

CHAPTER 7

WHAT ARRANGEMENTS WERE MADE, AND WHAT PRECAUTIONS WERE TAKEN, TO PROTECT CITIZENS IN TIVOLI GARDENS AND OTHER AFFECTED AREAS FROM UNNECESSARY INJURY OR PROPERTY DAMAGE DURING THE LAW ENFORCEMENT ACTION IN THE STATE OF EMERGENCY, AND THE ADEQUACY AND APPROPRIATENESS OF THOSE ARRANGEMENTS AND PRECAUTIONS IN THE PREVAILING CIRCUMSTANCES

ToR (G)

INTRODUCTION

7.1. This Chapter is divided into four parts. In Part 1, we describe the arrangements that were made and the precautions that were taken to protect persons residing within the area of operations. Part 2 examines the measures taken to avoid unnecessary injury during the operation. Part 3 considers the specific matter of the provision of medical services and Part 4 deals with the arrangements made and measures taken to minimise damage to property.

7.2. During the discussion under the four Parts, we assess the adequacy and appropriateness of the arrangements or measures in the findings.

7.3. Since the internal security operation was carried out in the context of a limited State of Emergency under which the rights of citizens were reduced and a violent armed confrontation between the security forces and criminals loyal to Coke was clearly anticipated, it is axiomatic that arrangements and measures were necessary for the protection of citizens. The risk of injury to persons and property was plain.

PART 1
PRECAUTIONS TAKEN TO PROTECT CITIZENS

7.4. The measures adopted to protect citizens, according to the evidence adduced before us, were of three types and were applied during three stages of the entire process, viz. (a) before the armed confrontation on 24 May; (b) during the period of confrontation; and (c) during the period of pacification. The first set of measures was mainly for the purpose of avoiding violence and to maintain control. The second set, taken during the operation, may be described as measures aimed at reducing harm and were built into the design of the operation. The third set of measures was in the nature of palliatives, taken after the security forces gained control of the area of operations.

(A) MEASURES TAKEN PRIOR TO 24 MAY

7.5. Under this head, we review the evidence of former Prime Minister Golding, the Heads of the security forces and certain non-State actors.

Legal Framework for the Operation

7.6. As early as 11 January 2010, the JCF's plan for Operation Keywest at page 1 included a provision for "imposition of a limited State of Emergency". CoP Ellington told us that when he and CDS Saunders briefed the Cabinet on 23 May about the deteriorating situation in West Kingston, they sought and obtained approval for a limited State of Emergency covering Kingston and St. Andrew.

7.7. The political directorate therefore made a decision to restrict the internal security operation to certain narrow, geographical confines. Former Attorney General, Ms. Dorothy Lightbourne, stated that she scrutinised the relevant Regulations governing the State of Emergency to ensure that they were "not more stringent than necessary." She said –

"I agree that, on 17 May, a decision had been taken in principle for a State of Emergency. After the necessary documents were prepared, I went through them because, as I speak now, I do recall that we removed some of the regulations, the Solicitor General and I, and put in others. I can't say specifically which ones, but there might have been one or two that caused me some concern and we discussed them and they were removed."

7.8. In answer to a question put by Mrs. Mayhew, Commission Counsel, Ms. Lightbourne stated that she did "not monitor the process relating to the declaration of the State of Emergency to ensure that the process thereafter was compliant with the law and that the police exercised their powers in accordance with the Regulations. I just ensured that it got to the Governor-General for signing and that was it."

7.9. As a protective measure, the State of Emergency was not only limited in space but also in time. It was for 30 days. Any extension beyond that time required parliamentary approval and review as in fact happened. It was subsequently extended for a further 30 days and expanded to include St. Catherine.

7.10. A Review Tribunal was also established pursuant to the Constitution to have the cases of persons aggrieved by their detention reviewed.

Prime Minister's Advice

7.11. Prime Minister Golding testified that he was alert to the risks to citizens who resided within the area of operations and he insisted, in discussions with the leadership of the security forces, that no effort be spared to safeguard the lives of citizens, especially women and children. Mr. Golding said –

"The Commissioner of Police and the Chief of Defence Staff assured me that the protection of lives and property was factored into the operation's plans... On 23 May I was quite encouraged by the instantaneous way the Heads indicated to me their concerns and had included them in their plans

for executing the warrant. I felt re-assured that all reasonable steps would have been taken to avoid injuries or death to innocent persons. I was not privy to the operational plan.”

Both CDS Saunders and CoP Ellington confirmed in evidence that the former Prime Minister’s concerns were communicated to them by him.

Principle of Operational Independence

7.12. The principle of the operational independence of the JDF and JCF precluded the Prime Minister from directing the heads of those Forces as to the manner of carrying out the operations. And CDS Saunders stated very clearly that the operational plan was neither shared with, nor approved by Prime Minister Golding. In fact, Mr. Golding testified –

“I did not give any direction to the heads of the security forces. Section 3 of the Constabulary Act and section 9 of the Defence Act, give exclusive authority, in operational matters, to the heads of those Forces. But there is also a proviso to section 9 of the Defence Act which gives a discretion to the Prime Minister. I did not give the Chief of Defence Staff any directions.”

7.13. Section 9(2) of the Defence Act is in these terms:

“(2) The responsibility of the Defence Board shall not extend to the operational use of the Jamaica Defence Force, for which use responsibility shall be vested in the Chief of Staff subject to the overall direction of the Cabinet. Provided that the Prime Minister may give to the Chief of Staff such directions with respect to the operational use of the Jamaica Defence Force in Jamaica for the purpose of maintaining and securing public safety and public order, notwithstanding that the directions of the Cabinet have not been obtained, and the Chief of Staff shall comply with those directions or cause them to be complied with.”

