

CHAPTER 9

WHETHER, AND IF SO, UNDER WHAT CIRCUMSTANCES, CIVILIANS, POLICE OFFICERS AND SOLDIERS OF THE JAMAICA DEFENCE FORCE WERE SHOT AND KILLED OR INJURED DURING MAY 2010 IN CONNECTION WITH THE SECURITY FORCES SEEKING TO EFFECT THE ARREST OF CHRISTOPHER "DUDUS" COKE ON A PROVISIONAL WARRANT IN EXTRADITION PROCEEDINGS

ToR (H)

INTRODUCTION

9.1 In Chapter 4, we discussed the circumstances under which the security forces were attacked by criminal elements supportive of Christopher Coke. With a view to avoiding or reducing repetition which is inherent in many of the Terms of Reference, this Chapter focuses primarily on the circumstances surrounding the injuries and deaths sustained by civilians, police officers and soldiers.

9.2. Part A deals with the injuries and deaths of members of the JDF. Part B treats similarly with members of the JCF. Part C discusses the deaths of civilians. Part D discusses injuries suffered by civilians and Part E addresses allegations that civilians were killed by gunmen.

9.3. We wish to make it plain, however, that the matters addressed in Parts A, B, C and D of this Chapter relate only to persons of whom evidence was adduced at the Enquiry. They do not purport to be exhaustive of injuries and deaths of all persons who may have suffered during the internal security operation or, indeed, during May 2010.

9.4. Having regard to the requirements of Term of Reference (I), there will necessarily be repetition, even if limited, in our discussion of this Term of Reference and matters dealt with in Chapter 8.

**CAVEAT RE: FINDINGS IN RESPECT OF ALLEGED CRIMINAL
OFFENCES INCLUDING EXTRA-JUDICIAL KILLINGS**

9.5. We have eschewed making definitive findings of fact in relation to allegations of extra-judicial killings and other criminal offences for four reasons.

- (i) The Commission was not a court of law and, even though we permitted cross-examination of witnesses, we were not in a position to apply all the exacting tests of proof and rules of evidence such as would apply in a court of law.
- (ii) In nearly all of the cases, there was no positive proof of identification of alleged wrongdoers.
- (iii) The security forces adduced no evidence of possible defences to allegations. To that extent, we would not have heard both sides of the issue. It would therefore be inappropriate to make definitive findings of fact on the evidence of one side only. However, in reaching our conclusions, we paid regard to evidence which was unchallenged.
- (iv) The Commission was made aware that Independent Commission of Investigations (INDECOM) is currently investigating some, if not all, of the very matters on which we heard evidence. In those circumstances, it would also be imprudent for the Commission to appear to be foreclosing those investigations by making definitive findings of fact.

Nevertheless, we could not abdicate our responsibilities to enquire into those matters and indicate, at least *prima facie*, what the evidence seemed to suggest on a high balance of probabilities. In the result, where the evidence

pointed to the possible commission of a criminal offence, we have used a standard linguistic formula as follows:

“The evidence suggests, at a high level of probability, that a criminal offence may have been committed and we recommend that there be further investigation into the deaths of...”

PART A - JAMAICA DEFENCE FORCE

INJURIES AND FATALITY

Dr. Gail Ranglin-Edwards

9.6. In her capacity as a registered medical practitioner and Commissioned Officer of the JDF, (Maj.) Dr. Ranglin-Edwards is currently the Force Medical Officer and keeper of the medical records. In May 2010 she examined and treated members of the JDF who were injured during the internal security operation. During her testimony on 21 October 2015, Dr. Ranglin-Edwards listed the soldiers who were injured or who died during the operation in her witness statement – see Appendix 13.

9.7. In summary, 26 soldiers were injured. Fourteen sustained gunshot injuries, including one soldier, whose leg was amputated above the knee. Shrapnel wounded 5 soldiers and 4 suffered blunt trauma injuries. Two others suffered from heat exhaustion. Pte. Maurice Green was the only fatality. He received a single gunshot wound to the back of his head. Dr. Ranglin-Edwards explained that –

“the projectile that caused that single fatal wound had enough energy to pierce his ballistic helmet.”

9.8. The doctor was unable to say whether 12 of the soldiers were injured as a result of hostile action or not but they were all injured on 24 May.

9.9. *Circumstances under which Soldiers were Injured*

(a) L/Cpl. M. Hylton

Maj. Kennedy recounted that, about 2.00 p.m. on 24 May, while he and his platoon were advancing to secure Sector 2, they were fired upon by a gunman in the gully. L/Cpl. Hylton was shot in his left hand and he had to be evacuated.

(b) L/Cpl. G. Roach and Cpl. L. Johnson

Maj. Chevarria's troops were on Industrial Terrace en route to Tivoli Gardens and sector 1 when gunmen opened fire on them. L/Cpl. Roach was hit by gunshot in his right arm and leg. Cpl. Johnson suffered a gunshot wound to his right arm.

(c) L/Cpl. J. Robinson and Pte. C. McHayle

These 2 soldiers were attached to Charlie Company (1JR). While this company was making its way to its sector to secure KPH, Victoria Jubilee Hospital and the Blood Bank, it encountered significant resistance from gunmen in Fletcher's Land, in Craig Town and when it was near to Kingston Secondary School. L/Cpl. Robinson was shot in his buttocks and Pte. McHayle received a shrapnel wound to his left forearm.

(d) Pte. G. Marshall and Pte. D. Brown

Pte. Marshall and Pte. Brown were in Bravo Company (1JR) under the command of Maj. Kevron Henry. Lt. Col. Jaimie Ogilvie who was the commanding officer of 1JR, said that Bravo Company was tasked to take control of Spanish Town Road, Coronation Market and Denham Town. While advancing through Coronation Market, Bravo met heavy gunfire and resistance. The soldiers became bogged down by gunmen firing on them from multiple locations.

The gunfire was so intense that a request was made for additional troops to augment the numbers of Bravo which Lt. Col. Ogilvie approved. About midday, he received information that Pte. Brown had been shot and injured when leaving the MSOC building en route to Denham Town.

(e) Two Soldiers of the Combat Support Battalion

Maj. Mahatma Williams gave evidence of the CSB receiving heavy gunfire on Industrial Terrace. The shots were fired from buildings in Tivoli Gardens and the Universal Freight Handlers' building. When the Battalion entered Tivoli Gardens, they were fired upon at Levy and Derek Pathways. Two soldiers were injured: one received a grazed injury and the other was shot while attempting to dislodge a motorcycle.

(f) Three soldiers of Capt. Anderson's Company (Bravo 1JR) were injured. He said that one soldier was shot in a hand; another was shot in his groin. The third soldier's leg was broken in three places while the troops were seeking to enter Lizard Town through Rasta City.

(g) Pte. Maurice Green (Fatality)

Maj. Henry testified that he received information that MSOC was under heavy and sustained gunfire in the vicinity of Coronation Market. As they exited the MSOC building, Pte. Green was fatally wounded by a gunshot wound to his head. Maj. Henry heard of the fatality about 12.30 p.m. on 24 May. It seems that Pte. Green was shot about 11.45 a.m.

(h) Unidentified Soldier

In the course of his evidence Maj. Warrington Dixon testified that a soldier received gunshot injury to his hand, while on the Seprod building.

FINDINGS

9.10. We find that the following soldiers were injured by gunshots fired by criminal elements trying to protect Christopher Coke from arrest during the advance of Bravo Company and Charlie Company towards their designated positions:

- **Pte. C. James**
- **Pte. G. Marshall**
- **L/Cpl. G. Roach**
- **Pte. D. Brown**
- **Sgt. C. Grant**
- **L/Cpl. J. Robinson**
- **L/Cpl. M. Hylton**
- **Pte. M. Fenton**
- **Cpl. L. Johnson**

The following soldiers were injured by shrapnel:

- **Cpl. M. Riley**
- **L/Cpl. L. Lynch**
- **Pte. C. McHayle**
- **Pte. D. Lawrence**

Five soldiers were found to have blunt trauma injuries, but the circumstances under which they sustained their injuries were not made known to us:

- **Pte. K. Adams (head)**
- **L/Cpl. R. Clarke (head)**
- **Pte. R. Johnson (left eye)**
- **Pte. B. Clarke (right knee)**
- **L/Cpl. S. McCurdy (lower back)**

Those who were overcome by heat exhaustion or dehydration were:

- **L/Cpl. T. McLarty**
- **L/Cpl. R. Wade (dehydration)**

In the absence of evidence, we are unable to make any findings concerning lacerations sustained by:

- **Pte. D. Willock; and**
- **L/Cpl. W. Gilzene.**

It seems from Dr. Ranglin-Edwards' list, that Pte. S. Moulton fell from a truck and suffered blunt trauma to his back and abdomen.

9.11. We are satisfied that Pte. Green sustained his fatal injury from a high-powered weapon used by one of Coke's adherents who was shooting at officers of Bravo Company as they exited the MSOC building.

9.12. The slow progress made by Bravo and Charlie Companies as reported elsewhere, was evidence in itself of the intensity of the resistance offered by Coke's gunmen to the JDF. We also find that the distribution of IEDs throughout the area of operation retarded the progress of the JDF, and made them more vulnerable to injuries and fatalities.

PART B – THE JAMAICA CONSTABULARY FORCE **INJURIES AND FATALITIES**

9.13. Chapter 4 contains a full discussion of the circumstances under which 8 JCF officers were shot and wounded at Mountain View Avenue in the early hours of 24 May. We therefore do not dwell upon that particular incident here save and except to identify the police officers involved.

(a) Incident at Mountain View Avenue

9.14. The injured policemen were: Cpl. Dawkins, Cpl. C. Cummings, Cons. K. Miller, Cons. K. Forde, Cons. Knight and Cons. O. Reid. Sgt. Wayne Henriques and Cons. Jason Davis succumbed to their injuries.

(b) Injury to Cons. Maxwell

9.15. We were told that Cons. Maxwell received a grazed injury on 24 May.

FINDINGS

9.16. With respect to the Mountain View Avenue incident, we find that the 8 police officers were on duty patrolling the area. They were ambushed by some of Coke's gunmen who used the elevated wall on the playing field as a shield from which to rain a hail of bullets at the officers. These gunmen were part of the Back Bush gang which was affiliated to Coke's Shower Posse. They were ruthless, merciless and utterly defiant of the additional police officers who came to rescue their ambushed colleagues. The location of the gunmen behind the wall gave them the advantage of shooting at the police officers on the roadway while using the wall as a shield from police gunfire. We also find that two other officers received minor grazed wounds according to the evidence of SSP Donovan Graham.

PART C – CIVILIANS KILLED

The Public Defender's Interim Report

9.17. After the internal security operation, 76 bodies were subject to post mortem examinations. The then Public Defender, Mr. Earl Witter Q.C., prepared an Interim Report for Parliament dated 29 April 2013 concerning his Office's

independent investigation into “the conduct of the security forces during the State of Emergency...”. At Appendix I, headed “List of Known Related Deceased”, Mr. Witter set out in alphabetical order, the names, addresses and occupations (if known) of the 76 deceased persons. We append that list to this Report as Appendix 14.

