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TRINIDAD AND TOBAGO

COMMISSION OF ENQUIRY INTO EVENTS SURROUNDING THE ATTEMPTED COUP D'ETAT WHICH OCCURRED IN THE REPUBLIC OF TRINIDAD AND TOBAGO ON 27 JULY 1990

PROCEDURAL RULES

In exercise of the powers conferred on it under section 9 of the Commissions of Enquiry Act, Cap.19:01, the Commission of Enquiry appointed by the Acting President of the Republic of Trinidad and Tobago on 6 September 2010, and whose appointment was published in the Trinidad and Tobago *Gazette* on 7 September 2010, makes the following Rules:

PART 1

Interpretation

1. In these Rules:

- (i) "Commission" means Sir David Simmons, K.A., B.C.H., QC; Dr. the Hon. Sir Richard Cheltenham, K.A., QC, J.P.; Dr. Haffizool Ali Mohammed; Dr. Eastlyn Kate McKenzie; and Mrs. Diana Mahabir-Wyatt, being the persons appointed as Commissioners by His Excellency, the Acting President of the Republic of Trinidad and Tobago on 6 September 2010 under the provisions of the Commissions of Enquiry Act, Chap.19:01.
- (ii) "Commission Counsel" means Counsel appointed to the Commission and retained by the Government of Trinidad and Tobago to act as Counsel to the Commission.
- (iii) "document" includes any paper writing or material that is in electronic, audiotape or videotape form, digital reproductions, photographs, maps, graphs, microfiche and any data or information recorded or stored by means of any device.
- (iv) "party" means a person, group of persons or organisation that has been granted standing by the Commission under Part 3 of these Rules.

PART 2

General

2. The Commission's mandate established by its Terms of Reference is:-

- (a) To enquire into —
 - (i) the causes, nature, extent and impact of the attempted coup, including any contributing historical, social, economic, political and other factors;
 - (ii) the underlying purpose and extent of the plot that led to the attempted coup;
 - (iii) any criminal acts and omissions, including looting, which were committed in connection with the attempted coup and the motives and objectives of the perpetrators of such acts or omissions;
 - (iv) the identity of any person or any local, regional or international authority, institution, organisation or entity who incited, masterminded, planned, directed, conspired towards, consented to, connived at, acquiesced in, participated in, aided or abetted the carrying out of, had prior knowledge of, or was implicated or otherwise involved in criminal acts or omissions, including looting, which were committed in connection with the attempted coup, and the extent to which any such person, authority, institution, organisation or entity did any such thing or had prior knowledge of, or was implicated or otherwise involved in, any such acts or omissions;
 - (v) the national security deficiencies and breaches of law that facilitated the attempted coup and the extent to which it was possible to prevent the occurrence of the attempted coup;
 - (vi) the response and performance of the Government, the Defence Force, the Protective Services and other Essential Services, the Foreign Service and the media during and after the attempted coup;

2276—Continued

- (vii) all matters pertaining to the negotiation, preparation, execution and effect of the amnesty and the negotiation of the terms of surrender; and
 - (viii) the continuing propensities for criminal activity arising from the attempted coup and the correlation, if any, between the attempted coup and the trafficking, supplying and possession of illegal drugs, firearms and ammunition.
- (b) To make observations and recommendations arising out of its deliberations, as may be deemed appropriate, in relation to —
- (i) the policies, measures, mechanisms and systems that should be put in place to detect, counteract and treat with plots to overthrow the democratically elected Government of Trinidad and Tobago and other acts of treason, terrorism and insurrection;
 - (ii) the development of the capacity of the Government of Trinidad and Tobago to maintain national security, democratic governance and the protection of the citizens and residents of Trinidad and Tobago and State property in the event of a future occurrence of an attempted *coup d'état* or other acts of treason, terrorism or insurrection;
 - (iii) the consequences of any historical, social, economic, political and other factors that may have contributed to the attempted coup;
 - (iv) the effective coordination of responses by agencies responsible for defence, law enforcement, intelligence-gathering, the emergency services, the social services, the diplomatic corps, and the media in the event of a future occurrence of an attempted *coup d'état* or other acts of treason, terrorism or insurrection;
 - (v) the modernisation of legislation pertaining to national security;
 - (vi) ensuring that victims of the attempted coup and the society as a whole are satisfied that their pain, loss, suffering and damage have been acknowledged, with a view to fostering closure of the events surrounding the attempted coup and

with a view to the promotion of individual and community healing in the interests of national development; and

- (vii) the prosecution of persons for criminal acts or omissions in connection with the attempted coup.

3. The Commission is governed and guided by the Commissions of Enquiry Act, Chap.19:01.

4. The proceedings of the Enquiry shall be conducted in public. The Commission will hold public hearings at the premises of the Caribbean Court of Justice, 134 Henry Street, Port-of-Spain or such other place as the Commission directs on dates to be determined by the Commission. The administrative offices of the Commission will be located at the Second Floor, E.F. "Telly" Paul Building, Corner of St. Vincent and New Streets, Port-of-Spain.

5. Notice of dates of hearings will be provided in a timely manner.

6. Unless otherwise directed by the Commission, hearings shall commence at 9.30 a.m. and conclude at 2.00 p.m. or such later time as may be necessary. There will be a break for lunch of one hour and such other breaks as may be convenient.

