

CHAPTER 15

RECOMMENDATIONS

INTRODUCTION

15.1 Our Instruments of Appointment require that we furnish to his Excellency the Governor-General "a full and faithful report and recommendations of the proceedings." The main thrust of our Terms of Reference was investigative and we have accordingly made a number of findings concerning the several matters which we investigated under the Terms of Reference. In many instances we have recommended that further investigations be carried out as a matter of justice and with a view to preventing a recurrence of similar events. We are deeply concerned that events similar to those which form the substance of our Enquiry should be avoided in the future.

15.2 In this concluding Chapter, we make certain recommendations aimed at preventing unnecessary loss of life and injury in circumstances similar to those which have engaged our attention. These recommendations are limited in scope. We have restricted them to matters or issues which we think arise fairly and logically from our investigations. We emphasise that they are not and are not intended to be solutions to Jamaica's larger problems involving crime, the control of crime, reform of the criminal justice system, treatment of human rights issues and social problems. As we conceive it, the Commission of Enquiry was not established for these wider purposes. Indeed, we had neither the time nor the capacity to deliver such outputs.

15.3 Thus, the recommendations which follow are limited to proposals for redress for wrongs done and to the prevention of large-scale loss of lives during the operations of the security forces in the context of garrison communities. They are based on evidence available to us during the course of the Enquiry as well as submissions from members of the general public. In this

regard, we are grateful to the 118 residents of West Kingston who submitted a petition to us which included recommendations for an apology and compensation – two matters which we support.

15.4 The objectives of these recommendations are limited to:

- restoring/promoting trust and confidence in the State;
- compensating victims for property damage, wrongful death and injuries;
- controlling the use of force by the JDF and JCF;
- dismantling garrisons and mitigating the conditions that give rise to them.

PART 1- REDRESS

DOING JUSTICE AND RESTORING TRUST AND CONFIDENCE IN THE STATE

1. APOLOGY

15.5. It is undoubted that the events of May 2010 have left enduring physical, psychological and emotional scars on the people of West Kingston and, in particular, the residents of Tivoli Gardens and Denham Town.

15.6. Although the operation of the security forces was justified, the manner of its execution by some members of the security forces was disproportionate, unjustified and unjustifiable. We have indicated in this Report, our disquiet and dissatisfaction about the deaths and injuries of several persons.

15.7. With a view to assuaging the hurt feelings, bitterness and resentment of the people of West Kingston and, with a view to promoting restorative justice and bringing closure to this sorry chapter in Jamaica's history, **we recommend** that the GoJ apologize in Parliament to the people of West Kingston and Jamaica as a whole *for the excesses* of the security forces during

the operation. The Government is, in the last resort, responsible for the conduct of its security forces.

2. COUNSELLING FOR TRAUMATISED PERSONS

15.8. During the public hearings, it was evident that some witnesses are still traumatised by their experiences of May 2010. The Ministry of Justice sensitively provided counselling assistance to these persons. Nevertheless, we are satisfied that there needs to be a programme of continuing counselling for some of the residents including children. The United Nations ECLAC estimated in its report to the Government that approximately 2,500 children were witness to and affected by the events of 24 May.

15.9. **We therefore recommend** that this matter be pursued by the appropriate Ministry.

3. COMPENSATION FOR VICTIMS

15.10. Term of Reference (Q) which requires us to determine the adequacy of compensation to victims of the events of May 2010, implies a willingness on the part of the GoJ to adequately compensate the victims who suffered personal injuries and property damage. We find this predisposition of the Government to be admirable. It is the right thing to do. And it should be done fairly and promptly.

Establishment of a Compensation Committee

15.11. While we recognise that there is a pressing need to bring closure to this matter and, while we are conscious of INDECOM's continuing investigations which must not be constricted, we are of the opinion that redress by way of compensation should proceed without delay. An apology alone will not meet the justice of the legitimate claims of the people of West Kingston and related areas.

15.12. Accordingly, **we recommend** the establishment of a Compensation Committee with two broad mandates:

- (i) To investigate and determine claims for compensation for loss and damage to property and business. Since there already exists in the possession of the MoLSS and OPD, a substantial body of relevant and useful documentation relating to loss and damage of property, we do not envisage that this recommendation will involve a protracted exercise.
- (ii) On completion of this exercise, the Compensation Committee should investigate and determine the quantum of compensation payable to injured persons and to the personal representatives of deceased persons without prejudice to the investigations of INDECOM.

