

CHAPTER 3

THE SITUATION IN WEST KINGSTON AND RELATED AREAS IN MAY 2010 PRIOR TO THE ATTEMPT TO EXECUTE A PROVISIONAL WARRANT FOR THE ARREST OF CHRISTOPHER "DUDUS" COKE AND THE REASONS AND CIRCUMSTANCES SURROUNDING THE DECLARATION OF A STATE OF EMERGENCY IN MAY 2010

ToR (A)

INTRODUCTION

3.1. The violent events in West Kingston on 24 May 2010 did not suddenly happen. As indicated in Chapter 2, they had their genesis on 24 August 2009 when the then CoP Hardley Lewin and CDS Stewart Saunders received information that the Government of the USG intended to request the extradition of Coke.

3.2. This Chapter examines various activities and events leading up to the launch of the internal security operation in West Kingston and related areas with a view to contextualizing the situation in those areas.

3.3. Thus, we discuss the circumstances under which the Attorney-General signed an "Authority to Proceed" thereby authorising the execution of a warrant of arrest on Coke. We sketch the planning of the security forces for execution of the warrant; the announcement of the signing of the warrant; the reactions of the residents of Tivoli Gardens as exemplified by public demonstrations and fortification of Tivoli Gardens.

3.4. Particular attention is directed to the eruption of violence on 23 May, the briefing of the Cabinet by the Heads of the security forces, the Prime Minister's broadcast to the nation and the declaration of a State of Emergency.

24 AUGUST 2009 – PRELUDE TO MAY 2010

3.5. On 24 August 2009, then CoP Hardley Lewin telephoned CDS Stewart Saunders and told him that a request for the extradition of Coke was to be made by the USG to the GoJ.

3.6. CDS Saunders and CoP Lewin went to advise the Minister of National Security, Mr. Dwight Nelson. Mr. Nelson was briefed as to the information, which the Heads of the security forces had, and he advised them to report to Prime Minister Golding. Accordingly, they briefed the Prime Minister at his official residence the same afternoon. Mr. Golding testified about the information he received. Under cross-examination by Mr. Linton Gordon on 11 February 2015, he said –

“I did not get the impression from Gen. Saunders or CoP Lewin that they were seeking a direction from me. The USG wanted to alert me and CoP Lewin told them that it was his responsibility to alert me.....I was alerted by the Heads of the security forces that an extradition warrant for Christopher Coke would be arriving the following day... I spoke to the Attorney-General late that evening to tell her what the Heads had told me. Ultimately, it was her call to make.”

3.7. Para.6 of CDS Saunders’ witness statement mentions that a plan to detain Coke was to be launched on **25 August 2009** “or any time thereafter as we received authorisation”. Since CDS Saunders and CoP Lewin expected the request to be acceded to by the GoJ, they conceived of “a soft detention”. That is, in the words of CDS Saunders –

“we would have taken Mr. Coke at his home in Belvedere, St. Andrew and avoid him fleeing to Tivoli Gardens and fortifying his position there.”

3.8. Coke was under surveillance. Intelligence confirmed that, up to the time of briefing the Prime Minister and Minister of National Security, Coke was at his Belvedere residence. CDS Saunders told the Commission –

"I left Vale Royal and, within 5 minutes, I received information that Coke had fled from his home in Belvedere and headed to Tivoli Gardens."

FINDING

3.9. It is very probable that Coke was 'tipped off' but that probability was not of immediate consequence because the request of the USG was not in hand and no warrant was in existence for the arrest of Coke on 24 August 2009. The leak did however, rule out any use of a soft detention and it enabled Coke to have the opportunity to fortify himself in Tivoli. On the state of the evidence adduced to us, we are unable to make a positive finding as to the origin of the tip off.

ROLE OF THE ATTORNEY-GENERAL

3.10. When the former Attorney-General, Ms. Dorothy Lightbourne, gave evidence, she said that Prime Minister Golding telephoned her on 24 August 2009 and told her that a request for Coke's extradition was on its way. The next day, she received a telephone call from the Office of the Director of Public Prosecutions (DPP). It was the Deputy DPP who said that there was someone from the military in her office and the person wanted to discuss the extradition with Ms. Lightbourne. Ms. Lightbourne said "I would not entertain it since it had not come through the proper channels, that is to say, the procedure and protocol for dealing with an extradition request had not been followed".

