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PROCLAMATIONS, RULES AND REGULATIONS

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THE COMMISSION OF ENQUIRY ACT

COMMISSION OF ENQUIRY INTO EVENTS WHICH OCCURRED IN WESTERN KINGSTON AND RELATED AREAS IN MAY 2010 PRIOR TO AN ATTEMPT TO EXECUTE A PROVISIONAL WARRANT IN EXTRA-DITION PROCEEDINGS RELATING TO CHRISTOPHER "DUDUS" COKE, AND WHICH EVENTS INVOLVED THE DEATHS OF AND INJURIES TO SEVERAL PERSONS, THE CONDUCT OF THE SECURITY FORCES OF JAMAICA AND INDIVIDUALS, THE DECLARATION OF THE STATE OF EMERGENCY AND OTHER RELATED MATTERS

PROCEDURAL RULES

In exercise of the powers conferred on it under section 9 of the Commissions of Enquiry Act, the Commission of Enquiry appointed by the Governor-General of Jamaica, His Excellency the Most Honourable Sir Patrick Linton Allen, makes the following Rules:—

PART 1

Citation

1. These Rules may be cited as the Commission of Enquiry (Western Kingston Events—May 2010) Procedural Rules, 2014.

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- (e) the allegations that persons were especially armed to repel any law enforcement effort to capture the fugitive Christopher “Dudus” Coke and, if so, by whom;
 - (f) what were the circumstances under which, and by whom, embattlements and barriers were set up in Tivoli Gardens, and whether efforts were made, and by whom, to restrict ingress and egress of law enforcement officers or to prevent the arrest of Christopher “Dudus” Coke;
 - (g) what arrangements were made, and what precautions were taken, to protect citizens in Tivoli Gardens and other affected areas from unnecessary injury or property damage during the law enforcement action in the State of Emergency, and the adequacy and appropriateness of those arrangements and precautions in the prevailing circumstances;
 - (h) 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;
 - (i) the circumstances under which, and the persons by whom, private property was damaged or destroyed during or around the period of the State of Emergency declared in May 2010;
 - (j) whether the rights of any person or persons were violated in any of the affected or related communities by either law enforcement officers or by anyone else and, if so, whose rights were violated, and the manner and extent of such violations, and by whom such violations were perpetrated;
 - (k) the chain of command in relation to the decisions concerning the operations by the security forces in Tivoli Gardens and related areas during May 2010, and the respective responsibilities of each person in that chain of command;
 - (l) whether any dereliction of duty or unlawful conduct is attributable to any person or persons in that chain of command in connection with the decisions concerning or the execution of the operations by the security forces in Tivoli Gardens and related areas during May 2010 and, if so, to which person or persons, and the nature and extent of such dereliction of duty or unlawful conduct;
 - (m) the circumstances concerning the recovery of illegal firearms and other munitions in Western Kingston or any related or affected areas;
 - (n) whether there was any direct or indirect communication between the fugitive Christopher “Dudus” Coke, and any Jamaican Government Official (or Officials) or any agent thereof, during the period between when the Request for Extradition was first communicated to the Jamaican

Government or any of its agents or officials and when the fugitive Christopher “Dudus” Coke was arrested; and if so, by which Officials and/or agents thereof, the nature of any or all such communications, by what means and for what purpose;

- (o) whether copies of affidavits and other confidential supporting documents attached to or related to the Request for Extradition of Christopher “Dudus” Coke, were found in Coke’s offices, and the circumstances under which and the purposes for which those documents came to be there;
- (p) the circumstances under which the fugitive Christopher “Dudus” Coke managed to elude arrest during and after the operations by the security forces of Jamaica in Tivoli Gardens and related areas in May 2010, and the circumstances of his capture;
- (q) whether monies, benefits or compensation were provided by the State to compensate residents of Western Kingston including Tivoli Gardens and, if so, how much was actually paid or distributed, the manner and recording of such payment or distribution, and the adequacy of such compensation.

4. The Commission is governed and guided by the Commissions of Enquiry Act and other applicable laws.

5. The proceedings of the Enquiry shall be conducted in public. The Commission will hold public hearings at the Jamaica Conference Centre, Ocean Boulevard, Kingston, or such other place as the Commission directs on dates to be determined by the Commission. The Secretariat and administrative offices of the Commission will be located at the Jamaica Conference Centre, Ocean Boulevard, Kingston.

