

SCFR Nos. 163/2019, 165/2019, 166/2019, 184/2019, 188/2019, 191/2019, 193/2019, 195/2019, 196/2019, 197/2019, 198/2019, and 293/2019.

**Investigation into whether there has been underpayment and nonpayment of compensation to a majority of the victims and families of the Easter attack of April 21, 2019**

This Report is submitted consequent to the investigation conducted by the Members of the Office for Reparations in compliance with the Order of the Supreme Court in its judgment dated January 12, 2023 in the above FR Applications.

In the judgment (page 115) Their Lordships have made reference to the submission of President's Counsel who appeared for the Respondent Archbishop of Colombo in SC/FR/195/2019 that *there has been not only an underpayment of compensation but also nonpayment as far as the majority of the victims and families are concerned*, and made order that this matter be investigated by the Office for Reparations and accurate information be submitted to the Court by way of a motion within 3 months from the date of the judgment.

In compliance with the Order of the Supreme Court, the Members of the Office for Reparations (OR) conducted an investigation and report as follows-

#### REPORT

##### 1. DOCUMENTS EXAMINED

The OR examined the following documents relevant to the concerns in the submissions of counsel-

- a. The written submissions of Mr. Shammil Perera P.C. Counsel for the 57<sup>th</sup> Respondent in SC/FR 195/2019 the Archbishop of Colombo (made available to us by Mr. Shammil Perera, P.C).
- b. The Cabinet Memorandum of the then Prime Minister dated April 22, 2019 and the decision thereon of the Cabinet of Ministers dated April 24, 2019 – ANNEX 1.  
(Every reference in this Report to "the Cabinet decision" is a reference to the decision of April 24, 2019).
- c. Affidavit of E.M.S.B. Ekanayake, Secretary to the then Prime Minister dated July 22, 2019 and the lists attached thereto marked X5, X6, X7, X8, X9 and X10 all under the signature of Director, Office for Reparations and dated July 10, 2019, containing information regarding the monetary relief paid to victims.
- d. The following Government circulars on compensation payable to victims of "terrorist violence" -
  - i. Circular No. 1579 dated July 18, 1988 issued by the Director General of Health Services – ANNEX 2
  - ii. Circular No. M/R & R/UAS/MAP/1 dated September 26, 1988 issued to All Government Agents by the Secretary to the Ministry of Rehabilitation and Reconstruction - ANNEX 3
  - iii. Circular No. MRR/7/MAP/GAN dated June 12, 1990 issued to all Government Agents and Deputy Directors of Rehabilitation & Reconstruction, by the Secretary to the Ministry of Rehabilitation, Reconstruction and Social Welfare - ANNEX 4.

(These circulars are referred to in this Report collectively as "circulars").
- e. Medical Reports submitted by Medical Officers in respect of each injured person.
- f. Payment vouchers relevant to the grant of monetary relief.

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**2. POLICY DECISIONS APPLICABLE TO DETERMINE THE QUANTUM TO BE AWARDED TO VICTIMS**

The provisions of the Office for Reparations Act, No. 34 of 2018 vests the responsibility of formulating reparations policies and guidelines in the OR. However, the OR had been operationalised only on April 1, 2019 with the appointment of the very first members and the Easter attack took place just twenty (20) days later. The Policies and Guidelines envisaged in the OR Act had not been formulated by the OR as at that time. Hence, complete reliance was placed on the new Cabinet decision and the circulars referred to at paragraphs 1(d)(i) to (iii) above, to make payments to the victims of the Easter attacks.

The policy decisions applicable were the following-

- a. Rs. 1 million was payable in terms of the Cabinet decision, on account of -
  - i. Death; and
  - ii. Injury which resulted in permanent total disablement
- b. Rs. 500,000/= was the *maximum* payable to injured persons (other than those suffering permanent total disablement) in terms of the Cabinet decision.
- c. There was no decision to make the maximum payment of Rs. 500,000/= to ALL injured persons.
- d. The circulars which had been issued in 1988 and 1990 contained detailed instructions as to the method of computing the sums that can be paid to victims of terrorist violence subject to the upper limit. The amounts payable were based on the certification of the Government Medical Officer (MO) as to either the degree of loss of earning capacity in the event of permanent disability or the period of temporary disablement in the case of temporary disablement.

**3. PRINCIPLES AND CRITERIA AS CONTAINED IN THE CIRCULARS**

The principles and criteria that can be gleaned from these circulars to determine the sums payable, are the following -

**[A] Circular No.1579 dated July 18, 1988 issued by Director General Health Services titled "Determination of Degree of Permanent Disablement" - ANNEX 2**

This circular contained a scheme to determine "loss of earning capacity" which was in correlation to the loss resulting from the injury. The "loss of earning capacity" was a determination that resulted from the medical assessment of the MO alone. The sum payable to an injured was based on the percentage of loss of earning capacity.

