigating officer was given for any of these 25 bodies, despite various attempts by our staff to obtain this information....."

14.112. It was standard operating procedure for the name and particulars of the investigating officer to be sought since, under the contract, bodies delivered to Madden's must be supervised by an Investigating Officer. At the end of 25 May, Madden's North Street location had 35 bodies in storage while Taylor's was holding 10 bodies.

14.113. With regard to decomposing bodies, Mr. Madden said at para.13 –

"Despite the insistence of Madden's staff that there was no arrangement in place for Madden's to receive decomposing bodies, the security forces maintained that Madden's had to receive the bodies, and simply deposited the bodies at the North Street location."

Four bodies were taken to May Pen Cemetery on 25 May.

14.114. Mr. Madden saw the team from BSI at North Street, including Supt. Gladys Brown-Ellis. The team did extensive photographing and fingerprinting "and assigned each body an identification number".

Bodies at May Pen Cemetery

14.115. Mr. Madden was informed that the 4 bodies taken to MPC were undergoing post mortem examination. He therefore sent 19 bodies, including 15 decomposed, and 4 others brought in on 25 May. In addition, he sent coffins to the cemetery. The on-the-spot post mortem examinations were curtailed as a result of the gunfire mentioned previously in our review of Supt. Brown-Ellis' evidence.

14.116. The Public Defender, Mr. Witter, instructed that the on-the-spot post mortem examinations should cease and Madden's retrieved the 23 bodies. Mr. Madden said that he objected strongly to keeping these bodies "since we were not in a position to receive" them. He gave the reasons. He was able, however, to resolve the issues concerning the decomposing bodies by securing a refrigerated container which was installed on 28 May at Norman Road where the decomposing bodies were sent.

28 May

14.117. Taylor's asked Madden's to remove the bodies at Taylor's because of an odour from the decomposed bodies. Madden's removed 4 of the bodies but none of these was connected to the internal security operation.

29 May

14.118. About 11.30 a.m. Madden's removed 8 decomposed bodies from Taylor's and stored them at Norman Road in a container together with the 23 removed from MPC.

14.119. Under cross-examination by Lord Gifford, Mr. Madden explained that the 45 bodies counted by Mr. Witter on 25 May "would have included others heaped up in the same area".

14.120. Lt. Col. Cummings claimed that on 25 May he saw wooden coffins in MPC and several persons were there. In answer to Lord Gifford, he said –

“I recollect that just prior to midday on 25 May, the coffins and people were there – not on 26 or 27 May... I am not aware that post mortems were carried out on 26 and 27 by the Consultant Pathologist.”

PART D

HOUSE CLEARING AND SEARCHES

14.121. Section 19(1) of the Constitution enacted –

“Except with his own consent, no person shall be subject to the search of his person or his property or the entry by others on his property.”

As with some of the other Constitutional provisions discussed, a law that is reasonably required “in the interests of defence, public safety, public order, public morality, public health...” may not be in contravention of s.19(1). In this regard, Reg.28 of the Emergency Powers Regulations (No.1) 2010 (*supra*) gave the security forces power to enter and search premises “suspected of harbouring or containing any persons suspected of having committed or being about to commit any offence against these Regulations”.

14.122. The manner in which the security forces cleared and searched houses was a prominent feature of the evidence of residents who testified and was tangentially discussed in Chapter 7. But to the extent that such exercises involved the conduct of the security forces directly, it is convenient and appropriate to highlight here the substance of the evidence touching and concerning the house clearing and searches conducted by the security forces especially on 24 and 25 May.

Who was responsible for what?

14.123. It was accepted that the JDF was to lead the effort to get into Tivoli Gardens and capture Coke. The forward troops under the command of the sector commanders were mostly comprised of JDF personnel although some JCF members were operating *in tandem* with the forward troops and formed part thereof. The function of the forward troops involved breaking down barricades and embattlements to secure entry. Once dismantling had been achieved and the forward troops were inside Tivoli Gardens, the next phase of operation required them to "secure the sectors".