15.13. We have been assured by the Public Defender, Mrs. Arlene Harrison-Henry, that the OPD is ready, willing and able to assist in the swift dispatch of (i) and (ii) above. We respectfully **further recommend** that the Compensation Committee be chaired by a retired judge or senior attorney-at-law, expert and experienced in the assessment of compensation for personal injuries and death, and the Committee should be directed to complete its work within 9 months.

4. WAIVER OF LIMITATION PERIOD

15.14. It has been represented to us that formal legal claims against the State for compensation in matters of the kind referred to at para.15.12 above, will be barred after 3 years in some cases of death and 6 years in all other cases. As a result, it will be too late for persons to institute litigation against the State for compensation for personal injuries, death and loss and damage to property.

15.15. **We therefore recommend** that the State waive its strict legal rights to all claims and agree to settle compensation on an *ex gratia* basis in respect of claims brought by aggrieved persons, personal representatives and/or near relations and/or dependents of deceased persons. In this regard, we again have the assurance of the OPD that it is ready, willing and able to assist in the facilitation of the procedural requirements to obtain grants of representation. We wish to make it clear that our recommendation for a waiver also applies to claims for loss and damage to property and personal injuries.

PART 2 - PREVENTION

15.16. We think that the prevention of similar events turns on the following (non-exhaustive) set of measures:

- i. How the responsible officers who were in various ways negligent or derelict in their duties are dealt with administratively by their respective services, that is, rewarded or punished. If they are rewarded with promotions, then others may be expected to engage in similar reward-seeking behaviour. If their careers are negatively affected, then similar behaviour may be discouraged. We know that human motivations are more complicated than simply responding to rewards and punishment but these things matter.
- ii. Policies and doctrine that better control the use of weapons systems by the security forces.
- iii. Improvement in the systems of internal control within the security forces with emphasis on the special operations units that are typically deployed in cases where violent confrontations involving large numbers of gunmen are expected.

- iv. Improved external, independent civilian oversight of the security forces.
- v. Dismantling garrison communities.

1. ADMINISTRATIVE REVIEWS

15.17 Consistent with our findings with regard to the conduct of certain officers and other ranks of the JCF and JDF, **we recommend** that both forces undertake administrative reviews of the conduct of the named officers. It is not too late for the security forces to further examine these matters administratively as issues of internal accountability and thereby signal to their members that such matters will be treated seriously. We note that since May 2010, some of these officers have been promoted - in some cases to very senior ranks.

15.18. **We recommend** that the serving police officers against whom adverse findings have been made be relieved of any operational commands that they may hold and that they be prohibited from serving in any special operations units. This measure is not recommended as punishment but as a protective measure against similar abuses of power in future operations.

The Mobile Reserve

15.19. Most of the accusations of extra-judicial killings were levelled at members of the JCF who entered Tivoli Gardens on the afternoon of May 24, 2010. We have identified the units to which they belonged as elements of the Mobile Reserve.

15.20. Where the accusations of extra-judicial killings on the part of the security forces were found by this Commission to be credible, and where persons were identified as being in dereliction of duty or were administratively or operationally incompetent, **we recommend** that these persons should never again be allowed to lead or otherwise participate in internal security operations.

The persons to whom we refer are SSP Graham, SSP Budhoo, DSP Tabannah, Sgt. Waugh and Sgt. Pratt. This point similarly applies to the commander of the JDF's Mortar Unit, Maj. Dixon. CDS Saunders, CoP Ellington, ACP Gause and DSP Turner are not included in our recommendation because they are no longer serving members of the JDF and JCF.

15.21. **We further recommend** that the Mobile Reserve be subjected to special external oversight arrangements. The Police Citizen Oversight Authority (PCOA) should be tasked to develop a proposal on how best to configure such oversight. Mobile Reserve's systems of internal accountability should also be reviewed - perhaps by the Inspectorate of the Police and the PCOA either in partnership or as separate and independent reviews.

2. USE OF WEAPONS SYSTEMS

15.22. Both Forces have use of force policies that set high standards of conduct which their members are required to meet. We find these policies to be appropriate. The experience of May 2010, however, suggests that there is a gap in policies that guide the selection of weapons systems that may be used in internal security operations. This issue is not and should not be narrowly regarded as an operational issue and therefore beyond the reach of the civil authorities. Innocent citizens lost their lives because of the use of inappropriate weapons systems. The citizenry must be protected by sound public policy and doctrines that should not be the preserve of the security forces only. **We strongly recommend** that a group of competent persons be tasked to draft such a policy.