3.11. The proper procedure as represented to us was, in summary –

- (a) A request for extradition is made by the Requesting State to the Ministry of Foreign Affairs of GoJ;
- (b) The Ministry of Foreign Affairs then sends the documentation to the Ministry of Justice. An administrative officer prepares a letter in standard

form addressed to the DPP and sends the letter and the documents received from the Requesting State to the DPP;

- (c) The DPP prepares a draft of the document known as an "Authority to Proceed" and forwards it to the Attorney-General, assuming that the GoJ is going to proceed with the extradition.

3.12. On the morning of 26 August 2009, Ms. Lightbourne received a Diplomatic Note containing the Request for Extradition and the several supporting documents duly authenticated. On the same day, an approved document "Authority to Proceed" was sent to her.

THE RELEVANT LEGISLATION

3.13. It is convenient to refer here to the statutory provisions which relate to the "Authority to Proceed". Under Part III of the Extradition Act, it is provided as follows in section 8(1):

"8(1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Act except in pursuance of an order of the Minister (in this Act referred to as "authority to proceed") issued in pursuance of a request made to the Minister by or on behalf of an approved State in which the person to be extradited is accused or was convicted."

3.14. In the case of a person accused of an offence, a warrant for the person's arrest must accompany a request together with particulars of the accused, the facts and the law under which the person is accused "and evidence sufficient to justify the issue of a warrant for arrest under section9" [of the Act].

3.15. Section 8(3) provides:

"(3) On receipt of such a request, the Minister may issue an authority to proceed, unless it appears to him that an order

for the extradition of the person concerned could not lawfully be made, or would in fact not be made, in accordance with the provisions of this Act.”

FINDINGS

3.16. The Attorney-General did not promptly exercise the discretion vested in her under section 8(3) in August 2009. She took time to be advised.

3.17. We are satisfied that, as of 26 August 2009, the Attorney-General was seized of all relevant documentation to enable her to exercise her discretion in favour of signing the Authority to Proceed, i.e. to have Coke arrested with a view to his answering the extradition charges in the Magistrate’s Court.

Publication of Indictment on the Internet

3.18. At about this time, copies of various documentation relating to Coke’s indictment were, as Mr. Golding said, “universally available on a website of the Southern District Court of New York two days after the request was received”. He heard of their availability on a radio station which quoted from the documents and the radio station indicated how they had sourced the documents. Mr. Golding went on the website himself and saw the documents.

Hiatus – No Action on Authority to Proceed

3.19. The Attorney-General did not sign the Authority to Proceed until *18 May 2010* – some nine months after the request was received. Both Mr. Golding and Ms. Lightbourne explained to the Commission that, essentially, the Government was firmly of opinion that the manner in which the USG collected evidence against Coke and the manner in which that Government purported to have the request for extradition processed, offended the laws and the Constitution of Jamaica. Much time and effort were expended in

negotiations, seeking legal opinions and filing proceedings in Court to test the validity of the actions of the USG. Since this matter was the subject of another Commission of Enquiry – the **Manatt Commission**, it would be inappropriate for us to deal with the legal and Constitutional issues that were fully ventilated at that Enquiry.

FINDINGS

3.20. We accept that negotiations and legal and Constitutional issues did cause delay in the progress of the extradition request. We also find that the delay accelerated public concern and disquiet. Mr. Golding clearly was in a position of conflict. He was Prime Minister and Minister responsible for Defence. He was also Coke's M.P. and leader of the political party to which Coke was wedded.

THE SECURITY FORCES BEGIN TO PLAN

3.21. While the GoJ was considering the diplomatic, legal and constitutional implications of the extradition request, the security forces began planning for the day when the arrest warrant would have to be executed.

3.22. The leadership of the JCF changed in November 2009 when Mr. Owen Ellington was appointed to act as Commissioner of Police following the resignation of Rear Admiral Lewin. CoP Ellington met with CDS Saunders soon after his appointment and they discussed the need to plan an operation for execution of the warrant when it was ultimately received.