14.124. In the words of Maj. Luis Cheverria in respect of sector 1:

" 'securing the sector' meant that we controlled the streets and about 6 to 8 high-rise buildings in our sector which we occupied. We got on the roofs. In relation to apartments, it meant that no persons were hiding in each apartment...We would have gone into each apartment. We would have made sure that no gunmen were inside houses. It took about 3 hours to control all 8 high-rise buildings. Hostile fire had dissipated by 3.25 p.m. I personally made a tour to ensure that everything was in order... Checkpoints were established by 5.00 p.m."

14.125. In that evidence, Maj. Cheverria set out the basics of house clearing.

14.126. So far as searches were concerned, these were led by the JCF who followed behind the JDF forward troops. DSP Tabannah said –

"After the JDF, I should have been the first into Dee Cee Avenue, McKenzie Drive and Java...I was to carry out searches."

14.127. By 2.00 p.m. Maj. Kennedy and Alpha Company of 2JR were at the Tivoli High School. By 4.35 p.m. sector 2 was secured and by 5.00 p.m. he called DSP Turner and told him that he could enter the sector.

14.128. Capt. Anderson, it will be recalled, testified that "control of sector 3 was achieved by 5.00 p.m." Maj. Mahatma Williams and the contingent of the CSB were detailed to go to the Levy and Derek Pathways to find Coke. About 30 members of the security forces carried out the mission albeit unsuccessfully. But in carrying out the mission, they cleared and searched 2 properties on Derek and Levy Pathways. They did no searches on Dee Cee Avenue.

14.129. Capt. Anderson's evidence is that an aspect of securing and controlling a sector involved looking for criminals. This required clearing houses. In his words:

"House clearing entailed separating women and children from men. We had to keep them in one place for the purposes of command and control. They were separated until the Police arrived. We had to do a count of the number of persons in each building. The JCF came and took control."

14.130. Under cross-examination by Lord Gifford, Capt. Anderson said –

"Buildings which we selected, specifically high-rise buildings, were cleared...During house clearing I received no reports of dead bodies."

14.131. Later, he said that 6 bodies were found in sector 3, and house clearing continued into the night, he explained that -

"Tactical clearance is just to ensure that a building is cleared from immediate danger."

Lt. Col. David Cummings

14.132. Lt. Col. Cummings created his own plan for the operations of the Engineers, 371 of whom he deployed on 24 May. On 26 May the Engineers began searches in West Kingston. They were looking for weapons and munitions especially.

14.133. At Chapter 8.118 *etseq*, we reviewed Lt. Col. Cummings' evidence of damage caused to the properties of residents by the Engineers and their remedial action undertaken in the weeks after 1 June 2010. Accordingly, we do not repeat that evidence here.

14.134. DSP Tabannah testified that persons complained on 25 May that their properties had been ransacked and damaged by the JCF. He saw damage to furniture, but no windows knocked out or bloodstains in houses.

14.135. According to DSP Turner, the house clearing in sector 2 took approximately 2 hours and ended about 11.20 p.m. on the night of 24 May.

Caribbean Search Centre

14.136. Personnel from the Caribbean Search Centre (CSC) assisted in conducting searches from 26 May. No evidence was adduced from CSC.

FINDINGS

14.137. Without prejudice to findings in other Chapters, we desire to make these additional findings. None of the reasons advanced by ACP Granville Gause or Insp. Devon Harris for the delay in establishing or even marking actual or potential crime scenes is acceptable to us, although we appreciate that Insp. Harris and his unit could only start to process a scene after he received a request to do so. By 25 May, Tivoli Gardens was pacified to such an extent that Mr. Witter, Bishop Blair and Dr. Salmon were able to go into the community and walk around, speak to residents and observe the general condition of the community safely. It was not beyond the capacity of the security forces to make the areas of actual or potential crimes safe and secure for the operation of Scenes of Crime officers. After all, a large number of men were in detention. Other residents were confined to their

residences and could have been kept out of the way of Scenes of Crime officers. To have delayed establishment of Scenes of Crime until 4 June, gives incontrovertible support to Mr. Witter's evidence that crime scenes were not established "with alacrity". It is an indictment on the professionalism of the JCF. The JCF had an obligation to demarcate locations where bodies were found or allegations made of killings as a necessary and inescapable incident of the investigating process. Even after ACP Blake visited Tivoli Gardens on 26 May, he saw three bodies in a house and instructed Supt. Michael Phipps "to get the Scenes of Crime persons to do the photographing". Thus, a very senior police officer was of the opinion that on 26 May, the conditions in Tivoli Gardens were such as to permit investigations to commence.

