

CHAPTER 8

THE CIRCUMSTANCES UNDER WHICH, AND THE PERSONS BY WHOM, PRIVATE PROPERTY WAS DAMAGED OR DESTROYED DURING OR AROUND THE PERIOD OF THE STATE OF EMERGENCY DECLARED IN MAY 2010

ToR (I)

AND

WHETHER MONIES, BENEFITS OR COMPENSATION WERE PROVIDED BY THE STATE TO COMPENSATE RESIDENTS OF WESTERN KINGSTON INCLUDING TIVOLI GARDENS AND, IF SO, HOW MUCH WAS ACTUALLY PAID OR DISTRIBUTED, THE MANNER AND RECORDING OF SUCH PAYMENT OR DISTRIBUTION, AND THE ADEQUACY OF SUCH COMPENSATION

ToR (Q)

INTRODUCTION

8.1 In this Chapter, we have combined two of our Terms of Reference, viz. (I) and (Q) and subdivided the Chapter into 3 discrete Parts. Part 1 deals with the evidence of those witnesses who testified at the Commission of Enquiry and alleged that they suffered property damage and loss. We make specific findings in respect of each witness. Since several of the witnesses mentioned in this Chapter also testified as to injuries they suffered or observed to other persons as well as the deaths of certain persons, there is correlation between this Chapter and Chapter 9.

8.2. Part 2 focuses attention on Term of Reference (Q). Under this Part, we discuss the response of the GoJ to claims by residents for compensation. The procedure and methodology used by the MoLSS to provide some form of financial solace to residents are examined.

8.3. In Part 3 of the Chapter, we indicate the reasons for our inability to address the issue of adequacy of compensation and our proposals as to the manner in which this issue may be dealt with after submission of this Report.

PART I
DAMAGE TO SPECIFIC RESIDENCES

Evidence of Residents

8.4. We have considered the evidence of 32 witnesses who testified at the Enquiry at (i) to (xxxii) below.

(i) Germaine McLeod

8.5. This witness lived at 22 Harold Path, Tivoli Gardens, on 24 May 2010. He ran a business selling video games from his concrete two bedroom house. On 24 May, he and his family at first remained at home. He heard some gunfire and went outside and stood on the edge of a parking lot from where he saw a car on fire. "Shooting became louder and things started blowing up", so Mr. McLeod went inside his house and remained for about an hour. Then he left and went to the house of a wheelchair-bound lady, Ms. Sissy. While at Ms. Sissy's, Mr. McLeod saw some houses "to the front of her house" begin to burn. Ms. Sissy's house also caught fire. A soldier ordered all the occupants of Ms. Sissy's house to go outside.

8.6. Mr. McLeod said he was lined up with other men and made to walk to an apartment building in Java in the late afternoon. He related a story of being beaten by soldiers (which we deal with in Chapter 9) before being taken by truck to Up Park Camp where he was detained for 2 days and, thereafter, to the National Arena where he was further detained "for two or three days".

8.7. On his return to Tivoli Gardens about a week after being released from the National Arena, Mr. McLeod said that his game shop was completely burnt out and he had lost all of his possessions. He received no compensation but estimated his loss of earnings at \$60,000.00 per month.

FINDINGS

8.8. There is no evidence that the fire which destroyed Mr. McLeod's business was started by the security forces. Indeed, under cross-examination by Senator Alexander Williams, Mr. McLeod agreed that his video game shop started to burn when electricity poles and wires fell in the area so that the loss of the game shop may have been accidental.

8.9. Since he received no compensation, we recommend that there should be further investigation into his pecuniary loss.

(ii) Troy Palmer

8.10. Mr. Palmer is a chef who lived at #2 Ebenezer Lane, Bustamante Highway on the second floor. He owned a shop located on the ground floor at #2 Ebenezer Lane and another shop "across the road on Bustamante Highway". About 5.00 p.m. on 24 May, he was at home. He looked out and saw soldiers on the roof of the Coronation Market and police officers on the ground in Tivoli Gardens firing. He said that shots from the direction of the Market knocked out a window in his house and destroyed a fan and television set. He was hiding behind a concrete column in his house at that time.

8.11. Mr. Palmer said that he witnessed two soldiers go from the church yard to his shop on Bustamante Highway and one of them "lick off the lock". They entered the shop and drank bottles of water which he had in stock. A soldier came upstairs and took him to Building #40 where there were about

40 other persons. He was later taken to the National Arena and detained for four days.

8.12. He returned to #2 Ebenezer Lane on 27 May and found that his house had been ransacked, both businesses looted and his passport, a motorcycle and jewellery were missing. He estimated his total losses at approximately J\$1.4 million.

FINDINGS

8.13. Mr. Palmer was a straightforward and credible witness. We find that his house was damaged by gunfire coming from the direction of the Coronation Market where soldiers were deployed. But to the extent that evidence was adduced (and we saw video evidence) that both gunmen and the security forces were exchanging heavy gunfire in the Market and its immediate environs, we are in no position to make a finding as to the source of damage to Mr. Palmer's property. We find that he suffered economic loss for which he was not compensated but the quantum of such loss requires further investigation.

(iii) Collette Robinson

8.14. Ms. Robinson lived at #4 Linton Place, Tivoli Gardens. She said that she received a gunshot injury to her left bicep while talking with a neighbour on 25 May about 7.00 a.m. She was taken to KPH where she was kept for two weeks before being discharged on 9 June 2010.

8.15. When she returned home, her house was ransacked. Her daughter reported to her that soldiers had ransacked the house. Ms. Robinson alleged that \$30,000.00 hidden under a bed were missing. It was money which she had saved to buy a refrigerator. "The windows upstairs were licked out".

FINDINGS

8.16. Ms. Robinson was evasive under cross-examination. Her demeanour and her lack of candour under cross-examination, give us concern about her truthfulness. She said that she received no compensation for the loss or damage to her property and we are of opinion that her case requires further investigation.

Adverse Comments re: Collette Robinson

The Commission sent a "Notice of Proposed Adverse Comment" dated 24 March 2016, to Ms. Robinson in respect of its finding at para.8.16. Ms. Robinson responded to the said Notice on the 7th day of April 2016. Her response appears at Appendix AC1.

Having carefully considered her response, the Commission sees no reason to alter its original finding and wishes to emphasize the following:

- a. As the tribunal of the facts, we are entitled to accept such evidence of a witness as we find credible and reject that which we deem unbelievable. Miss Robinson's evidence was not of the standard which any reasonable tribunal would have fully accepted. Undoubtedly she was shot. However, her testimony as to how she received her injury and by whom she was shot is highly speculative and therefore did not meet the requisite threshold.**
- b. Paragraph 4 of her response is a snide, unworthy and baseless attack on the integrity of the Commission.**

- c. All witnesses testifying before the Commission, including Ms. Robinson, had the benefit of legal representation.**

(iv) Lovette Bryan

8.17. Mrs. Bryan lived at #5 Levy Path, Tivoli Gardens. On 24 May, about noon, she was at home in her two-storey house with her children and other relatives. She heard gunshots and explosions while she was on the ground floor and some soldiers asked her to open the door and grill. She did so and she and the nine occupants of the house were led to an abandoned house nearby, i.e. Building #5.

8.18. She was confined to building #5 until about 7.00 p.m. when she went home. She found her house ransacked, a door smashed and part of the ceiling torn down. She was not compensated but she did her own repairs to the value of \$14,000.00.

FINDINGS

8.19. Ms. Bryan was an impressive witness. She was not cross-examined or challenged by Counsel for the JDF. We have no reason to disbelieve her testimony and find that soldiers of the JDF ransacked and damaged her house. She should be refunded the cost of repairs expended after further investigation.