3.23. CoP Ellington said –

“It was necessary to plan because of past experiences in trying to enforce the law in Tivoli Gardens and West Kingston. Confrontations with the police were usually violent and sometimes involved the use of women and children as human shields. There was a risk of injury to innocent

persons. We felt that an operation had to be carefully planned because, on previous occasions, law enforcement was greeted with serious resistance and there were clashes between the police and criminal gunmen...We anticipated public disorder such as the blocking of streets, the burning of tyres and vandalism of public property."

3.24. CDS Saunders and CoP Ellington therefore committed resources to the formation of an operational planning team which was given guidelines to develop a plan of action.

The Plans

3.25. Although it was understood by the leadership of the security forces that the operation would be a joint enterprise between the JDF and JCF, each Force developed its own plan. The JDF developed "Operation Garden Parish". The plan of the JCF was "Operation Keywest" which was the subject of an Operational Order. Nevertheless, a joint planning team met regularly. DCP Hinds stated that the plan to arrest Coke was completed in January 2010. CDS Saunders said that the JDF began to prepare a plan for Coke's arrest in January 2010. He said –

"Since the operation was to be joint with the JCF, they were fully involved."

3.26. Lt. Col. Andrew Sewell who commanded the Second Battalion of the Jamaica Regiment (2JR) returned from Moneague where 2JR had been on training exercises. He said that he became involved in planning for the operation in February 2010.

3.27. Lt. Col. Jaimie Ogilvie was the commanding officer of the First Battalion of the Jamaica Regiment (1JR). From the last week of August 2009, he was engaged in planning the operation to capture Coke. His first plan was presented at the end of September 2009 and was accepted. Further refinement of the plan continued through to December 2009, at which time he briefed

CDS Saunders, Lt. Col. Sewell and CoP Ellington. In his witness statement, Lt. Col. Ogilvie said at para.9:

“Shortly before the New Year, I attended a meeting at HQ, JDF which was jointly chaired by the Commissioner of Police and the Deputy Chief of Defence Staff and including senior officers of the JDF and JCF. No operational plans were discussed but the meeting focused on guidance given by the Chairmen concerning the planning, processes and conduct of any operation to apprehend Mr. Coke.”

3.28. Lt. Col. Ogilvie stated that among the issues discussed and the guidance given –

“were the need to ensure that Mr. Coke’s rights were not violated, the rights of citizens were to be protected and the operation should consist of 3 phases – planning and preparation, search and capture, and the return to normalcy, the importance of examining past operations in Western Kingston, the need for disciplined but overwhelming force and the importance of the security forces having a positive impact on communities.”

3.29. Between March and May 2010, 1JR did contingency planning, training and rehearsals. Emphasis was placed on the CDS’s instructions for Opening Fire, Human Rights awareness, citizens’ rights and issues such as span of control, de-confliction of unit boundaries, identification of friendly forces and the interpretation of the Emergency Powers Regulations were discussed and resolved.

FINDINGS

3.30. We found rather disconcerting the evidence of CDS Saunders and CoP Ellington that neither knew of the other’s plans, namely, OPERATION KEYWEST and OPERATION GARDEN PARISH. We do not believe that these were matters for secrecy at the highest level of the security forces. In our view, to the extent that the operation

was joint as between the two forces, the respective plans should have been seen and discussed certainly at the level of the respective Heads.

3.31. On the evidence adduced, we accept that senior officers of both forces were involved in the planning of what was agreed to be a joint operation. Deputy Commissioner Hinds, Lt. Col. Sewell and others testified to their involvement in planning the joint operation.

Public Disquiet about The Hiatus

3.32. The long hiatus between the request for Coke's extradition and any attempt to execute the warrant caused great public concern and disquiet. It is said that "nature abhors a vacuum". And, while the GoJ was exploring the diplomatic, legal and Constitutional ramifications of the request, tension took over the country – particularly in Kingston generally.

3.33. In the month of May 2010, "there was an atmosphere of fear in the country, especially the Corporate Area", according to DCP Hinds. CDS Saunders said that "these were anxious times for the Commissioner of Police and civil society".

