The West Kingston/Tivoli Gardens Incursion in Kingston, Jamaica

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ABSTRACT

On May 24, 2010, 800 soldiers and 370 police officers stormed into Tivoli Gardens, an impoverished district in the capital of Jamaica. Their aim was to restore state authority in this part of Kingston and to arrest Christopher “Dudus” Coke, who was wanted for extradition to the United States on drug and arms trafficking charges. The incursion was the culmination of nine months of national political turmoil. The first aim was achieved, but the second was not, and only at great cost. Around 70 civilians and three members of the security forces were killed. The authors constituted a small group of international forensic pathologists who, at the request of the Public Defender and over a four-week period from mid-June, observed the autopsies of the civilians. This paper describes some of the outcomes of this work, set within the evaluation of the incursion by the Commission of Enquiry. The Enquiry concluded there was evidence of at least 15 extrajudicial killings and was highly critical of many other aspects of the operation and its aftermath. *Acad Forensic Pathol.* 2017 7(3): 390-414

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INTRODUCTION

Jamaica is an island nation in the Caribbean Sea, south of Cuba and west of the island of Hispaniola (divided between Haiti and the Dominican Republic). Jamaica was discovered and claimed for Spain by Christopher Columbus in 1494 and taken by the English, finally, in 1655. It achieved independence in 1962, but remains in the British Commonwealth. It is a parliamentary democracy and a constitutional monarchy with a Governor General representing the Queen. Its population in 2010 was 2.6 million, 90% of whom claim mainly African descent (1).

Jamaica has one of the highest homicide rates in the world. Of countries with more than 100 homicides, and with data available for 2012, Jamaica had the sixth highest homicide rate at 39.3/100 000 population (2). In 2006, with 1674 homicides, the rate was 58/100 000, and possibly in that year the world's highest. The death penalty was reaffirmed by Parliament in 2008, although it is not used.

Civil disturbance of a degree has been a feature of Jamaican history. In 1865 (slavery having been abolished in 1835), there was a protest march by the impoverished black population ruthlessly put down by the Governor, Edward John Eyre. The Governor declared martial law and sent in troops. Several hundreds of the population were subsequently killed as they were hunted down, arrested, and executed without recourse to what, even then, was regarded as proper process. A subsequent Royal Commission in England found that the Governor acted with—“*commendable promptitude but unnecessary rigour*”—words that resonated with the evaluation of the events in 2010 (3).

In 1938, there were labor riots and 15 deaths. In 2001, 27 civilians were killed in an event involving police in Tivoli Gardens, the same location as the current event. There is a British trained Jamaica Defence Force (JDF) and Jamaica Constabulary Force (JCF). Together, these are referred to as the security forces.

The title of this paper refers to the reestablishment of state authority in West Kingston/Tivoli Gardens

by the Jamaican security forces in May 2010 as an “incursion.” According to the Public Defender, this is how it was popularly known, although he thought it could more accurately be described as a siege (4).

DISCUSSION

Background to the West Kingston/Tivoli Gardens Incursion

Christopher “Dudus” Coke

Christopher “Dudus” Coke was regarded as the preeminent Don in Jamaica. His base was in Tivoli Gardens, in the Prime Minister's electorate. Tivoli Gardens had a population in 2010 of approximately 10 000 including, in the words of one witness to the subsequent Commission of Enquiry, “*a cadre of uneducated, unemployed and unemployable young people*” (5). They depended on the patronage of Coke for their livelihood. His father before him had led a gang in Tivoli Gardens. Coke took the title “President,” he led the “Presidential Click,” and his girlfriend was popularly known as “The First Lady.” His gang had reach into other parts of Kingston and Jamaica through a less cohesive transnational organized crime network called the “Shower Posse,” and had overseas affiliates in Tampa, Miami, Ohio, and the UK. His criminal enterprise involved drug trafficking, arms trafficking, robbery, extortion, and kidnapping.

Tivoli Gardens – “A State Within a State”

The Commissioner of Police described Tivoli Gardens under Coke as a state within a state. It was also called a garrison community created by large scale housing developments allocated by the state to supporters of the party in power. These partisans then pushed out the minority from within and guarded against invasion from outside; the expelled set up a squatter community. Utility companies could not go in to the community to collect outstanding money, effectively making utilities free in Tivoli Gardens. Coke himself collected payment for these services.

For 30 years before, police testified at the Commission of Enquiry, the JCF was unable to undertake regular policing in Tivoli Gardens. No police station had been situated there for many years. This was a recognition of the danger to police involved in having a presence there. A Commission of Enquiry had been held into a bloody confrontation between the security forces and the residents of Tivoli in 2001, resulting in 27 deaths. How they met their deaths was never established. No one was held legally or administratively accountable. The 2001 Commission concluded,

There was abundant credible evidence from which it may be inferred that the twin issues of garrison communities and political tribalism cannot be eliminated as a feature of political and cultural life in Jamaica unless Tivoli Gardens is brought under the complete control of the JCF (6).

This was easier said than done because of the level of everyday violence. A component of Jamaica's high homicide rate is the frequency with which citizens die at the hands of the police. "Police shot and killed 272 people in 2007, 224 people in 2008 and 263 people in 2009" (7). In addition, 10, 19, and 12 police officers, respectively, died during the course of JCF operations in each of those years, almost all by gunshot wounds (8). Also, over this period there were many other individual events of violence including attacks on police stations and when one of Coke's brothers was killed in 2005.

The Extradition Request

On August 24, 2009, the heads of the security forces received information that the United States government was actively seeking Coke's extradition from Jamaica. They immediately informed the Prime Minister, Mr. Golding, the leader of the Jamaica Labour Party government. Almost immediately, according to intelligence, Coke fled his luxury compound in regional Jamaica and went to his base in Tivoli Gardens. The government took nine months to authorize his extradition, during which time public anxiety and unrest increased.