(v) Maurice Tomlinson

8.20. Mr. Tomlinson lived at #1 McKenzie Drive, Tivoli Gardens. He was at home about 10.00 a.m. on 24 May with his wife and children. After visiting his mother, Donetta, at her house, Flat 23, Building #5, Sangster Crescent, he returned to his house where he saw "a bomb" by his goat pen. He heard "a

bomb drop" by Miss Fatty's house which then caught fire. He brought Ms. Fatty to his mother's house.

8.21. Mr. Tomlinson said that he heard a soldier use indecent language and fire a shot at his house. The bullet tore out a window and a piece of wall. Soldiers then entered his house and ordered the occupants outside. He was sent to kneel with other persons in front of Building #5. Later, he was marched up Derek Path. There he saw a van belonging to "Slicer" (Steve Reid) burning as well as two houses on Chang Avenue.

8.22. About 6.00 p.m. he was taken to his house by members of the JCF, and then to Mobile Reserve about 10.00 p.m. He gave evidence of brutality by members of both Forces. On two occasions he was taken to KPH by the police. When released from detention, he did not return immediately to Tivoli Gardens. Instead, he went to his grandmother's house.

8.23. When he eventually returned to Tivoli Gardens, he discovered that his house was damaged. There was evidence of gunshots on the walls and windows were damaged. Many personal items, including jewellery, were missing. He received no compensation but his wife received \$15,000.00.

FINDINGS

8.24. We believed Mr. Tomlinson. He should be compensated for the damage to his property after further investigation. On his own admission, his wife received compensation and, we assume, it must have been accepted that she sustained some loss. On the other hand, Mr. Tomlinson's case does not appear to have been considered.

(vi) Anonymous Witness

8.25. About 11.00 a.m. on 24 May 2010, this witness was at home at 11 Dee Cee Avenue, Tivoli Gardens with two nephews. She said that she heard

a sound like a sledgehammer while she was downstairs. She then saw soldiers come from upstairs. They were using indecent language. Some came into the living room and tied up the occupants of the house while others were "smashing" the upstairs section of the house. After seeing her nephews taken away, she was taken to Adasa Wright's house at Building #4 and, later, to Building #5. She remained there until near midnight when she went home. She found heavy damage to the structure and contents of her house. She was obliged to replace her refrigerator at a cost of \$42,000.00 and she received \$75,000.00 as compensation which she said was inadequate.

FINDINGS

8.26. This witness's evidence was unchallenged by Counsel for the JDF. We accept it as truthful. Accordingly, we find that her house was badly damaged by soldiers of the JDF. The amount of \$75,000.00 appears to be inadequate and the damage to the witness's property should be further investigated to determine a more realistic measure of compensation.

(vii) Evadne Stewart

8.27. Ms. Stewart lived at Derek Path on 24 May 2010 with her daughter Sharon. She said that, about 3.00 p.m. three soldiers came to the house. There was a conversation between herself and the soldiers and, as a result, she was taken to Chang Avenue and made to lie face down with about twelve other residents. Next, she was taken to a high-rise building on Derek Path where she saw a lot of other persons. While there, she heard an explosion and saw houses on Chang Avenue burning. She remained at Derek Path for about another hour before going home.

8.28. She observed the following damage to her house: ceiling, door, toilet, bedroom and a bookcase destroyed beyond recognition. She estimated

the damage at \$70,000.00 and stated that she received \$15,000.00 – “that couldn’t buy a mint ball”.

FINDINGS

8.29. We accept that Ms. Stewart’s house was damaged and find that it was damaged by soldiers of the JDF. We are further persuaded that the sum of \$15,000.00 was inadequate and recommend that the value of her property damage be further investigated.

(viii) Adina Darby

8.30. This witness lived at 3 Wilton Hill Drive, Tivoli Gardens. She said that she was shot on 24 May and was admitted to KPH on 25th. She remained in hospital with crutches and a wheelchair. She operated a shop from her residence and had a “drinks” cooler outside the house. She worked as a higgler in Coronation Market and saved money which she kept in a pan. On 24 May, she had \$14,000.00 in the pan. She said that when she returned home from hospital, the cooler was damaged and the money was missing.

FINDINGS

8.31. According to Ms. Darby, she was injured about 8:30 a.m. on 24 May. However, Annette Marshall testified that Ms. Darby was in fact injured on 25 May. In weighing the evidence adduced at the Enquiry, we took into account that the security forces were not in Tivoli Gardens on the morning of 24 May. We are satisfied that Ms. Darby was injured on 25 May and she was either mistaken or confused about the date of her injury. We also accept that her drinks cooler was damaged by an explosion from a weapon or weapons in the possession of the security forces. Her alleged loss of money requires further investigation as well as her loss of earnings. However, she

acknowledged receipt of \$15,000.00 from the MoLSS for loss of goods in the Market.

(ix) Trevion McFarlane

8.32. Mr. McFarlane resided at 1 McKenzie Drive on 24 May. About midday he was next door at Myrtle Fleming's house. She was his grandmother. He said that he heard an explosion which broke glass and threw him from the back of the room. He remained at his grandmother's house for 3 days and then returned to 1 McKenzie Drive. The house was completely burnt. He lost everything. He gave the office of the Public Defender a list of his losses and received \$250,000.00 from MoLSS. He said that that sum was inadequate.

FINDINGS

8.33. To the extent that Mr. McFarlane considered the money he received as inadequate, his case should be further investigated. He seemed to us to be a truthful witness and we have no reason to doubt that his property was lost in the circumstances which he described.

(x) Jonathan McPherson

8.34. Mr. McPherson was a bus driver of 6 Shearer Drive, Tivoli Gardens. On 24 May he left home about 9.00 a.m. and went to his mother-in-law's because there was no electricity at his house and he wanted to charge his mobile telephone. He heard explosions and decided that it was best to remain at his mother-in-law's house. He was there for 4 days. He saw his house damaged as follows when he returned: upstairs ransacked; TV damaged; microwave destroyed; tiles dug up; 5 tyres of his car slashed; window broken; computer destroyed; gunshot holes in windows and ceiling. For some of his property which was damaged, he estimated his loss at \$98,000.00. However, he received only \$15,000.00 from MoLSS.

FINDINGS

8.35. We are unable to attribute blame to any one section of the security forces who are clearly answerable for the damage to Mr. McPherson's property. His case should be further investigated since it seems to us that \$15,000.00 was wholly inadequate to cover his total losses which we have no reason to disbelieve. The gunshot holes are suggestive of damage by the security forces.

(xi) Joan McCarthy

8.36. Joan McCarthy lived at Building #22 Seaga Boulevard. About 2.30 p.m. on 24 May, she was at home with several members of her family. She heard "a loud banging coming upstairs" while she was in a bathroom. She rushed out and met five "hostile soldiers". They ordered her out of her house. All of the occupants of the house went downstairs to the verandah. The soldiers went inside the house, spent about ten minutes and gathered downstairs. They said the police were coming to search the house. About 5.00 p.m. the police came. They questioned Dwayne Edwards, Ms. McCarthy's daughter's boyfriend and Andre Smith, the grand-nephew of Ms. McCarthy.

8.37. The soldiers said "All house clear" and the police told Smith to go upstairs with them to search. George Lewis and Anthony Browne were also taken upstairs but subsequently returned to join the other family members. Andre and Dwayne did not come back. Then Ms. McCarthy heard shots "very close". She said "I looked up and start to bawl". She told Jermaine Jackson, her grandson, "They kill Dwayne". She said she saw the same policemen who carried Dwayne upstairs, coming back down with a body wrapped in his bed sheet. One of his feet was protruding and blood was on the sheet. She said: "I recognise Dwayne by his grey pants and a beige shoe".