6. Notice of dates of hearings shall be published in a timely manner.

7. Unless otherwise directed by the Commission, hearings on each sitting day of the Commission shall commence at 9.30 a.m. and conclude at 4.30 p.m. or such other time as may be convenient or necessary. There will be a break for lunch of one hour and such other breaks as may be convenient or necessary.

8. All parties and their Counsel shall be deemed to undertake to adhere to these Rules. Any party may raise any issue of non-compliance with these Rules with the Commission. The Commission shall deal with a breach of these Rules as it sees fit including, but not restricted to, revoking the standing of a party, and imposing restrictions on the further participation in or attendance at the hearings by any party, counsel, individual or member of the media.

9. The Commission may amend these Rules or dispense with compliance with them as it deems necessary in order to ensure that the hearing is thorough, fair, transparent and timely.

10. The Commission may postpone any date set for any hearing or application or the doing of anything. The Secretary shall notify all Counsel and any person, organization or office affected by the postponement of the new date.

PART 3

Standing

11. Commission Counsel shall assist the Commission throughout the Enquiry and are responsible for ensuring that the Enquiry is conducted in an orderly fashion, and that all matters bearing on the public interest and falling within the scope of the Commission's mandate are brought to the Commission's attention. Commission Counsel shall have standing throughout the Enquiry.

12. Persons, groups of persons or organizations who wish to participate in the Enquiry may apply for standing before the Enquiry. The Commission may grant standing if it is satisfied that an applicant has a substantial and direct interest in the subject-matter of the Enquiry or that the applicant's participation in the Enquiry may be helpful to the Commission in fulfilling its mandate.

13. An applicant for standing shall apply in writing to the Commission, at least 7 days before any hearing to which the application relates.

14. The Commission shall determine on what terms a party may participate in the Enquiry, and the nature and extent of such participation.

15. As provided for in Part 4, Counsel representing a witness who is called to testify before the Commission may participate during the hearing of that witness's evidence without the necessity of applying for standing.

PART 4

Evidence

A. General

16. The Commission may receive any evidence that it considers to be helpful in fulfilling its mandate whether or not such evidence would be admissible in a court of law.

B. Preparation of Documentary Evidence

17. All parties granted standing under Part 3 of these Rules shall, as soon as practicable after being granted standing, produce to the Commission true copies of all documents in their possession or control having any bearing on the subject-matter of the Enquiry. Documents in the possession or control of a party that are already in the possession of the Commission shall be listed but need not be produced, unless specifically requested by the Commission. Upon the request of the Commission, parties shall also provide originals of relevant documents in their possession or control for inspection.

18. Upon the request of the Commission, persons who have not been granted standing shall produce to the Commission true copies of all documents in their possession or

control which have any bearing on the subject matter of the Enquiry. Documents in the possession or control of such persons that are already in the possession of the Commission shall be listed but need not be produced, unless specifically requested by the Commission. Upon the request of the Commission, such non-parties shall also provide originals of relevant documents in their possession or control for inspection.

19. All documents received by the Commission shall be treated by the Commission as confidential, unless and until they are made part of the public record or the Commission otherwise directs. This does not preclude the Commission from producing a document to a potential witness prior to the testimony of the witness, as part of the Commission's investigation; nor does it preclude the Commission from disclosing such documents to the parties to this Commission of Enquiry, pursuant to and subject to the terms and limitations described in Rule 20.

20. Any person required to produce a document or documents pursuant to Rule 17 or 18 or pursuant to a summons issued under the Commissions of Enquiry Act, and who claims privilege in respect of such document, shall produce a list of the documents in respect of which privilege is claimed, stating the basis and reasons for the claim of privilege. The Commission shall determine whether the claim of privilege is justified.

21. Where privilege is claimed under Rule 20, the Commission shall not disclose any disputed documents to the other parties, but may prepare and produce a summary of the document.

C. Witness Interviews and Disclosure

22.—(1) The Commission, with or without the assistance of Commission Counsel, may interview persons believed to have information or documents bearing on the subject matter of the Enquiry. The Commission may choose whether or not to attend an interview and Commission Counsel shall provide the Secretary with a transcript or report of all interviews conducted in its absence.