9.18. At Appendix 2 of his Interim Report, Mr. Witter published similar information concerning the alleged extra-judicial killing of some 44 persons. We append that list to this Report as Appendix 15.

9.19. We were unable to obtain evidence concerning the death of every person allegedly killed by the security forces. Thus, what follows hereafter is limited to the evidence of witnesses who testified at the Enquiry. In that regard, we wish to signal, in advance, that many of the civilians mentioned in this Part, testified that their properties were also damaged by the security forces. Thus, their evidence concerning such damage was previously discussed in Chapter 8 and the discussion in this Part will be limited to the circumstances under which civilians were killed or injured.

*(i) **Dwayne Edwards and Andre Smith***

Joan McCarthy

9.20. At Chapter 8, paras.36 to 39, we considered Ms. McCarthy’s evidence. So far as material to this Term of Reference, her evidence is to the effect that, about 5.00 p.m. on 24 May, police officers took Dwayne Edwards, Andre Smith, George Lewis and Anthony Brown upstairs her apartment at 22 Seaga Boulevard to conduct a search. Andre and Dwayne were wearing white shirts. Lewis and Brown were brought back downstairs to rejoin other family members but Edwards and Smith were not brought back downstairs. Later, Ms. McCarthy and others were directed to Paulton Edwards’ apartment in the building and, shortly after, she saw the same policemen descending the

steps of her apartment with a body wrapped in a blood-stained sheet. It was Dwayne's bed sheet. One of his feet was protruding from under the sheet. Ms. McCarthy recognised a beige crepe sole shoe and gray pants as Dwayne's. When she eventually returned to her dwelling about 7.00 p.m., Ms. McCarthy found Dwayne's room ransacked, a pool of blood at the entrance to the room and a tooth on the bed. The post mortem report on Andre Smith records that he sustained two gunshot wounds – one in the abdomen, the other to his right forearm continuing into his chest. Dwayne Edwards' body has not been identified.

Paulton Edwards

9.21. Mr. Edwards observed police officers taking Dwayne and Andre upstairs Building #22. He "heard a barrage of shots coming from the second and third floors" of the building and saw the police officers come back downstairs. He said in evidence that when the officers came back downstairs, they said words to the effect: "You think we are fools. You think you can hide gunmen?" He saw police officers carry two bodies wrapped in sheets and the foot of a person was protruding from beneath the sheets.

9.22. Smith's and Edwards' deaths are not recorded on the police list of persons killed during the operation.

Victor Hemmings

9.23. On 25 May 2010, Mr. Hemmings, an investigator at the office of the Public Defender, accompanied Mr. Witter, Dr. Jaslin Salmon and Rev. Herro Blair to Tivoli Gardens. He saw bullet holes inside Building #22 Seaga Boulevard, Flat G, and took photographs which we saw.

FINDINGS

9.24. We find that the evidence of Mr. Hemmings, Mr. Paulton Edwards and Ms. McCarthy was truthful. Dwayne Edwards and Andre Smith were taken away from the company of their family by police officers to an apartment upstairs in Building #22. All the evidence adduced strongly suggests that Dwayne and Andre were unlawfully killed by unidentified police officers. There is no evidence that the officers may have been acting in self-defence or under provocation. Such issues could hardly arise since the killings occurred after soldiers had cleared the building, according to the evidence.

9.25. The evidence suggests, at a high level of probability, that a criminal offence may have been committed and we recommend that there be further investigation into the deaths of Dwayne Edwards and Andre Smith.

(ii) Nicholas Wilson

Adina Darby

9.26. Ms. Darby lived and had a small business at #3 Wilton Hill Drive. On 25 May, during the morning between 10.30 and 11.00 o'clock, she was at home with some family members and friends, including her son, Nicholas. Nicholas went upstairs to fetch his cellular telephone. There was gunfire outside the house. Nicholas came down the staircase saying to the mother of his baby: "Tassie, me get shot!" The witness, Annette Marshall, said that Ms. Darby shouted: "Annette, they kill me pickney!" Ms. Marshall said that she had seen police and soldiers on the roof of a building and at that time, the area was under the control of the security forces. She further said she saw a bullet hole in a window of Ms. Darby's house.

9.27. Ms. Darby said that she saw blood on Nicholas' chest. She went outside to get a handcart from a friend, Peppo, to take Nicholas to hospital. She managed to put him on the handcart and began to push him. However, soon after she passed a policeman who was kneeling with a gun, she was herself shot.

9.28. The post mortem report on Nicholas discloses that he received a single gunshot wound to his back which travelled towards his chest damaging his heart and lungs. His hands were swabbed and there is no evidence that the residue of a firearm discharge was found.

FINDINGS

9.29. We accept the evidence of Ms. Darby and Ms. Marshall and we find that Nicholas Wilson was shot by a member of the security forces on 25 May. Nicholas was shot in his back while inside a room in Ms. Darby's house. Miss Marshall saw members of the security forces on the roof of a nearby building. At that time the area was clearly under the control of the security forces. Nicholas had gone to his bedroom, and was returning downstairs when he was shot. The evidence suggests, at a high level of probability that a criminal offence may have been committed and we recommend that there be further investigation into Nicholas' death.

9.30. In so far as Ms. Darby admitted that at the time when she was shot, there were shots being fired in the area, we are unable to say that she was shot by the policeman whom she had just passed before she was shot. The inferences from that portion of evidence are equivocal and, as a matter of law, we are obliged to draw the more favourable inference in favour of the policeman.

(iii) Lundie Murphy

Roselyn Newton

9.31. Ms. Newton alleged that her nephew, Lundie Murphy, was shot and killed by a policeman on 24 May. She lived at 52 Lenford Path near Bustamante Highway. About 2.30 p.m. she was at home with Winston Barrett and Lundie. About eight soldiers, who were wearing masks, tore down the fence at the house and, after the door was opened, a soldier ordered them to go next door to Ms. Pricey's house and lie on their faces. Ms. Newton claimed that she saw soldiers point their guns at them as they lay on the ground. She "jumped up" and said, "Unna can't shoot them!" She said she was roughly treated. She heard them question the three men in the group and then they were ordered to go to a muddy area in Chang Avenue and lie face down in the mud. They did as they were told. Men were separated from women.

9.32. Ms. Newton gave evidence that she saw a soldier kick Lundie in his forehead while he lay on the ground and other soldiers step on the heads, backs and fingers of the men. She said she saw the soldiers take away Lundie and the other men "across the road" where there were other soldiers. Then Ms. Newton gave this evidence:

"I see when Lundie cross over to Kirkpatrick Pathway. I see Lundie open and turn his hands. Police tell him go into Kirkpatrick Pathway. I didn't see him no more. I saw a police point a gun towards where my nephew was. I see fire come out from the gun. I couldn't see Lundie 'cause the wall block me. I saw no one else in the pathway. I start to bawl. It was about 6.00 p.m."

9.33. Under cross-examination, Ms. Newton admitted that she did not see when Lundie was shot but she saw fire from a gun. The post mortem report shows that Lundie suffered three gunshot wounds to his chest. He had contusions on both sides of his face.

FINDINGS

9.34. The evidence suggests strongly that Lundie Murphy was killed by the security forces in circumstances where he was clearly unarmed in their custody and in no position to be a violent threat to them. But since there is no satisfactory evidence of the actual shooting, we cannot attribute the shooting specifically to either the JDF or JCF. On Ms. Newton's evidence, members of both forces were in the vicinity at the time but a wall obstructed her view of Lundie. Kirkpatrick Path is a cul-de-sac. The post mortem report's findings are consistent with Murphy having been beaten about his face and shot at a time when members of the JDF and JCF were in the sector. The evidence suggests, at a high level of probability, that a criminal offence may have been committed and we recommend that there be further investigation into Lundie Murphy's death.

*(iv) **Martin Lindsay and Oshane Walker***

Jane McFarlane

9.35. Ms. McFarlane's house was situated at 11 Wilton Hill Drive but, from the weekend immediately preceding the internal security operation and up to 25 May, she was at the house of her common law husband in Spanish Town. She kept in touch with her children by telephone. She was the mother of Martin Lindsay (Pops) and Oshane Walker (Pow) was her nephew.

9.36. On 25 May, Ms. McFarlane spoke to Martin and Oshane at Ms. Tracy's house. She stated that about 10:00 a.m., on Wednesday, 26 May, she spoke with Martin who told her that there was no food at Ms. Tracy's, he was hungry and he was going home to Wilton Hill Drive for food. About 11.00 a.m. or noon, Martin confirmed that he was in the house at 11 Wilton Hill

Drive. Ms. McFarlane said that she encouraged Martin to return to Ms. Tracy's house. That conversation ended.

9.37. Ms. McFarlane called Martin again after speaking with Annette Marshall and learning of the death of one Taniel. Martin said that there were shots everywhere. Soon after Oshane called his aunt and said "Pops dead!" Oshane was using Martin's phone. Ms. McFarlane said that she called Oshane and he said: "I get a shot in my back and I feel I gwine dead!" Ms. McFarlane said she asked him who had shot him and he said "Police". She heard a police officer ask a policewoman, "You call the truck yet fi tek dem dead boy dey out of the house?"

9.38. Ms. McFarlane said that Annette Marshall told her that police officers took the bodies out of the house and put them on a big truck. Ms. McFarlane subsequently identified Martin's body from a photograph at the Tivoli Community Centre and an aunt identified Oshane's body.

9.39. When Ms. McFarlane eventually returned to her house on 28 May, she saw blood everywhere except in the bathroom downstairs. We were shown photographs confirming the presence of blood all over the house. Ten spent shells were allegedly found in the house.

9.40. The post mortem report for Oshane discloses that he received two gunshot wounds, one to the right side of his face and the other to "the posterior of the root of the neck". Cause of death is said to be injury to the brain and gunshot wound to the head. The post mortem report of Oshane locates his death between 23 and 25 May. It also referred to "white maggots 0.5 cm along with white flies eggs seen on the body". The report for Martin states that he received two gunshot wounds to his chest and forearm respectively. Cause of his death is stated as gunshot wounds to the chest, haemorrhage and shock. The report states that he died between 23 and 24 May. "The body was

discovered between 23 and 24 May 2010 at KPH by the doctor of duty". The records of KPH do not support the latter statement on Martin's post mortem report, because there is no reference in the KPH records of any such body.

FINDINGS

9.41. Ms. McFarlane appeared certain of the 26 May as the date of death of Martin and Oshane. On the evidence adduced, we cannot be confident of the date on which these two men died. On the other hand, we are satisfied on the basis of the photographic evidence of the state of Miss McFarlane's house, and her oral testimony, that these two men were more than likely murdered in Miss McFarlane's house, by unidentified members of the JCF. Miss McFarlane's evidence as well as that of Annette Marshall support this finding. We believe that Miss McFarlane was mistaken as to the date of death of Martin and Oshane. Having regard to our findings suggesting, at a high level of probability that criminal offences may have been committed, we recommend that there be further investigations into these deaths.