8.38. Soldiers sent her to Paulton Edwards' house. She has never seen Dwayne or Andre alive since that day. About 7.00 p.m. she returned home. Dwayne's room was ransacked. She stepped in a pool of blood at the entrance to the room and ran out crying. Subsequently, she found one of Dwayne's teeth on a bed. She said her house was "mashed up". There were gunshot marks on walls, windows were damaged; her dresser and dining table were damaged as well as the door to her bathroom. She received \$15,000.00.

FINDINGS

8.39. We make specific findings about the evidence of Ms. McCarthy in Chapter 9 as it relates to the deaths of Dwayne and Andre. However, there is no doubt that the security forces damaged Ms. McCarthy's house. We believe that the gunshot marks and the blood upstairs in Ms. McCarthy's house were the result of shooting by members of the JCF. The damage to her property requires further investigation.

(xii) Paulton Edwards

8.40. Mr. Edwards is a 58 year old radio and TV technician who lived at Building #22, Seaga Boulevard on 24 May. It was to his house that soldiers ordered Joan McCarthy to go. Mr. Edwards' evidence is that about 3.00 p.m., he heard shots being fired into his house and he was grazed by a bullet to his back. He heard his door being kicked down by soldiers and he and all of the persons in his house were ordered to go to a stairwell.

8.41. During the evening, "a whole heap of police come. They took over from the soldiers." Mr. Edwards heard when the police questioned Dwayne Edwards and Andre Smith. He saw the police go upstairs with Dwayne and Andre and come down about ten minutes later. When they took Andre and Dwayne upstairs, Mr. Edwards said:

"I heard a barrage of shots coming from the second and third floors. Then they came back down and say, 'You think we are fools. You think you can hide gunmen'."

FINDINGS

8.42. Mr. Edwards gave no evidence of damage to his house but we believe his account of what he saw in relation to Dwayne and Andre. We accept his evidence that he saw a large number of bullet holes in a wall of one of the bedrooms in Ms. McCarthy's house. For the moment, we are content to find that Mr. Edwards' evidence is strongly corroborative of Ms. McCarthy's as regards damage to her property.

(xiii) John Green

8.43. John Green lived at 30 Dee Cee Avenue. About 2.00 p.m. he was looking through a window in his house. He heard shots and saw "residents running up and down the place". Three soldiers were in the park in front of his house. On the advice of his common law wife, he moved from the window. Soon gunshots entered his house through the very window from which he had been looking. He took his family downstairs. He estimated the cost of repairs to the window at \$25,000.00 but he received compensation of \$15,000.00.

FINDINGS

8.44. The damage to Mr. Green's property was caused by soldiers of the JDF who fired shots through the window. Whether the compensation he received was adequate, is a matter for further investigation.

(xiv) Willis McFarlane

8.45. Mr. McFarlane is a jerk chicken vendor of 1 McKenzie Drive. On 21 May he used his various utensils and tables and left them in their place by Myles Pharmacy. On 24 May he went to a house owned by the mother of his baby in Denham Town. About three weeks after 24 May, he went to McKenzie Drive. His house was completely destroyed by fire as well as a fowl coop beside the house. His fridge was "full of pork". That was destroyed and all the contents, including two television sets, computer, bed, two deep freezers, a stove, a microwave oven and his tools. He produced a list of all his losses in an exhibit to his witness statement. The MoLSS provided \$250,000.00 by way of some compensation. He was able to rebuild his house in 4 months but he did so through loans, "some plywood from Digicel, the sale of pigs, scrap iron and a motor car". He said "I replaced most things except the chickens and chicken coop".

FINDINGS

8.46. We are unable to determine the origin of the fire that destroyed Mr. McFarlane's property at 1 McKenzie Drive. He was an excellent witness – open and frank. His total losses require further investigation.

(xv) George Harriott

8.47. Mr. Harriott, a delivery driver, lived at 76 North Street. About 6.40 a.m. on 25 May, he went outside to urinate in a drain and, while there, he was shot. He walked to KPH, was admitted and spent 20 days. He was initially discharged on 20 June 2010 but had to return for further surgery on his hand and spent a further 4 days.

8.48. During his hospitalisation, his house was damaged. There was a hole in the roof through which water came. He put his losses at \$300,000.00 and received \$60,000.00 by way of compensation. He says it was not enough. Under cross-examination, Mr. Harriott stated that when he was shot, his building was not under gunfire. He said that it was a ricochet bullet that “tear up the roof”.

FINDINGS

8.49. We are unable to determine who was responsible for the damage to Mr. Harriott’s house. It could have been a bullet from the security forces or from a gunman. On the state of the evidence we make no finding as to responsibility. Mr. Harriott was quite a satisfactory witness. His losses require further investigation.

(xvi) Roselyn Newton

8.50. Ms. Newton lived at 52 Lenford Path. On 24 May about 2.30 p.m. she was at home with members of her family when she heard gunshots and banging on the door. Winston Barrett opened the door. Ms. Newton saw about eight soldiers. A soldier ordered them to go over the fence and they went next door to Ms. Pricey. They were ordered to lie on the ground face down. Ms. Newton claimed brutality. She said the men in her family were taken into a pathway and then “to a yard”. She heard soldiers question the three men before she was sent to Chang Avenue and again made to lie face down “in the mud”. Ms. Newton gave further evidence, which we discuss in Chapter 9, in which she alleged that her son Winston Barrett and her nephew Lundie Murphy were killed by security forces.

8.51. Ms. Newton did not go home on the night of 24 May. She stayed at Ms. Pricey. She said that she suffered loss and damage of \$183,000.00. Mattress cut up; the electrical wire to her fridge was cut; two cell phones

missing; medication missing plus \$52,000.00 in a drawer. She received compensation of \$15,000.00 which she says is inadequate.

FINDINGS

8.52. The evidence of Ms. Newton in the circumstances surrounding the damage to her property suggests that it was caused by soldiers during the house clearing exercises to secure the sector. Further investigation into this matter is, however, recommended.

(xvii) Sandra Shaw

8.53. Sandra Shaw lived at Building #5, Flat D, 5 Sangster Crescent, Tivoli Gardens. On 17 May 2010, she left home to take her mother to a doctor. Her house was in good order and she locked and secured the house and its contents. She stayed at her mother's house.

8.54. About 2.00 p.m. on Friday, 28 May, she returned to her house. She immediately noticed that the metal gate was damaged as though it had been forced open. The padlock was missing. Items of clothing and household articles were scattered on the verandah. Four soldiers were in the premises and she sought their permission to go inside. When she was allowed to enter her house, she saw broken floor tiles strewn across the room.

8.55. On further examination, she discovered that 8 bottles of wine, 4 gold rings, a gold chain and three bottles of cologne were missing. A wall fan was broken in two but was still being used by soldiers. Jonathan McPherson took photographs of the things that were damaged. Ms. Shaw estimated the value of missing items at over \$20,000.00 but she received compensation of \$15,000.00.

FINDINGS

8.56. Taking into account that Ms. Shaw saw soldiers in her house, and had to obtain their permission to enter, it is our finding, on a balance of probabilities, that the damage which she alleged was caused by members of the JDF who may also have taken her personal property. The payment of \$15,000.00 seems to have been acknowledgment of some loss, but we are unable to quantify that loss and recommend that her case be further investigated.

(xviii) Marjorie Hinds

8.57. Ms. Hinds' address on 24 May was Building #2, Flat N, Chang Avenue. On that day, she was at home with her fiancé, Radcliffe Freeman, and two children. When she awoke about 1.30 p.m. she did not see Freeman. She learnt from her daughter that he had gone out of the house. She looked from the kitchen and saw Freeman "round the corner up top Java on Levy Path" fixing a neighbour's door.

8.58. She went outside and, while returning to her house after speaking with Freeman, she heard a loud explosion as result of which she was lifted off the ground and flung into the road. She knew nothing more. She woke up in KPH with burns to her body and a serious disability in her right arm.