Section 3(2) of the Constabulary Force Act provides in part:

“(2) Subject to the provisions of subsection (3) the Force shall consist of –

- (a) A Commissioner who shall have the sole operational command and superintendence of the Force;"

By virtue of subsection (2A),

"The Minister may give to the Commissioner directions as to the policy to be followed by the Force."

Subsection (3) empowers the Minister to establish certain ranks but it is the Commissioner who determines the command and duties of members of the Force in the ranks so established.

Measures taken by the JCF

7.14. During the course of his evidence, CoP Ellington said that, upon receipt of the warrant for Coke's arrest, the JCF took a number of steps aimed at preventing a violent confrontation. These are discussed at (i) to (iv) below.

(i) Public Appeals through the Media

7.15. On 17 May, the JCF's Director of Communications issued a Press Release stating that, *inter alia*, "police offices have been bombarded by citizens reporting threats on businesses and vital infrastructures". The Director appealed "to all to remain calm and not to circulate false information capable of generating panic....".

7.16. On 19 May, the Director appealed to law abiding citizens of Tivoli Gardens and Denham Town "to report concerns and information coming to their notice". This was in response to the JCF's becoming aware that criminal elements, since 17 May, had blocked entry points into Tivoli Gardens and Denham Town and reinforced barricades "by barbed wire attached to high voltage electricity distribution lines". The Press Release also mentioned the insertion of LPG cylinders within barricades and that "law abiding citizens are

being prevented from leaving Tivoli Gardens and have had their cellular phones confiscated by criminals". The JCF confirmed that an APC was "shot up this morning while travelling in the Denham Town area...". An assurance was given to the public that the JCF intended to conduct its operations "in a professional manner in accordance with the law and in the interest of all concerned".

7.17. The JCF repeated its calls for restraint and respect for the law on 20 May. A Press Release on that day appealed to residents of Tivoli Gardens to refrain "from obstructing access to their communities by the security forces". Residents were reminded that creation of barricades was illegal and urged to remove the barricades "currently established" in Denham Town and Tivoli Gardens. In bold print were these words, "the security forces have no desire to engage in any armed conflict".

7.18. On 20 May, a Release was published informing the public that "criminal elements in Tivoli Gardens are in possession of the .50 calibre Grizzly Big Boar rifles" and "criminals in Tivoli Gardens have stockpiled petrol".

7.19. An appeal to dismantle barricades was made on 21 May since they "impeded the movement of the security forces during the lawful performance of their duties". Importantly, the Release of 21 May appealed "to the lawyers retained by Christopher Coke to take their client to the nearest police station in order for the extradition warrant to be executed".

7.20. On Saturday, 22 May, a Release stated that criminals from Tivoli Gardens and Denham Town, on that very day, "blocked Industrial Terrace and sections of Spanish Town Road despite repeated public appeals not to block roads and remove barricades constructed in the two communities". Significantly, the Release stated that the police viewed "this action by the criminals as a direct act of provocation and a clear indication that they are not interested in the rule of law". The Release noted that the JCF had cleared the blocked areas.

(ii) Correspondence with Lawyers

7.21. In an attempt to have Coke peacefully surrender and avoid a violent confrontation, the JCF sent letters to attorneys-at-law who were believed to be acting for Coke, viz. Mr. Tavares-Finson and Mrs. Jacqueline Samuels Brown Q.C., asking that they try to persuade Coke to surrender. As it turned out, neither attorney-at-law was then representing Coke.

(iii) Using the Peaceful Surrender Option

7.22. Prime Minister Golding and CoP Ellington received assistance from Bishop Herro Blair and Rev. Al. Miller. CoP Ellington explained –

“Prior to 23 May, Bishop Blair and I discussed his concern that if he were able to persuade Coke to turn himself in, it would avoid the security forces having to take any action to execute the warrant and that is what I sanctioned...This was pursuant to a public appeal that the police had made for Coke to surrender himself and I thought that if Bishop Blair, given his stature, given his experience working with inner-city communities, if Bishop Blair were able to achieve the same objective for which the police had made a public appeal, it would be in the best interest of the community and therefore I sanctioned those efforts.”

7.23. Bishop Blair was head of the Peace Management Initiative (PMI), which negotiated truces between gangs and promoted peace in violence-prone areas. Rev. Miller was head of the National Transformation Programme in the Office of the Prime Minister which worked with inner-city youth.

Bishop Blair's Meetings with Coke

7.24. As reported by CoP Ellington, Bishop Blair had meetings with Coke at which the conditions of a possible surrender were discussed. Coke was reluctant to surrender because he distrusted the JCF, the agency to which he would have to surrender. He feared for his life. This fear was born of his

interpretation of the circumstances of the death of his father, "Jim Brown", who had died in prison while awaiting extradition.

7.25. When Bishop Blair reported Coke's fears to CoP Ellington, the Commissioner requested Bishop Blair to assure Coke that he would personally guarantee his safety.

Evidence of CoP Ellington

7.26. CoP Ellington spoke of the discussions with Bishop Blair:

"He came to see me in my office and told me that he had been in contact with Coke and Coke was concerned about his safety if he were to come into custody because he recalled his father being killed in the custody of the State....I asked Bishop Blair if he could persuade Coke to surrender peacefully to the police. I gave him the assurance that I would personally, as Commissioner of Police, make sure that he was safe and secure once he turned himself in. I also told him that if Coke was so concerned about spending time in custody locally, he could waive his right to an extradition hearing....[Bishop Blair] left and said he would go and speak to Coke. He came back to me, I think the day after, and he told me that the man says he is not coming. He said he waited a long time to see Coke and he had some previous experience with the military and he had never seen so many rifles in his life and he would be praying for me and my officers. He saw the rifles in Tivoli Gardens."