14.138. As Head of BSI at the time, ACP Granville Gause should have been held accountable for the long delay in having crime scenes established. It matters not whether a crime was committed. Human lives were lost. They deserved prompt investigation into the circumstances of the loss of life. A delay of 10 days before commencement of investigations conducted to the absence or disappearance of vital evidence that could and should have been available to this Commission of Enquiry and to the courts of law of Jamaica.

14.139. In Chapter 10, we have previously criticised the conduct of DSP Tabannah in failing to ensure that proper records of the locations of dead bodies were made available, and could be retrieved. DSP Tabannah had a duty to ensure that notes allegedly made by Cons. Maxwell were retrieved and the information contained therein, properly entered in the relevant books or diaries. Although Cons. Maxwell unfortunately died in October 2010, there can be no excuse for not having him enter the information in the proper

documents of the JCF or seeking to retrieve the information from him during the five months that he was alive subsequent to the internal security operation. We have noted the evidence of ACP Gause that, for the period May to October 2010, he did not have "any documentary evidence showing where bodies were found, on what date or whether anything illegal was found near the bodies".

14.140. The absence of a record of deployment of JCF officers on 24 May is but another example of unprofessional conduct. There was ample time in the planning of the operation to take this matter into account and make proper arrangements to put in place the necessary logistics. Once again, our Enquiry has been "short-changed" by reason of a dearth of relevant and vital information on a matter of the greatest importance.

14.141. Similarly, the investigatory process has been greatly compromised by the vast disparity that exists between the record of 7,610 rounds expended by the security forces and only 36 spent shells being recovered. We find this disparity alarming. We are forced to ask why is it that those who were searching for guns and ammunition on 24 May and thereafter were not instructed to search for and recover spent shells also? All of the officers doing searches would surely have known of the evidential value of spent shells. It is our finding that either no instructions were given to recover spent shells or instructions were given to ignore them. Either way, the omission does no credit to the security forces. We accept the evidence of Mr. Campbell that the documentation supplied by BSI to INDECOM did not include any evidential material regarding spent shells.

14.142. We also accept Mr. Campbell's analysis of the post mortem reports and his findings more particularly set out at para.14.63. To that extent, we do not repeat his findings here.

14.143. SSP Winchroy Budhoo's evidence is worthless. His credibility was destroyed by the several corrections he sought to make to his witness statement and the reasons he gave for making the corrections. We deprecate his corrections to his evidence after first seeing Sgt. Waugh's evidence on television and, secondly, in response to a telephone conversation with Supt. Turner after Supt. Turner had seen part of SSP Budhoo's evidence on television. Such an approach to sworn evidence does not only adversely affect the quality and reliability of SSP Budhoo's evidence. It is also unworthy of a senior police officer of SSP Budhoo's rank. Above all, it should never happen at all.

14.144. We have no similar concerns with the evidence of Supt. Gladys Brown-Ellis. We endorse Mr. Witter's observation that she was very professional in extremely trying and traumatic circumstances. Her evidence has been most useful to the Commission in our determination of the actual number of persons killed as a result of the internal security operation. We have determined that 69 persons died as a result of the operation.

14.145. With regard to the treatment of bodies, the evidence of Mr. Ferdinand Madden was credible. His staff were confined to the Funeral Home for 24 and 25 May as a consequence of the unstable state of North Street. We applaud Mr. Madden's prescience to request the assistance of Taylor's in storing bodies and we commend Mr. Taylor for his response to a difficult situation. We accept the evidence of Mr. Madden in respect of the treatment of decomposing bodies and we

find that he was forced to store them under pressure from the security forces although to do so was in breach of his company's contractual arrangements with the GoJ.