18 MAY 2010 – SIGNING THE AUTHORITY TO PROCEED

3.34. The Attorney-General informed the Prime Minister before 17 May 2010 that she intended to sign an order giving authority to proceed (ATP) with the request of the USG. The Prime Minister decided to make a broadcast to the nation. Mr. Golding, in answer to Lord Gifford, said –

"Cabinet was advised by the Attorney-General that she would sign the Authority to Proceed. The effect of the Authority was that a warrant would issue for Coke and be executed. I did not consult with the Heads of the security forces about the execution of the warrant. On that very day, I broadcast to the nation and told them that the Minister would sign the Authority to Proceed the next day. Coke would have been

alerted that his arrest was imminent but it had been public knowledge long before that his extradition was requested.”

PRIME MINISTER’S BROADCAST TO THE NATION – 17 MAY

3.35. Accordingly, on the evening of 17 May 2010, Mr. Golding made a broadcast in which he announced that the Attorney-General intended to sign the ATP. Both the ATP and the Warrant of Arrest were in fact signed and dated 18 May 2010.

3.36. In the course of a wide-ranging address, the Prime Minister confessed that the issues surrounding the request for Coke’s extradition had “caused much anxiety throughout the society”. He said that –

“This matter of the extradition has consumed too much of our energies and attention and has led to a virtual paralysis that must be broken...The nation’s business cannot continue to be disrupted and distracted by the ordeal of the last several months.”

3.37. The Prime Minister’s announcement of the Attorney-General’s decision took the Heads of the security forces by surprise. He did not alert them of his intentions prior to his broadcast. CoP Ellington said, “I was advised like the rest of Jamaica.”

3.38. CDS Saunders spoke similarly –

“I learnt that the ATP was to be signed through the media in a broadcast. It took me by surprise... It denied the operation the element of surprise.”

3.39. DCP Hinds, on the other hand, said that he was not surprised by the announcement. “Nothing in politics surprises me” he said.

The Effect of The Broadcast in West Kingston

3.40. The Prime Minister's broadcast had a dramatic and catalytic effect in West Kingston and across Jamaica. Coke's supporters began to mobilise to prevent his arrest. Residents of West Kingston were thrown into a state of great fear, and tension was heightened in Tivoli Gardens and West Kingston. Mr. Golding said that in the days following the broadcast, "serious disorder began to erupt". During the day of 18 May, CoP Ellington received the warrant of arrest duly signed. In his witness statement, CoP Ellington stated that "news of the issuing of a warrant for Coke's arrest triggered much public anxiety".

3.41. Under cross-examination by Lord Gifford as to whether he (Ellington) had in mind that the security forces should have been warned at least three days before the warrant was to be signed, CoP Ellington answered –

"We thought it was desirable for us to be able to exploit the benefit of the element of surprise and therefore prior information would have been beneficial. I did not tell that to the GoJ because the way events unfolded at the time did not give us the opportunity to do it...During February, March and April, I did not advise the GoJ that, if they decide to issue the warrant, they should tell me in advance. It was not a fatal error. We had meetings with the Prime Minister and Minister Nelson. It wasn't desirable to tell them; they had no obligation to tell me."

THE PERIOD 18 – 23 MAY 2010

Situation in West Kingston and Related Areas

3.42. DCP Hinds was of the view that the residents of Tivoli Gardens and West Kingston used the announcement to galvanise themselves into action. He told us –

"The residents took their cue from the broadcast and began to block entrances and this made it very difficult for us."

3.43. And Assistant Commissioner of Police (ACP) Leon Rose, observed that, from 18 May, there was "a tremendous mobilisation of criminal elements into Tivoli Gardens".

"A number of blockades sprung up at all entrances to Tivoli Gardens, on Marcus Garvey Drive, Industrial Terrace and others."

Demonstrations on 20 May and Accelerated Fortification of Tivoli Gardens

3.44. Some 600 women, mainly dressed in white, took to the streets of West Kingston on 20 May demonstrating against execution of the warrant on Coke and pledging their loyalty to him. Placards exemplified the esteem in which these women held Coke: "Without Dudus, there will be no Jamaica"; "Next to God, Dudus"; "Jesus die for us, we will die for Dudus".

3.45. On the same day, the barricading and fortification of Tivoli Gardens were accelerated. The entrances to and the exits from the community were blocked. We were shown a large number of films and photographs of the blockading of Tivoli Gardens up to 23 May 2010. CoP Ellington's witness statement neatly encapsulates the nature of the barricading -

"The barricades were constructed from old vehicles, old appliances, heavy equipment, scrap metal, sandbags and other solid materials. Several of the barricades had explosives embedded in them, with trigger mechanisms operable from inside residences. Road blocks were also mounted in other Corporate Area communities where gangs aligned to the Shower Posse had their bases."