7.27. With regard to Rev. Miller, CoP Ellington said that Miller reported to him Coke's response to his suggestion of a peaceful surrender. Miller is alleged to have said –

"I saw the man and the man said to me if it was the PNP in office, they would know how to deal with this. Tell Bruce Golding to find a way to deal with it. I am not going anywhere and, if they want me, they have to come for me and they have to come good."

7.28. CoP Ellington said he was given that oral report by Rev. Miller in his office at 103 Old Hope Road, St. Andrew, after he had spoken to Coke in Tivoli Gardens.

Bishop Blair's Account

19 May 2010

7.29. In May 2010, Bishop Blair was, *inter alia*, the Political Ombudsman, Head of the PMI, and a member of the Parole Board. His very important account of his interaction with Christopher Coke, during evidence-in-chief, repays quotation:

“On 19 May I initiated a call to Prime Minister Golding at Vale Royal and sought an audience with him. He invited me to Vale Royal and I went – as Head of the PMI. I offered to do whatever was necessary to defuse the tension arising from Coke’s situation. The Prime Minister agreed that I should go into Tivoli Gardens. I felt it necessary to inform the Opposition and I made a call to Dr. Peter Phillips and he invited me to come to his office. I spent an hour with him and I told him that the Prime Minister was in agreement with my going to Tivoli Gardens. Dr. Phillips said he thought the best thing was to go.

I tried to contact Coke and I made contact with someone in the community who could contact him. This person escorted me to Tivoli Gardens the same day.”

7.30. Bishop Blair continued –

“I went in from off Spanish Town Road. It seemed that that was the only access at the time.”

7.31. Bishop Blair saw his effort as “a pastoral duty” and recalled that he had performed similar roles in 1967 and in 2001. In 1967 there was “a stand off” between the police and residents of Tivoli Gardens. In respect of 2001, Bishop Blair said that “a problem had existed for 4 days; the security forces were

under threat". He called the then Prime Minister, the Most Honourable P.J. Patterson, and sought and obtained his permission to go into Tivoli Gardens.

7.32. Returning to the visit of 19 May, Bishop Blair testified:

"Upon entering Tivoli Gardens I noticed that, on a few occasions, he had to gesticulate to persons to move and allow us in. I observed blockages within the community and there seemed to be an intensification. This was along Bustamante Highway. I was taken straight to an office. I waited for some time. Mr. Coke ultimately appeared. He was very calm, cool and calculating. I had been apprehensive going in but that disappeared."

Request to Surrender

7.33. Bishop Blair said that he thought it was important "to request him to do some things".

- "(i) It was necessary for him to accede to the requests of the security forces for him to turn himself in. He patiently responded and expressed fear that if he turned himself in, he would not receive a fair trial but his legal team was drafting an affidavit and he would wait until the Court decided.
- (ii) He could waive his rights and turn himself in to the U.S. authorities."

7.34. Bishop Blair spent about 2 hours with Coke and, before he left, he asked Coke "to request the more than 50 armed persons that I saw to disarm themselves. These men were securing the community."

21 May 2010

7.35. On 21 May, Bishop Blair "made a presentation of what took place to the PMI, including the representative of the JCF, James Forbes". Later, in the evening, he received a call from CoP Ellington inviting him to the Commissioner's office the next day.

22 May 2010

7.36. Bishop Blair went to the Commissioner's office the following day. James Forbes was there. Of the meeting with CoP Ellington, the Bishop said –

“He (Ellington) asked me to go back into Tivoli and share some things with Coke. I agreed but I had to go in myself. I went back in that same Saturday. I saw none of the armed men until I got to the office where I saw four (4). I met with Coke and conveyed to him the Commissioner's request for him to turn himself in to the State or the U.S. authorities by waiving his right to an extradition trial. There was a promise that, if he waived his rights, he might get a lesser sentence of five to seven years. He thought it might be a ploy and they might drop the charges, re-arrest him and jail him for life. He was reluctant to surrender to the local authorities because of the death of his father who died in prison without explanation. That meeting lasted an hour or less. I pointed out to him the likely loss of life.”

7.37. That evening Bishop Blair reported to the Commissioner that Coke was “willing to wait his time out with the judicial system”. As to the internal security operation, Bishop Blair said that he “knew that the event would happen but Coke did not know”. He confirmed telling the Commissioner that –

“I had never seen so many weapons illegally by persons who were not supposed to have them and I would offer a prayer for him.”

7.38. When cross-examined, Bishop Blair described the person who took him into Tivoli Gardens as “one of the leaders of the community”, and he made it clear that, on his way to Coke's office on 19 May, he saw armed gunmen “en route to Coke's office and at the entrance to the community”.

Mr. Golding's Evidence

7.39. Mr. Golding said that he spoke with Bishop Blair who indicated that there was some reluctance on the part of Coke to surrender. Mr. Golding said that Bishop Blair spoke of the number of guns he had seen in Tivoli Gardens

during a sermon. Mr. Golding and Bishop Blair discussed trying to have Coke turn himself in and avoid the security forces having to take action to execute the warrant. This was pursuant to a public appeal by the JCF for Coke to surrender.

7.40. So far as Rev. Miller was concerned, Mr. Golding said that Rev. Miller was a friend and he was involved in a social transformation project within the Office of the Prime Minister. Mr. Golding made clear the following:

“He was not my agent to have Coke surrender. I did not ask him to intervene. He took steps on his own initiative.”