8.59. Ms. Hinds spent three months at her sister's house on discharge from KPH and returned to her house. She saw the following property damaged: wardrobe, stove, fridge, settee, TV and accessories, chest of drawers, two fans, front door, face basin.

8.60. Ms. Hinds ran a shop at her premises selling a variety of drinks and dry goods. A deep freeze was damaged; three mobile phones belonging to Freeman and \$200,000.00 were missing. The MoLSS gave her \$75,000.00.

FINDINGS

8.61. Ms. Hinds' property was damaged by members of the security forces. On the evidence, we are unable to say which of the Forces was responsible. We also believe that the items she found missing on her return home, were taken by the security forces. It is plain that the compensation provided by MoLSS was inadequate and this issue requires further investigation.

(xix) Omari Gillespie

8.62. Mr. Gillespie lived at Building #43, Bustamante Highway. He was at home with his wife and two children on 24 May. He heard gunfire from the direction of Marcus Garvey Drive. He locked up his shop and his house. When he looked outside, he saw an armoured vehicle of the JDF parked in front of his building. His own car, a Mitsubishi Galant, was parked in his yard but a motorcycle was to the front of his car.

8.63. Mr. Gillespie saw a soldier shoot at the motorcycle. It caught fire. The fire spread to his car. There was a water tank at Building #43. It was shot up. However, Mr. Gillespie screwed a hose to a pipe and tried, unsuccessfully, to put out the fire on his car.

8.64. The car was bought for \$200,000.00 but, after refurbishment, it was valued at \$480,000.00. Mr. Gillespie said that he sold the damaged car for \$80,000.00. He received no compensation.

FINDINGS

8.65. Mr. Linton Gordon, on behalf of the JDF, informed us that the motorcycle was "a blockage in the way". The JDF soldiers fired at the motorcycle in an attempt to clear the way. Mr Gillespie denied this and we make no finding thereon. However, we find that the motorcycle

exploded and fire spread to Mr. Gillespie's car accidentally. The JDF conceded that there was accidental fire damage to Mr. Gillespie's car. In the circumstances, in so far as Mr. Gillespie received no compensation, his loss should be further investigated with a view to determining an appropriate measure of compensation.

(xx) Joan Haughton-Allison

8.66. Mrs. Haughton-Allison lived on the third floor of Building #1, Flat 22, Levy Path. About 1.00 p.m. on 24 May, she was at home with her husband and children. "A big explosion, like a bomb shake the building." Mrs. Haughton-Allison and her family ran downstairs to Marjorie Hinds' house on the ground floor.

8.67. While going downstairs, Mrs. Haughton-Allison saw the window and wall to her property torn down. And "the whole of the bathroom wall was tear out". She said the explosion left "a large hole" in her building. She lost 3 cell phones.

FINDINGS

8.68. Mrs. Haughton-Allison's house was probably damaged by mortar fire. She gave no evidence of the amount of her loss and damage and these issues require further investigation.

(xxi) Shana James

8.69. Ms. James is a higgler who lived at Chang Avenue. About 1.00 p.m. she heard the sounds of gunshots firing in Tivoli Gardens and Denham Town. As the sounds got closer, she went inside with her two sons. Her daughter came in and said, "big things going on outside. A bomb just drop in Java".

8.70. Ms. James went to Ms. Sissy's house at Kirkpatrick Pathway. About fifteen persons gathered at Ms. Sissy's. Later, members of the JCF "took everybody over to Dorothy Ferron's yard". She said when she came out of Ms. Sissy's house, she saw her own house burning. She asked a policeman to call the Fire Service. He said it was a State of Emergency and "no fire truck can come in here". Ms. James said she was able to see her house from Dorothy Ferron's and she saw no one make any attempt to extinguish the fire.

8.71. Ms. James' house was completely destroyed as well as Ms. Sissy's which was immediately to the rear of Ms. James'.

8.72. Ms. James estimated her total losses at \$764,300.00 including loss of furniture and appliances. She said that, in addition, she lost \$150,000.00 in cash. She received \$250,000.00 from MoLSS.

FINDINGS

8.73. Ms. James suffered total loss of her house and contents. The loss of her property may have been caused by an exploding mortar, which caused a fire which then destroyed several houses in Chang Avenue. We are not satisfied that the sum of \$250,000.00 received from MoLSS was adequate and we recommend further investigation of Ms. James' losses.

(xxii) Delores King

8.74. This elderly lady lived at 56 Sangster Crescent in a two-storey building. She left her house on 23 May and returned "when the war was over". On her return, she found that the TV was damaged, the door of the fridge was "mashed up"; all of her pots were destroyed; tiles in the kitchen and verandah were damaged and the back of the house was shot up with several "big holes". She received \$15,000.00 from MoLSS.

FINDINGS

8.75. Contrary to a suggestion from Counsel on behalf of the JDF that gunmen had taken over Ms. King's house, (which was denied by the witness), we find that the damage and losses occasioned to Ms. King were caused by unidentified members of the security forces. Her case for adequate compensation requires further investigation since the amount of \$15,000.00 received from MoLSS seems inadequate.

(xxiii) Annette Marshall

8.76. Ms. Marshall lived at 5 Wilton Hill Drive. On 24 May while at home about 3.00 p.m. she heard gunshots firing rapidly and explosions. "The house shake every time a bomb drop. All the glass in the house shatter." She said that two bombs dropped near to her house and left a large hole in the side of a building. Ms. Marshall said in evidence that that building is at 47 Baugh Path. It is the residence of Myrtle Kelly according to Lelieth James.

8.77. On 27 May, according to Ms. Marshall, about 10 police officers came to her house. "They hit out the downstairs bathroom, kitchen windows and ceilings upstairs". A glass-topped dining table, 2 wardrobes, a fridge and figurines were damaged. She claimed that members of the JCF looted the homes of Adina Darby and Jane McFarlane and she says she can identify the female officer.

"I saw her with two plastic bags with things which Jane had brought from overseas."

Ms. Marshall estimated the value of damage to her property at \$170,000.00.

FINDINGS

8.78. We find that Ms. Marshall's house was probably damaged on 24 May by a mortar. The damage on 27 May was caused by police officers who were carrying out searches. They used more force than was necessary since, by that date, Tivoli Gardens had been pacified. Ms. Marshall's losses require further investigation.

(xxiv) Jane McFarlane

8.79. In May 2010 Ms. McFarlane's house was situated at 17 Wilton Hill Drive. She is a businesswoman who travelled to Panama and Curacao to purchase goods for resale. She usually spent Saturday nights at the home of her common-law husband in Spanish Town. This routine obtained on 22 May. She kept in contact with her children over the weekend and on 24 and 25 May.

8.80. On Wednesday, 26 May, Ms. McFarlane lost her son Martin and her nephew Oshane in "heartrending" circumstances described more fully at Chapter 9.

8.81. Ms. McFarlane returned to 17 Wilton Hill Drive on Friday, 28 May. She recounts her experience as follows:

"When I reached my house, a whole heap of people came to greet me. Everybody looked weird. A group of police and soldiers was by my gate. I saw the lock burst and the panel of the door. I saw blood. A police went in with me. It reminded me of a slaughter house. There was blood from the steps back into my house; a pool of blood on the floor of the living room. My furniture was in disarray. A pool of blood to the bathroom and to the kitchen. My furniture was destroyed. Blood was everywhere downstairs but not in the bathroom. I saw bullet holes upstairs and blood splattered all over."

8.82. During the course of Ms. McFarlane's evidence, we saw 18 photographs of the inside of the house. They told a gruesome story of slaughter in the house.