The Prime Minister referred to legal and constitutional issues in the extradition request leading to the considerable delay. The existence of these issues was subsequently confirmed by a special Commission of Enquiry convened in October 2010 to consider all the issues surrounding the request (9). As time passed, the US began refusing visas, amongst other actions, for members of the government wishing to travel to the US. Civil society groups became active. The opposition discovered a \$400 000 USD payment to a US law firm to lobby in Washington against the extradition. When challenged with this, the Prime Minister responded that the money was paid by the Jamaica Labour Party, not by the government. This fact was also verified by the special Commission of Enquiry, which was very critical of the payment, saying that it was inappropriate for the Prime Minister to arrange such a thing (9). Eventually, the Prime Minister apologized in Parliament. Then, without giving the security forces any advance notice, he announced agreement to the extradition in a national address on public television on May 17, 2010. This was regarded by his opponents as effectively signalling the agreement to Coke, thus giving him time to disappear.

The main Commission of Enquiry concluded that it was imprudent of the Prime Minister not to give the security forces notice of his intended announcement that Coke was to be arrested; they should not have learned of this through the media (10). But the Commission made no formal adverse finding of the Prime Minister in this regard; he readily acknowledged merit in the point. The Commission was critical of the Commissioner of Police for not telling the Prime Minister and the Minister of National Security that it was important that they had some advance notice of the government's intention to act.

The Nine Months Between the Request and the Incursion

The security forces stated that they used the nine-month delay to plan the joint operation for Coke's arrest. Although it was referred to as a "joint operation," each force developed its own plan. The Commission of Enquiry found that neither heads of the JDF and

JCF knew of the other's plans, although other officers did. The basic tasks were for the JDF to secure the sectors and then invite JCF to enter and conduct searches and other tasks appropriate for the civil power. The Commission of Enquiry was highly critical of the quality of planning and its implementation (see below).

Coke used the period...

...to amass a substantial armoury and recruit a large number of mercenaries to protect him from arrest" (11). "... [G]unmen from Tivoli Gardens and approximately 300 gunmen from across Jamaica were mobilised with a view to preventing the arrest of Coke" (12). "... The video evidence that we saw left no doubt in our minds that the special arming of criminal elements in Tivoli Gardens was no mere allegation. It was a fact of frightening proportions. The armoury which Coke established or to which he had access was comprised of M16 and AK47 rifles, handguns, grenades, at least one 0.50 calibre Grizzly sniper rifle and a large quantity of ammunition. These rifles were no ordinary firearms (13).

In the days leading up to the incursion, barricades were constructed within Tivoli Gardens. These...

...were constructed of old vehicles, old appliances, heavy equipment, scrap metal, sandbags and other solid materials. Several of the barricades had explosives embedded in them, with trigger mechanisms operable from inside residences (14).

Sandbags were also used as firing positions. The Commission concluded that amongst Coke's men were some with military experience to help plan and build the barricades. In addition, the National Intelligence Bureau had photographs of men piling sandbags in bulletproof vests, wearing night vision goggles, and carrying rifles.

On May 18, people were in the streets of the capital, Kingston, demonstrating in favor of Coke and para-

lyzing the city. On May 20, 600 women dressed in white held a demonstration with placards saying variously, "*Leave Dudus alone*," "*Next to God is Dudus*," and "*We will die for Dudus*."

Matters came to a head on Sunday May 23. Criminal elements launched a series of attacks against police stations in West Kingston and related areas. These attacks were of such intensity that the heads of the security forces sought and obtained an urgent meeting of the Cabinet of Jamaica. The deteriorating security situation was explained to the Cabinet, which authorized the declaration of the State of Emergency (11).

The attacks resulted in two police stations being totally destroyed by fire and a third being extensively damaged; a fourth was damaged by gunfire and other assets such as vehicles were damaged.

In the words of the Commission,

Resisting arrest and extradition had morphed into an open and violent assault against the State of Jamaica and its law enforcement agencies (15).

The next day, May 24, 2010, the security forces moved into West Kingston.

The Incursion

Approximately 800 soldiers of the JDF and 370 officers of the JCF were involved in the operation.

The advance of the security forces was slowed, and in some instances halted, by the ferocity of the resistance. Explosions, gunfire, and smoke could be heard and seen over the city. It took until around 4 pm on May 24 before the Tivoli Gardens area was secured. It was clear that Coke had fled, if he was ever there at the beginning. By the next day, there were reports of hundreds dead; people phoned in to the radio with reports of brutality, including throwing people off roofs. There was sporadic gunfire in other areas of West Kingston over the next few days. By the end of the week, 73 deaths were reported.

The scale of the operation and its costs in blood and economic value were great and unprecedented in the history of confrontations between the citizenry and the security forces of Jamaica. Two days after the launch of the operation, 69 civilians and 3 members of the security forces lay dead. The UN Economic Commission for Latin America and the Caribbean estimated 'the total effect of the unrest' on the economy of Jamaica at \$J 22,515.8 billion (\$US 258.8 million)... Senior officers of the security forces readily described the operation as an event the like of which they had never before experienced in their many years of service. Equally, residents of West Kingston... spoke of a frightening experience and being in a continuing state of fear and anxiety immediately before, during and after the operation (16).

The Investigation of Deaths In Jamaica

The death investigation system is governed by the Coroners Act 1900 and the Registration (Births and Deaths) Act 1881. Only three of 34 sections in the Coroners Act relate to forensic pathology and/or the management of bodies. The Act covers a dead body that appears to have died a violent or unnatural death, has died a sudden death of which the cause is unknown, when a medical certificate of the cause of death is not forthcoming, or when the person has died in prison.

In these cases, a coroner, justice, or designated police officer can direct any duly qualified medical practitioner to undertake a postmortem examination of the body.

There is no national Jamaican forensic pathology service. In Kingston in 2010, there were two overseas trained doctors who formed the Medico-Legal Unit of the Ministry for National Security who undertook the autopsies in the capital. At this time, homicide victims were being stored for approximately three months prior to autopsy because of the high number of homicides and the dearth of pathologists.

In 2010, all aspects of the forensic pathology system were under severe strain, underresourced, and thus not

operating effectively. In addition, the coroner system was ineffective and the investigation of the deaths following the "incursion" into West Kingston/Tivoli Gardens was undertaken by the Public Defender, a small ombudsman type office, and The Bureau of Special Investigations (BSI). The role of the latter was criminal investigations, and this was taken over by the newly established Independent Commission of Investigations (INDECOM) in November 2011 (see below).