(v) Fabian and Fernando Grant

Marjorie Williams

9.42. On 25 May 2010 Ms. Williams lived at 25 Dee Cee Avenue, Tivoli Gardens. About 6.15 a.m. her two sons, Fabian (20) and Fernando (17) Grant were in the house together with other persons. According to Ms. Williams, both seemed nervous. Fernando even said that he felt that he was going to die. She had prepared breakfast when there was a knock on the door. She went downstairs and saw soldiers and police officers in the road. She opened the door and a soldier went into the house. As instructed, she called together all of the persons in the house. The soldier said: "Mum, you can't tell me that this guy (Fabian) wasn't firing at me." Ms. Williams said "No".

9.43. The soldiers summoned the police officers and told them to "sort him out". Ms. Williams asked the security forces what they were going to do. She said the police carried Fabian and Fernando "across the road" along with Mark Williams, her brother. The soldiers went upstairs to speak to her father and she heard them say "Daddy, everything o.k." Ms. Williams said she went outside and saw her sons "across the road on Dee Cee Avenue kneeling down with their hands on their heads". She saw the boys crying and gesticulating. They were taken to the garden area of adjoining premises.

9.44. Ms. Williams said that, peeping through a broken window from inside her house, she saw the boys in the garden lying down. "Police were in my yard and over the road". She heard police tell the boys who were crying: "Shut up, unno gwine ded today!" Ms. Williams went and told her father what she witnessed. He was blind but he came downstairs. Ms. Williams then said –

"I hear Fernando cry out and I heard gunshots. Fernando shout, "Mummy, Mummy, they kill Pooksie" (Fabian). Shortly after, I heard Fernando shout, "Mummy, Mummy, they gwine kill me". I heard shots. I was hugging up Diane. When I did not hear any more from Fernando, I looked outside. We went upstairs and climbed on Daddy's bed and looked outside into the road. I could see clearly. There was a big white truck. I saw police drag my son's body and put him on the truck. I did not see when they killed Fernando."

(vi) ***Jermaine 'Kevin' Grant (Porridge Man)***

9.45. Ms. Williams also testified about Jermaine Grant (Porridge Man). She told the Commission that, when she saw Fabian and Fernando crying and gesticulating, she was at her gate and saw police officers go next door to #27 Dee Cee Avenue. Porridge Man was outside. The police officers ordered him to go inside and he said "Marjorie, give me a hand". He appeared frightened.

9.46. She saw soldiers and police officers go into the house with him. Fabian and Fernando were still across the road. Ms. Williams said she heard shots go off and they sounded as if they came from #27 which adjoins her property. She believes that Porridge Man was killed in his dwelling and she told Diane that, if they killed Porridge Man, they would kill Fabian and Fernando. Sometime after she heard gunshots next door, she saw police officers carry Porridge Man's body in a sheet from his dwelling.

9.47. Ms. Williams gave these descriptions of the way her sons and Porridge Man were dressed:

"Porridge Man was in a white Tee Shirt. Fabian had on orange slippers. I found one with blood sometime after. I can't recall if any of my boys were wearing white Tee shirts but both were wearing shorts."

9.48. Ms. Williams was positive that the police officers she saw were masked. Under cross-examination by Mrs. Neita-Robertson, Ms. Williams agreed that she had not mentioned in her witness statement that police officers were masked, that they had told the boys that they were going to die, that Fernando said the police had killed Fabian, that she had made no mention of Porridge Man. Ms. Williams, however, explained to the Commission that she merely answered questions put to her by the interviewer when she gave her witness statement.

9.49. Ms. Williams specifically denied that her sons were "shooters", that Fabian had been buried with his gun and, that she conspired with two soldiers who gave evidence (Nos.1 and 3) to give untruthful testimony - a suggestion that was never put to those soldiers. Fabian's post mortem report shows that he received six gunshot wounds, two of which damaged his heart, arteries and lungs. In Fernando's case, there were three gunshot wounds on his body and the cause of death was lacerations to his heart, lungs and liver.

9.50. Porridge Man's report refers to three gunshot wounds damaging his heart, arteries, lungs, liver and lumbar spine. Cause of death was gunshot wound to right arm and chest and laceration of the subclavian aorta and lung.

Veronica Muirhead

9.51. Ms. Muirhead's address is 12 Dee Cee Avenue. She recalled 25 May 2010 about 7.00 a.m. About 2 soldiers and 5 police officers came to her house. She was downstairs with her son, Dwayne Watkis. Another son, Andre was upstairs. He came down. The police officers enquired about Christopher Coke. Ms. Muirhead denied knowing him and was accused of lying. Andre said he knew Coke. The police officers took Dwayne and Andre outside. Ms. Muirhead followed them. She saw her sons, Denton Dacres and one 'Escobar' lying face down on the sidewalk. She heard gunshots. A police officer told a soldier to "send over one of them boys there" but the soldier refused.

9.52. Ms. Muirhead said she was crying and a policeman pointed a gun at her and told her, "Woman, go inna yuh bloodcloth house". She saw police officers send her sons and Mr. Dacres "across the street where a truck was parked with dead bodies". She saw her sons standing by the truck.

9.53. Then Ms. Muirhead spoke of seeing Fabian and Fernando Grant:

"I saw when the police come out from Marjorie Williams house on the other side of the road – about 25 yards away, I see when they take out Marjorie two sons, Fernando and Fabian Grant and bring them in the street. Then the police ordered them to go next door to the neighbour's house. They went over there and I saw them go down on their knees. A banana tree was in the yard and the little one rested his head on a tyre. Police and soldiers were with them in the yard. I saw a police with a short gun shoot. The police kill the other Grant. The little one bawl out, "Mummy!" The same policeman shot both Grants one after the other. They shoot the smaller one first."

9.54. Ms. Muirhead continued:

"They used "Giffy" (Orlando Brown) to take up the bodies and throw in the truck. Escobar and Giffy threw the Grant boys in the truck. I saw the police kill "Giffy", shoot "Giffy" after he throw the bodies in the truck."

9.55. Ms. Muirhead said that she can identify the police officer who shot the Grants. In her words –

"I see him at Denham Town station. I see him more than 5 times."

9.56. Under cross-examination by Mrs. Neita-Roberston, Ms. Muirhead testified that she saw when "Porridge Man" was brought from his house in a white sheet. She described the house where the Grants were taken for execution as having "flowers and banana. The walkway was paved green."

9.57. She said that soldiers took her sons out of the truck. Andre was vomiting and the soldiers gave him a handful of marijuana and told him to inhale it before taking them off the truck.

9.58. Her son Andre was taken away and detained until 12 June. He showed her his fingers which he claimed were the result of "people standing on them".

*(vii) **Jermaine 'Kevin' Grant (Porridge Man)***

Denton Dacres

9.59. Mr. Dacres is a fisherman who lived at 27 Dee Cee Avenue in a townhouse owned by his sister. Two other persons, one Ariel and "Porridge Man" (*supra*) shared the house with Mr. Dacres but on 25 May, Ariel was at Portmore with the mother of his baby. On 24 May, "Porridge Man" and Mr. Dacres occupied the house but Mr. Dacres left and went next door at Ms. Carol where there were other persons.

9.60. About 6.30 a.m. on 25 May, Mr. Dacres heard Ms. Carol's door "start fi lick off". All the persons at Ms. Carol's went outside. He observed Porridge Man "talking to 3 policemen and 1 soldier". Mr. Dacres was ordered to go to his home but he said he leant on the fence by the gate. The security forces took "Porridge Man" inside Mr. Dacres house. He said:

"I hear gunshots coming from inside my house."

9.61. Then he heard a voice saying "go and lay down", and he went and lay on the corner of Dee Cee Avenue with about 6 other men. He said Marjorie Williams' brother told him that "Porridge Man" had just been killed. Mr. Dacres then said:

"Lying on my hands I peeped up and saw the 3 police and 1 soldier drawing a body in a sheet from inside the house. I saw a truck at the bottom of Dee Cee. It was a police truck. I saw the police take the body and put it in a truck. I recognise it was Kevin (Porridge Man)."

9.62. He said the security forces took him and the other men off the ground and put them in the truck in which there were dead bodies. Two police officers were sitting at the back of the truck. Mr. Dacres recognised the two Grants in the truck and he saw "Porridge Man" with a gunshot wound to his upper body. He related that he was allowed to get off the truck "with the other fellows" and a black police vehicle took them to Seprod.

9.63. Mr. Dacres said that when the police made him come outside at first, the truck was parked by the garbage dump. At the time, he could not discern whether there were dead bodies in the tray of the truck but, as he was walking towards the truck, he saw bodies in it. He described "Porridge Man's" clothing on 25 May. While he was on the verandah, he was wearing short pants and was shirtless. When Mr. Dacres saw him on the truck, he was wearing only underwear.

FINDINGS

9.64. We find that Ms. Williams was a truthful witness and we believe her account of the circumstances in which her sons Fabian and Fernando Grant were killed. That evidence is suggestive of deliberate murder by unidentified police officers. Ms. Muirhead's evidence corroborated Ms. Williams' in respect of the manner in which Fabian and Fernando were killed. We also accept Mr. Dacres' testimony that he saw their bodies in a truck driven by a police officer. Since the evidence suggests, at a high level of probability, that these three men may have been murdered, we recommend that there be further investigation into their deaths.

9.65. We believe Mr. Dacres' evidence as well as Ms. Muirhead's. Their evidence speaks to the murder of "Porridge Man" and Orlando Brown (Giffy) by police officers on the morning of 25 May 2010 at a time when members of the JCF were retrieving dead bodies in Tivoli Gardens. Ms. Muirhead also seems to have been an eyewitness to the killings of Fabian and Fernando Grant. Since the evidence suggests, at a high level of probability, that a criminal offence may have been committed, we recommend that there be further investigation into the deaths of Jermaine "Porridge Man" Grant and Orlando "Giffy" Brown.

(viii) Kirk Allison and Dashard Page

Joan Haughton-Allison

9.66. On 24 May between 12.30 p.m. and 1.00 p.m. Mrs. Haughton-Allison was at home in Flat 22, Building #1, Levy Path with her husband, Kirk Allison, son Dashard Page and others. She was about to start cooking when she heard a loud explosion "like a bomb and the building shake". Kirk was on the verandah and he ran inside "crying for his ears". Her six months' old baby

was screaming. The entire family went downstairs from the third floor of the building to Marjorie Hinds' flat. Only Ms. Hinds' daughter and another lady (now deceased) were in Marjorie's flat.