(2) Persons interviewed by Commission Counsel may choose to have their Counsel present during the interview, but are not required to do so.

(3) Any person whose interview is requested by the Commission or Commission Counsel shall answer all relevant questions and produce any relevant documents.

(4) A summons may be issued if the person to be interviewed requests one or if the Commission or Commission Counsel deems it prudent to compel the attendance of the person.

23. Where the Commission or Commission Counsel determine that a person who has been interviewed should be called as a witness in public hearings, the Commission shall cause a statement of the witness's anticipated evidence or a transcript of the witness's interview to be prepared and may provide a copy of this statement or the interview transcript to the witness before he or she testifies in the hearing. After the statement or transcript has been reviewed by the witness, copies shall be disclosed to any relevant parties on their undertaking to use it only for the purposes of the Enquiry, and on the terms set out in Rule 24.

24.—(1) Where Commission Counsel determine that it is necessary for a person who has been interviewed to be called as a witness in public hearings, Commission Counsel may tender the witness's statement or interview transcript to the Commission at the hearing, and the Commission may consider the information in the witness statement or transcript when making its final findings, conclusions and recommendations.

(2) Where the Commission or Commission Counsel interview a person and decide not to call that person to testify at the public hearings, Commission Counsel may provide relevant parties with a transcript of the interview, if available, or a summary of the relevant information provided by that person.

(3) A party may apply to the Commission for permission to call any person as a witness or for a direction that that person be called as a witness.

25.—(1) Unless the Commission orders otherwise, all relevant non-privileged documents in the possession of the Commission shall be disclosed to the parties at a time reasonably in advance of the witness interviews or public hearings or both or within a reasonable time of the documents becoming available to the Commission.

(2) Before these documents are provided to a party or a witness, the witness shall undertake to use these documents only for the purposes of the Enquiry, to keep their contents confidential to himself or herself and their Counsel before the Commission unless and until those documents have been admitted into evidence during a public phase of the Commission of Enquiry, and to abide by such restrictions on disclosure and dissemination as the Commission considers appropriate.

(3) All documents provided by the Commission of Enquiry to parties and witnesses and which have not been admitted into evidence during a public phase of the Commission of Enquiry, and all copies made of such documents, shall be returned to the Commission—in the case of witnesses, on completion of their testimony; and, in the case of parties, within seven days of the Commission issuing its final Report.

D. Witnesses and Witness Statements

26. A written statement of the material which any party or witness intends to put before the Commission shall be provided to the Secretary in accordance with such time limits as may be specified by the Commission.

27. Written and signed statements of persons intended to be called as witnesses shall similarly be delivered to the Secretary in accordance with such time limits as may be specified by the Commission. All such material shall be provided in both hard copy and in electronic form where possible.

28. Witnesses who testify shall give their evidence under oath or upon affirmation.

29. Prior to giving evidence, witnesses who have provided signed statements shall be invited to confirm their written statements, which shall be accepted as the evidence of that person. Provided that where in such evidence, it is alleged that another person acted improperly, that evidence shall be given orally.

30. Witnesses are entitled to have their own Counsel present while they testify. A witness's Counsel has standing in the Enquiry for the purposes of that witness's testimony, or such other witness or witnesses as the Commission may determine, and may examine the witness as provided for in Rules 33 and 34.

31. Witnesses may be called to give evidence in the Enquiry more than once.

32.—(1) Where it considers it advisable, the Commission may issue a summons requiring a witness to give evidence on oath or affirmation and/or to produce documents or other things.

(2) A summons may be issued in relation to:

- (a) pre-hearing interviews conducted by the Commission or Commission Counsel;
- (b) pre-hearing requests for documents; or
- (c) public hearings.

33. The Commission shall admit any evidence provided that it is relevant to the Enquiry. Where evidence is challenged or objected to on any ground, the Commission shall determine its admissibility and give only such weight to that evidence as it determines to be appropriate, having regard to all the circumstances.