Future use of Mortars and Other Indirect Fire Weapons

15.23 We support the principle of the operational independence of the Chief of Defence Staff of the JDF as enshrined in the *Defence Act*. Thus, we are reluctant to suggest the imposition of a fetter on the independence of the Chief

of Defence Staff in operational matters. However, we think that the case against the use of mortars in built-up areas is unanswerable. Contemporary international best practice and international humanitarian law do not advocate the use of such weapons in built-up areas.

15.24. **We therefore recommend** that, in future, the leadership of the JDF pay careful regard to contemporary best practice and learning in relation to the use of weapons of indirect fire. Consistent with international humanitarian law, the use of these weapons in built-up areas should be prohibited.

15.25. And, where their use in *other settings* may be contemplated, the CDS should utilise the procedure for consultation with the Prime Minister as provided for in section 9 of the *Defence Act* before resorting to the use of mortars or similar weapons. There should be a strict application of the relevant doctrine.

15.26. Incendiary devices should not be used.

3. IMPROVING LEGAL AND ADMINISTRATIVE ACCOUNTABILITY FOR USE OF FORCE

15.27 The evidence that was presented to the Commission revealed a pressing need to improve the administrative systems that were designed to ensure individual accountability for the use of force. In this regard, **we recommend** the following firearm related systems and procedures for favourable consideration by the GoJ:

- a. Evidence given before the Commission of Enquiry suggested that the weapons used by the JCF are not given to ready ballistic traces. **We therefore recommend** that the JCF progressively change its weapons systems to developing an armoury of weapons that are more traceable. In making this recommendation we recognise that we are simply

endorsing a recommendation that was made by a number of earlier reports (for other stated reasons).

- b. **We also recommend** that while the JCF should phase out from general use weapons whose use is not easily traceable, we recognise that some units of the JCF will necessarily be obliged to continue their use. But in order to promote greater accountability by these units, new and better administrative systems should be put in place for the purpose of after-action identification of the users of these types of weapons.
- c. **We recommend** that the JCF, like the JDF, adopt the “same person same weapon” policy. That is to say, that for the service life of a weapon, it is assigned to the same person. We **strongly recommend** that this policy be immediately implemented in respect of the Mobile Reserve and other special operational units.
- d. Specifically, **we recommend** that:-
 - (i) The issuing officer and the supervisor be made accountable for the state of the records (the Firearms Register).
 - (ii) The PCOA be adequately resourced to be able to inspect the Firearms Register of all divisions and special operations units at least once per year.
 - (iii) There must be formal written responses by the responsible commanders to the inspection reports of the PCOA.
 - (iv) All firearm related violations and the related disciplinary actions or inactions be noted on the personal files of the offenders.

- e. We recommend that the JCF institute a method of tracking and making readily available to all operational commanders the use of force records of all members of their respective units who have been the subject of accusations of the unlawful use of force against citizens.

Use of Masks or Other Concealment Gear

15.28. We accept that in some circumstances there may be justification for members of the security forces to use masks. However, **we recommend** that the use of masks and/or other concealment gear be limited to special cases when the identities of particular officers and units are best protected by these means. **We also recommend** that where masks and other concealment gear are used by entire units or groups, this be done only with the approval of the CDS and CoP for the JDF and JCF respectively. And in the case of their use by individuals who are accompanied by unmasked and uniformed or otherwise easily identifiable officers and units, approval may be granted by senior officers (superintendent of police and higher). Moreover, **we recommend** that in all cases, there be reliable and verifiable means of internally identifying all individuals for whom approval is given to wear masks and or other concealment gear. There must be a record of all persons for whom such approval was granted and the units to which they were assigned. It should be the responsibility of the supervising officer(s) to ensure that the conditions for accountable conduct are met.

Body Worn Cameras

15.29. For decades there have been allegations of extra-judicial killings levelled against the security forces and, in particular, the JCF. There also seems to be a pervasive distrust of the JCF among many citizens.

15.30. The most significant and worrying feature of our Enquiry was the fact that the JCF did not acknowledge responsibility for any civilian deaths whatsoever. The JDF, for its part, gave evidence of only one such death – a sniper on the Blood Bank building. The time has surely come to usher in a radical new culture in the operations of the security forces: a culture that provides for greater transparency and accountability.