9.67. Mrs. Haughton-Allison said that she heard a second bomb and gunfire. She looked out and saw soldiers going on the roof of the Community Centre. Then she heard soldiers and police officers beating the door of one of Christopher Coke's houses at Levy Path. They came to Ms. Hinds' house and asked who was there. Mrs. Haughton-Allison identified herself and the security forces kicked the door open. She said that she heard a policeman say, "Today going be like Christmas day!" She saw six masked soldiers and one policeman. At the point of guns, all of the occupants of Ms. Hinds' house went to an open area at the front of the building. This was in the area known as Java. They were separated and ordered to sit down. She described where the men were taken:

"Where they place us, it have like a curve area like. It's on like a corner, where you have like the trees. They place the men around that little section, like the side of the building."

She said there were about 20 to 25 men sitting in "the side area". One of them was "Micky, Marjorie Hinds' baby father. At that point, there was a lot of police. Most of the soldiers went on the building." Mrs. Haughton-Allison was allowed to return to Ms. Hinds' house. She left her husband and son behind. She never saw them alive again.

9.68. When Mrs. Haughton-Allison eventually returned home, she saw none of her children. Soldiers were sitting on the landing and Mrs. Haughton-Allison told one of them that she could not find her family. He said "leave it till tomorrow morning". Next morning when she enquired after her family, soldiers responded that they were alright. They escorted her to Building #2 where she found her daughter. From 26 to 29 May Mrs. Haughton-Allison

went to the National Arena in search of her husband and son. Those were fruitless journeys.

9.69. A few days later, she identified the bodies of her husband and son on a TV monitor at the Community Centre. Kirk was shown wearing plaid shorts and a black Tee shirt; Dashard wore baggy blue jeans and a blue Tee shirt. Mrs. Haughton-Allison's husband was a security officer with Millennium Security and her son was a trainee electrician.

9.70. Under cross-examination, Mrs. Haughton-Allison said that she did not know that Millennium Security was operated by Coke. The post mortem report on Kirk Allison shows that he received three gunshot wounds to his back, damaging his lungs and important arteries and a wound that destroyed his right femur. Death was due to gunshot wounds to his back, laceration of the left carotid pulmonary arteries and his lungs. Dashard sustained four gunshot wounds to the chest. Cause of death was due to gunshot wounds, haemorrhage and shock.

FINDINGS

9.71. There was no direct evidence of the circumstances of Kirk Allison's and Dashard Page's deaths. We are satisfied, however, that when Mrs. Haughton-Allison last saw them, they were alive and under the protective custody of the security forces. No evidence was led by either the JDF or JCF concerning the deaths of these two men. But the post mortem reports provide powerful evidence that they were shot and killed. The inferences are compelling that they must have died at the hands of the security forces. The evidence suggests, at a high level of probability, that criminal offences may have been committed and we recommend that there be further investigation into the deaths of Kirk Allison and Dashard Page.

(ix) Bojan Rochester and Carl Henry

Romaine Walker

9.72. On 24 May 2010, Mr. Walker was in his yard at 86 Lewis Path, Tivoli Gardens. About 12.30 p.m. he heard several unusually loud explosions coming from the direction of Chang Avenue and Levy Path. He climbed a wall separating the houses and looked into Chang Avenue and Levy Path. He saw Marjorie Hinds, Bojan Rochester and Carl Henry lying on Chang Avenue. Henry was bleeding profusely from his head and crying; Ms. Hinds and Bojan Rochester were also bleeding. Shots were being fired.

9.73. There was another explosion. It was in Michael Williams' yard. Debris erupted from the dirt yard. Mr. Walker was hit in his face with debris. He ran to Bustamante Highway. Williams was in Building #42 and Walker told him what he had seen. Walker returned home. He said he heard "something fly through the air and the roof". He was still hearing gunfire. So he left home again and went to "Chinee's" house where he remained for 4 days. He returned to Lewis Path on 28 May.

9.74. Mr. Walker said that, about a month later, Williams told him that he found a mortar shell in a hole in his yard. Mr. Walker eventually took the shell from Williams on 28 June 2012. He showed it to a US journalist, Mattathias Schwartz and then took it to the OPD. He turned over the shell to OPD on 2 July 2012. Photographic evidence of the shell was produced during the Enquiry.

9.75. In answer to Ms. Martin, Mr. Walker said that he did not see any member of the security forces in Tivoli Gardens about 12.20 p.m. on 24 May. He knew that Henry and Rochester died during the internal security operation. He saw them lying on the ground bleeding less than 5 minutes after he heard the first explosion.

9.76. To Mr. Linton Gordon, Mr. Walker testified that Mr. Schwartz was in Jamaica on 24 May and, "after the incursion, he told me that the U.S. Government was involved and he wanted to investigate what happened". He and Schwartz kept in regular contact. Mr. Walker agreed with Counsel that, at the time of the explosion, gunfire was coming from all directions. But he said that the explosion "came from the sky".

9.77. Mr. Walker's house was about 200 yards from the playing field. He was not aware of a mortar falling in the playing field and he never saw a hole or crater there or in Williams' yard.

9.78. Carl Henry died from metal particles which penetrated his kidney. Cause of death was a "perforated wound (shrapnel wound) to the abdomen". There were 13 lacerated wounds to his body, including one to his head and 9 metal fragments were found.

9.79. There was also evidence concerning *Bojan Rochester* which was given *in camera*. The witness testified that, during the morning of 24 May, she spoke to *Bojan* at his grandmother's house on Derek Path and asked him to come for porridge. He said he would soon come but he never came. She heard that "the mortar catch him". She said she was at home on the fourth floor of Building #24, Seaga Boulevard, when she heard the sound of mortars and saw "white smoke". Rochester's body was found to have multiple lacerations but the cause of death is stated as multiple gunshot wounds.

FINDINGS

9.80. In our opinion, Romaine Walker was a credible witness. We find that Carl Henry probably died as a result of injuries received from an exploding mortar round. Bojan Rochester seems to have been the probable victim of mortar fire and gunfire. There are at least five reasons why we have come to these conclusions. (i) The 3 persons

seen by Mr. Walker lying on Chang Avenue were found to have had lacerated wounds, which are consistent with having being hit by shrapnel: *(ii)* If mortars had exploded in an open field as claimed by the JDF, it is unlikely that houses would have shaken, as related by at least 3 witnesses: *(iii)* The fires on Chang Avenue can only reasonably be explained on the basis of an exploding mortar landing in that area. CDS Saunders said that mortars could cause fire and, if the mortar landed on a building, it could cause it to burn. In addition, in Capt. Crooks' letter dated 23 August 2012 it is stated "the types of incendiary devices used were mortars"(see para.10.106): *(iv)* Evidence of an anonymous witness was to the effect that she saw white smoke sometime after mid-day "and the whole place was white". *(v)* Romaine Walker testified that he saw a bomb fall on Michael Williams' house and dirt rising from the yard. The expert evidence of Maj. Cobb-Smith, referred to later, seems to support the evidence of residents who testified. For example, Shana James, Joan Haughton-Allison, Annette Marshall, Lelieth James, Marjorie Hinds and Romaine Walker. The deaths of the 2 persons in this area require further investigation with a view to awarding compensation to their respective estates.

Adverse Comments re: CDS Stewart Saunders and Maj. Warrenton Dixon

9.81. On 13 April 2016, the Commission referred certain paragraphs in its draft Report to CDS Stewart Saunders and Maj. Warrenton Dixon as "Proposed Adverse Findings" for their responses thereto in accordance with the provisions of 2013 amendments to the Commissions of Enquiry Act. On 5 May 2016 the Commission received their joint responses, through Counsel, appended hereto as Appendix AC3. We summarise the several responses and give our comments and findings *seriatim* below and in paras.10.184 to 10.218.

Re: Paras.9.80 and 10.113 (formerly 10.71) - Summary of Responses

- 9.82. (i) Romaine Walker is not a witness of truth since his evidence of seeing objects falling from the sky is in conflict with expert evidence.
- (ii) IEDs were planted throughout Tivoli Gardens by persons resisting the security forces and these IEDs may have exploded and injured persons.
- (iii) All civilian witnesses, except one, denied seeing gunmen, IEDs or persons erecting barricades.
- (iv) Walker denied knowledge of Coke and persons attacking the security forces.
- (v) Residents of Tivoli Gardens are under a code of silence and there is "a grand conspiracy to cast blame for injuries, damage or deaths on the security forces". This is clear from the evidence of Minnette Lindsay.
- (vi) Careful attention should be paid to the post mortem reports on Sidney Clarke, Bojan Rochester and Carl Henry as well as the oral evidence in respect of Marjorie Hinds.
- (vii) Capt. Crooks is not an expert on mortars. His reference to "incendiary devices" was an error which he speedily corrected.
- (viii) "White smoke" cannot be linked to mortar fire.
- (ix) The Commission should not conclude that all injuries sustained by shrapnel were the result of mortar fire.

Commission's Comments and Findings

9.83. Although we are of opinion that Carl Henry and Bojan Rochester were probably hit by shrapnel from an exploding mortar, we are not dogmatic in our finding. That is why we have recommended that their deaths be further investigated. We have discounted the suggestion that an exploding IED may have caused their injuries from shrapnel because there was no evidence before us of any IED exploding *within the community of Tivoli Gardens*. The evidence was that these types of device were embedded within barricades on the perimeter of Tivoli Gardens, not inside Tivoli Gardens near to houses on Chang Avenue. We were also alert to the corrections in Capt. Crooks' correspondence with Mr. Witter. We assumed that, as an attorney-at-law, he would have taken instructions from an expert on mortars in the JDF before composing his responses to Mr. Witter. And, as an attorney-at-law, he would have been careful and precise in his choice of language.

9.84. With regard to Romaine Walker's evidence of seeing objects falling from the sky and the anonymous witness's evidence of white smoke, it was Lt. Col. Sewell's evidence that several civilians pointed out to him "areas where they said things fell from the sky in Java" and "a row of houses near Java mysteriously went up in flames". We do not believe that residents or criminals deliberately set fire to those houses in Java. The more reasonable and probable explanation is that some weapon of the security forces caused the conflagration. The colour of smoke observed by witnesses is not a crucial issue. The fact is that the mortars which were fired created a cloud-like effect and it was admitted by witnesses for the JDF that one of the consequences of this cloud was to disorientate the gunmen.

9.85. As to the code of silence among residents of Tivoli Gardens who testified, we have explained in this Report our recognition of this attitude or behaviour as well as our understanding of the reason for residents' hesitancy in being more forthcoming in identifying persons who erected barricades – see Chapter 6. Witnesses for the security forces were at pains to inform the Enquiry that members of the Shower Posse still reside and operate in Tivoli Gardens and the culture of this gang allows for reprisals against persons who may be seen to threaten its operations. We therefore took into account that many of the civilian witnesses testified fearing that if their evidence identified persons still alive within the community, they might be subject to reprisals. We are surprised that Counsel should rely on the evidence of Minnette Lindsay which was destroyed by Counsel during cross-examination. We have rejected her evidence as being untrustworthy.