8.83. Ms. McFarlane said that, in addition to losing her son and nephew, she lost all of the goods which she had brought from Panama on the Friday before the internal security operation. She gave an estimate of \$4 -5 million of loss and damage. She received compensation totalling \$165,000.00.

FINDINGS

8.84. We saw photographic evidence of the defilement of Ms. McFarlane's property and agree with her description that, on 28 May, it resembled "a slaughter house". In our opinion, the damage occasioned to Ms. McFarlane's house was attributable to members of the JCF. The compensation she received was wholly disproportionate to her losses and this issue must be further investigated.

(xxv) Lelieth James

8.85. Ms. James, an elderly lady, lived at 1 Wilton Hill Drive. On 24 May, as gunfire intensified, she locked her gate, went upstairs and sat on the landing. Shots appeared to be coming from the direction of 1 McKenzie Drive. She took her phone and hid under a bed. Then she heard a loud explosion, sounding "like a bomb", followed by a second explosion. "The house start to dance".

8.86. After shooting subsided, she went to a cousin's house "further up Wilton Hill Drive". While going down the stairs in her house, aided by a walker, she observed that glass windows were shattered. Outside, there was a large hole in the pathway and her verandah was littered with debris. She said: "I had a hard time opening the grill because everything was lodged on my verandah."

8.87. Ms. James saw drinks from Adina Darby's cooler scattered past her doorway. She stayed with her cousin Danny, until Thursday, 27 May.

8.88. Ms. James said that, on reaching her house, she saw four soldiers there. They refused to open the gate even though she offered them the keys. She had to "force" the grill gate open to go inside because of the debris that was still on her verandah. Two soldiers followed her and searched the house. She said that they tore down the ceiling to the kitchen. She said the compensation of \$75,000.00 which she received was not enough and, five years later, the house has still not been repaired.

FINDINGS

8.89. Ms. James' house was damaged when a mortar probably exploded nearby on 24 May. On 27 May, the damage to the ceiling of the kitchen was caused by members of the JDF. To the extent that the compensation she received was, in her opinion as well as ours, not adequate, there should be further investigation of this matter.

(xxvi) Minnette Lindsay

8.90. This witness lived at 1 McKenzie Drive, Rasta City. On 24 May she left her house and went to her mother-in-law at Building #34 or 36, Flat 2, Drecketts Place in Lizard Town. Ms. Lindsay returned to her home on Wednesday, 2 June 2010 when she saw that her house and contents had been burnt flat. She valued the house at \$2 million and the contents also at \$2 million. She received \$250,000.00 as compensation. During her evidence-in-chief, Ms. Lindsay testified of seeing brutality to residents by JDF soldiers; of seeing a soldier shoot Sydney Clarke in his head while he was running and of Capt. Garth Anderson "sitting by some railings" when Clarke was shot. She also said in answer to the Chairman that Capt. Anderson was "not close to Sydney when he was shot". Cross-examination of Ms. Lindsay by Mr. McBean Q.C.

elicited many discrepancies in her oral evidence and her witness statements including this evidence:

“I did not know on 24 May where Sydney get shoot. I only found out after the little girl come back and tell me where him get shoot. She told me him get shoot inna his head. I did not really see him get shoot inna his head.”

Ms. Lindsay also admitted that she never saw some of the things which she said that she saw in her witness statement. She saw Capt. Anderson give evidence on 26 June 2015 and, thereafter, she gave another witness statement dated 27 June 2015 which Mr. Lloyd D’Aguilar helped her to prepare.

FINDINGS

8.91. Ms. Lindsay was a thoroughly unsatisfactory witness, not at all credible. She deliberately lied about Capt. Garth Anderson. In normal circumstances, we would have rejected her entire testimony because if she lied on one aspect of her evidence, we could not be sure what other aspects of her evidence were mendacious. However, we have no reason to disbelieve her on the narrow points that she owned the house at 1 McKenzie Drive and that it was completely destroyed. We are not satisfied as to the valuations she gave and recommend that this aspect of Ms. Lindsay’s evidence be further investigated.

Adverse Comments re: Minnette Lindsay

The Commission sent a “Notice of Proposed Adverse Comment” dated 24 March 2016, to Ms. Lindsay in respect of its finding at para.8.91. Ms. Lindsay responded to the said Notice on the 7th day of April 2016. Her response appears at Appendix AC2.

Having carefully considered her response, the Commission sees no reason to alter its original finding and wishes to emphasize the following:

- a. The Commissioners, carefully, dispassionately and objectively reviewed her Miss Lindsay's evidence, taking into consideration all relevant facts before arriving at our findings.**
- b. Miss Lindsay gave four witness statements, on 6 July 2010, 28 August 2010, 4 May 2011 and 27 June 2015. She signed all as true and correct. She said she believed that the witness statement of 4 May 2011 was written by Mr. Lloyd D'Aguilar and that of 27 June 2015 was also written by him. Those four statements contained internal inconsistencies and discrepancies and, under oral examination, it became clear to the Commission that Miss Lindsay made statements influenced by what she was told by others. There was very little direct evidence of what she actually saw. Her admission of the role played by Mr. Lloyd D'Aguilar in the preparation of her statements cast obvious doubt on her veracity and the reliability of her evidence. We reiterate our statement in Chapter 1 that a Commission of Enquiry applies the civil standard of proof to findings of fact.**
- c. Miss Lindsay was not a convincing witness under cross-examination. On more than one occasion she gave evidence under cross-examination that was in direct conflict with her evidence-in-chief.**

- d. We found her evidence about seeing Capt. Anderson in Tivoli Gardens particularly disturbing. And we noted that she gave evidence on 15 September 2015, after Capt. Anderson had testified on 26 June 2015. When she gave evidence she imputed very serious criminal conduct to Capt. Anderson for the first time. We are satisfied that that groundless evidence was deliberately concocted to implicate Capt. Anderson. This conduct alone, apart from the unreliability of her evidence under cross-examination, was sufficient for us to find that she was not a witness of the truth.**
- e. We are satisfied that it would be obvious to an objective arbiter that Miss Lindsay's evidence was discredited and without any evidential value.**
- f. We characterise her response of 7 April 2016 as scandalous, offensive and malicious.**

(xxvii) O'Neil Smith

8.92. Mr. Smith now lives at Sandy Bay, Clarendon. On 24 May 2010 he resided at Wilton Hill Drive and worked as a shop attendant at "Top Ten", a business owned by Lucius McFarlane, Smith's cousin.

8.93. On Wednesday, 26 May, Mr. Smith was ordered by soldiers to leave Top Ten and wait by the road side. Soldiers took him and Mr. McFarlane to the Community Centre in Tivoli Gardens about 1.00 p.m. He said that "a brown police lady who worked at Denham Town police station took away my money (\$3,000.00) and 2 cell phones".

8.94. He was later taken to the National Arena and released on Saturday, 29 May. He disputed a statement on the official release document of the JCF to

the effect that he was detained for one day only, i.e. 27 May. Mr. Smith insisted that it was Saturday, 29 May. He never recovered his money or his phones and he got no compensation.

FINDINGS

8.95. We found Mr. Smith to be a satisfactory witness. In so far as he purported to give some description of the police officer who took his money and phone, his claims should be investigated further with a view to determining a reasonable measure of compensation for his property loss.

(xxviii) Lancelot Bailey

8.96. Mr. Bailey resided at Flat G, Building #25, Seaga Boulevard on 24 May 2010. He shared this apartment with his nephew Andre Bailey (the owner) and a cousin, Decorey Wright a.k.a. "Ernie". Ernie was of unstable mind.

8.97. On 24 May, Mr. Bailey was awakened by explosions. He left his fourth floor flat and went downstairs to Ms. Barbara's apartment on the third floor. It was about 3.00 p.m. when Mr. Bailey heard Ernie singing and calling out to persons from the second floor. When explosions subsided later in the night (about 8.30 p.m.), "a lot of police" came to Ms. Barbara's home. They asked questions and searched. Mr. Bailey said that he had a bad headache and tried to get to his apartment for medication. As soon as he got outside, he saw Ernie on the fourth floor in front of the door of the apartment.