3.46. We saw evidence of propane gas cylinders within the barricades and on a roadway. Barbed wire was used to block access to a street. Spanish Town Road was blockaded to prevent access to Tivoli Gardens. Near Darling Street, the access way to the community was heavily blocked. The sandbags referred to by CoP Ellington were used not only as blockade reinforcements but also as firing positions. The films and photographs, taken by the National

Intelligence Bureau (NIB), captured images of men wearing bullet proof vests; men with night vision goggles; men piling sandbags; men with rifles and men keeping look out. Women were also seen watching the barricading in progress.

3.47. Fortification of Tivoli Gardens was swift and comprehensive. Intelligence available to the JCF and JDF on a continuing basis was to the effect that, in the days leading up to 24 May, some 300 gunmen from all over Jamaica and loyal to Coke, had migrated into Tivoli Gardens and other parts of West Kingston. They had come to assist Coke and local gang members in resisting any attempt by the security forces to enter the Tivoli Gardens' community and arrest Coke.

3.48. CDS Saunders' witness statement at paras.9, 12 and 13, paints a clear picture of the manner in which Tivoli Gardens was fortified to repel the security forces and the importation into Tivoli Gardens of a large number of gunmen. The relevant paragraphs of the witness statement are set out *in extensor* at Chapter 5.

21 MAY – PRELIMINARY MOBILISATION BY JDF

3.49. Meanwhile, on 21 May, the respective roles of 1JR and 2JR were clearly determined. 1JR would create a buffer around Tivoli Gardens and "establish the conditions for 2JR to execute its mission of apprehending Coke without being affected by criminal elements external to Tivoli", according to para.15 of Lt. Col. Ogilvie's witness statement.

3.50. The primary task of 2JR was to provide support for the JCF in apprehending Coke.

3.51. On 21 May, a platoon from Bravo Company of 1JR was deployed to the Metcalfe Street Operational Centre (MSOC) in order to be in position to secure and deploy from that location as ordered.

FINDINGS

3.52. Contrary to language pervading our Terms of Reference, there was no *Provisional Warrant*. We accept the evidence of Ms. Lightbourne that the warrant for Coke's arrest was not provisional.

3.53. We are satisfied that the Prime Minister's announcement had the effect of giving impetus to the preparations of some residents in their desire to create a fortress of Tivoli Gardens. The evidence is unchallenged and undeniable that fortification was accelerated after the announcement.

3.54. The announcement caused further anxiety and tension in Tivoli Gardens. Mr. Golding admitted this.

3.55. We are also satisfied that the announcement took away the element of surprise from the planned operations of the security forces and allowed the supporters of Coke to mobilise their own forces against the security forces. Mr. Golding himself acknowledged that "there [was] some validity to the argument that announcing the signing of the warrant on the Sunday took away the element of surprise". We accept that he genuinely felt "a need for the society to be advised that an issue that had virtually led almost to a state of paralysis in terms of governance of the country was being resolved". However, we think that it was imprudent on his part not to have alerted the Heads of the security forces of his intended announcement prior to doing so. They ought not to have learnt of the Attorney-General's intention via the Press.

3.56. Having regard to Mr. Golding's long service as a Member of Parliament; his familiarity with the constituency of West Kingston which he had represented since 2005; his knowledge of the societal

disquiet which had been festering since August 2009; the history of violent confrontations between the people of Tivoli Gardens and the security forces, he ought to have foreseen the probability of violent confrontation. In those circumstances, we think that it was incumbent upon him as Prime Minister and Minister responsible for Defence to have communicated with the Heads of the security forces prior to his broadcast. But we make no adverse finding against Mr. Golding with regard to this matter since he readily acknowledged that there may have been merit in opinions that his announcement deprived the security forces of the element of surprise. In any event, this was a matter of judgement for Mr. Golding.

3.57. The manner in which the Tivoli Gardens community was barricaded, its extensive nature and the speed of erection of the barricades portrayed a frightening situation and experience for both the residents and the security forces. We believe that such fortification of a residential community in a Commonwealth Caribbean State was unprecedented in the history of the region.