(x) Radcliffe Freeman

Marjorie Hinds

9.86. Ms. Hinds lived at Flat N, Building #2, Chang Avenue. On 24 May, she woke up about 1.30 p.m. and was told that her fiancé, Radcliffe Freeman, had gone outside. She went to the kitchen and saw him on Levy Path “up top Java” standing and talking to a friend. He was fixing the door of a neighbour’s house. She spoke with him and started to go back home.

9.87. On her way back to her house “something lift me up and then it fling me out in the road”. She became unconscious and spent 4 weeks in KPH. When she regained consciousness, her buttocks and a foot were burnt and her right arm was disabled. She never saw Radcliffe again. They were in a relationship since 1993 and intended to get married in 2010. For 3 months after she left hospital, Ms. Hinds recuperated at her sister’s home.

9.88. A report of Dr. C.A. Fraser, dated 25 February 2014 states *inter alia*:

“Ms. Hinds was first seen on our clinical facilities (1/2/11) and our initial report dated 5 May 2011 documented a very distressed individual, with extensive deep penetrating burns of face, neck, lower extremities, foot and buttocks, strongly suggestive of white-phosphorous burns.”

9.89. The post mortem report on Mr. Freeman speaks of eleven gunshot wounds all over his body. Cause of death is stated to be gunshot wounds to the head and chest and injuries to head and chest. Nine copper fragments and one lead fragment were found in his body.

FINDINGS

9.90. Ms. Hinds was injured when the same mortar exploded near Chang Avenue. We accept the report of Dr. Fraser detailing her injuries. Notwithstanding the contents of Capt. Crooks’ letter of 23 August 2012 referring to the mortars as “incendiary devices”, in the absence of tested expert evidence about the white phosphorous burns mentioned in Dr. Fraser’s report, we hesitate to find that Ms. Hinds was injured by a mortar. Such discrepancies in her evidence, elicited by Mr. Gordon, do not, in our opinion, derogate from a finding that she was in fact injured. We recommend that there be further investigations into Ms. Hinds’ injuries.

9.91. So far as Mr. Freeman is concerned, no reliable evidence was adduced of the circumstances of his death and we are unable to make any finding thereon. The large number of gunshot wounds to his body suggests that there may be something very perverse about the circumstances of his death. It is highly probable that criminal offences may have been committed and we recommend that there be further investigation into his death.

(xi) ***Decorey Wright***

Lancelot Bailey

9.92. The late Decorey Wright (Ernie) shared Flat G, Building #25, Seaga Boulevard with his cousin Lancelot Bailey and his nephew Andre Bailey who owned the flat. Ernie was mentally challenged. On 24 May 2010 Andre was not at the flat and Mr. Bailey left the fourth floor apartment and went downstairs to Mrs. Barbara's apartment on the third floor. Other persons were at Ms. Barbara's. About 8.30 p.m. police officers went to Ms. Barbara's home, asked questions and searched. Mr. Bailey said that he had a bad headache and wanted to go to his flat for medication. As soon as he got outside, he saw Ernie in front of the flat. He gave him the keys and told him to fetch the medication. Ernie did so. Mr. Bailey told him to return to the flat and stay there. Ernie went to the flat while Mr. Bailey went back to Ms. Barbara's.

9.93. About 9.00 p.m. Ernie was playing a CD and Mr. Bailey instructed him to cease playing it. Soon after, 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 flat and he heard "a lot of shooting coming from inside my house".

9.94. On 25 May about 6.30 a.m., while standing on Ms. Barbara's verandah, Mr. Bailey saw two soldiers coming from his flat with a body wrapped in a sheet belonging to him. He said he knew that it was Ernie "since he was the only person in the house".

9.95. When Mr. Bailey returned to the flat two weeks later, he saw a gruesome sight. Blood was spattered on the walls of Andre's bedroom and bathroom; there were bullet holes in the said rooms, teeth and bone marrow on the floor as well as spent shells. The post mortem report on Ernie states that he

had ten gunshot wounds all over his body. Cause of death was multiple gunshot wounds to head, chest, abdomen, pelvis, haemorrhage and shock.

FINDINGS

9.96. Mr. Bailey was a thoroughly satisfactory and credible witness. His evidence points to an extra-judicial killing. Accordingly, we find that it was highly probable that Mr. Decorey Wright (Ernie) was executed by unidentified members of the security forces. DSP Warren Turner said that, on the morning of 25 May, Maj. Kennedy told him that there was a dead body in Building #26 “in Belgium” and another at the bottom of Building #27. The body on the top floor of Building #26 “had been neutralised by soldiers”. Maj. Kennedy denied knowledge of this event and did not remember reporting such an incident to DSP Turner – see also Chapter 10. It goes without saying that Mr. Wright’s death should be investigated further.

(xii) Orlando and O’Connor Brown

Witness in camera

9.97. About midday on 24 May, this witness was at her residence, 11 Dee Cee Avenue with her two nephews, Orlando and O’Connor Brown and others. She said that she heard a sound like a sledgehammer and screaming from an apartment upstairs. She saw soldiers come downstairs and enter her house using expletives. The soldiers tied all of the occupants with tie-straps, and, referring to Orlando and O’Connor Brown, said –

“The last two man at the back, ah dem fi get kill!”

9.98. The witness said that she looked around after they were all manacled and she did not see Orlando and O’Connor at first. But then a soldier

shoved Omar onto the verandah and asked another soldier if he wanted Omar. The soldier replied: "A schooler that!" Omar, who was aged 15, was left alone.

9.99. She saw O'Connor show the soldiers his Water Commission ID card but they said it would not help him. She said the soldiers told Orlando and O'Connor to run and they ran outside. She said –

"I never see them alive after I see them run out. I saw them go up Dee Cee Avenue. That is the last I saw of them."

A few days after, she saw the dead bodies of Orlando and O'Connor on a computer screen at the Community Centre. The Post Mortem Reports show that Orlando had three gunshot wounds over his body, two of which were at the front of his chest. The other was to his left arm. Cause of death was exsanguination, lacerations to the liver, aorta and gunshot wound to chest. O'Connor had two gunshot wounds to his chest which damaged vital organs.

FINDINGS

9.100. Taking this witness's evidence together with that of Ms. Muirhead and Mr. Dacres, it is apparent that Orlando Brown (Giffy) was killed by police officers on the morning of 25 May. His body was thrown into the truck. Ms. Muirhead was positive that she saw police officers murder Orlando. We have no reason to disbelieve this witness. She stood up well to cross-examination. Whereas there is credible evidence of the death of Orlando, there is no evidence about the death of O'Connor. But to the extent that the anonymous witness last saw the two men alive while under the control or supervision of soldiers, the JDF should provide an explanation of their fate. There was no evidence of hostile fire aimed at the security forces in sector 1 after the soldiers entered. The evidence suggests, at a high level of probability, that criminal offences may have been committed and we recommend

that there be further investigation into the deaths of Orlando and O'Connor Brown.

EVIDENCE OF TWO ANONYMOUS SOLDIERS

9.101. On 17 and 21 September 2015, the Commission received evidence from two soldiers whose witness statements suggested that they were eyewitnesses to extra-judicial killings by members of the JCF. In the interest of the soldiers' personal safety and the wider interest of national security, these witnesses gave their evidence anonymously as Soldier #1 and Soldier #3 respectively.

Soldier #1

9.102. Soldier #1 first gave an oral and handwritten statement of what he observed on 24 May 2010. He was shown a copy of a written statement on 26 November 2014 and said he signed that statement on that date. His evidence is that, on 24 May 2010, he was part of a convoy of JDF soldiers with responsibilities as a member of an assault team of 2JR.

9.103. When his team reached Industrial Terrace, they came under heavy gunfire from criminal elements in bushes near Rasta City. They returned fire and made slow progress to Tivoli High School. The entrance to Tivoli Gardens was barricaded and the Engineer Regiment was summoned to breach a wall and permit their access into the community. They entered and were assigned to specific locations. Soldier #1 took up a position at the intersection of Dee Cee Avenue and Chang Avenue. He and about two other soldiers secured the area.

9.104. Then a group of police officers came and began searching houses. These police officers wore balaclava masks. He said that, when they reached a house about 15 metres from where he was, he heard the officers ask who was

inside the house and a woman replied "Me and my two sons". The mother was instructed to come out, leave the sons inside and go to a "cage" in Java.

9.105. Soldier #1 said he heard the police officers speak to the two men but he could not see the men. He said –

"I heard two gunshot explosions from the direction where I had heard the talking in the vicinity of the same house where they asked about the persons. I heard one of the police ask "is a shoot you go shoot me?"

9.106. About a minute after, Soldier #1 went to the area from which he had heard the gunshots. He said –

"I saw two young men on the ground and I saw blood flowing from their wounds."

9.107. Soldier #1 spoke with another soldier and the latter said he was "not going any further behind these police". Soldier #1 returned to his position. He told the Enquiry that he saw no weapons near the bodies of the two men and the police officers carried M16 rifles.

9.108. Soldier #1 was cross-examined by Ms. Martin. *Inter alia*, Soldier #1 said that, on entering Tivoli Gardens, there was firing at the soldiers but he could not see who was firing and it was coming "from different points of elevation". He knew the difference between clearing houses and searching houses. "The role of the JDF was to clear out then the JCF would conduct searches". He said he reached the intersection of Dee Cee Avenue and Chang Avenue about 1.30 p.m. and the men were shot about 45 minutes after he got to the intersection. During that time, there was still "shooting all around. It was a dangerous situation."

9.109. With respect to the cage, Soldier #1 did not see a cage. He "learnt" that there was a "cage" after he entered Tivoli. He described his understanding of the cage thus:

"It was something to restrict the movement of persons. I heard it was in the Java area."

He did not know where the woman went but he saw her walk away. He heard her say they were her sons.

9.110. In response to questions from Mr. Terrence Williams of INDECOM, Soldier #1 testified that, while he was at Dee Cee Avenue, he was not under fire. He saw the woman as she passed him. Soldier #1 clarified a discrepancy in his evidence as to the time when the killings took place. In oral evidence he had said 1.30 p.m. However, his witness statement put the time approximately between 4.00 and 5.00 p.m. He told the Commission "4.00 p.m. and 5.00 p.m. is more correct". Soldier #1 further said that he told a fellow soldier – "Ah pure foolishness the police keep up!"

Soldier #3

9.111. Soldier #3 was also part of the assault team. On 25 November 2014, he signed a written statement of what he had seen on 24 May 2010. He supported the evidence of Soldier #1 as to the gunfire encountered on Industrial Terrace and the breaching of a wall to gain entry into Tivoli Gardens.

9.112. After entering Tivoli Gardens, Soldier #3 said he saw 3 police officers in an armoured vehicle. Persons were detained and put in a confined area in Java. It was not a physical "cage". He said that a police officer left the confined area and returned about 45 minutes later sometime between 2.00 p.m. and 3.00 p.m.