In the absence of other effective mechanisms, the Public Defender's Office was frequently involved on behalf of members of the public in criminal investigations. The focus in this role is to...

...seek redress (ranging from money compensation to an apology) for the victims of abuse or estate – particularly in the case of extra-judicial killings (17).

The Public Defender, Mr. Earl Witter, a barrister by background, acknowledged how ill-equipped he and his office was to undertake the task of investigating the incursion. But he thought even this was better than involving the coroner system. He wrote in his Interim Report to Parliament as follows:

With the greatest respect, to commit those deaths to the hands of coroners therefore would be to condemn and inhumane the deaths in a veritable sinkhole. But worse, the resort to inquests would condemn the Government to reasonable suspicion of seeking to cover up alleged wide-scale atrocities as well as deny timely enquiry into the matters adumbrated herein (18).

The Public Defender went on to recommend the establishment of a Commission of Enquiry, which was implemented.

Investigation of the Deaths Related to the Incursion

Introduction

In the weeks following the incursion, the international community, including the United Nations Develop-

ment Programme (UNDP), were very concerned. The difficulties in Jamaica were well-known. Following enquiries from the Public Defender, the UNDP sought the assistance of the Argentine Forensic Anthropology Team (EAAF) to form a group of international forensic pathology observers to independently record the results of postmortem examinations conducted by the Jamaican authorities. Ultimately, the authors were assembled into this group. The examinations were to be undertaken only when the international observers were present. One of us (MSP) had considerable experience already in the Caribbean and was the first observer to attend.

He arrived in mid June and immediately struck difficulty when he started observing autopsies. On the first day of the examinations, ten cases were examined in such a way that it was not possible for him to be sure of the observations, let alone record them in an acceptable fashion. The examinations were occurring in two rooms at the same time with some dissections being undertaken without the pathologist or the observer being present, so he sought the intervention of the Public Defender. The outcome was an agreed protocol between the observer pathologist and the Jamaican pathologist. The provisions of the autopsy components of the United Nations Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions (1991) formed the basis of this agreed protocol (19). Better known as the Minnesota Protocol, this has recently been completely revised and updated (20).

The specific terms were then formalized in a memorandum from the Minister for Security as set out in **Appendix 1**. A *pro forma* observer report, developed by one of us (MSP) in accordance with this protocol, and used by all the observers, is set out in **Appendix 2**.

Over four weeks, the four observers attended and provided *pro forma* reports for 73 postmortem examinations undertaken by the Jamaican pathologists. The reports produced by the Jamaican pathologists were provided directly to the BSI, whereas the observer reports were provided to the Public Defender. The information in **Tables 1 to 4** is therefore based on the observer reports only.

The Number of Deceased

The observers, it has become clear with the passage of time, did not see all deaths associated with the events in West Kingston/Tivoli Gardens. First, there were a number of deceased (perhaps three to four according to the Commission of Enquiry) regarded by the BSI as having been killed by gunmen before the incursion. Supt. Brown gave evidence about four burnt bodies that she corresponded with the Public Defender who gave permission on July 4 for them to be buried. Supt. Brown said:

...at no time did I have these bodies as part of my total or as persons killed during the military

Table 1: Main Injury(ies) Causing Death and Number of Gunshot Wounds

Case	GZ*	Sex and Age†	Main Injury(ies) Causing Death	Number of Gunshot Wounds
1	33	M36‡	GSW of back	3
2	13	M31‡	GSW of torso	3
3	34	M30‡	GSW of chest	2
4	58	M23	GSW of torso	3
5	27	M37	GSW of chest	2
6	5	M24	Multiple GSW	8
7	61	M61	GSW of thigh	3
8	42	M27	GSW of head	1
9	16	M16‡	GSW of chest	6
10	9	M17‡	GSW of chest	3
11	11	M31‡	GSW of arms and chest	3

Table 1: Continued

Case	GZ*	Sex and Age†	Main Injury(ies) Causing Death	Number of Gunshot Wounds
12	47	M20	GSW of head	4
13	40	M54	GSW of left shoulder	2
14	4	M25‡	GSW of chest	4
15	25	M23	GSW of head and chest	4
16	56	M45	GSW of head	1
17	37	M22	GSW of buttocks	3
18	60	M41	GSW of back	7
19	1	M35	GSW of back	3
20	46	M32	GSW of torso	2
21	2	M29	GSW of neck	3
22	19	M26	GSW of head	3
23	24	M21§	Multiple GSW (with likely shrapnel injuries)	9
24	52	M37	GSW of torso	2
25	51	M45	GSW of head	1
26	57	M28	GSW of back	2
27	54	F49	GSW of right shoulder	1
28	17	M22	GSW of head and chest	4
29	53	M53	GSW of chest	1
30	55	M29	GSW of chest	Unclear
31	3	M29‡	GSW of back	1
32	67	M30	GSW of head and chest	3
33	69	M23	Multiple GSW	7
34	66	M19	GSW of head and chest	2
35	71	M24	GSW of chest and buttock	2
36	36	M21	GSW of right shoulder	2
37	22	M23	Multiple GSW	7
38	48	M(U/K)	GSW of chest	1
39	39	M46	GSW of torso	5
40	62	F36	GSW of head	1
41	28	M42‡	GSW of head and chest	11
42	15	M23	GSW of head	1
43	30	M30	GSW of chest	4
44	26	M32§	Shrapnel injuries	-
45	6	M52	GSW of head	1
46	70	M28	GSW of abdomen	1