(iii) Voluntary Evacuation of Residents

7.41. Measures were taken to evacuate residents from the area of operations. In the evening of 23 May, the JCF issued a statement on radio stations as follows:

“The security forces are asking all decent and law abiding residents of Tivoli Gardens and Denham Town to leave those respective communities immediately.

They are being asked to leave the areas via the corridors of Industrial Terrace onto Marcus Garvey Drive where buses will be waiting at the intersection of Marcus Garvey Drive and Industrial Terrace to transport them to a secure location.

Those persons opting to be evacuated are being asked, if possible, to bring food and clothing to last them for at least 24 hours.”

7.42. It was CDS Saunders’ initiative to have the JCF issue the above statement. He said –

“On the Sunday, prior to the launch of the operation, I made a request to the Commissioner of Police for him to make arrangements for all law-abiding citizens in Tivoli Gardens and its environs to meet at a particular point to be conveyed out of the area and the Commissioner did exactly what was requested. He in fact ensured that it was widely broadcast across the media and buses were arranged which turned up

at the junction of Industrial Terrace and Marcus Garvey Drive at the appointed time. These buses waited there for quite a long time but nobody turned up. He had made arrangements to accommodate these persons temporarily at the National Arena, but nobody availed themselves of that particular opportunity. That action was a deliberate action taken basically to reduce injuries to individuals that could occur once the operation had started.”

Refusal of Residents to be Evacuated

7.43. None of the witnesses who testified before the Commission had taken up the offer to be evacuated. Some said that they did not know of it; others said they heard of it only late on the Sunday evening; still others said they refused because of a distrust of the JCF. Annette Marshall spoke of that distrust on 15 September 2015:

“No garrison community likes the police because they brutalise us.”

7.44. Troy Palmer said that he was aware that buses had been provided by the JCF but neither he nor his relatives availed themselves of the buses because, “me say dem a carry we and kill we”.

Security Forces’ Expectations of Casualties

7.45. A question arises naturally as to whether the security forces anticipated any casualties as a result of the anticipated joint operation.

(a) The JCF

7.46. DCS Hinds was specifically asked whether the JCF contemplated that the operation would cause “collateral damage in the nature of probable injuries and damage to property of law abiding residents of Tivoli Gardens”.

7.47. He replied:

“We had no such contemplation. We planned to do an operation that would allow us to arrest those that were breaking the law, execute the warrant on Mr. Coke and with the least harm to the civilian population. We did not contemplate that anyone would be injured or killed.”

However, DCP Hinds said that he did “factor into plans medical assistance for injured persons”. Amplifying that evidence, he said –

“We developed a medical plan. That was largely the responsibility of the JDF. The plan was to have an arrangement with hospitals to receive persons who were injured; persons who required immediate care. The persons with first aid training would be able to administer there. And there was also a plan to evacuate persons who needed medical attention. We identified what we considered a safe corridor to evacuate persons to hospitals for medical care.”

7.48. ACP Blake’s evidence under cross-examination by Mrs. Mayhew was to this effect:

“We factored in the use of ambulances and police vehicles to assist with injured persons. We had police ambulances. I was surprised to see dead bodies on 26 May. I did not contemplate the high number of deaths. Overall the whole medical system was not equipped to deal with the injured and dead.”

(b) The JDF

7.49. The plan of the JDF as expressed through Operation Garden Parish made clear and definite provision for casualties. We saw the JDF’s medical plan. The main components of the plan were, in summary:

- to have JDF paramedical personnel administer first aid to injured persons at the place where the injury occurred;
- to evacuate persons who needed greater or additional medical attention;
- to arrange for KPH and UHWI to receive injured persons;

- to provide a special ambulance service;
- to ensure the unimpeded movement of ambulances and other vehicles to move the injured to hospitals. In that regard, a safe corridor for evacuation of persons to hospital was identified;
- to establish a field hospital in close proximity to the community.

CDS Saunders stated unequivocally that this plan was intended for all and was not for the exclusive use of the security forces.

FINDINGS

7.50. Given the experience of armed conflict and confrontation in 2001, and especially in light of the Intelligence available and known to the security forces in 2010, the consequences of an armed confrontation, could and should have been anticipated. In order to ensure the adequacy of measures to be put in place, what was required was a sound method of estimating the likely demand for services for treatment of the injured. There was no evidence given to the Commission of estimates of demand for services. The arrangements made, including the provision of services and procedures for accessing these services would then have been based on those estimates.

7.51. Having regard also to the history of violent confrontation between the residents of Tivoli Gardens and the JCF in particular, and the fatalities of 2001, we were surprised that DCP Hinds did not contemplate any injuries or deaths in the 2010 operation. We find it hard to accept that a plan which ostensibly took into account the interests of both civilian and security personnel, could have been based on an estimate of zero injuries. In fairness to DCP Hinds however, he

did explain, and we accept, that the development of a medical plan was “largely the responsibility of the JDF”. We also accept ACP Blake’s evidence that the JCF factored in the use of police vehicles and ambulances to assist injured persons. Notwithstanding the plans, the evidence of some of the civilian witnesses suggests that there is validity in ACP Blake’s assessment that “overall the whole medical system was not equipped to deal with the injured and the dead”. When Mr. Witter and Bishop Blair toured Tivoli Gardens on 25 May with Dr. Salmon, they saw a man who was badly injured but showing signs of life. They brought this to Lt. Col. Sewell’s attention but, according to the evidence of Mr. Witter, there was no response to their request for urgent attention to the man. Finally, we received little or no evidence from the security forces of the operations of ambulances on 24 and 25 May 2010.