9.113. Soldier #3 then gave this evidence:

"The police officer took his rifle and fired several shots into the caged area where there were detainees. He shot a young man. At least one hit him in his head. He fell to the ground. I saw blood coming from his head. The young man was sitting with his hands bound behind him with a tie strap. He was wearing a white Tee shirt, short pants and sneakers. This was near Dee Cee and Chang Avenue. When he fired the shot, the police officer was about 10 feet from the young man and within touching distance of me."

9.114. Soldier #3 testified that another young man protested and another policeman shot him in his upper body. The young man was sitting with his hand tied behind his back.

9.115. Soldier #3 spoke of a third man. He said:

"There was a young man sitting in the caged area and the first policeman beckoned to him and the young man went to him. He came out of the caged area and the officer took him to a house across the road from Java. I heard several explosions from the direction of the house where the policeman had taken the man. The policeman returned alone. I never saw the young man again."

9.116. Soldier #3 continued his testimony:

"We then came upon a house. A lady occupying the house said she and her two sons occupied the house. The same policeman who had shot into the caged area, held the boys by their collars and took them to the back of the house. I heard a voice saying: "You ah go shoot me?" And I heard several explosions from behind the house. The officers returned to the area laughing."

9.117. Soldier #3 stated that he and a colleague went behind the house to investigate. He saw the two boys lying in a pool of blood and he said to his colleague "Pure foolishness ah go on". They left and went to Java. He saw the lady go and look behind the house after the explosions. Soldier #3 said that the

police officers were masked and had come in the armoured vehicle. The shootings took place between 3.00 p.m. and 4.00 p.m. "or possibly later".

9.118. Soldier #3 said that he reported the incidents to a L/Cpl.

9.119. To Mrs. Neita-Robertson, Soldier #3 described the caged area as "an open concrete area". He denied collaborating with Soldier #1 even though there were certain similarities in their statements. He said that the lady ran towards the young boys bawling. The two young boys were killed outside a house, to the rear. There was barbed wire at the caged area. He explained to Mr. Terrence Williams that the barbed wire was "rolled up razor wire on the ground".

9.120. Soldier #3 answered Lord Gifford to say that one of the policemen was about 5 feet, 6 inches tall and "fired his rifle in a left-handed manner". He did hear a soldier say: "Better we cut, cause we ain't in nothing with them police". Soldier #3 was also cross-examined by Mr. Michael Williams and he maintained that the first young man was shot in the presence of detainees. The second young man asked why the first man was shot when he was unarmed. The third man did not have his hands tied behind his back.

9.121. Soldier #3 said that the policeman who shot the civilians continued to search with JDF officers after the killings. Soldier #3 said that he expressed his disquiet about what he had seen because "it is standard operating procedure" to report up the chain of command.

FINDINGS

9.122. We find the evidence of Soldiers #1 and #3 credible. Both witnesses testified that, before the end of May 2010, they gave statements to the Legal Officer of the JDF and reported what they had seen to a L/Cpl as required by the protocols of the chain of command.

They both spoke of a "caged area" in Java and other witnesses at the security forces explained that "a caged area" is, in effect, a temporary holding area, for example, a verandah or, in the words of Maj. Cheverria, "basically a building or space which we ensure is made sterile, where detainees are kept". In fact, Maj. Cheverria admitted that such areas were established in Java. We noted the evidence that, at least three of the deceased were seen in a "caged area", viz. Kirk Allison, Dashard Page and Radcliffe Freeman so that there appears to be some correlation between the evidence of certain civilian witnesses and Soldiers #1 and #3. No reason was advanced by any Counsel as to why those two soldiers should fabricate a story against members of the JCF. Their evidence is strongly suggestive of five extra-judicial killings by unidentified officers of the JCF.

9.123. We find that those police officers who shot the young men were masked deliberately to conceal their identities. However, since there is evidence that at least one of the police officers was left-handed, it should not be an insuperable problem to investigate these killings further with a view to identifying the perpetrators thereof. Accordingly, since the evidence suggests, at a high level of probability, that criminal offences may have been committed, we recommend that the incidents to which Soldiers #1 and #3 testified, be further investigated.

(xiii) Nicholas Wright and Damion Lindsay

Sharon Warren

9.124. On 14 September 2015, Ms. Warren of 5 Linton Place, Tivoli Gardens, gave evidence. She said that about 8.30 a.m. on 24 May she was on the verandah of her house. She went outside because she was hearing gunshots in Tivoli Gardens. She stooped in the road. A gully was about 4 yards away.

She saw Damion Lindsay's (Lion King) baby's mother assisting him through the gully. He appeared to have been shot "in his belly and his groin". Ms. Warren said that with the assistance of the baby's mother and her sister, Nicola Warren, they put Mr. Lindsay on a handcart and took him to KPH.

9.125. Next day about 6.30 a.m. Ms. Warren said that she heard shouts of "Murder!" She ran to her balcony and saw Adina Darby screaming for murder and Ms. Darby's daughter-in-law, Tassie, crying. Tassie told Ms. Warren that Nicholas Wright had been shot inside Ms. Darby's house. Ms. Warren said she saw a wound to Nicholas' belly. She and one Jasper put Nicholas on a handcart and pushed the cart towards KPH but when they reached Wilton Hill Drive, they saw soldiers on a pathway and Jasper ran away. Near Tivoli Court, Ms. Warren claimed that she saw soldiers and police officers on top of the Tivoli Court building. She stopped the cart. There were "a lot of shots" and she ran "for her life".

9.126. On Fong Yee Avenue, she saw Adina Darby lying on the ground and she went to her. She told Ms. Darby that she "had to leave Nicholas on the cart because soldiers firing shots". She left Ms. Darby on the ground. She saw an injury to Ms. Darby's groin and she telephoned Ms. Darby's niece overseas and the niece promised to get someone "in the Force" to assist Ms. Darby. Soldiers and police officers eventually came for Ms. Darby and took her to UHWI.

9.127. Under cross-examination Ms. Warren's credibility was destroyed. For example, she denied parts of her evidence in her witness statement and created discrepancies between her oral evidence and her witness statement. Ms. Warren admitted that Lloyd D'Aguiar of the Tivoli Committee wrote a statement for her and gave it to her to sign. She said, "I signed the statement because they gave me to sign".

Damion Lindsay

Kishonna Gordon

9.128. Ms. Gordon, who was 13 years old in May 2010, gave evidence that, between 2.00 p.m. and 3.00 p.m. on 24 May, she was inside a house at #1 McKenzie Drive when she heard shots. She went outside because she knew that her stepfather, Damion Lindsay (Lion King) was outside. She heard him scream and then he "dropped". She rushed to him and put him on a handcart assisted by Brittany Morgan. She saw 6 or 7 soldiers in the gully with long guns and she believed that they shot her stepfather. She took him to KPH and left him. However, Ms. Gordon also testified that it was in the morning, about 10.30, that her stepfather was shot, and she claimed that she saw a soldier point a gun at him and shoot him twice.

FINDINGS

9.129. Although we are satisfied that Damion Lindsay was shot on 24 May, we are unable to conclude how, where, or when he was shot. We reject Ms. Warren's evidence which was riddled with material discrepancies between the oral testimony and her witness statements. She was even willing to disown her own witness statements. Similarly, Ms. Gordon's evidence was not convincing. It is far from clear that she actually saw when Lindsay was shot and there is a material discrepancy in the time of his injuries. If they were sustained about 10.30 a.m., they could not have been caused by the security forces since the internal security operation had not even started at that time. In any event, we were not impressed by Ms. Gordon's demeanour which betrayed a propensity to be cantankerous, and quarrelsome. Her evidence that a doctor at KPH tried to inject her and kill her was in the realm of fantasy.

Adverse Comments re: Kishona Gordon

The Commission sent a "Notice of Proposed Adverse Comment" dated 24 March 2016, to Ms. Gordon in respect of its finding at para.9.129 (formerly 9.125). Ms. Gordon responded to the said Notice on the 7th day of April 2016. Her response appears at Appendix AC4.

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

- a. As the sole arbiters of the facts, it was open to us to determine whether we believed Miss Gordon or not. Her evidence contained many inconsistencies and discrepancies as to when and how her stepfather was injured; and as noted at para.9.182 below, when and how she received the shot to her leg.**
- b. It is our considered and unanimous opinion that Miss Gordon's demeanour was very poor. She was disrespectful, bellicose, antagonistic and argumentative during cross-examination.**

Involvement of an Armoured Patrol Carrier (APC)

Insp. Linroy Edwards

9.130. On 12 and 15 February 2016, Insp. Linroy Edwards gave evidence. He was based at Mobile Reserve in May 2010. On 24 May, he was part of a special unit (The Snatch and Go Team) assigned to take custody of Coke, if he was captured by the CSB. Insp. Edwards was in an APC together with "about six other JCF officers and four or five from the CSB of the JDF following behind the FEL driven by L/Cpl McLennon". The CSB was the main assault group and the APC followed behind to provide cover and support for the CSB led by Maj. Williams. About 12.30 p.m. Insp. Edwards saw gunmen in white Tee shirts firing

shots from Rasta City. There were exchanges of gunfire between the officers in the APC and the gunmen.

9.131. According to Insp. Edwards, about 3.00 p.m. Maj. Williams called him to say that he had located premises where Coke was believed to have been hiding but Coke was not there and Insp. Edwards could come and do searches. While the APC was entering Tivoli Gardens, Insp. Edwards said that he saw a swollen body next to a high-rise building. After he entered Tivoli Gardens to go to his assigned target on Chang Avenue, Insp. Edwards said –

“The JDF said that a man was taking sniper shots at us. They returned fire and they said that the man fell from a tree with a rifle.”

Insp. Edwards said that he saw the JDF soldiers shooting at the man while he was on his telephone and the man “was shot down. This was about 3.30 p.m. I reported the incident to the CoP”.

9.132. Insp. Edwards’ team was the first police unit to enter Tivoli Gardens. When he reached Chang Avenue, two JCF officers accompanied him to carry out the searches at Coke’s assumed premises at a location off Chang Avenue. They searched for about 15 to 20 minutes, leaving behind the other occupants of the APC. The soldiers in the APC had disembarked and “gone about their business”. Insp. Edwards said that about four police officers, including the driver of the APC, Cons. Scott, were left in the APC when he went to conduct the searches of the premises at Chang Avenue. He said –

“I cannot say if they remained in the vehicle.”

The men he left behind were not in his company for about 15 to 20 minutes.

9.133. Insp. Edwards testified that he did not go to Derek or Levy Paths. After the search, Insp. Edwards returned to the APC and remained for about 20 minutes before going to Tivoli High School about 4.00pm. In answer to Lord

Gifford, Insp. Edwards said that he did not know if the men he left behind "deployed or not".