- a. In the case of "permanent total disablement" - the Medical Officer was required to mention this fact in the certificate.
- b. In the case of permanent partial disablement - MO's were required to use the schedule below as the guide to determine the percentage of loss of earning capacity in relation to the injury.

List of injuries deemed to result in permanent partial disablement

Injury	% of loss of earning capacity
Loss of right arm above or at the elbow	70
Loss of left arm above or at the elbow	60
Loss of right arm below the elbow	60
Loss of leg at or above the knee	60
Loss of left arm below the elbow	50
Loss of leg below the knee	50
Permanent total loss of hearing	50
Loss of one eye	30
Loss of thumb	25
Loss of all toes of one foot	20
Loss of one phalanx of thumb	10

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Loss of index finger	10
Loss of big toe	10
Loss of any finger other than index finger	5

- c. The circular stated that "permanent total disablement" shall be **deemed** to result from –
- i) the permanent total loss of the sight of both eyes; or
  - ii) any combination of injuries in the schedule where the aggregate percentage of the loss of earning capacity against those injuries amounts to 100% (or more).

For purposes of granting monetary relief, the above deeming provision placed the persons with the abovementioned injuries in the same category as those who were "Permanently totally disabled."

**[B] Circular No. M/R & R/UAS/MAP/1 dated September 26, 1988 issued to all Government Agents by the Secretary to the Ministry of Rehabilitation and Reconstruction – ANNEX 3**

This circular specified, inter alia, the "assistance" payable in respect of an injured person and set out principles and processes to make payments. Although the maximum sum payable for those injured in the Easter attacks was decided by the Cabinet decision and was higher than the sum specified in this circular, the principles in the circular that were not contradictory of that decision, continued to be applied. These were -

- a. In determining the quantum of payment, the % of loss of earning capacity or disability recommended by the MO (in terms of the circular at [A]) should be directly correlated to the extent of assistance payable.
- b. If the percentage of loss of earning capacity or disability recommended by the MO is 70% or above, 100% assistance could be paid.
- c. If the Medical Officer does not specifically mention a percentage but certifies disability, minimum percentage on the scale (5%) may be considered.

**[C] Circular dated June 12, 1990 titled "Grant of relief to Most Affected Persons – Injuries" issued by Secretary to the Ministry of Reconstruction, Rehabilitation and Social Welfare – ANNEX4**

This circular set out that the following scheme should be adopted to determine payments for "temporary disablement" reported by Medical Officers-

Where the temporary disablement period is -

- I. Less than one month – 10% of amount paid for permanent disablement.
- II. Between 1 to 3 months - 25% of amount paid for permanent disablement
- III. Between 3 to 6 months - 50% of amount paid for permanent disablement
- IV. More than 6 months –Full amount paid for permanent disablement
- V. Where time period is not specified - 10% of amount paid for permanent disablement

Accordingly, only those who were certified to be temporarily disabled for more than six months were entitled to the full sum of Rs. 500,000/=.

**4. THE SUMS PAYABLE IN TERMS OF THE POLICY**

The sums payable in compliance with the policy decisions were as follows -

- a. **For death:** Rs. 1 million was payable to the next of kin of each person who died, as per the Cabinet decision.
- b. **For injuries that resulted in, or were deemed to have resulted in, permanent total disablement:** Rs. 1 million was payable as per the Cabinet decision.
- c. **For injuries that resulted in permanent partial disablement:** Rs, 500,000/= was the maximum sum payable as per the Cabinet decision, and where, in terms of the Medical

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certificate the victim was not entitled to the maximum, the apportionment was as per the provisions of the circulars at Annexes 2 and 3.

- d. **For injuries that resulted in temporary disablement, whether total or partial:** The maximum sum payable was Rs. 500,000/=, as per the Cabinet decision and where, in terms of the Medical certificate the victim was not entitled to the maximum, the apportionment was as per the circular at Annex 4  
The "amount payable for **permanent disability**" in the circular at Annex 4, was interpreted to mean "the amount payable for permanent **partial disability**" since the category suffering permanent **total disability** alone had been classified separately in terms of the Cabinet decision of April 24, 2019 to be granted Rs. 1 million.

**Summary**

Category	Degree of disablement or loss as certified by the Govt. Medical Officer (MO)	Amount payable
Permanent total disablement	Permanent total disablement	Rs. 1 million.
Permanent <i>partial</i> disablement deemed to result in Permanent <i>total</i> disablement.	1) Loss of the sight of both eyes; or 2) Total cumulative % of injuries is equal to or more than 100%	Rs. 1 million.
Permanent <i>partial</i> disablement <u>not</u> deemed to result in permanent <i>total</i> disablement	70% or more	Rs. 500,000/=.
	Less than 70%	Relevant % of Rs. 500,000/=
	Not specified in MC	Rs. 25,000/= (i.e. 5% of Rs. 500,000/= )
Temporary disablement whether total or partial.	Disablement for < 1 month	Rs. 50,000/=
	Disablement for 1 -3 months	Rs. 125,000/=
	Disablement for > 3 up to 6 months	Rs. 250,000/=
	Disablement for > 6 months	Rs. 500,000/=
	Period not specified	Rs. 50,000/=