3.58. We accept the evidence that, gunmen from Tivoli Gardens and approximately 300 gunmen from across Jamaica, were mobilised with a view to preventing the arrest of Coke. In Chapter 7, we report that, as early as 19 May when he visited Coke in Tivoli Gardens, Bishop Herro Blair saw in excess of 50 armed men in the community. It is clear to us, especially on the basis of the film and photographic evidence tendered, that the Intelligence units of the JCF and JDF were receiving credible evidence of the preparations by persons determined to prevent Coke's arrest.

3.59. We, however, are troubled that the vast majority of residents who testified, pretended ignorance of the persons who

created the barricades although they admitted seeing “some” barricades in the area. It seems to us that these witnesses were glued to a code of silence perhaps out of genuine fear, self-interest and self-preservation from reprisals, if they divulged their knowledge of the persons involved in barricading the area. On the balance of probabilities, we are of opinion that, since elements of Coke’s vast organisation are still active in Tivoli Gardens and other parts of Jamaica as we were told, these residents may still be living in real fear of reprisals if they divulge information about criminals.

DETERIORATION OF THE SITUATION IN WEST KINGSTON – SUNDAY, 23 MAY 2010

3.60. On 23 May 2010 the security situation in West Kingston and related areas deteriorated rapidly. Criminal elements, loyal to Coke, launched a series of coordinated attacks against members of the JCF and facilities of the Force in Kingston and St. Andrew. Intelligence reports available to the JCF suggested that the short-term intent of the criminals assembled in Tivoli Gardens and other areas of West Kingston was to break the will and spirit of the JCF. CoP Ellington pointed out that the JCF has a legacy of Intelligence on criminal gangs in Jamaica including those in Tivoli Gardens and the JCF was always aware of what was being planned by way of resistance to any operation by the security forces.

Briefing the Prime Minister

3.61. Mr. Golding said that he was aware of attacks on Hannah Town and Denham Town Police Stations on 23 May and he recalled the blocking of roads in several areas. He testified –

“The security forces advised me on the morning of 23 May that roadblocks had intensified; that some barricades had been wired to propane gas cylinders; that armed men with high-powered weapons were manning barricades; sandbags had been assembled and gunmen were in the vicinity.”

In answer to Ms. Martin, Mr. Golding said that the Heads of the security forces did not tell him that 300 gunmen had been recruited into the community.

3.62. He saw the attacks against the JCF on 23 May as an attempt to achieve their short-term objective of breaking the will and spirit of the JCF. And he said –

“They intended to spread the attacks across the country so that they could give the impression to the population that the security forces were incapable of protecting the people.”

Attacks on Police Stations

3.63. A number of police stations in West Kingston came under attack. Hannah Town police station and Darling Street police station received sustained gunfire about midday and were then burnt down by criminal elements. Several attempts were made to invade and set fire to the Denham Town station. During the attack on an Armoured Personnel (APC) Carrier in Hannah Town, a policeman was shot and had to be hospitalised. Fire Service officers who attempted to put out the fire at Hannah Town police station were shot at and forced to retreat. These matters are dealt with more fully in Chapter 4.

Briefing the Cabinet

3.64. *CoP Ellington believes* steadfastly that the attacks on 23 May were coordinated because, they all happened at about the same time, they all occurred in communities where there were gangs loyal to Coke and/or the Shower Posse; they were all directed at the assets of the JCF; and they seemed to have been aimed at disrupting patrols and street level operations. He was deeply concerned.

3.65. CoP Ellington and CDS Saunders, therefore, sought an audience with Prime Minister Golding and the Cabinet. An emergency Cabinet meeting was arranged and CoP Ellington and CDS Saunders briefed the Cabinet. The

situation in Tivoli Gardens and related areas was grave. It portended a violent confrontation between the security forces and citizens of Jamaica.

3.66. In the words of CDS Saunders at para.20 of his witness statement–

“These unprecedented, deliberate, coordinated attacks against the legitimate State and particularly against the JCF, created a situation that severely demoralized and overwhelmed the capacity of the JCF. It immediately threatened the State’s ability to enforce its legitimate authority through its primary law enforcement agency and thereby presented a challenge to the continued existence of lawful governance in Jamaica.”