FINDINGS

9.134. Insp. Edwards' evidence about the whereabouts of the persons he left in the APC when he set out to conduct a search of the premises off Chang Avenue and for the half an hour after completion of the search, raises concerns about the activities of at least eight members of the security forces on the afternoon of 24 May. We exclude Insp. Edwards and Cons. Scott from our calculations. We find that it is highly probable that members of the security forces, including the soldiers who had "gone about their business" and policemen left in the APC, committed extra-judicial killings in the Java area. They had ample time within which to engage in such illegal conduct. Evidence of some of the civilian witnesses, as to the times at which such killings took place in Java, fortifies us in this finding. In any event, this matter calls for further investigation by INDECOM.

PART D

CIVILIANS INJURED

(a) Germaine McLeod

9.135. Mr. McLeod who lived at 22 Harold Path, testified that, on 24 May, while at Ms. Sissy's house, he saw some houses "to the front of her house begin to burn" and her house actually caught afire. A soldier ordered all occupants of Ms. Sissy's house to go outside. He lifted Ms. Sissy who was wheelchair-bound but a soldier made him put her down.

9.136. He was then beaten by soldiers with a baton in the presence of many persons. He was brought into a yard where a soldier broke the limb of a

tree and beat him with it. A female police officer intervened. He was put in a line with other persons and they walked to an apartment building in Java. This was in the late afternoon. His hands were bound and he was asked if he knew Coke. He said 'No' and a soldier "elbow me up". The same female police officer asked the soldier what he was doing and he replied "He is mine!" At this time, Mr. McLeod's hands were swollen and he was untied.

9.137. Mr. McLeod related that, later that evening, the same soldier made him crawl on his knees and constantly kicked him and hit him with his baton all the way to a truck. He and others were driven to Up Park Camp where he said a truck was driven over his right hand. Mr. McLeod told the Commission that he sustained broken teeth which he showed to a doctor. After 2 days at Up Park Camp, he was taken to the National Arena where he spent a further 2 or 3 days before release with "a piece of white paper". He is unable to identify either the soldier who beat him or the female police officer who intervened.

9.138. Under cross-examination by Ms. Martin and Mr. Gordon, Mr. McLeod said that he saw civilians running on Chang Avenue with guns on 24 May – "maybe three or four persons". To Ms. Martin, he said –

"I see guys running around with guns but I don't know what kind of guns they running with....As I said in my report, I have seen people running around with guns that weren't wearing police or soldier uniform. This was before 24 May. No. I remember it happening the same day, that's when I remember people were getting armed, running around with guns."

As to the time when he saw men running around with guns, Mr. McLeod said –

"When the shots were firing and the place got intense, that's when I saw people running across the street with guns. So I don't know about the day before that, I am telling you what I saw from the day it happened."

He said that when he went to Ms. Sissy's house, he saw bodies lying on the pathway.

"When I walked out, I saw soldiers.....I don't know how the bodies came to be lying on the pathway. It could have been soldiers shot them. It could have been, I don't know who did it."

FINDINGS

9.139. In their final submissions, Counsel for the JCF and JDF relied on the evidence of Mr. McLeod that he saw bodies on Chang Avenue and civilians running around with guns to suggest that civilians may have been killed prior to the entry of the security forces into Tivoli Gardens. We discuss this matter elsewhere in this Chapter. Mr. McLeod's evidence of brutality by a soldier of the JDF is accepted and we therefore find that he was beaten and injured by an unidentified soldier.

(b) Granville Roy Johnson

9.140. Mr. Johnson's evidence was that, from Sunday 23 May, he was staying at Ms. Bertha's house on Charles Street. On 25 May, about 5.00 a.m. he was urinating in an outside toilet. He went to a gate at the front of the house to look out and he saw a JDF jeep on Charles Street about 40 yards from him. Two soldiers were kneeling down with their guns. He said: "When they saw me, they turned and fired at me. I got hit in my back while I was heading back to the house." He shouted for one Pauline and told her he had been shot.

9.141. Mr. Johnson said he saw blood running down his back. Pauline and Ms. Bertha took off his shirt and "tied the area".

9.142. On the next day, he said he told a "heavy-set soldier" that he had been shot the day before and the soldier suggested that he walk to KPH. He was reluctant to walk since there was still gunfire. The soldier made a telephone call and another soldier came with a bag, and dressed the wound. Mr. Johnson

said he went to KPH a few days later. He claims that he suffered a stroke three months later.

9.143. Under cross-examination, Mr. Johnson proved to be a most unreliable and, at times, cantankerous witness. He was unable to demonstrate precisely where he received the alleged injury; he denied his signature on a witness statement and denied some of the contents of his three witness statements. He said he signed statements but did not read them.

FINDING

9.144. Mr. Johnson's evidence was riddled with inconsistencies and discrepancies rendering it unreliable. His credibility was destroyed under cross-examination.

Adverse Comments re: Granville Johnson

The Commission tried unsuccessfully to locate Mr. Johnson in order to serve a notice of proposed adverse comment on him in respect of this paragraph.

(c) Collette Robinson

9.145. Ms. Robinson lived at 4 Linton Place, Tivoli Gardens. Her evidence was that, on 25 May, about 7.00 a.m., she was at home with members of her family. "Shots licking and bombs dropping all over Tivoli". She said that she received a gunshot which tore up her left bicep when she was at her doorway speaking with a neighbour, Mickey. She told Mickey she had been shot and he used a towel to apply a tourniquet. Mickey took her to KPH. She said that, on her way to the hospital, she explained to a soldier that she had been shot and he replied: "Go back down; go dead!" She went back home and called a telephone number for assistance. None came.

9.146. She went to Vincent Path and, on advice, she and her daughter, Peta-Gaye, went to Darling Street where she saw a policeman who allowed her to go to Seprod and then to hospital where she was a patient for two weeks. She was discharged on 9 June 2010. Ms. Robinson claims that she feels pain especially after rainfall and she has not worked since May 2010.

9.147. Under cross-examination, Ms. Robinson swore that she was shot by a soldier who was wearing a mask. She denied saying in a statement of 12 November 2014 that she did not know who shot her.

FINDINGS

9.148. Ms. Robinson was not a convincing witness. At times, she was evasive under cross-examination and showed a lack of candour generally. We have a profound concern about the time when Ms. Robinson suffered the injury. In her witness statements, she stated that she was shot in the afternoon. On the other hand, in oral evidence, she claimed that she was shot in the morning. Although we are satisfied that she was injured, we are not satisfied about the circumstances surrounding the injury. Ms. Robinson admitted that there was gunfire before she was injured and "shots were licking". We do not rule out the possibility that she may have been injured in crossfire between criminals and the security forces.

(d) Lovette Bryan

9.149. Ms. Bryan lived at 5 Levy Path. She was not injured but she gave evidence of persons who were subjected to brutality. About noon on 24 May she was at home with her children. "Gunshots were firing in the community and sounds like bombs exploding". People were screaming and hiding under beds. After the gunfire and explosions died down, soldiers began sawing off grills. Ms. Bryan went outside and was accosted by a soldier in vile language. He was

on the roof of Building #5. All of the occupants of her house were called outside and taken to an abandoned house nearby. Other residents were brought to this house.

9.150. Ms. Bryan said she witnessed soldiers bring Dean Spence and “fling him in the corner”. They beat Spence’s father with guns. The residents begged the soldiers not to kill them. Then the soldiers took the residents to Building #5. Men were made to kneel. Police officers came and members of both forces beat one “Thick Man” who started to bleed. His wife begged them to desist but she was “boxed”.

9.151. Under cross-examination by Ms. Taylor on behalf of INDECOM, Ms. Bryan said that neither Mr. Spence nor “Thick Man” offered any violence to the security forces.

FINDINGS

9.152. Ms. Bryan was a good witness, calm and thoughtful. Her evidence of conduct by the soldiers was not challenged by Counsel for the JDF. We find that soldiers of the JDF beat Dean Spence’s father and “Thick Man” and were abusive to residents. Ms. Bryan’s evidence tended to corroborate Maurice Tomlinson’s (*infra*).

(e) Maurice Tomlinson

9.153. Mr. Tomlinson (*alias, Tikka or Thick Man*) lived at #1 McKenzie Drive. He was at home on the morning of 24 May with his wife and children. About 11.00 a.m. he heard gunshots from the direction of Lizard Town. He went to his mother’s house at Building #5, Flat 23, Sangster Crescent and then returned to McKenzie Drive where he gathered his family and returned to his mother’s house on the 4th floor of the building.

9.154. Gunfire was heard in May Pen Cemetery and on Industrial Terrace. Mr. Tomlinson said that a bomb dropped near Ms. Fatty's house and it caught afire. Everyone moved over to Ms. Donelle's house. Mr. Tomlinson heard a barrage of gunfire and a voice shouting: "See the pussy dem!" Looking through a window, he saw soldiers with guns pointed in his direction. They fired. He ducked. The shots tore out a window, then stopped.

9.155. Masked soldiers kicked down a door and asked for the men in the house. Three men went outside. Mr. Tomlinson said that soldiers hit two men with their guns and one kicked him in his chest. He bent over in pain and a soldier kicked him on his buttocks. He said: "I spread out!" A tall, thick, black soldier kicked him in his face and threw Girlie Paul (one of the other men) through a window.

9.156. The occupants of the house were sent to another house while some soldiers went upstairs. Mr. Tomlinson was told to lift up "the fat lady" and bring her (Ms. Allison) downstairs. He put her to sit in a settee and then was made to kneel in front of Building #5. He was questioned about "Dudus" and was beaten by a soldier when he said that he did not know his whereabouts. This soldier "was a short one". Mr. Tomlinson was asked about "Slicer". Again he said he did not know where he was. He was punched in his face, bursting his nose. His wife protested and she was boxed and "dropped by a picket fence".

9.157. According to Mr. Tomlinson, a soldier said, "Give me that boy" and he was marched to Derek Path where he saw "Slicer's" van on fire as well as two houses on Chang Avenue. A soldier told him to run towards a dead body near the burning houses. He did not. He was taken back to Sangster Crescent and to Derek Path. There, he was made to lie in a yard and was kicked by a soldier. Mr. Tomlinson said this soldier pointed his gun at him. He heard "click" and ran away. He was caught and beaten again. He remembers that he woke up in Building #5.

9.158. About 6.00 p.m. police officers came and he was taken, along with others, in a truck to Mobile Reserve and later to Harman Barracks where he was detained until 27 May.

9.159. Mr. Tomlinson told us that he had two ribs fractured. He was taken to KPH and given 2 Panadol tablets. His head was burst; his face was swollen and he was sore in his abdomen. On release, he went to a private doctor, Dr. George W. Lawson. In his report of 28 August 2010, Dr. Lawson gave his findings following examination of Mr. Tomlinson on 2 June 2010. *Inter alia*, Dr. Lawson found and diagnosed:

- Blunt trauma to back with acute lower back pain, muscle spasm and deep soft tissue injury;
- Blunt chest injury with bone contusions of 7th, 8th, 9th ribs and diffuse chest pain;
- Blunt abdominal trauma;
- Deep contusions to lower back;
- Laceration to upper lip;
- Multiple abrasions to both knees, both elbows and left ear;
- Right knee sprain.