Table 1: Continued

Case	GZ*	Sex and Age**	Main Injury(ies) Causing Death	Number of Gunshot Wounds
47	50	M25 [†]	GSW of chest	2
48	65	M33	GSW of head	5
49	72	M37	GSW of left shoulder	1
50	64	M49	GSW of chest	1
51	21	M25	GSW of chest	3
52	14	M17	GSW of torso	4
53	8	M20 [‡]	GSW of chest	3
54	74	M45	GSW of head	1
55	63	M44	GSW of chest	1
56	32	M20 [‡]	GSW of chest	4
57	43	M67	GSW of chest	1
58	31	M54/5	GSW of head and chest	4
59	35	M34	GSW of torso	7
60	45	M23	GSW of pelvis and thigh	3
61	44	M18	GSW of head	2
62	20	M20	GSW of head	7
63	49	M30 [‡]	Multiple GSW	10
64	7	M(U/K)	GSW of head	1
65	38	M(U/K)	GSW of torso	2
66	41	M(U/K)	GSW of torso	~1
67	29	M(U/K)	GSW of neck and chest	2
68	12	M25	GSW of forearm and torso	2
69	73	F46	AIDS	1
70	23	M(U/K)	Multiple GSW	4
71	59	M32	Multiple GSW	>2
72	10	M20	GSW of chest	2
73	18	M20	GSW of torso	Unclear

M – Male

F – Female

U/K – Unknown

GSW – Gunshot wound

* GZ (Ground Zero): This was the prefix used to give the deceased a unique identifying number. Note that GZ 68 is not listed and that there is a GZ74, although there are only 73 deceased on the list.

[†] We have chosen not to list the names. These are available publicly.

[‡] Included in the 15 individuals listed by the Commission of Enquiry as those whose “*right to life may have been intentionally violated*” (21). Two of these 15 were not on this list of 73 deceased whose autopsies the authors observed.

[§] Deaths caused or contributed to by mortar fire.

incursion, as I knew through investigation and subsequent statements from family members that they were murdered because they refused to block the road and facilitate the criminal activities of gunmen (22).

Table 2: Sex and Identification Status of the 73 Deceased Whose Autopsies Were Observed

Sex	Identification*
Male n = 70	Identified n = 68
Female n = 3	Unidentified n = 5

* This includes two decedents who were identified subsequent to the observed autopsies

Table 3: Age of the 73 Deceased Whose Autopsies Were Observed

Age Range (Years)	Number of Individuals (N=73)
16-25	26
26-40	24
41-60	14
>60	1
Unknown	8

Table 4: Number of Gunshot Wounds In the 73 Deceased Whose Autopsies Were Observed

Number of Gunshot Wounds	Number of Individuals (N=73)
1	19
2	16
3	14
4	9
5	2
6	1
7	5
8	1
9	1
10	1
11	1
Unknown	2
Shrapnel wounds only	1

Notwithstanding this, the Commission formally concluded, however, that there was no good evidence that gunmen killed residents of Tivoli Gardens (23).

Secondly, the three deceased security force members (one soldier and two policemen) were not subject to autopsies that involved the observers. It is not clear from the Commission of Enquiry report if they had autopsies at all.

For the purposes of this paper, there are two main lists of deceased. The first is the list of 76 deceased, headed “*State of Emergency 2010 – List of known related deceased*,” set out in the Public Defender’s Interim Report of 2013 (24), and adopted by the Commission of Enquiry (25). This first list is by name, sex, age, occupation, and address (without the ground zero [GZ] body reference number). The five unidentified decedents on this list do include the “GZ” number. The second is the authors’ list of 73 deceased (including seven unidentified at the time of examination) whose autopsies we observed and have both the name, if known, and the GZ reference number. The apparent discrepancies between these two lists are as follows: two of the seven unidentified on the authors’ list of 73 were subsequently identified, reducing to five the number unidentified; there were four named deceased on the list of 76 who were not on the authors’ list of 73. All the unidentified bodies on the list of 76 were also present on our list of 73. This means that there were at least four deceased, who probably received autopsies, which we did not observe. There may be reasons for this, including the possibility that the deaths may have occurred after our involvement; there was only one of the 73 deceased seen by the observers that was not on the list of 76 bodies. This was an HIV-positive female, who suffered a very superficial gunshot graze to the knee requiring dressing who died in hospital from *Pneumocystis pneumonia* some weeks later. The observer did not feel that her death could properly be attributed to the “incursion.” There is, thus, an obvious reason why she was omitted from the list of 76.

Identification of the Bodies

Over the 10 to 14 days following the operation, the bodies underwent an identification process largely involving families viewing photographs of the deceased. Such identification was supplemented by a member of the deceased's family attending the mortuary to identify the deceased to the pathologist. The pathologist would question the family member about any ante-mortem identifying information (e.g., scars, tattoos) and about the family member's understanding of the circumstances of the death. Immediately prior to autopsy, the family member was brought into the autopsy room and asked to identify the deceased, usually with specific reference to the previously discussed ante-mortem information. This was often extremely distressing for family members (and for everyone else). This was the way in which most of the 66 deceased were identified; seven remained unidentified at the time of the observed autopsies, two of which were subsequently identified.

The Public Defender's interim report refers to four cases of missing persons.

Nine bodies had to be re-autopsied because their name tags, after identification by relatives, had disintegrated or become unreadable. The purpose of the re-autopsy was to compare the observed injuries with the reports of previous autopsies to re-establish identity.

In all cases where deceased were not identified, a cross section of femur was retained.

The Nature of the Deaths and Possible Extra Judicial Killings

The public defender in his interim report included a list of 44 complaints of alleged extrajudicial killings set out by name, sex, age, occupation, and address. Five of these individuals are not on the authors' list of 73 deceased whose autopsies were observed. To what extent, if at all, these five overlap with the five unidentified deceased on the authors' list we cannot know.

The Commission listed the names of 15 people whose "right to life may have been intentionally violated" (21). Two of those named were not included on the list of 73 deceased whose autopsies were observed (although of course, they may have been among the unidentified deceased on that list). One of the two was also not on the Public Defender's list of 76 deceased, but this too included some unidentified bodies.

Most of those on the Commission's list of 15 were last seen alive in the custody of the security forces, who were frequently masked, shortly before shots were heard and other circumstances suggested they had been killed. One, GZ 49, was intellectually handicapped and was found to have ten gunshot wounds to the front of his neck, chest, abdomen, and inguinal region, as well as the back of his right forearm and hand. Three (GZ 33, 32, 28) were last seen in a temporary holding area established by the security forces.

In addition, the Commission concluded that...

...five other males were very likely murdered in the sight of soldiers #1 and #3 in Sector 1 on 24 May.....we cannot identify these persons, nor can we be sure they are not included in the 15 referred to above (26).