E. Oral Examination

34. Subject to Rule 35, the order of examination of a witness shall be as follows:—

- (a) the Commission or Commission Counsel may examine the witness at any stage of the proceedings; the Commission or Commission Counsel may adduce evidence from a witness by way of leading or non-leading questions;
- (b) the parties who have been granted standing shall have an opportunity to cross-examine a witness to the extent of that party's interest and in accordance with such time limits as the Commission may direct; if parties are unable to agree the order of cross-examination, the Commission shall give directions which shall be complied with;
- (c) subject to Rule 35, counsel for a witness shall examine the witness as directed by the Commission, regardless of whether or not counsel is also representing another party;
- (d) the Commission or Commission Counsel shall then have the right to examine or re-examine the witness; except as otherwise directed by the Commission, the Commission or Commission Counsel may adduce evidence from a witness during or after re-examination by way of leading or non-leading questions.

35. A witness's Counsel may apply to the Commission for permission to present that witness's evidence-in-chief, and if permission is granted, the witness shall be examined in the following order:—

- (a) Counsel shall examine the witness in accordance with the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commission;

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- (b) the other parties with standing shall be entitled to cross-examine the witness, as provided for in Rule 34(b);
 - (c) the Commission or Commission Counsel shall then be entitled to conduct an examination of the witness, as provided for in Rule 34(d);
 - (d) Counsel for the witness shall then be entitled to re-examine the witness.

36. After a witness has been sworn or affirmed at the commencement of his or her testimony, no Counsel or party may speak to that witness about the evidence he or she has given until the witness has completed his or her evidence. Commission Counsel may not speak to the witness about his or her evidence while the witness is being cross-examined by other counsel.

37.—(1) Where the Commission has indicated that it shall not be calling a particular witness to testify at the public hearings, a party may apply to the Commission and request that the witness be called to give evidence.

(2) Where the Commission is satisfied that the witness's testimony is required, the Commission may direct that the witness be called (in which case Rule 34 applies) or may allow the requesting party to call the witness and adduce his or her evidence in chief (in which case Rule 35 applies).

F. Use of Documents at Hearings

38. Before a witness testifies at the Enquiry, the Commission may, where practicable and appropriate, provide the witness and the parties with a binder, bundle or a list of those documents that are likely to be referred to during the witness's testimony.

39. Except with the permission of the Commission, no document shall be used in cross-examination or otherwise except copies of the documents have been provided to the Commission in a timely manner pursuant to Rules 16 and 17.

G. Access to Hearings and to the Evidence

40. Subject to Rule 41, the hearing referred to in Rule 5 shall ordinarily be open to the public. The press, television and public radio broadcasters shall have access to the hearing at any time subject to Rule 41. One pooled television camera shall be permitted, but the Commission may direct that broadcasting be suspended at any time in the interest of avoiding disturbance to the proceedings.

41. Where the Commission is of the opinion that it is necessary in the interest of the maintenance of order or the proper administration of justice or the due conduct of the Enquiry to exclude all or any members of the public from the hearing room, it may, after hearing submissions from interested parties, direct that such part of the hearing as it deems appropriate, be conducted in the absence of the public or on such terms and conditions as the Commission may direct.

42. Applications from witnesses or parties to conduct any part of the hearing in the absence of all or any members of the public shall be made in writing to the Commission at the earliest possible opportunity.

PART 5

Opening Speeches

43. The Commission may invite parties or their counsel to make opening speeches before the commencement of the testimony of witnesses and on such terms and conditions, including time limits, as the Commission may direct.

PART 6

Final Submissions

44. All Counsel may make final submissions as directed by the Commission subject to any restrictions that the Commission deems appropriate.

45. The Commission shall direct when submissions are to be made and whether they are to be made orally, in writing or in both forms.

PART 7

Amendments to the Rules

46. These Rules may be amended and new Rules may be added if the Commission considers it advisable to do so in order to fulfill its mandate and to ensure that the Enquiry is conducted fairly, thoroughly and with appropriate transparency.

PART 8

Communications with the Commission

46. All communications to the Commission, including applications in writing, shall be addressed to the Secretary.

Issued by the Chairman on behalf of and with the concurrence of the other Commissioners this 1st day of September, 2014.

SIR DAVID A. C. SIMMONS K.A., B.C.H., Q.C.
Chairman