9.160. Mr. Tomlinson produced the document given to him upon his release from detention. It was signed by ACP Leon Rose and stated "no injuries".

FINDINGS

9.161. Of all the persons who gave evidence of brutality by the security forces, Mr. Tomlinson seemed to have suffered most grievously. We accept his evidence of the circumstances under which he was injured, particularly by members of the JDF. We find that, having regard to the medical report of Dr. Lawson, ACP Rose's notation

of "no injuries" on the Release Form seems to be questionable. Such notation is wholly at variance with the medical reports which detailed a plethora of injuries. Moreover, the evidence of Lovette Bryan seems to us to be corroborative of Mr. Tomlinson's evidence of brutality. His nickname is "Thick Man" or "Tikka: and we believe that Mr. Tomlinson was the person to whom she referred in her evidence as "Thick Man". However, in so far as we were unable to call Dr. Lawson as a witness since we were advised that he now resides overseas, and despite persistent efforts, we make no adverse finding against ACP Rose. We recommend that Mr. Tomlinson's case be further investigated.

(f) Nicola Bryce-Wilson

9.162. Mrs. Bryce-Wilson resided at Building #30, Dreckett Place. On 24 May 2010 she was at her mother's house in Dreckett Place with a few friends and family members. She heard gunshots and three of the occupants ran into "a back room". She remained in the sitting room.

9.163. Mrs. Bryce-Wilson said that about 3.00 p.m. to 4.00 p.m.:

"I felt something like water running down my stomach. I lift up my blouse and, when I looked, I saw blood and a hole in my breast. I tied my left breast."

9.164. She said that she ran down steps to the ground floor and noticed several soldiers with long guns. "I was bawling for help and Jesus", she said. Her brother opened the door and she dropped down on her side.

9.165. Soldiers entered the house and made the men lie face down and tied their hands behind their backs. Her brother asked them to take her to hospital but, said Mrs. Bryce-Wilson, "they beat him and tell him to shut up his mouth". A soldier got a lady to give her some tea.

9.166. While at the lady's house, Mrs. Bryce-Wilson noticed another injury on her left foot near the instep. It was bleeding. A soldier came and used Q-tips and Peroxide to clean the wound on her left breast. Mrs. Bryce-Wilson remained in Tivoli Gardens until 26 May when she saw a doctor at UHWI, was treated and discharged. Subsequently, she had a mammogram which revealed a metal object in her breast.

9.167. Mrs. Bryce-Wilson testified that a soldier (one Baby Shrek) shot her. She says she has seen him several times in Tivoli. She said that, at first, he denied shooting her but, when confronted by her son, the soldier is alleged to have said "I am sorry. I am glad you're not dead." Mrs. Bryce-Wilson said she saw this soldier "a few weeks after 24 May and I spoke to him". She was cross-examined by Counsel for the JDF as to why she never mentioned "Baby Shrek" before in her statements and she said that none of the interviewers asked her if she knew who shot her. She volunteered that she and "Baby Shrek" have a good relationship.

FINDINGS

9.168. We do not doubt that Mrs. Bryce-Wilson was injured on 24 May 2010 but we are not prepared to find that she was shot by a soldier. She did not see the person who shot her. Even if it is true that she saw soldiers with long guns, that evidence does not necessarily lead to a conclusion that she was shot by one of them. There are other inferences which can be drawn from the primary facts that soldiers were in the area with long guns and we are obliged to resolve equivocal inferences in favour of the JDF.

9.169. In addition, her evidence concerning "Baby Shrek" is unconvincing. Nevertheless, we recommend that her case be further investigated.

(g) O'neil Smith

9.170. On 24 May 2010 Mr. Smith resided at Wilton Hill Drive and worked at the Top Ten Shop on Spanish Town Road with his cousin, Lucius McFarlane who owned the shop. The shop was closed on 24 May but Mr. Smith slept at the shop from 24 to 26 May. About 10.00 a.m. he heard the voices of soldiers outside Top Ten.

9.171. Soldiers came to the shop and took Mr. Smith, Mr. McFarlane and his wife across Spanish Town Road and told them to wait. Mr. Smith put his hands on a wall. A soldier kicked him behind the shin and he fell on rough ground. His leg bled. He was taken, in pain, to the Community Centre and made to kneel. He was later taken to the National Arena and released from detention on Saturday, 29 May.

9.172. Mr. Smith produced the official release document of the JDF which states that he was detained "from 27-5-2010 to 27-5-2010". Mr. Smith insisted that that statement is untrue. He said "I sure I come out Saturday". The condition of his leg had deteriorated to such an extent that he had to be lifted from the National Arena.

9.173. When asked why he did not check the accuracy of the release document, Mr. Smith's answer was: "I did not check it. I was so glad to leave". Mr. Smith showed the Commissioners his leg. It is badly discoloured.

FINDINGS

9.174. We believed Mr. Smith as to the circumstances of his injury and find that he sustained the injury as a result of being kicked by a soldier and falling on rough ground. We also believe his evidence that he was detained until 29 May. The date of release appearing on the release documents is not true. It is fanciful to believe that, in the

context of other evidence adduced about the duration of detentions, Mr. Smith only spent a few hours in detention. Mr. Smith showed us the discolouration of his leg at the site of the original injury and we recommend further investigation of his case with a view to an award of compensation.

(h) Kishonna Gordon

9.175. On 24 May 2010 Ms. Gordon was 13 years old. She lived at #1 McKenzie Drive, Tivoli Gardens in a house near lands of the Public Works Department. Between 2.00 p.m. and 3.00 p.m., Ms. Gordon was inside the house with her mother Marcia and other relatives. Ms. Gordon said that she heard shots and went outside because she knew that her stepfather, Donovan Lindsay, a.k.a. "Lion King", was outside. She heard her stepfather scream and then he "dropped and lie down".

Ms. Gordon said that she rushed and put her stepfather on a hand cart. Brittany Morgan assisted her. According to Ms. Gordon, she saw her stepfather get as far as the gate and, at the same time, she saw 6 or 7 soldiers coming through the gully with long guns. They were about 35 feet away when she first saw the soldiers. She claimed that her stepfather was shot by soldiers.

9.176. She took him to KPH and left him in the care of doctors. She left KPH "and headed back home via Oxford and Charles Streets". On reaching Darling Street, she heard shots. When she reached Spanish Town Road, Ms. Gordon said that she found out that she had been shot in her right leg. Brittany Morgan took her to KPH where she was admitted.

9.177. Ms. Gordon testified that, while she was in hospital, a soldier came to see her and said to her that he did not wish to kill her; he just wanted to "slow me down". She remained in hospital until 17 June 2014. Her stepfather

died but she was unable to attend the funeral because of her injury. For 4 months she wore a splint.

9.178. In the course of her rather confused evidence-in-chief, Ms. Gordon said that her stepfather was shot about 10.30 a.m. She carried him to KPH "in the morning". She claims to have seen a soldier point a gun at her stepfather and shoot him twice. She said –

"I saw the gunshot wounds near his heart and his belly."

9.179. As to her own injury, Ms. Gordon said that she was discharged from KPH on the same day that she was shot. The wound was bandaged but she hid at the hospital. On 25 May, the area of the wound was smelling foul and, according to the witness, she was obliged to curse a doctor to get him to attend to her. As a result, she was re-admitted to KPH. Ms. Gordon said that she saw a doctor "with an injection coming to kill me".

9.180. Under cross-examination, Ms. Gordon became very emotionally distraught and both her testimony and demeanour cast doubt on her veracity. For example, she answered Mr. Linton Gordon to say that, when her stepfather was shot, she was inside the house lying down. Further, she said –

"When I hear my stepfather bawl is when I went outside.
When I went out is after he got shot."

9.181. And she admitted that she had said that she could not say if certain persons were wearing uniform because she was behind a zinc fence. Ms. Gordon agreed with Counsel that at the time of her injury, "*shots were being fired all over*". She has not received any compensation for her injuries.

FINDINGS

9.182. Although we accept that Ms. Gordon was injured during what she described as "a war", we are not persuaded that she was injured by the security forces. We do not believe her story that she

saw soldiers shoot her stepfather twice because of the discrepancies in her evidence. Similarly, we do not accept her evidence as to how she was injured and we reject her evidence that a soldier admitted to her that he shot her to slow her down. Notwithstanding our findings, we recommend that her case be further investigated to determine how she was injured since the records of KPH show that she arrived there on 24 May at 12.50 p.m. with injuries.

(i) Adina Darby

9.183. We have referred to this witness at para.8.30 in relation to her alleged loss and damage to property and at para.9.26 in respect of the death of her son, Nicholas Wright. However, Ms Darby also suffered personal injuries which we have found were sustained about 8.30 a.m. on 25 May. Her evidence was to the effect that, while she was pushing Nicholas on a handcart on their way to the hospital after he was shot, she passed a soldier and a policeman with guns. After she passed these persons she heard an explosion. She said –

"I drop! Tassie and dem run with the cart. I feel something inna me womb. I get up and run and me fall down 3 times. Tassie run to me and say me dead."

9.184. Ms Darby spent approximately one month in hospital. On her discharge, she was obliged to use a wheelchair and crutches. She said that, as a result of her injuries, her gait has been affected.

FINDINGS

9.185. At para.9.30 we explained that the circumstantial evidence concerning how Ms Darby was injured was equivocal and we could not draw inferences favorable to her on the evidence. Nevertheless, we are satisfied that she was injured and we recommend that her case be further investigated.

PART E
CIVILIANS KILLED BY GUNMEN

9.186. Hearsay evidence was adduced to the Enquiry that gunmen had killed a number of civilians in Tivoli Gardens when these persons attempted to leave. For example, under cross-examination by Mr. Alexander Williams, SSP Graham said –

“I had information that gunmen were killing persons in Tivoli Gardens who were trying to leave.”

9.187. ACP Clifford Blake, also in answer to Mr. Williams on 3 June 2015, said –

“I overheard a conversation or discussion that civilians who tried to leave Tivoli Gardens were killed by gunmen... I never received any Intelligence that civilians from Tivoli Gardens who tried to leave were killed by gunmen.”

9.188. DCP Glenmore Hinds, again in answer to Mr. Williams, testified on 27 May 2015 as follows:

“Intelligence told me that persons from Tivoli Gardens who tried to leave were killed by gunmen prior to the operation.”

9.189. Mr. Alexander Williams told the Enquiry at the end of the hearing on 3 June 2015:

“My case is that gunmen killed residents who were reluctant to comply with their demands.”

FINDINGS

9.190. No satisfactory evidence was led in support of the allegations that gunmen killed residents of Tivoli Gardens who wanted to leave the community. Such testimony as there was and, as has been set out above, does not rise beyond the levels of hearsay and

conjecture. Accordingly, it is our finding that the evidence in support of the allegations is unreliable.