7.52. There was a gap between the services required and those actually delivered. The gap can only be explained in terms of either *(a)* an inaccurate Intelligence estimate of the anticipated demand for medical services or operational casualties; or *(b)* an operation that went awry. The large number of injured and dead as well as property damage may be indicative of such an operation; or *(c)* it may be that insufficient regard was paid to the matter of civilian casualties despite public appeals via the media; *(d)* there could even have been a combination of *(a)*, *(b)* and *(c)* above.

7.53. Specific measures as referred to at paras.7.14 to 7.42, were planned to minimise harm to persons. Thus, we recognise the efforts of the JCF in appealing to the public through regular media releases. And we deem it entirely appropriate that efforts were made to encourage Coke to surrender peacefully and avoid the confrontation that ultimately resulted. We commend Bishop Blair and Rev. Al Miller

for their public-spiritedness. Bishop Blair, in particular, displayed profound patriotism and courage in initiating sincere attempts to avert a violent confrontation between gunmen and the security forces. Coke was not interested in any rapprochement. He had already had plans in place to mount an offensive against the security forces and had begun to barricade Tivoli Gardens to prevent the forces' entry to arrest him. Bishop Blair's evidence was very helpful to the Commission because it afforded credible and authoritative support to the evidence of the security forces that Coke was amassing a large contingent of gunmen in West Kingston.

7.54. The concerns expressed by Prime Minister Golding to the heads of the security forces to avoid injury to residents and their acceptance of the concern of the Prime Minister was a demonstration of consensus-building. That the security forces did not heed the concerns after the operation commenced was regrettable and is given further treatment in this Report.

7.55. We view favourably the specific measures taken by the security forces, particularly the JCF, to avoid a violent confrontation. The public appeals to residents of Tivoli Gardens to remain calm and allow the JCF to enforce the law were worthwhile initiatives. Similarly, the assurances by the Commissioner of Police, through Bishop Blair, to Coke as to his safety if he surrendered, were appropriate, having regard to Coke's expressed fears. On the evidence presented to the Commission, there is little room for a dissenting argument that the JCF did not attempt to avoid violent conflict prior to 24 May.

7.56. Limiting the State of Emergency in time and space was another example of measures designed, as far as practicable, to

protect citizens. And the establishment of a review tribunal was an advance on the arrangements made in respect of the events of 2001.

7.57. In our opinion, the concerns of the Prime Minister suggested that he was conscious of the recent history of confrontations between the security forces and residents of Tivoli Gardens, which was the subject of a Commission of Enquiry in 2001. In that confrontation, 21 persons died or were injured and some of them, especially women and children were not parties to the armed encounter.

7.58. As an effort to avoid violent armed conflict, the peaceful surrender option failed on Saturday, 22 May. It irretrievably collapsed on Sunday, 23 May when gunmen began a series of attacks against the JCF in circumstances more particularly narrated elsewhere in this Report. But we also think that the option was closed when Bishop Blair and Coke met and the latter made it explicit that he was going nowhere "and if they want me, they have to come for me and they have to come good". Bishop Blair's statement that he had never seen so many rifles in his life was evidence suggesting that Coke had made a settled decision by 22 May to offer violent resistance to those who attempted to arrest him. Coke operationalised that decision the very next day when strategic and obviously coordinated attacks were launched against the JCF and its assets by criminal elements loyal to him and, in all probability, acting under his directions.

7.59. It is worthwhile to explore the reasons for the residents' rejection of the JCF's offer to evacuate them in buses. In the first place, the offer was publicly announced very late - about 6.00 p.m. on radio. This meant that not all residents would have been aware of the offer. It was then almost night and little time was usefully available to

enable residents to make proper arrangements to leave their homes. To compound the situation, there was a power outage in the area. Secondly, the invitation to go to the National Arena as guests of the JCF was limited to the residents of Tivoli Gardens. The residents of Denham Town were not considered in the text of the announcement. To the extent that the buses were stationed at one pick up point South West of Tivoli Gardens meant that the buses were inaccessible to residents of Denham Town. Some of these residents were also barricaded in their community and under the eyes of some of Coke's gunmen. A third reason for refusal of the offer was probably a fear about leaving property unoccupied. Since the public announcement did not give an assurance that vacated properties would be properly looked after by the security forces, the fear was not unfounded or unreasonable.

7.60. Beyond any issue of adequacy of the measures to protect life, limb and property, no reliable evidence was adduced to us that some persons in Tivoli Gardens were threatened with death if they attempted to leave. At best, suggestions to that effect were made by Counsel to witnesses, but these suggestions were not supported by actual evidence.

7.61. We find that those residents who were aware of the JCF's offer but rejected it, did so mainly because of a deep distrust of the security forces. That distrust, which we were told is prevalent among the general population of Jamaica, is rooted in the history of conflicts between the security forces and gunmen embedded within the Tivoli Gardens community.

PART 2

(B). MEASURES TAKEN DURING THE OPERATION

7.62. We turn now to the measures that were intended to reduce the risk of injury and to protect the citizens during the operation. The 2001 Commission of Enquiry urged the JCF to better anchor its operations in sound risk assessments, including risks to the security forces as well as citizens.

7.63. DCP Hinds was asked if the failure of the residents to take up the offer of evacuation affected his risk assessment. He answered –

“The residents being in the community where we were likely to do an operation was always considered. We knew that, even if some residents took up the invitation, not all would. So we were dealing with larger numbers than if they had taken up the invitation.....We would have factored greater numbers of persons being in the space than if some had taken up the invitation.....The purpose of the invitation to remove them by buses was simply to allow us to deal with fewer persons in the space.”