15.31. Since 2005, police forces in many countries have introduced body-worn video cameras to assist in capturing evidence in real time, to improve the quality of evidence and to provide a mechanism for greater accountability by members of police forces. The technology has been tried and tested. Rigorous evaluations have found that body-worn cameras are effective in reducing violence by police and complaints against the police. They protect both citizens and police.

15.32. This **recommendation** should also apply to soldiers who participate in special policing operations. Most of all, they should be routinely used in house clearing operations.

15.33. We fully appreciate that the provision of such technology will be costly but the use of the technology can be phased in according to the resources available to the GoJ. We also appreciate that amendments to legislation will necessarily be required. Nevertheless, we believe that the introduction of body worn cameras must occur without undue delay. **We therefore recommend** the introduction of this type of technology.

4. ACCOUNTABILITY IN JOINT OPERATIONS – A TRANSITION COMMAND PROTOCOL

15.34. **We recommend** that the JDF and JCF fashion a transition command protocol that would be applied in instances of large-scale joint internal

security operations. This protocol would formalise the transition of command and would include but not necessarily be limited to:

- a) The names of the commander or commanders from and to whom responsibility is transferred as well as the names of the units involved;
- b) The time of the transition;
- c) An accounting for all detainees;
- d) A preliminary accounting for the dead that would include the number of persons killed, the places where they were killed and the circumstances under which they met their deaths.
- e) These matters should be reduced to writing at the earliest opportunity.

5. STRENGTHEN OVERSIGHT OF THE JCF

15.35. The structures that are responsible for the oversight of the police include the INDECOM, the PCOA and the Police Service Commission (PSC). These structures are responsible for different aspects of the oversight of the JCF. **We recommend** that they be strengthened in terms of their capacities to fulfill their functions effectively.

6. OVERSIGHT OF THE JDF's INVOLVEMENT IN POLICING OPERATIONS

15.36. If there is a structural gap in the system of oversight, it is related to the JDF. Armies are treated differently from police forces. They are accountable in different ways. However, to the extent that the JDF has become routinely involved in policing and is required to play a major role in internal security operations, it is our view that this aspect of their work, that is, their policing work, should be subjected to a greater measure of external civilian oversight. In this report we limit ourselves to proposing that the principle be

accepted or at least be examined by the Government and the leadership of the JDF.

7. TACKLING THE GARRISON PHENOMENON

15.37. Much focused and scholarly writing has been given to the “garrison phenomenon”. Beyond our observations in Chapter 2, we shall eschew the temptation to add yet another layer of scholarship to the issue. Rather, we shall make a series of recommendations which we hope will provide a basis for meaningful action.

15.38. By way of prefatory remarks, however, we accept that in parliamentary democracies there are certain constituencies which are considered electorally safe seats for one political party or another. There is nothing unique or unsavoury in that reality.

15.39. The nature of the garrison phenomenon in Jamaica is rooted in the fact that, over time, these constituencies have been allowed to become, in the popular vocabulary, “states within the State”. They have their own credo and ethos. They give the appearance of living outside the mainstream of society. Promotion of a political party’s interests is paramount. All else is secondary, including the rule of law. Political patronage and violence are two of the hallmarks of a garrison constituency. Criminals are highly organised and challenge the conventional societal order in order to establish and magnify their own. Fear of reprisals leads inexorably to adherence to a code of silence among law abiding citizens who are forced, by necessity, to allow criminality to reign within the garrison constituency.

15.40. Tivoli Gardens is an example of an advanced stage garrison community. But it has been represented to us that, six years after the events of 24 May 2010, the situation in that community has ameliorated. One member of the public who submitted recommendations wrote: “Today, people are able to

move freely from Arnett Gardens to Tivoli Gardens, two communities that belong to opposing political parties. There is friendly rivalry between opposing football teams.....This was not always so.” We were also told that the influence of “Dons” is on the wane. However realistic those portents may be, we are still concerned about the concentration of illegal firearms and the emotion of pecuniary greed that exist among criminal organisations that have their headquarters within garrison communities.