14.146. We find that the JCF acted in breach of established procedures that required the name and particulars of an investigating officer to be supplied to the Funeral Home. Mr. Madden's evidence also helped to clarify the issue concerning dead bodies and coffins in MPC. We find that, when Mr. Madden learnt that on-the-spot post mortem examinations were being conducted in MPC, he sent 23 bodies to MPC together with coffins. He had those bodies returned to the Funeral Home when the examinations were aborted owing to gunfire in MPC on 26 May. While mentioning 26 May, we also find that Lt. Col. Cummings was mistaken in his evidence that the shooting in MPC took place on 25 May. We are satisfied that it was 26 May.

14.147. Turning finally to the house clearing exercises and searches of property by the security forces, we find that it was the responsibility of the JDF to conduct house clearing exercises as soon as practicable after entry was gained into a sector. Taking the evidence of civilian witnesses together with that of the JDF sector commanders, it is our finding that the soldiers of the JDF used disproportionate force in carrying out house clearing. There is an abundance of evidence from civilians that, in our opinion, unnecessary damage was often caused to residents' properties, notwithstanding the clear need for the JDF to be careful and thorough in carrying out those exercises. With regard to searches, we also find that the JCF acted disproportionately, and the complaints of residents to officers of the JCF about their conduct of searches were justified. Residences were ransacked and furniture and household appliances were unnecessarily damaged. – See also Chapter 8.

Adverse Comments re: SSP Winchroy Budhoo

14.148. On 22 March 2016, the Commission referred a draft of para.14.143 as a “proposed adverse comment” to SSP Winchroy Budhoo for his response thereto in accordance with the provisions of the 2013 amendment to the Commission of Enquiry Act. We received his response on 5 April 2016. It appears at Appendix AC14 to the Report.

Summary of Response by SSP Budhoo

- 14.149. (i) SSP Budhoo objected to our proposed description of his evidence as “worthless”.
- (ii) He asserts that we do not appreciate his role on 24 May and the fact that he was testifying about information which he had received from other officers.
- (iii) He corrected his witness statement during the Enquiry after DSP Turner and Sgt. Waugh had spoken with him during the currency of the Enquiry.
- (iv) He made the corrections to ensure that he spoke the truth on oath.

Commission’s Comments and Findings

14.150. Save that we describe SSP Budhoo’s evidence as “unreliable and unhelpful”, we are not persuaded to alter the terms of para.14.143. However, we wish to make the following additional observation.

14.151. What is clear from SSP Budhoo’s evidence and his response to our Notice is that when he gave a written statement in June 2010, he did not read over his statement to determine its correctness before signing it. During his testimony, SSP Budhoo admitted giving the

statement on 4 June 2014 but said, "Prior to signing it, I did not read it because Mr. Gause was rushing me for the statement". He said further, that he read the statement when the Enquiry started but he did not see the errors before the day of his testimony. We think that it is the epitome of carelessness that a police officer should submit a written statement to his superiors without first reading it and verifying the accuracy of its contents.

Final Death Toll - Area of Operation

14.152. In his Interim Report to Parliament, Mr Witter listed 76 Known Related Deceased Persons who were said to have died in the operation. We have already appended that list at Appendix 14 of this Report. DSP Gladys Brown-Ellis testified in the Enquiry that she excluded from her count of "Ground Zero bodies", several names because of information she received that indicated that these persons did not die as a result of the operation. The names of the persons she excluded are:

- i. Sandrae Harrison**
- ii. Errol Mitchell**
- iii. Leroy Walker**
- iv. Kelsey Nelson**
- v. Carlene McKenzie**
- vi. Mark Smith**

14.153. The records of KPH and Madden's generally support the reasoning of DSP Brown-Ellis that these persons did not die as a result of the operation. The records indicate that the bodies were recovered from outside the area of operation and, in the case of Carlene McKenzie, the post mortem report confirmed that she died from a cause not related to injuries she received in the operation.

14.154. We accept DSP Gladys Brown-Ellis' reasons for excluding the aforementioned names. When these persons along with Mr. Keith Clarke are excluded from Mr. Witter's list, the number of known related deceased persons stands at 69.

14.155 Accordingly, we find that 69 civilians died as a result of the operation.