7.64. The types of planned measures taken during the combat stage of the operation included:

- determining an appropriate date and time for the operation to minimise risks to the population;
- managing the movement of the population;
- selecting and using appropriate weapons systems;
- briefing and supervising members of the security forces properly;
- making the physical environment safe during the operation;
- providing for emergency medical services.

These matters are discussed below under sub-heads (i) to (v).

(i) Determining the Date and Time of the Operation

7.65. CDS Saunders told the Commission that he determined the date and time of the operation i.e. 24 May at 11.00 a.m. In making those decisions, he took into account the safety of civilians within the area of operations. 24 May was a public holiday and he reasonably expected that schools and business places would be closed. Consequently there would be less movement of children and adults in and out of the area of operations. Vehicular traffic would be reduced. CDS Saunders said:

“It was my decision not to launch an operation until we were ready – In order to minimise injuries, it was decided not to go at night....The fact that it was a holiday was also a consideration because of the lack of activity in the commercial area of downtown Kingston.”

(ii) Managing Movement of Population

7.66. The security forces sought to control the movement of people in the area of operations, to reduce the exposure of people to gunfire. The Forces seemed concerned that women and children might willingly or unwillingly obstruct the operation. DCP Hinds said –

“Women and children were specifically provided for.....They are often used as human shields. I have seen it. I have seen stations attacked with women in front.”

7.67. Two other measures were taken to control the movement of persons, viz. the use of mortars and forced evacuations and detentions.

(iii) Mortars

7.68. Mortars were fired during the operation. CDS Saunders told us “It was my decision to use mortars”. He gave reasons for the use of mortars in his evidence-in-chief:

“There was a need to keep women and children behind doors. Experience had shown that they were used as

human shields. I needed the troops to have as much access as possible and to create a different sound in the operational area. They were fired under observed and controlled conditions. Each target was pre-determined and they were fired into three open areas. They had the desired effect. They created some disorientation and we never suffered many injuries and fatalities. There is no record of women and children killed during the operation. The mortars caused persons to remain behind doors.”

7.69. Under cross-examination by Mr. McBean Q.C., CDS Saunders identified the three open areas as the Seprod field, an open area near to the Community Centre in Tivoli Gardens and the football field on the eastern side of Tivoli Gardens. Thirty-seven (37) rounds of mortar were fired and Maj. Dixon was responsible for observing and controlling the mortars. CoP Ellington said that he had no knowledge of mortars or that any were fired on 24 May.

7.70. Women and children did stay indoors on 24 May. It was mainly “daredevils” (per John Green) who could be seen running around the community during the operation.

7.71. The use of mortar fire was, for some witnesses, a terrifying experience. Most witnesses described them as bombs. CDS Saunders accepted that they might very well have sounded like bombs. Romaine Walker said that a mortar “bomb” fell on his house; A witness who gave evidence *in camera*, claimed that her son, Bojan Rochester, was in fact killed by a mortar. We return to the issue of mortars in detail in Chapter 10.

(iv) Forced Evacuations – Detentions

7.72. There was mass detention of residents of Tivoli Gardens. CoP Ellington said that this was a measure designed to protect lives. Here we only discuss detentions in relation to the claim that they were a protective measure. According to CoP Ellington:

“It was a hot zone and there was intense gunfire. We didn’t know who was who. We were primarily concerned about the safety of individuals. We could not give orders to civilians, thousands of them and enforce those orders to keep inside, stay indoors and keep out of the way of gunfire. So the safest option for us to do was to remove them from the hot zone and that is why there was mass detention and separation as we battled the criminals on the ground. As soon as it was possible to re-unite citizens with their community that was done and so the considerations were citizens’ security, their own safety, preventing obstruction of the men and women who were conducting the operation, preserving evidence, ensuring that citizens did not get caught in crossfire between the security forces and the criminals who were embedded in the community.”

7.73. Detentions were done after high intensity violence subsided or ceased and after house clearing and searches had been conducted of the houses from which the detainees were taken. The matter of detentions is discussed more fully in Chapter 14.

(v) Selection and Use of Weapons Other Than Mortars

7.74. The selection of appropriate weapons that allow the security forces effectively to accomplish their mission but which also recognise the safety of civilians, is a responsibility of the leadership and operational commanders of the security forces. The use of weapons should be strictly controlled to avoid unnecessary harm to civilians.

7.75. The JDF released a list of weapons that were deployed and used during the operation and it provided information of the extent to which these weapons were used, viz. the number of rounds fired by a particular type of weapon. Two .50 calibre sniper rifles were deployed by the CSB for the very specific task of “defeating the Tivoli sniper”, according to Maj. Williams.

7.76. Further, the use of weapons by the JDF was governed by the Chief of Staff’s “Orders for Opening Fire”, a copy of which every soldier was required

to have on his/her person during the operation. The key elements of the Orders were: (a) fire only aimed shots; (b) fire no more rounds than are necessary; and (c) take all reasonable precautions not to injure any person other than the intended target.

7.77. We address the use of weapons more fully in subsequent Chapters.

PART 3

(C) PROVISION OF MEDICAL SERVICES

7.78. We have referred to the JDF's medical plan for the operation at para.7.49 above. Thus, we limit the discussion here to the citation of examples of the plan at work. Mr. Granville Johnson testified about receiving medical attention from JDF paramedics. He said:

"On 26 May, I came out of the house about 8.00 a.m. I saw two soldiers clearing up barricades. Pauline and Bertha went to a gate where the soldiers were by Charles Street and Bread Lane – about half mile from Tivoli. I raised my hands above my head and the solders called me over and I heard people saying they knew me and that I sold coal in the market. A soldier lifted up my shirt. I told them I got shot yesterday... He sent me to my gate and made a call on his cell. A soldier then came with a bag and looked at my injury. He put medication on my back and dressed the wound."