8.98. He handed Ernie the keys and told him to fetch his medication. Ernie did as he was told. Mr. Bailey then told him to go back to the apartment and remain there. He did so and Mr. Bailey went back downstairs to Ms. Barbara's.

8.99. Mr. Bailey saw "soldiers and police in front of the building running back towards Building #25 and using profanities". He heard them go into his apartment and "a lot of shooting coming from inside my house".

8.100. About 6.30 a.m. the next day, Mr. Bailey saw two soldiers coming from the fourth floor with a body in a sheet belonging to him. He said, "I knew it was Ernie since he was the only person in the house".

8.101. Mr. Bailey went to the apartment two weeks later. He saw the door shot off and blood splattered all over the apartment, bullet holes in bedroom walls and the flooring and blood on his clothes which "were scattered". Furniture and appliances were damaged. Andre has refused to return to the apartment to live.

FINDINGS

8.102. We find that Mr. Bailey's apartment was damaged and defiled by soldiers during the probable extra-judicial execution of Decorey Wright (Ernie). Mr. Bailey's consequential economic loss should be investigated further.

(xxix) Veronica Muirhead

8.103. On 25 May 2010, Ms. Muirhead was at home, 12 Dee Cee Avenue, Flat 12. This property has two bedrooms and is concrete with galvanise roofing. It is owned by Angella Watkis who lives in New York. About 7.00 a.m. Ms. Muirhead heard a loud banging on the verandah grill. She opened the door and saw 6 JCF officers and 1 JDF soldier. The JCF officers questioned her and her children and searched the premises.

8.104. Ms. Muirhead said that a policeman took a knife and cut a mattress in four places, pushed over a portable closet with clothes in it and smashed it on

the floor. It cannot be repaired. She described how her property was damaged in these words:

“He then threw away my figurines from a whatnot to the floor, destroying them and my DVD player which has not worked since. He then tear down the ceilings upstairs and downstairs.”

8.105. Ms. Muirhead valued her loss and damage at \$46,000.00.

FINDINGS

8.106. We found Ms. Muirhead to be an honest witness. We believe her account of the damage to her property. Accordingly, we find that the said damage was caused by members of the JCF. Ms. Muirhead gave no evidence of receiving compensation and we recommend that this issue be further investigated.

(xxx) Denton Dacres

8.107. Mr. Dacres lived in a three bedroom town house at 27 Dee Cee Avenue. His sister was the owner of the house. On 25 May, about 6.30 a.m., he was at his neighbour’s (Carol) house where he had been since the day before. He said –

“Carol door start to lick off. We come out. I saw a lot of soldiers and police. They told us to come outside. Kevin, my nephew, a.k.a. “Porridge Man”, was on the verandah of my house talking to three police and one soldier”.

8.108. He said he was ordered to go to his house but he leant on the fence by his gate. He saw the security forces take Kevin inside that house and he heard gunshots “coming from inside my house”.

8.109. He was directed to lie down in the road with 6 other men “at the corner of Dee Cee”. Later that morning, he was taken to Seprod and detained

until 27 May when he was taken for further detention at the National Arena. He was eventually released about midnight on 28 May.

8.110. About noon on 29 May, he returned home. The front door was "wide open". He went inside. His clothes and shoes were scattered on the floor and the bed. He noted damage to three wooden doors, a shattered bedroom window, Toshiba laptop and DVD player non-functional.

FINDINGS

8.111. Mr. Dacres' property was damaged by members of the security forces between 27 and 29 May 2010. The extent of his losses should be quantified after further investigation.

(xxxi) Romaine Walker

8.112. On 24 May, Mr. Walker was residing in one of four rooms at 86 Lewis Path, Tivoli Gardens. About 12.30 p.m. he heard loud explosions "different from normal gunshots". He said that the first set of explosions came from the Chang Avenue/Levy Path area. He climbed up a wall and saw Marjorie Hinds, Bojan Rochester and Carl Henry lying on Chang Avenue bleeding. According to Mr. Walker, a second explosion caused debris and dirt to erupt from Michael Williams' yard. Mr. Walker said that there was another explosion and "something fly through the air and fly through the roof" of his room so he went over to Chinee's house where he stayed for 4 days.

8.113. When he returned to his room, he saw a large hole in the roof and everything in the room was destroyed – TV, radio, a fan. His laptop was missing. Ultimately, a cousin repaired the roof. Mr. Walker received \$25,000.00 from MoLSS.

FINDINGS

8.114. In our opinion, the damage to the room and roof was probably the result of an explosion of a mortar near to Mr. Walker's residence. His claim for compensation should be investigated further.

(xxxii) Two Witnesses who testified in camera

8.115. One 12 December 2014, the Commission received evidence *in camera* from two persons who carried on business on Spanish Town Road. They testified to heavy financial loss arising from the internal security operation but received no compensation. It is our understanding that litigation is pending in the Supreme Court. Accordingly, in those circumstances, we shall not discuss the issues of liability and quantum of compensation in this Report; save and except to observe that we received evidence to the effect that, between 1 June 2010 and 18 January 2013, lawyers acting for the business persons wrote ten (10) letters to the JDF and received only one (1) response from the JDF, dated 15 August 2012.

PART 2

HOW WAS THE PROPERTY DAMAGE CAUSED?

8.116. Lt. Col. David Cummings testified that, at a meeting of Commanders on 25 May, he was informed that his "entire Regiment was going to be tasked to assist with the search for weapons and ammunition". Thus, on 26 May, the Engineers Regiment was deployed in West Kingston in a search role. At para.29 of his witness statement, Lt. Col. Cummings stated:

"29. I personally remained on the ground with my soldiers every single day, and personally entered hundreds of houses, apartments and buildings to oversee the searches, to monitor the conduct of my soldiers, and to stay abreast

and in firm control due to the dynamic nature of the operation.”

8.117. He said that the searches paid off in a significant way, “as my Engineers used their knowledge of buildings and construction to identify places where weapons and ammunition could be hidden. These included but were not limited to behind false walls etc.” He then mentioned the types of things recovered, and which have been dealt with under ToR (M) in Chapter 5.

8.118. During the course of his oral evidence, Lt. Col. Cummings said that where the Engineers disturbed premises, they sent teams to effect repairs. He said, in respect of his personal visits to properties:

“I saw no wanton destruction of property. There were cases where residents complained of damage to property but it was difficult to determine the time when damage occurred. I am specifically dealing with damage caused in the course of searches.”

8.119. Under cross-examination by Mrs. Mayhew, Lt. Col. Cummings said that the only complaints in Tivoli Gardens were related to damage to property. As to the *modus operandi* of the Engineers, he said:

“Where a house was locked, we made enquiries about the owner. In some instances, we had to gain entry under the powers in the 2007 Emergency Regulations. Grills may have been sawn off. I saw houses where it appeared that they were searched before and were in a state of disarray. None of the residents complained that they were searched before or that the security forces had been there already. If my men had reasonable suspicion that a weapon or ammunition was concealed, they would search. A record was made of where each weapon or ammunition was found and they were handed over to the JCF... I did see some damage. The actions of my soldiers should not have led to destruction of appliances. They should not have been destroyed as a result of the searches of my soldiers. I saw blood in some

instances but I cannot say it was fresh. There was blood in quite a few places.”

8.120. Lt. Col. Cummings said that he never saw Jane McFarlane’s property at 11 Wilton Hill Drive. Repairs to houses were carried out after 1 June 2010 and each house in Tivoli Gardens was searched twice. In the opinion of Lt. Col. Cummings, where it was necessary for the Engineers to breach walls by means of explosions to gain entry into the area of operation on 24 May that was done, but such methods did not cause injury or fire.