15.41. The establishment of a police post within Tivoli Gardens after 24 May 2010 was and is a positive development. **We recommend that this approach be replicated in those garrison constituencies where none presently exists.** Such institutional strengthening is vital to the development of community policing and problem-oriented policing strategies and engendering respect for the rule of law. No democratic nation can have, within its own borders, communities that cannot be effectively and efficiently policed by the legitimate civil power. It is crucial that garrison communities be brought into mainstream existence and benefit from the services and protection provided by the State.

15.42. In addition, since “de-garrisonisation” ultimately requires consensus among political parties, **we recommend**

- a. A bi-partisan approach leading to agreement towards the dismantling of garrison communities facilitated by an independent third party.
- b. A road map for “de-garrisonisation” should be handed over to an independent body similarly structured in composition to the Electoral Commission, to develop the details of the process.

Integration of Garrison Communities

15.43. In addition to our process recommendations under the previous heading, **we recommend** the following (i) to (iii) *infra*, for urgent consideration and action by the GoJ.

- (i) Political leaders, must commit themselves to ending the allocation of the Government's and the political party's resources to Dons in order to reduce the influence of these types of person. In this regard, State funds for use in a constituency (e.g. Constituency Development Fund) should be administered by a representative board rather than at the direction of a Member of Parliament.
- (ii) Resources should be targeted at garrison communities to facilitate the development of skills training programmes and remedial schooling for at risk youths within those communities. We are well aware that there is a tendency to regard garrison communities as being specially deprived areas when, in fact, relative to other poor communities, they tend to be specially favoured in the allocation of State funds. The implementation of this recommendation should therefore have regard for and be consistent with the principle of fair allocation of State funds.
- (iii) If not currently being done, the Social Development Commission should introduce initiatives to promote and expand the work of youth clubs, sports clubs, and the Boys' Scouts and Girl Guides Associations. Such organisations are useful in promoting character-building and fostering respect for discipline.

8. ACTION ON RECOMMENDATIONS OF ECLAC

15.44. Sustainable development is urgently required in addressing the problems in the low-income urban areas. There is a pressing need to attend to the social requirements of the residents, who have limited access to employment, income, housing, health and education. The physical, economic and social challenges in these communities should be attacked aggressively. Programmes directed towards positive changes in the lives of members of each community should be spearheaded by the Government.

15.45. At the request of the GoJ, ECLAC, carried out a study on the impact of the events of May 2010 in Jamaica. Its report made a number of specific recommendations, which we do not set forth herein since they are readily available to GoJ. We are content **to endorse those specific recommendations for urgent action by GoJ.**

15.46. **At a macro level, we also endorse the main conclusion of the report that a medium to long-term programme of rehabilitation and revitalisation of the affected communities should be developed in order to integrate those communities into Jamaican society.** Such a programme must have, at its centre, the creation of mechanisms to train, educate and assist the people in generating wealth from productive activities.

15.47. As part of a programme for inner city renewal and development **we recommend** that the Government should vigorously pursue the private sector's assistance by inviting them to embrace the Urban Renewal (Tax Relief) Act. Under section 3 (1) of the Act, the Minister is empowered to declare an area "a special development area." The section reads:

"S. 3 (1) The Minister may, by order, declare any area suffering from blight or urban decay to be a special development area for the purposes of the Act."

9. REVIEW AND REFORM OF THE CRIMINAL JUSTICE SYSTEM

15.48. Some memoranda which we received from members of the public tended to list specific areas of concern with discrete parts of the criminal justice system. With respect, the criminal justice system encompasses a series of stages, from investigation of crimes, through various pre-trial processes, trial, sentencing and even post-sentence decisions. We strongly counsel against a piecemeal approach to reform of the criminal justice system. **We recommend** that there should be a thorough-going holistic review of the existing criminal justice system followed thereafter by appropriate administrative and legislative action.

10. AMENDMENT OF EXTRADITION ACT

15.49. As the law presently stands, there is no time limit within which the Minister responsible for extradition requests must issue an authority to proceed. Extradition proceedings in the Magistrate's Courts do not involve the determination of innocence or guilt, and a fugitive is not stopped from invoking such legal challenges to the request as he/she may be advised.

15.50. **We recommend** that section 8 of the Extradition Act be amended to make it mandatory that the Minister make a decision on authority to proceed within a finite time.

15.51. **It is recommended** that where a request for the extradition of a resident or a fugitive is made and the Attorney General intends to sign the Authority to Proceed, this should not be publicised. **It is further recommended** that immediately upon its execution, the Attorney General should inform the Commissioner of Police.