Mortars were deployed during the operation. This use was regarded by the Commission of Enquiry as "irresponsible and reckless" (27), and a "serious error of judgement...reckless and wholly disproportionate to the threats offered by gunmen" (28).

In the Commission's view, with good support from the autopsy reports, two died from (or in one case, perhaps, with) injuries from explosive mortar rounds. In view of the nature of the decision to deploy the mortars, these two deaths are probably also unlawful homicides. In one of the two, there were injuries from firearms as well as injuries suggestive of shrapnel. A history of the death of this individual is given by the Public Defender and refers to a period of conscious survival after being struck by mortar shrapnel with subsequent execution by a soldier:

One of the soldiers came over to him and just shot him. It was more than one shot; I heard more than one shot (29).

The autopsy revealed nine gunshot wounds as well as less serious shrapnel wounds.

With the exception of one death, the security forces provided no evidence of having killed anyone in any circumstances. There was no good evidence that criminal gunmen killed anyone either. This is despite the fact that by May 27, it was clear that about 70 people had been killed, and by May 29 only 29 guns had been recovered.

The security forces argued that many of the dead were gunmen “*who embarked on a vicious and violent offensive against the security forces*” (30). The response of the Commission was:

Where were the guns that these deceased were firing? The security forces adduced not a shred of evidence of any guns found near to bodies at any time, and certainly not after 4pm when they were in control of Sectors 1 and 2 (30).

This finding of the Commission is in stark contrast to an earlier expressed view of the Commissioner of Police in a letter to the Minister for National Security in 2013 when he wrote:

Gunmen loyal to Coke murdered 24 citizens in St Catherine alone on May 24 to detain police resources in that area so that the effort to arrest Coke would be abandoned (31).

In the presence of what amounted to significant passive resistance by the security services to the work of the Commission, there was focus on forensic avenues of enquiry. Even in the days following the operation, the Public Defender was very concerned that there seemed to be little or no investigative activity and wrote to the Chief of Police and the Head of the BSI about this.

Injuries to Others

The Commission of Enquiry does not refer to how many civilians were injured.

Twenty-six soldiers were injured – all on May 24. Fourteen had gunshot injuries and a number of these were serious: multiple gunshot wounds to the thigh, inguinal region, and scrotum; to the neck with hemothorax; and a compound fracture to humerus. One soldier suffered a blast injury to the lower leg resulting in an above knee amputation. Five were wounded by shrapnel and four suffered blunt force injuries “*in circumstances not made known to us*” (32). Two soldiers suffered heat exhaustion. There was one death of a soldier: a single gunshot wound to the back of the head. The projectile had penetrated his ballistic helmet, indicating that it had been fired from a high-powered rifle. No commissioned officers were injured. The Commission found that all were injured as a result of the actions of the criminal elements trying to protect Coke from arrest (32).

Eight JCF personnel were shot and wounded in the early hours of May 24; two died. No details of the injuries were provided to the Commission, although the circumstances of their occurrence were well understood and were the result of gunfire from criminal elements trying to protect Coke from arrest.

Other Aspects of the Investigation

The BSI was formally handed responsibility by the Chief of Police “*to commence investigations without delay*” on May 25 (33). The Commission found that there was no record made of the locations of bodies to assist investigations, nor was there any start made to process possible crime scenes. The officer in charge of the BSI stated that he delegated responsibility in relation to the bodies to two officers. The processing of crime scenes did not commence until ten days after the operation on June 4 (34), because the officer in charge of the Scene of Crimes Unit stated that was when he was first requested to attend.

From the foregoing, we hold that (the relevant Assistant Commissioner) was in dereliction of his duties to move expeditiously to commence investigations into the locations and deaths of civilians...We reject the evidence of (the Assistant Commissioner and another) that the environment in Tivoli Gardens was not conducive to processing crime scenes earlier...Respect for the right to life required a swift and appropriate response from the JCF whose duty it was to investigate these deaths (35).

The Commission concluded that the investigation...

...had been greatly compromised by the vast disparity that exists between the record of 7610 rounds expended by the security forces (and 1516 expended by the JCF) and only 36 spent shells being recovered. We find this disparity alarming (36).

Total number of firearms recovered was 106, and there were considerable discrepancies in these numbers at different times and places. The low number of firearms recovered in light of the number of gunmen led to discussions about gunmen being skilled at concealment and inefficient searches. The overall evidence in relation to recovered firearms was considered to be “unsatisfactory.”

Location of Bodies

Data about where specific bodies were found and the presence or not of nearby firearms would be essential for the investigation of the deaths. In fact, there were no records of which bodies were found where, when, or by whom; nor whether firearms were found nearby (37, 38). Thus the Commission of Enquiry was highly critical of the evidence of those said to be responsible for the collection of the bodies.

INDECOM took over the investigations of the deaths in November 2011. The Asst. Commissioner of INDECOM, a former Detective Chief Superintendent of Police in England, Mr. Campbell, said that the materials supplied to INDECOM...

...did not include any written or photographic documentation which showed the locations from which any bodies were recovered (39).

This lack of information and records contrasted with the expressed view of the Commissioner of Police in a letter to the Minister of National Security in 2013 about the operation. Relative to the JCF's Policy on the Use of Force and Human Rights, humanitarian considerations were a priority in the strategic planning of the operations. These include respect for human rights, removal of injured persons, removal of dead bodies, and protect the dignity of the dead (31).

Field Autopsies

Field autopsies have been a feature of Jamaican forensic pathology practice, in Kingston at least. They occur because of the disinclination of funeral homes (there being no government mortuary) to admit decomposing bodies to their facilities. In those circumstances, an autopsy is performed where the body is found, or nearby.

Amongst the 73 deceased whose autopsies were observed, 18 had undergone a previous field autopsy at the cemetery on May 25 and 26 by one of the pathologists. These had involved an external examination followed by a midline incision and examination of the internal organs *in situ*. Notes made at the time were later compiled into a report completed, usually, at the police station. The bodies were then placed in coffins and their burial commenced by police. The field autopsies were disrupted by gunfire. There was a community outcry that the authorities were not investigating the deaths properly and trying to minimize the number of deaths. The Public Defender informed the Prime Minister, who ordered the practice to stop. It was not until May 29 that the bodies located at the cemetery were retrieved and taken for storage to the Norman Road temporary mortuary.