Gunmen on High-Rise Buildings

8.121. All of the JDF witnesses testified that, at various times and places of the operation, they received heavy and sustained gunfire from gunmen strategically located at various high-rise buildings.

8.122. Capt. Garth Anderson said that, although he received no specific complaints about property damage, “the majority appeared to have been caused by gunshots”. On the other hand, he gave this evidence –

“I did not observe any houses being destroyed by fire in or out of my sector. I did not observe any houses being damaged on 24 or 25 May.”

8.123. With regard to damage caused by residences, Capt. Anderson said in oral evidence:

“There was systematic breaching of doors of citizens so that innocent occupiers of houses would have been subjected to this.”

8.124. Lt. Col. Sewell did not discount the possibility of the complaints of residents being true. He said –

“I do believe that some residents who made allegations against the JDF may have been speaking the truth.”

SSP Donovan Graham

8.125. SSP Donovan Graham was a Silver Commander and had 244 officers from Mobile Reserve under his command on 24 May. He was effectively the senior officer on the ground during the operation and he established a base at Seprod. When hostilities subsided, he visited the community of Tivoli Gardens. SSP Graham said that he did not see any burnt out houses or apartments. He did not see any windows shot out or riddled with bullet holes. He did not visit Rasta City but he visited sections of Java and parts of sector 2.

Java

8.126. Mr. Golding said that, in the week following the internal security operation, he visited Tivoli Gardens. He knew that Coke lived in Java. He said –

“I saw Java totally destroyed.”

On the other hand, Maj. Marlon Kennedy who was the JDF Commander responsible for sector 2, testified in answer to Ms. Deborah Martin, that after 4.35 p.m. on 24 May, he “moved around Belgium, Java and the Community Centre”. Java was within his sector, but Maj. Kennedy said –

“All the buildings in Java were intact.”

FINDINGS

8.127. Upon a consideration of the totality of evidence adduced, we find that the JDF caused most of the damage to the property of residents. First, during the phase of the internal security operation when the JDF was seeking to get into the area of operation, the JDF encountered heavy and sustained gunfire from gunmen, several of whom were strategically placed on top of high-rise buildings. It seems to us that, when the JDF engaged these men in exchanges of gunfire, they would necessarily be firing upwards and damage was caused to

high-rise buildings. When Commissioners visited Tivoli Gardens on 24 April 2015, we saw a constellation of bullet indentations on these buildings.

8.128. Secondly, after 26 May, during the searches conducted by the Engineers, damage was caused to the interior of many dwellings. Lt. Col. Cummings admitted that the Engineers were obliged, in some cases, to damage parts of dwelling houses where they suspected that weapons and ammunition may have been concealed. That the Engineers had to revisit properties to carry out repairs is an implicit acknowledgment that they caused damage in the first instance.

8.129. Thirdly, it would be a perversion of common sense, in the context of the operation, to accept that the damage to 2,520 dwellings seen by the officials of the MoLSS (infra), was caused by the residents or even the gunmen. The gunmen were pre-occupied with firing at the security forces and were predominantly firing from inside or on top of properties at the security forces who were firing back towards buildings where the gunmen were located. However, whereas we accept that some damage to private property was caused by gunmen in cross-fire, we think that the percentage of such damage was not substantial.

8.130. Finally, since according to the evidence of the leaders of the security forces, the area of operation was substantially pacified on 25 May, the force used by the JDF in carrying out searches was disproportionate to the circumstances existing in West Kingston at the time of those searches. Searches, primarily by the JCF on 24 and 25 May, were also heavy-handed. Premises were invariably ransacked, appliances broken and strewn across rooms. These

exercises were also disproportionate to what the circumstances required.

8.131 We recognise the need for firmness but wanton destruction and damage were quite unnecessary.

Response of the Government – Benefits and Compensation

8.132. The present Permanent Secretary MoLSS, Mrs. Colette Roberts-Risden, was Director of Social Security in May 2010. She was intimately involved in the establishment of a system and the mechanics to respond to the claims and complaints of residents.

8.133. When Mrs. Roberts-Risden gave oral evidence on 3 July 2015, she said that, immediately after 24 May, the Prime Minister convened a meeting at his office. The then Permanent Secretary, Mr. Alvin McIntosh, officials of the MoLSS and personnel from the Social Development Commission were in attendance.

8.134. The Prime Minister gave instructions that the MoLSS should carry out an assessment of the damage suffered by persons in West Kingston as a result of the internal security operation of 24 May.

8.135. On 31 May 2010, Mr. McIntosh, brought together in a meeting, officials from the Social Development Commission (SDC), the Poor Relief Department and the MoLSS. Arising from this meeting, an inter-agency team led by Mrs. Roberts-Risden was established to develop an appropriate methodology and procedure for undertaking the assessment. It was decided that such methodology and procedure would include –

- designing a questionnaire;
- creating teams of social inquiry officers;
- properly equipping the officers;

- providing training as to completion of questionnaires.
- deploying these officers to affected communities;
- carrying out house to house inspections and assessments;
- entering data collected in an in-house Management Information System (MIS);
- generating necessary reports;

8.136. On 1 June 2010, approximately 100 officers from the MoLSS, SDC, Kingston and St. Andrew Poor Relief Department were deployed to Tivoli Gardens, Denham Town, Hannah Town and Fletcher’s Land. They were assigned in teams of four or five persons, each with a team leader.

8.137. The questionnaire sought information about demographic data of families, type of dwelling, names and numbers of persons in a family and whether any had died during the operation, nature of damage to dwellings, furniture and household contents and the value of damage. A “dwelling” was defined as a physical space in which a person or family resided. It was not necessarily synonymous with a house, although it could be. There could, therefore, be multiple dwellings in one house or building.

8.138. Mrs. Roberts-Risden’s witness statement then states –

“Each morning the officers were transported to the Tivoli Gardens Community Centre where they met with the Warrant Officer on the ground. He assigned army personnel to accompany each team while they carried out assessments of damage to places of residence. The exercise lasted 14 days (1-15 June 2010).”

8.139. The teams of assessors were instructed to visit every dwelling and assess it. After the information was compiled, there was a verification process whereby officers were sent back to the communities to verify the information gathered.

8.140. Mrs. Roberts-Risden emphasised that the methodology adopted for the exercise was one which drew upon and satisfied international standards promulgated by United States Agency for International Development (USAID). This methodology called for the categorization of damage as follows and “had been used by the MoLSS for years”.

- (i) Totally destroyed (dwelling uninhabitable)
- (ii) Severe damage (major damage to roof and structure)
- (iii) Minor damage (less severe damage to roof and structure)
- (iv) Other damage (to furniture and household effects)

Assessments

8.141. The MoLSS carried out 2,520 assessments in West Kingston. The data generated from the questionnaires were:

Totally destroyed (Uninhabitable Dwelling)	94
Severely damaged (Major damage to roof and structure)	200
Minor damage... (to structure or roof)	1,505
Other damage (Furniture and household effects)	<u>721</u>
	<u>2,520</u>

8.142. Residents usually gave estimates of their loss which were recorded by the assessing officers but, according to Mrs. Roberts-Risden, the MoLSS did not consider those assessments to be binding on the Ministry.

Supplementary Provision

8.143. The Ministry of Finance and Planning provided \$92.8395 million in the Supplementary Estimates of Expenditure 2010-2011 to accommodate the

payments to be made to affected persons. Payments were made during the month of September 2010, by cheque. Disbursement began on 20 September 2010 and distribution of the cheques took place at the Community Centres in Tivoli Gardens, Denham Town, Hannah Town and Fletcher’s Land.