3.67. CoP Ellington said that he and CDS Saunders briefed the Cabinet “on the deteriorating security situation in Kingston and our assessment that it was likely to escalate”. They gave the Cabinet the benefit of their latest Intelligence which suggested that –

- attacks would be directed at innocent, unarmed civilians;
- the intention of the criminals was to engage in an intense gun battle, shoot many citizens and break the spirit of the JCF so that they could not enter Tivoli Gardens to arrest Coke;
- the criminals wished to stretch the resources of the JCF then and deny it operational capability;
- the use of explosives, the barricading of thousands of residents within Tivoli Gardens, locating tyres in strategic positions portended danger for those residents.

3.68. CoP Ellington’s view was that such a situation “called for a response beyond the capability of the JCF.....We needed emergency powers which would enable the JDF to take the lead on certain aspects of the operation and create a safe environment for the continued execution of the operation.”

3.69. Mr. Golding’s evidence is as follows:

"On 23 May, I had discussions with the Commissioner of Police and the Chief of Defence Staff. They told me that the situation in West Kingston and Tivoli Gardens in particular had reached alarming proportions. During the week before, the media had reported (and I saw security reports) that several roads leading into Tivoli Gardens had been barricaded. The Heads briefed me that the alarming situation was caused by the nature of the activities, what was taking place at the barricades and they felt strongly that a State of Emergency should be declared. I summoned an emergency meeting of Cabinet.

Cabinet authorised me to advise the Governor-General to issue the requisite Proclamation for a State of Emergency to commence from 6.00 p.m. that day. I went to see the Governor-General about 5.00 p.m. and he issued the Proclamation covering the Corporate Area, Kingston and St. Andrew. On the Sunday evening I gave an address to the nation."

3.70. CoP Ellington testified that he showed the Cabinet video footage of what was taking place in Tivoli Gardens and West Kingston. However, Mr. Golding, in his testimony, had no recall of this. Mr. Golding's evidence, in answer to Ms. Martin, was: "I have no recollection of being shown men in goggles with high-powered weapons on 23 May." Former Attorney-General Lightbourne was more certain. She said – "I saw no slideshow or photographs".

Prime Minister's Address to the Nation – 23 May 2010

3.71. The text of the Prime Minister's address to the nation is as follows:

"This afternoon, the Cabinet, in emergency session, took the decision to advise the Governor-General to issue a proclamation declaring a state of public emergency for the Corporate Area effective 6.00 p.m. today. This decision was based on information and advice provided by the security forces that actions were being taken which pose significant threats to law and order in the Corporate Area.

Since this morning, violent, orchestrated attacks have been launched on a number of police stations. Two members of the security forces have been shot and injured.

What is taking place is a calculated assault on the authority of the State that cannot be tolerated and will not be allowed to continue.

The state of emergency will enable the security forces to exercise extraordinary powers necessary to deal with this extraordinary situation. These include the power to restrict the freedom of movement, search premises and detain persons suspected of involvement in unlawful activities without warrant. These are necessary measures to restore order to a community that is now threatened. The security forces will be moving swiftly to bring the current situation under control. Criminal elements bent on violence and mayhem will be detained, and processed. The criminal element who have placed the society under siege will not be allowed to triumph.

The security forces have been instructed to observe and respect the rights of citizens to go about their lawful business. The city is not being shut down. People are assured that they are free to move about and go to work as usual. Schools will be in full session on Tuesday. There will be some inconvenience as the security forces intensify their surveillance and efforts to ferret out the criminals and return the Corporate Area to a state of calm.

But let us make no mistake. The threats that have emerged to the safety and security of our people will be repelled with strong and decisive action.

The state of emergency will remain in effect for a period of one month unless the security forces advise that it should be revoked or unless it is extended by the House of Representatives.

This will be a turning point for us as a nation to confront the powers of evil that have penalized the society and earned us the unenviable label as one of the murder capitals of the world. We must confront this criminal element with determination and unqualified resolve.

Tonight, I appeal to all law-abiding citizens to remain calm and support these necessary measures. My government is determined that Jamaica must be a land of peace, order and security. Without this, we will never achieve the happiness and prosperity that we seek.

Good night and God bless you."