Facilities and Processes

On June 11, all bodies were radiographed at the hospital.

The temporary mortuary established at Norman Road was a blue plastic tent established in what appeared to be a large work yard in suburban Kingston, being used temporarily by a funeral home. A refrigerated container obtained by police had been located there, holding perhaps 20 or so bodies. The container was being maintained by staff of the funeral home, whereas autopsy assistance was being provided by staff of the Medico-Legal Unit. One of us (MM) noticed that the container was only working at night, the refrigeration being turned off by the funeral home during the day to save electricity.

The Spanish Town Hospital Mortuary, where many of the examinations were conducted, was a room about 6.5 square meters. It was entered directly from the outside and had a porcelain autopsy table. The environment was often warm and humid. There was no running water at the autopsy table, such water as there was being delivered by a very thin hose from an adjacent sink, and there was a very small selection of dissecting equipment on a small board. An adjacent refrigerated room for body storage was out of order. Bodies were brought on a daily basis from a private funeral home in Kingston, about 30 to 40 minutes away.

In one case, the deceased was known to be HIV-positive and had died in hospital from *Pneumocystis pneumonia* about four weeks following the incursion. She had suffered a graze gunshot wound injury requiring only dressing. The pathologist was concerned about undertaking the autopsy. Decomposition meant that the bodies were very slippery, and with rudimentary equipment and no mesh gloves or other personal protective equipment, that meant that the risk of injuring oneself during an autopsy was real. As such, the autopsy did not proceed.

All of these civilian deaths were, technically speaking, deaths in custody and therefore their investigation were covered by the 1991 Minnesota Protocol. The Protocol expects the scene to be secured and protected, detailed photography of the deceased and the scene, and the scene examined and records made.

Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. When applicable, tests for gun shot residue and trace metal detection should be performed (19).

The processing of the death/crime scenes was clearly in breach of the Protocol, as it seems not to have happened at all.

The Enquiries

There were four main enquiries into aspects of the operation and its surrounding events.

1. The first was a substantial extension of the ordinary functions of the small Office of the Public Defender, who in April 2013 tabled in Parliament an interim report...

...concerning investigations into the conduct of the security forces during the State of Emergency declared May 2010—West Kingston/Tivoli Gardens 'Incursion'—the killing of Mr Keith Oxford Clarke and related matters (40).

The death of Mr. Clarke on May 27 was not one observed by the authors. He was killed when his house was stormed by an operation involving 60 members of the JDF in the mistaken belief that Coke was there. His postmortem report records 21 gunshot entry wounds, 16 of them to the back (41).

2. The Commission of Enquiry into the extradition request for Christopher Coke established in October 2010 (The special Commission of Enquiry) (9).
3. The Commission of Enquiry into certain events that occurred in Western Kingston in May 2010, established in February 2014 (The main Commission of Enquiry). Earl Witter, the Public Defender, in his interim report had called for the Commission of Enquiry to be established. The JCF publicly supported a Commission of Enquiry, and

it had a measure of bipartisan support. As evidence, the Prime Minister at the time of the incursion stated that it was always his government's intention to establish such a Commission (10).

4. In May 2010, just before the incursion, Parliament passed The Independent Commission of Investigations Act that established INDECOM. This is a considerably strengthened version of the BSI and the Police Complaints Authority. The latter was scrapped, and the former became an internal agency for police dealing with lesser matters outside the scope of INDECOM. INDECOM commenced operations in August 2010 to improve accountability for the number of shooting deaths at the hands of police. In November 2011, it took over responsibility for investigating the deaths related to the incursion from the BSI.

The main Commission of Enquiry, a truth-finding, inquisitorial mechanism, was appointed on February 21, 2014, almost four years after the event. Its mandate was to investigate the totality of the circumstances before, during, and after the incursion of the JDF and JCF into Tivoli Gardens in their attempt to execute the warrant for the extradition of Coke. Prior to the report being submitted to the Governor of Jamaica in February 2016, 1138 witness statements were considered and 94 people gave oral evidence. The Commission used the civil standard of fact finding; that is, a fact was established on the balance of probabilities. People against whom an adverse finding or comment was made were given an opportunity to respond in advance to that finding. All such responses, and the Commission's further response, were included in the final report. The 493-page report, plus numerous appendices, makes many conclusions including:

1. There were completely inadequate arrangements for emergency medical services (42).
2. The planning for the operations did not include contingencies for dealing with injuries or deaths i.e., it was based on zero injuries (43).
3. The JDF caused most of the damage to the 2520

properties affected including 94 houses totally destroyed and 200 severely damaged (44, 45).

4. House clearing exercises were heavy handed.
5. The forced detentions immediately following the incursion were wholly disproportionate to the requirements of the situation. Young males were arbitrarily taken and subjected to indignities within Tivoli Gardens before being taken away to detention centres. The fact that 4372 people – largely young men – were detained and only 148 not released meant that the detentions were arbitrary (46). Even during a State of Emergency, it was only lawful to detain people...

...where their behaviour was of such a nature as to give reasonable grounds for suspecting that they were acting or had acted in a manner prejudicial to public safety or were committing or had committed an offence... (47).

The detentions were illegal, contrary to the Regulations and unconstitutional (47).

6. The security forces did not exercise due caution in protecting residents from injury and property damage (48).
7. There were many instances of theft by the security forces (49).
8. *"The majority of the criminal gunmen retreated or escaped"* (50).
9. JDF went to some effort to deal with soldiers who misconducted themselves. There was no evidence that the JCF did the same (51). JDF had a system of supervision allowing detection and punishment of misconduct. The same could not be said of the JCF (52).
10. Members of security forces were wearing masks during the operation (53).

11. *“In our judgement, the Chief of Police should have been held administratively accountable for weak superintendence of the JCF in May 2010” (54).*
12. *“On the balance of probabilities we find that members of the Security forces assaulted some residents without restraint” (55).*

In the final analysis, the Commission of Enquiry concluded that:

Although the operation of the security forces was justified, the manner of its execution by some members of the security forces was disproportionate, unjustified and unjustifiable (56).