7.79. Nicola Bryce-Wilson claimed to have been shot in the region of her left breast and near the instep of her left foot and her left hand was grazed. She said that a soldier came to her house and "asked for Q-tips and Peroxide. He cleaned up my injury by the breast".

Collette Robinson

7.80. On the other hand, some witnesses stated that they and other persons did not receive medical care from the security forces. Collette Robinson

was shot on her left bicep. The injury was "a big hole. Nuff blood". A neighbour tied the site of the wound and they set off for KPH. Ms. Robinson then testified:

"On my way to the hospital, a soldier stopped me and asked me where I was going. I told him to the hospital. He said "Go back down. Go dead." I went back home. I heard that if anyone got injured, call a particular number. This was on the news. I called the number but no one came at all. I stayed in the house."

7.81. Ms. Robinson said that, later, she and a friend walked to Darling Street where they were stopped by a policeman who asked where they were going. She showed him her injury and the policeman said, "Go on". A soldier told her to wait on Darling Street for an ambulance and he put a towel bandage on the wound. She said:

"They sent me in a van to Seprod compound and then to the hospital. I stayed for two weeks and was discharged on 9 June."

Adina Darby

7.82. Ms. Darby told us that her son, Nicholas, was shot. She ran to rescue him and grabbed a hand cart to put him on it and to go the hospital. Shots were being fired but she and her daughter-in-law started to push the hand cart. She said that she ran past a policeman and then heard an explosion and she "dropped". She got up and fell down three times but managed to tell one "Tassie" to make some calls. Eventually, a niece in America telephoned and said that she had contacted a soldier to assist her. She said –

"Three jeeps came for me about 8.00 p.m. I had managed to get to a yard. The soldiers handled me real good and take me to UHWI."

SSP Donovan Graham

7.83. SSP Graham established a command post in the vicinity of Seprod. He gave evidence of receiving "frantic calls about a female who was injured and needed medical attention". He said in relation to 25 May:

"I led a team and saw a woman in a yard behaving frantically. We placed her on a sheet and sent her off to hospital. I do not know her name and I got no report as to how she came by her injuries. I did not inquire about her name. I got no other calls for assistance."

SSP. Graham said that in the plan for Operation Keywest, provision was made for two trucks to remove dead bodies.

Exhibit DG2 - Mobile Reserve Firearm Register – May 23-24, 2010

7.84. This document, produced by SSP Graham, was compiled by the JCF. It shows the firearms issued, the number of rounds of ammunition returned and states that 161 police officers did not discharge rounds whereas 38 fired a combined total of 1297 rounds. This document is appended to the Report and marked Appendix 7.

FINDINGS

7.85. The planned measures that were taken, in the main by the JDF, suggest that that Force had carried out risk assessments. This is exemplified by the fact that, prior to 24 May, the JDF reinforced the FEL to be operated by L/Cpl. McLennon in anticipation of a violent armed attack. This prescience undoubtedly saved L/Cpl. McLennon's life. We have no reason to be critical of the decision of CDS Saunders as to the date and time of the launch of the operation. The reasons which he advanced and set forth by us at para.7.66 were thoughtful and rational.

7.86. However, we have concerns about CDS Saunders' decision to use mortars. We treat with this decision in detail in Chapter 10 and Chapter 14.

7.87. On the evidence adduced, considerable doubt is cast upon the claim that the purpose of detention was the protection of citizens. We find, on a balance of probabilities, that the purposes of detention were to make the area of operation safe for the security forces who remained there from the afternoon throughout the night of 24 May and to facilitate the processing of young men who were present in Tivoli Gardens at the time of the operation. The detentions were made AFTER various areas had been pacified or after high intensity violence had subsided or ceased. CoP Ellington's assertion that detentions occurred "as we battled criminals on the ground" is at variance with other credible evidence. It is at variance with timelines given by officers who were on the ground and civilian witnesses to the effect that detentions took place after sectors 1, 2 and 3 had been stabilised and the JDF was dominating those sectors.

7.88. We find that women, children and elderly persons were under-represented among the detainees. The vast majority were in fact males. CoP Ellington's assertion would lead to the conclusion that young adult males were provided with special protection by means of detention and the risks to under-represented detainees were ignored.

7.89. The JDF's medical plan was comprehensive and was of benefit to some of the injured. However, it is clear that it was inadequate in the light of the large number of injuries and deaths that occurred. We think that both branches of the security forces were taken by surprise by the number of injured and deceased persons. Ms. Robinson's case highlights the unresponsiveness she encountered,

whereas Ms. Darby's case illustrates the view that it was happenstance that caused her to receive attention from the JDF. Were it not for the fact that she had familial contacts who were able to communicate with a soldier in the area of operation, she might never have received medical attention.

7.90. In our view, three conditions were required to give real meaning and expression to the planned provision of emergency medical services: (a) provision of a special ambulance service; (b) ensuring the unimpeded movement of ambulances through safe corridors; and (c) a system for receiving and responding to emergency requests from citizens. It does not appear, from the evidence adduced, that these three conditions were satisfied.

7.91. The first was met in full in that the JDF provided two ambulances. The second was met in part in so far as ambulances seemed to have unimpeded access at times. The third condition does not appear to have been met although we are satisfied that there were trained medical personnel on the ground during the operation. What appears to have been lacking was a developed and coordinated system.