Disbursement to Persons whose Properties were Destroyed or Damaged

8.144. Disbursement was as follows:

<u>Category of Damage</u>	<u>Persons Affected</u>	<u>Payment to Each</u>
Totally destroyed	94	\$250,000.00
Severely damaged	200	\$75,000.00
Minor damage	1,505	\$15,000.00
Other damage	<u>721</u>	\$15,000.00
TOTAL Affected Persons	<u>2,520</u>	
Total PAYMENTS		<u>\$71,890,000.00</u>

Vendors in Coronation Market

8.145. Vendors who sold in Coronation Market were discommoded in the aftermath of the fire which took place at the Market during the operation on 24 May. The MoLSS sent officers to the Market on 10 June 2010. Mrs. Roberts-Risden said in her witness statement –

“[They] were assessed and assisted with grants totalling \$13M. The value of the grants provided ranged from \$25,000.00 - \$150,000.00.”

8.146. Next we provide a summary of the number of registered vendors affected and the amounts of money disbursed to them at the Market Office, Down Town, Kingston.

	<u>Vendors Affected</u>	<u>Payment to Each</u>
	12	\$150,000.00
	76	\$100, 000.00
	51	\$50,000.00
	<u>42</u>	\$25,000.00
Total Vendors	<u>181</u>	
Total PAYMENTS		<u>\$13,000,000.00</u>

Funeral Grants

8.147. The MoLSS also provided grants to assist the families of 47 persons who died during the operation of the security forces. These grants ranged from \$50,000.00 to \$277,000.00. Payments were made directly to Funeral Homes against the presentation of a burial order and a *pro forma* invoice from the Funeral Homes. The total disbursement for these grants was \$4,477,000.00

The True Nature of the Money Provided

8.148. The categories mentioned above did not make provision for compensation for physical injury, and payments were made without consideration of any issue of liability. Mrs. Roberts-Risden gave a clear exposition of the true nature of the payments. She said –

“The payments were not intended to be compensation. They were really a compassionate grant made to assist people in getting back on their feet or rehabilitating their vending businesses. The MoLSS reached out to the communities in pursuance of its welfare function. It was a response to a social and humanitarian need.”

Appendices

8.149. At Appendix 8 is a copy of a document setting out details of the names and addresses of persons who received assistance, and the amounts paid,

together with the relevant cheque numbers (telephone numbers redacted). At Appendix 9 is a copy of a document summarising and detailing the grants made to vendors in Coronation Market. At Appendix 10 is a copy of the list of persons to whom funeral grants were paid to the respective Funeral Homes. At Appendix 11 is a copy of information specific to dwellings totally destroyed. It is noteworthy that the majority of these dwellings were in the area of #1 McKenzie Drive. At Appendix 12 is a copy of the questionnaires (MoLSS Application for Rehabilitation/Compassionate Emergency Relief) used by officers assigned by the MoLSS.

FINDINGS

8.150. We had no difficulty accepting the evidence of Permanent Secretary, Mrs. Roberts-Risden. It was clear, concise and thoroughly credible. Accordingly, we find that the payments made to residents of West Kingston were not “compensation” properly so called as that term is used, for example, in the law of torts and, in particular, damages for loss and damage to property. The payments were compassionate grants made to assist residents in achieving minimum reparation for damage to their properties or re-establishing their businesses in Coronation Market. The payments were contributions rather than full compensation. They were made without consideration of liability and were, therefore, *ex gratia* payments. Moreover, the Government had capped amounts which residents would receive for particular categories of damage. To that extent, the caps were not intended to compensate fully.

8.151. The MoLSS moved with commendable speed to carry out the assessments of damage and to make the necessary payments. The methodology and procedure adopted by the MoLSS were not unique. They were within the normal remit of the MoLSS to assist persons who

suffer damage or dislocation following certain events, such as natural disasters. Following hurricanes, e.g. Dean (2007) Sandy (2012), and tropical storm Gustav (2008), the MoLSS used a similar approach to assist persons adversely affected by those weather systems.

8.152. We find that the following payments were made in respect of various categories of damage:

- (a) Total destruction of property – 94 persons affected – individual payments - \$250,000.00;**
- (b) Severe damage – 200 persons – individual payments - \$75,000.00;**
- (c) Minor damage – 1,505 persons – individual payments - \$15,000.00;**
- (d) Others – 721 persons – individual payments - \$15,000.00;**
- (e) Vendors in Coronation Market:**
 - 42 paid \$25,000.00 each;**
 - 51 paid \$50,000.00 each;**
 - 76 paid \$100,000.00 each;**
 - 12 paid \$150,000.00 each.**
- (f) Funeral grants to 47 persons ranging from \$50,000.00 to \$277,000.00**

8.153. The documentation produced to the Enquiry by the MoLSS reveals that, overwhelmingly, the worst property damage occurred at McKenzie Drive. However, severe damage was also sustained by property holders not only in Tivoli Gardens but also in Denham Town.

Victor Hemmings

8.154. In May 2010, Mr. Hemmings was an investigator attached to the Office of the Public Defender. On 25 May, about 9.00 a.m., he reported to Area 4 Headquarters where he was given certain information and instructions by Mr. Earl Witter, the Public Defender. He took a camera and went to Tivoli Gardens where he and Mr. Witter met Bishop Herro Blair and Dr. Jaslin Salmon.

8.155. About 11.00 a.m. Messrs. Witter, Blair, Salmon and Hemmings set out from the Community Centre, under military escort, to walk around Tivoli Gardens and observe the situation there. Mr. Hemmings took a large number of photographs. Lord Gifford informed the Enquiry that approximately 3,500 photographs were taken.

8.156. On 28 October 2015, Mr. Hemmings produced 37 photographs which showed damage to buildings, two dead bodies and blood stained properties. He said that residents pointed out to him damage to property and evidence of blood.

FINDINGS

8.157. The photographic evidence supported the oral evidence of residents who testified at the Enquiry and enables us to find that there was widespread damage to private property.

Evidence of Mr. Earl Witter Q.C.

8.158. Mr. Witter, as Public Defender, had his office investigate approximately 700 complaints (excluding personal injuries and detentions). The claims were estimated at \$110,806,704.44. He said –

“The claims assessed by the office of the Public Defender were disaggregated to take account of payments made by MoLSS. The office of the Public Defender (OPD) did not

consider that those payments by the Ministry should displace the statutory duty to investigate those claims and assess compensation. There was an obvious and urgent need for social intervention. This was part of Government's responsibility. We determined that there would be no double compensation."

8.159. Mr. Witter said that claims made to OPD were dealt with "forensically" and complainants were required to provide proof of losses.

"We also took photographs of damage and sought corroboration of the claims. The methodology we used was 'replacement cost'. We approached compensation in much the same way as a judge assessing damages and we arrived at a figure for each claim."

8.160. The Public Defender (Interim) Act, 2000 empowers the Public Defender to award legal aid in respect of cases establishing, to a probability, an infringement of any constitutional right of an individual and for which the State has not provided redress. Mr. Witter said that, although he had such statutory power, he did not authorise the payment of any monies up to the time when he demitted office.

PART 3

ADEQUACY OF COMPENSATION

8.161. The Commission of Enquiry is not a court of law. Having regard to rules of law which require strict proof of loss and damage, the time constraints imposed on the Commission and the large number of persons who suffered property damage and loss, the Commission was not competent to carry out detailed assessments of the quantum of compensation paid or payable to persons. Moreover, the overwhelming majority of witnesses testifying about property damage and loss, were of opinion that money received from the MoLSS was inadequate.

8.162. We have explained at para.150 the true nature of those payments. We think, however, that there is a strong case for the matter of compensation to be re-visited by a specially established tribunal. Thus, we make a specific recommendation to that effect at Chapter 15 of this Report.