STATE OF EMERGENCY

3.72. During the briefing of the Cabinet, CoP Ellington and CDS Saunders had strongly recommended to the political executive that a limited State of Emergency be declared over parts of Kingston and St. Andrew. They saw this as being absolutely necessary and critical to enable the security forces to take such operational measures as were lawful and as a means of containing the escalating criminal violence. It would also have conduced to a restoration of order and would have given confidence to the population, especially the residents of West Kingston. CDS Saunders said –

“The widespread criminal activities and the seriousness of the threats to the security of the nation, I believe, led the GoJ to declare a limited State of Emergency, initially for the parishes of Kingston and St. Andrew.”

3.73. CoP Ellington revealed under cross-examination that “as far back as January 2010, consideration was given to having a State of Emergency declared as part of the planning of the two Forces”. Operation Keywest was dated 11 January 2010. At section 1(v) is set out “Matters for governmental consideration” and included thereunder are:-

- Imposition of a limited State of Emergency
- Imposition of a curfew
- Advising security forces three (3) days in advance of signing of warrant.

3.74. A limited State of Emergency was declared to take effect from 6.00 p.m. on 23 May. It covered Kingston and St. Andrew and was due to expire on 23 June 2010. Subsequently, on 17 June 2010, CoP Ellington and CDS Saunders wrote to the Prime Minister jointly and requested that there be an extension and expansion of the “limited period of public emergency”. Broadly, the justification for expansion and extension was based on their assessment of continuing threats to public safety and security from the approximately

257 active gangs operating in Jamaica led by “the Tivoli Gardens Gang which exerted significant influence over other Southside and the Common/Allo gangs based in Donmair Close”. CDS Saunders and CoP Ellington saw the Emergency Powers Regulations as providing “the legal framework for the JDF to move efficiently support the JCF in their fight against the gangs”. Parliament approved an extension of the original State of Emergency for 30 days, ending on 22 July 2010.

Threats of Attacks on Key Installations

3.75. On the night of 23 May, Lt. Col. Jaimie Ogilvie deployed troops to the power station at Hunts Bay and the oil facility Petrojam along Marcus Garvey Drive in response to reports that, gunmen loyal to Coke, intended to attack these facilities.

FINDINGS

3.76. We accept the evidence of the witnesses who testified on behalf of the security forces that the sudden deterioration in the security situation in Tivoli Gardens and other areas of West Kingston on 23 May 2010 required a swift and decisive response. The situation in West Kingston had become equally intolerable to law abiding citizens and the security forces. The CoP and the CDS acted properly in alerting the Prime Minister and Cabinet to the prevailing serious conditions in West Kingston. The rule of law was under the severest threat and we can put the situation in no better terms than those used by Mr. Golding, namely, “a calculated assault on the authority of the State.”

3.77. It is our finding that, as early as January 2010, the security forces and especially the JCF, contemplated making a request to the GoJ for the declaration of a limited State of Emergency confined to the

parishes of Kingston and St. Andrew. The eventual declaration on 23 May was a necessary reaction to the serious events that unfolded on that date in West Kingston.

3.78. We accept unreservedly the evidence concerning the extensive loss, damage and destruction occasioned by criminals to assets of the JCF. The electronic evidence we saw is incontrovertible. The deteriorating security situation in West Kingston was alarming and required urgent counter measures. The rule of law and the security of the State were under serious threat.

3.79. We are not persuaded by CoP Ellington's evidence that it was not desirable to inform the Prime Minister and the Minister of National Security that the security forces should be given at least 3 days' notice of the signing of the warrant of arrest. After all, such a requirement was part of the JCF's strategic plan (Operation Keywest). It was a matter that was decided by the JCF in January 2010. Between January and 23 May 2010, there were frequent meetings between the Commissioner and Mr. Nelson on Mr. Ellington's own admission. Surely he could have told the Minister of the need for prior information at one of those meetings.

3.80. We find that the Prime Minister's address to the nation on 23 May 2010 was an accurate and appropriate exposition of the security situation in West Kingston generally. It left no doubt of the resolve of the GoJ, through the security forces, to put an end to the lawlessness, disorder and violence that engulfed West Kingston. His warning that "the security forces will be moving swiftly to bring the current situation under control" was a clear hint of an imminent internal security operation.