PART 4

(D) ARRANGEMENTS/MEASURES TO MITIGATE PROPERTY DAMAGE

7.92. Damage to property occurred during the fighting stage of the operation and, according to residents who testified, after the security forces gained entry to Tivoli Gardens. During the fighting stage, damage was done mainly to buildings by the impact of warheads, explosive devices and fires. An analysis of residents' testimony and documents tendered by the Ministry of Labour and Social Security (MoLSS), suggests that most of the damage was done

inside residences to furniture, appliances and personal effects or to parts of house structure such as windows, doors and ceilings.

7.93. There was also evidence of damage to motor vehicles and allegations of property taken away in the absence of occupants of residences. This last mentioned matter is dealt with elsewhere in this Report because it pertained to the conduct of the security forces – see Chapter 14.

7.94. In this Part, we examine –

- the measures that were taken to reduce property damage;
- the procedures adopted for searching premises;
- provisions for humanitarian assistance.

(A) Measures Taken

7.95. The measures taken by the security forces to mitigate property damage during the fighting stage of the operation included some of those taken to avoid injury and death to civilians. We have discussed those above. However, those that were specifically designed to reduce property damage were few and, in any event, were more related to the conduct of searches by the security forces.

7.96. With respect to searches, the evidence disclosed that these were conducted in what may be called, “waves”. Searches were indeed conducted by different types of units for different purposes and at different times.

First Wave – House Clearing

7.97. The first wave of searches was conducted for the purpose of clearing residences in Tivoli Gardens and ensuring that there were no gunmen within the buildings. These searches were conducted on 24 May after the JDF had gained control of the community. They were conducted as a combat procedure and continued throughout the night of 24 May and into the morning of

25 May. These tasks were assigned to the JDF but, in some cases, they were carried out by the JCF.

SSP Graham

7.98. SSP Graham gave us an appreciation of the house clearing procedures.

“The instruction on the 24th would have been house clearing. We had to make the area secure for us to operate. So while the civilians would see members of the security forces going through, lifting beds, moving away dressers and other furniture, it was not necessarily a search. It was house clearing to render the area safe. So, when the secondary stage of the operation, that is the search and evidence-gathering team comes in, we know that those houses were already cleared and they were safe for them to operate.”

Second Wave - Searches

7.99. The second wave of searches was conducted after pacification for the purpose of finding firearms and contraband. These types of searches involved more detailed and systematic searches of every building and these were conducted by specialist search teams composed of personnel from the Caribbean Search Centre and the Engineers.

Procedures and Property Damage

7.100. Searches should have been carried out in accordance with the law and any relevant procedural rules of the JCF.

7.101. The evidence of residents suggested that the first wave of searches (house clearing) was executed in a manner that paid scant regard to the law and the rights of citizens. Since we deal separately and in some detail with damage to private property in Chapter 9, we are content to relate, in summary form, some of the experiences of residents. Troy Palmer saw soldiers “licking off the lock” to his shop. Lovette Bryan said her house was “ransacked” and part of the

ceiling was torn down. Jonathan McPherson told us of several "gunshot holes in the windows and ceilings, apart from car tyres being slashed". Joan McCarthy's house was destroyed, furniture was damaged and gunshot marks were all over. Willis McFarlane was away from his home for 3 weeks. On his return, his property "was extensively damaged".

7.102. While the second wave of searches was being carried out, all houses were entered and property was disturbed or damaged in most cases. We were told that these teams comprised persons knowledgeable of construction and specially trained to identify hiding places for guns or contraband.

7.103. Lt. Col. Cummings described the operations of the second wave of searchers.

"The Engineers conducted the search for weapons and ammunition in Tivoli Gardens by using our knowledge of construction to analyse inside houses and outside as well in surrounding areas, wooded areas, areas that we would likely find weapons and ammunition. And this manifested itself by looking to see inside houses where there were fresh nails or fresh paint or grout or any sign of recent construction inconsistent with the remainder of the property....If an engineer walks into a room and sees a wooden structure and all of the nails on that structure are old and rusted and you suddenly notice that there is one panel with what appears to be newer nails in it, that would arouse suspicion and prompt us to want to look behind that particular structure. By this and other methodologies, we were able to go systematically from house to house in Tivoli Gardens."

7.104. According to Lt. Col. Cummings each house was searched twice.

"Each time 'a find' was made, it was reported up the chain of command and the JCF was brought in to secure the illegal item found and record it. We also made records of every round of ammunition and every weapon, where it was found and when it was found."

FINDINGS

7.105. The house clearing exercises were heavy-handed. We accept the evidence of many residents who testified of being roughly treated by the security forces during the searches. We find that several dwellings were not only ransacked but were severely damaged by the indiscriminate use of excessive force. Bullet holes within the interior of dwellings, tiles ripped up and appliances damaged appeared to have been evidence of unnecessary and inappropriate discharge of duties. Although we appreciate that a search in a relatively “hot zone”, in the context of an unprecedented confrontation, would not be a “Sunday School exercise”, we are not satisfied that the extent of damage reported and seen by us in some video clips was justified.

7.106. We repeat our findings at Chapter 5 para.5.81.

7.107. The forced detentions were wholly disproportionate to the requirements of the situation. The impression left with us is that young males were taken arbitrarily and subjected to indignities within Tivoli Gardens before being herded, onto trucks and taken away to detention centres. The fact that over 4,000 persons were detained but only 148 not released, is powerful evidence from which an inference can reasonably be drawn that the large-scale detentions were arbitrary.

7.108. CDS Saunders admitted that he received allegations of abuse by soldiers but he insisted “I have no evidence of abuse”. CoP Ellington said that he “could not rule out the possibility of policemen misconducting themselves”. We find that the security forces did not respect the property of many residents while carrying out house clearing and searches. We have set forth our reasons for

this conclusion in Chapters 8 and 14 of this Report. The security forces did not exercise due caution in protecting residents from injury and property damage.