It is not clear whether Coke was actually in Tivoli Gardens when the operation started. The Commission of Enquiry could make no finding about how he escaped. Coke was captured and/or surrendered – it is not clear which – 29 days after the operation. At the time, he was in the company of a Rev. Miller. Miller was unavailable to give evidence to the Commission as he was being tried for offences related to Coke.

CONCLUSION

Set out in **Table 5** is a summary of the questions that need to be addressed in evaluating the deaths from the incursion. The state of the forensic contribution is summarized.

Broadly speaking, the autopsy investigations, but not the scene investigations, were in accordance with the requirements of the Minnesota Protocol (19). Autopsies assist with understanding the circumstances within which the death occurred. Information about the death scene is almost always necessary to properly understand these circumstances. It seems that there may have been significant deviations from the obligations to investigate crime scenes following the incursion. While the Commission was able to make some conclusions based on eye witness testimony and autopsy findings, the lack of crime scene evidence supported by ballistics, blood spatter, and other DNA blood stain evidence has prevented the Commission of Enquiry from coming to better conclusions about the number of extra-judicial killings. This will also impact the ability to arrest and try members of the security forces for some of these killings, thus reducing accountability for breaches of the right to life that occurred during the Tivoli Gardens incursion.

Table 5: The Summary Forensic Contribution To Questions Arising In Relation To the Deaths From the Tivoli Gardens Incursion

Key Legal Questions	Forensic Contribution	Progress on the Forensic Work
Who died in the Tivoli Gardens incursion?	Determination of how many people died and their identity.	Sixty-eight of 73 deceased whose autopsies were observed were identified. There are additional deceased (both civilians and members of the security forces) who died, before, during or after the incursion, who may or may not have been subject to autopsy.
Where did people sustain injuries in the Tivoli Gardens incursion?	Determination of the origin and location of blood stains inside the houses and external environment.	Progress with any blood spatter and/or DNA analysis of the bloodstain samples is not clear, and it seems unlikely that any was undertaken, but if so the results are not publicly available.
How did the people die in the Tivoli Gardens incursion?	Determination of the causes of death and the injuries sustained.	The observer reports and autopsy reports have been finalized. The causes of death and the injuries sustained have been characterized, within the constraints of variable degrees of decomposition.
Who killed those who died in Tivoli Gardens?	Linkage of bullet fragments recovered from bodies to firearms that discharged the bullets.	The fired bullet fragments recovered from bodies have only undergone initial characterization. As far as can be assessed, firearms have not been obtained from the security forces, and if so, no results have been obtained or published publicly.
What were the circumstances surrounding the deaths in Tivoli Gardens?	The goal of the medicolegal investigation of death is to contribute information to enable legal authorities to determine the answer to this question.	Significant work remains outstanding on the ballistics and DNA analysis. The results of autopsies have provided sufficient corroboration in some cases for the Commission of Enquiry to conclude, on the balance of probabilities, that in at least 15 cases, extra-judicial killings have occurred.

APPENDIX 1 **OFFICE OF THE MINISTER OF NATIONAL SECURITY**

June 17, 2010

To: Mr. Earl Witter, Public Defender

Dianne McIntosh, Permanent Secretary (Acting), Ministry of National Security

Mr. Vivian Brown, Chief Technical Director (Acting)

Dr. Dinesh Rao, Director of Legal Medicine Unit (Acting)

Dr. Marion Bullock Ducasse, Director for Emergency Disaster Management & Special Services in the Ministry of Health

ACP Granville Gause, Bureau of Special Investigations

Ms. Paula Llewelyn, Q.C, Director of Public Prosecutions

Marcia Dunbar, Deputy Director, Government Forensic Laboratory

Mr. Steven Ranglin, Senior Legal Officer Ministry of Foreign Affairs & Foreign Trade

Dr. Michael Pollanen, Observer Pathologist

**Re: Protocol Standards for the Post-mortem Examination of
Bodies Recovered from West Kingston, Jamaica in May 2010**

Further to discussions held at the Ministry of National Security on Wednesday, June 16, 2010, I set out below agreed on protocols for the conduct of post-mortem examinations as of Friday, June 18, 2010:

The purpose of this protocol is to:

- ❖ Ensure that the post-mortem examinations meet accepted international norms in forensic pathology
- ❖ Define the role of the observer forensic pathologist (s) who will witness the post-mortem examinations

It is recognized that the protocol needs to be practically achievable within the existing infrastructure and available resources. However, the lack of resources is not considered a barrier to conducting complete post-mortem examinations.

- ❖ The participants to the post-mortem examinations will be:
 - Government Forensic Pathologist (s) acting in their official capacity
 - Photographer from the Bureau of Special Investigations
 - Autopsy assistants
 - Observer Forensic Pathologist (s) will provide professional expertise to the Office of the Public Defender
 - Other participants or attendees must be approved by authorities
 - Observer Forensic Pathologist(s) will observe the post-mortem examinations performed by the Government Forensic pathologist
- ❖ Where there is a dispute on any procedure in conducting an autopsy the Government Pathologist shall note the objection in the final post-mortem report and the observer Forensic Pathologist shall state his objection and the basis of such objection in his report
- ❖ Each post-mortem examination will be performed by a Government Forensic Pathologist
- ❖ A complete post-mortem examination will be performed on each body
- ❖ Post-mortem radiographs will be obtained in each case
- ❖ The post-mortem examination will be documented by photography in each case
- ❖ The post-mortem examination will be documented by videography in each case
- ❖ As far as is possible all projectiles will be recovered from each body
- ❖ The name of the deceased (as reported to the pathologist) age, sex, case number, date of examination, place of examination should be recorded
- ❖ The names of the Government Forensic Pathologist, Photographer, observer Forensic Pathologist and other witnesses should be recorded