7. 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.

8. The Commission may depart from these Rules when it considers it appropriate to do so.

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 and timely.

10. The Commission may postpone any date set for any hearing or application or the doing of anything. The Commission shall notify all counsel and any person, organisation 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 have standing throughout the Enquiry.

12. Persons, groups of persons or organisations 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. The Commission shall determine on what terms a party may participate in the Enquiry, and the nature and extent of such participation.

14. 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

15. 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

16. 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.

17. Upon the request of the Commission, any non-parties 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 a non-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, such non-parties shall also provide originals of relevant documents in their possession or control for inspection.

18. 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 19 below.

19. Any party or non-party required to produce a document or documents pursuant to Rules 10 or 17 above or pursuant to a subpoena or summons issued under the Commissions of Enquiry Act, Chap.19:01 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 such claim of privilege is justified.

20. Where privilege is claimed under Rule 19, the Commission shall not disclose any disputed documents to the other parties but may with the assistance of the party or non-party claiming privilege, prepare and produce a summary of the document.

C. Witness Interviews and Disclosure

21. (a) 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 Commission with a transcript or report of all interviews conducted in its absence.
- (b) Persons interviewed by Commission Counsel may choose to have legal counsel present during the interview, but are not required to do so.

- (c) Persons whose interview is requested by the Commission or Commission Counsel shall answer all relevant questions and produce any relevant documents.
 - (d) A subpoena or 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.
22. Where the Commission or Commission Counsel determines that a person who has been interviewed should be called as a witness in public hearings, the Commission may cause a statement of the witness's anticipated evidence or a transcript of their 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 described in Rule 23 below.
23. (a) Where Commission Counsel determines 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 statement or 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.
- (b) Where the Commission or Commission Counsel interviews a person and decides 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.
- (c) 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.
24. (a) 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 and/or public hearings or within a reasonable time of the documents becoming available to the Commission.
- (b) Before these documents are provided to a party or a witness, the witness must 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.

- (c) 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) The Commission may, upon application, release any party or Counsel in whole or in part from the provisions of an undertaking regarding the use or disclosure of documents or information.

D. Witnesses

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

26. 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.

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

28. 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.

29. 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, and may examine the witness as provided for in Rules 32 and 33.

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

2276—Continued

31. (a) Where it considers it advisable, the Commission may issue a summons or subpoena requiring a witness to give evidence on oath or affirmation and/or to produce documents or other things.
- (b) A summons or subpoena may be issued in relation to:
- (i) pre-hearing interviews conducted by the Commission or Commission Counsel;
 - (ii) pre-hearing requests for documents; or
 - (iii) the public hearings.
32. 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 give only such weight to that evidence as it determines to be appropriate, having regard to all the circumstances.

E. Oral Examination

33. Subject to Rule 34, 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 must be complied with;
 - (c) Subject to Rule 34, 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.

34. A witness's counsel may apply to the Commission for permission to present that witness's evidence-in-chief. 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.
- (b) The other parties with standing shall be entitled to cross-examine the witness, as provided for in Rule 33(b).
- (c) The Commission shall then be entitled to conduct an examination of the witness, as provided for in Rule 33(d).
- (d) Counsel for the witness shall then be entitled to re-examine the witness.

35. After a witness has been sworn or affirmed at the commencement of his or her testimony, no Counsel or party other than Commission Counsel 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, except with the permission of the Commission.

36. (a) 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.
- (b) 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 33 applies) or may allow the requesting party to call the witness and adduce his or her evidence-in-chief (in which case Rule 34 applies).

F. Use of Documents at Hearings

37. 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.

38. Without 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 15 and 16.

G. Access to Hearings and to the Evidence

39. Subject to Rule 40, the hearing referred to in Rule 4 will 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 40 below. 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.

40. 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.

41. 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.

42. The transcripts and exhibits from the hearings shall be made available as soon as practicable for public viewing. Transcripts shall be posted on the Commission's website as soon as is reasonably practicable and shall be available to the parties and the public. Transcripts of any part of the hearing held in the absence of the public pursuant to Rule 40 above may be made available for public viewing on such terms as the Commission may direct if, after hearing the evidence and any submissions, the Commission concludes that it is in the public interest to release these transcripts.

PART 5

Notices Regarding Alleged Misconduct

43. The Commission shall not make a finding of misconduct on the part of any person unless that person or, if the person is deceased, his estate, has had reasonable notice of the substance of the alleged misconduct and has been allowed full opportunity during the Enquiry to be heard in person or by counsel.

2276—Continued

44. Any notices of alleged misconduct shall be delivered on a confidential basis to the person to whom the allegations of misconduct refer.
45. The Commission shall perform its duties in accordance with its Terms of Reference.

PART 6

Opening Speeches

46. 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 7

Submissions

47. All counsel may make submissions as directed by the Commission subject to any restrictions that the Commission deems appropriate.
48. The Commission shall direct when submissions are to be made and whether they are to be made orally and/or in writing.

PART 8

Amendments to the Rules

49. 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.

Issued by the Chairman on behalf of and with the concurrence of the Commissioners this 24th day of November 2010.

Sir David A.C. Simmons K.A., B.C.H., Q.C.
Chairman