- ❖ The post-mortem changes of the body, clothing, jewellery, personal effects should be described and photographed
- ❖ A comprehensive external examination should be performed to document: apparent age, sex, height & weight, body habitus, hair, eyes face, mouth & teeth, torso, back, limbs and genitals. Photographs of all body surfaces and the face should be obtained
- ❖ Specific identifying features such as scars, tattoos and other unique features such as deformities should be documented and photographed
- ❖ Post-mortem radiographs should be reviewed prior to dissection and all projectiles visible on radiographs should be described. Other radiographic observations should be recorded
- ❖ Signs of recent injury should be documented and described – this applies to all injuries that are present
- ❖ If gunshot wounds are present, the gunshot wounds will be described in an arbitrary order that may not reflect the order of infliction. Wound paths and directions should be described in the anatomical position (upright frontal position with palms facing forward). The gunshot wounds should be described using the standard pro forma
- ❖ The gunshot wounds should be described in continuity from the entrance wound to the exit wound or from the entrance wound to the site of lodgement of the projectile, as appropriate
- ❖ Entrance wounds should be described by referring to the location on the body and position (measurement from the top of the head and from the midline). The size and shape should be described. The presence of an abrasion collar, blackening of margin, stippling and other observations should be recorded. An opinion should be proffered on the range of discharge of the firearm
- ❖ The path of bullet with internal injuries and associated haemorrhage should be described
- ❖ The volume of hemothoraces or hemoperitoneum should be recorded
- ❖ Exit wounds should be described by referring to the location on the body and position (measurement from the sole of the feet and from the midline). The size and shape should be described. If the bullet has not exited, the placement of the bullet should be recorded. The projectiles should be described (e.g., deformed, fragmented)

- ❖ The direction of the wound path in the body should be determined. All entrance and exit wounds should be photographed with a scale
- ❖ Where multiple gunshot wounds are present and wound paths associated with entry wounds cannot be uniquely associated with lodged bullets or exit wounds, then entry and exit wounds and bullets do not need to be described in continuity. This is to be done at the discretion of the Government Forensic Pathologist and within the limits of decomposition
- ❖ All body cavities, i.e. the cranial cavity, thoracic cavity and abdominal cavity must be opened for examination
- ❖ All dissections and removal of internal organs will be done at the discretion of the Government Forensic Pathologist
- ❖ A complete musculoskeletal dissection will be performed by the Government Forensic Pathologist in all cases.
- ❖ Histology will be performed at the discretion of the Government Forensic Pathologist
- ❖ Excision of entry wounds will be performed at the discretion of the Government Forensic Pathologist
- ❖ Samples of body fluids and liver will be collected for toxicology at the discretion of the Government Forensic Pathologist
- ❖ All physical exhibits (e.g., projectiles) and biological samples should be recorded in the report of post-mortem examination
- ❖ Reference samples for DNA examination shall be retained by the Government Forensic Pathologist in all cases in which the body is unidentified or unidentifiable

Sincerely,

Senator the Hon. Dwight Nelson CD, JP
Minister

APPENDIX 2

PRO FORMA FOR OBSERVER FORENSIC PATHOLOGIST'S REPORT

PREAMBLE

CASE #	
NAME OF DECEASED AS REPORTED TO PATHOLOGIST	
AGE/SEX	
DATE OF EXAMINATION	
PLACE OF EXAMINATION	
PATHOLOGIST	
PHOTOGRAPHER	
OBSERVER PATHOLOGIST	

PURPOSE

To provide independent commentary on:

1. State of the body.
2. Identification.
3. All the injuries present, including gunshot wounds. If gunshot wounds are present, then to comment on: the number and locations on the body of the entry and exit wounds, the number of bullets in the body, the path of the gunshot wounds in the body and the range of discharge of the firearm(s).
4. The cause of death.
5. Any other medico-legally relevant findings.
6. Completeness of the postmortem examination.

STATE OF THE BODY

LABELS AFFIXED TO BODY	
RIGOR MORTIS	
HYPOSTASIS	
DECOMPOSITION	

IDENTIFYING FEATURES

APPARENT AGE	
SEX	
HEIGHT & WEIGHT	
BODY HABITUS	
HAIR	

EYES	
SCARS	
TATTOOS	
OTHER UNIQUE FEATURES	

POSTMORTEM RADIOGRAPHS (X-RAYS)

LABELS ON RADIOGRAPH(S)	
NUMBER OF RADIOGRAPH(S)	
NUMBER AND PLACEMENT OF PROJECTILES (E.G., BULLETS OR FRAGMENTS) VISIBLE ON THE RADIOGRAPH(S)	
OTHER OBSERVATIONS	

SIGNS OF RECENT INJURY

GUNSHOT WOUNDS

Gunshot wound of x	
Entry wound	
Location:	
Position:	x cm from the top of the head and x cm from the midline
Size and shape:	~ x cm
Range of firearm discharge:	
Other observations:	
Path of bullet	
Internal injuries:	
Hemorrhage:	
Exit wound	
Location:	
Position:	x cm from the top of the head and x cm from the midline
Size and shape:	~ x cm
Projectile (if present)	
Appearance of projectile:	
Location:	
Direction in body	

OTHER INJURIES

1.

CAUSE OF DEATH

1(a)	
------	--

COMMENTARY

IDENTIFICATION

How was the body identified?	
How reliable is the identification?	
Was a femoral bone sample retained?	Yes / No

COMPLETENESS OF THE POSTMORTEM EXAMINATION

Where radiographs prepared?	Yes / No
Where autopsy photographs prepared?	Yes / No
Was a satisfactory examination undertaken?	Yes / No
Where all the projectiles recovered?	Yes / No

SUMMARY OF INJURIES

How many times was this person was shot and in what locations?	
Did the gunshot wounds show evidence of contact, close-range or intermediate range discharge of the firearm(s)?	Yes / No. If yes, specify.

OTHER INJURIES

Are any injuries caused by stabbing or cutting?	
Are any injuries caused by blunt impact?	
Are any burns present?	
Are any ligatures present?	

OTHER COMMENTS

1.

I certify that I have made a true statement of my findings and opinion:

ACKNOWLEDGEMENTS

We would like to thank UNDP and EAAF; Mr. Earl Witter, the Public Defender, and his office; Dr. Prasad and Dr. Rao, the forensic pathologists involved; and Superintendent Brown, from the Jamaica Constabulary Force, and her officers and staff at the mortuary at Norman Road and at the Spanish Town Hospital.

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