**5. FINDINGS ON ACCURACY OF AMOUNTS PAID**

**(a) Re. under payments to families of deceased-**

**Submission of counsel -**

- The families of four (04) of the deceased listed in X5 and three (03) of the deceased listed in X6 were paid sums less than Rs. 1 million, and that "on the face of the said two documents X5 and X6, the families of every single person who died has not been paid Rs. 1 million contrary to averments in the affidavits of the then Secretary to the Prime Minister."
- A number of persons have not been paid this sum. What right has been conferred on the Office for Reparations to reduce the sum of Rs. 1 million and to make such ad hoc decisions?

**Observations:**

It is correct that the said lists in X5 (list of persons who died in the attacks in Colombo) and X6 (list of persons who died in the attack on the church in Katuwapitiya) do state that each of the seven families referred to, received a sum less than Rs. 1 million. These lists (X5 and X6) also state that one hundred and sixty five (165) other families received the full sum of Rs. 1 million. Further, document X10 (list of persons who died in the Zion Church attack in Batticaloa), states that three (03) families had received sums less than Rs. 1 million each, while twenty six (26)

families received Rs. 1 million each. These lists were dated July 10, 2019 and the affidavit referred to was dated July 22, 2019. In terms of all three (03) lists pertaining to the deceased victims, there were a total of ten (10) on account of whom the families were stated to have received less than Rs. 1 million, and one hundred and ninety one (191) on account of whom the families were stated to have received Rs. 1 million each.

We have examined the files of all ten (10) Applications and found that the families of these victims have been paid sums totaling the full sum of Rs. 1 million. These payments were paid in two to four installments, with the initial sum of Rs. 100,000/= being paid immediately after the incident, by the District or Divisional Secretariats. Other sums have been paid subsequently in stages, by the OR, with the final installment being paid upon confirmation of the identity of the next of kin. A list of the ten (10) victims and details of the sums paid and the date of payment is at ANNEX 5. It's clear that the balance of the Rs. 1 million was paid to the families of these ten (10) victims by October 25, 2019, i.e. subsequent to the date of submission of the lists dated July 10, 2019.

The total number of deaths listed in X5, X6 and X10 was two hundred and one (201). In the final assessment, monetary relief was in fact granted to the next of kin on account of two hundred and twenty eight (228) deaths, i.e. twenty Seven (27) more than the total in the lists marked X5, X6 and X10. This is due to the fact that OR received applications after July 2019 as well. Three (03) of the victims who were injured and received Rs. 500,000/= and two (02) who were injured and had received Rs. 100,000 each, succumbed to their injuries subsequently, and each family was paid a further Rs. 1 million.

The final position is as follows –

- 1) Number of deceased on account of whom applications were received – 239
- 2) Number of applicants not eligible – 11\*
- 3) Number of deceased on account of whom monetary relief was granted – 228
  - a. Rs. 1 million each – 223
  - b. Rs. 1.5 million each – 3
  - c. Rs. 1.1 million each - 2
- 4) The total sum granted – Rs. 229,700,000/=

\*The eleven found not to be eligible –

Ten (10) applicants were not eligible since they had already been granted the full amount of monetary relief payable as parents of children who died. These applications were those from the same applicants requesting money on account of the children of those deceased children, i.e. the grandchildren who had also died. These were not granted since the grandparent applicants were not dependents of the grandchildren and had already been paid for the loss of their children.

One (01) applicant could not establish her relationship to the deceased victim.

**(b) Re. under payments to injured persons -**

*Submission of counsel –*

- Only nine (09) of the one hundred and one (101) injured persons listed in X8 and only twenty two (22) of the two hundred and sixty four (264) injured persons listed in X9, have been paid Rs. 500,000/= ; and
- Others have been paid lesser sums ranging from Rs. 20,000/= to Rs. 312,500/= contrary to the Cabinet decision of April 24, 2019.
- How was the Rs, 500,000 payment of compensation evaluated? Is it based on Medical Reports, Affidavits of the Doctors or the nature of the injuries? *The only conclusion that can*

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*be drawn in the absence of any other evidence is that these payments have been made on an ad hoc basis. Is this justifiable?*

**Observations:**

It is correct that some of the injured persons were paid less than the maximum sum stipulated by the Cabinet of Ministers. This was not in contravention of the Cabinet decision which stated that the *maximum* sum payable to injured persons was Rs. 500,000/=. There was no decision to pay all injured persons Rs. 500,000/=.

The sums paid to the injured were computed based on criteria set out in the Circulars at Annexes 2, 3 and 4. The use of the criteria set out in the said circulars to compute the sum payable to injured, was legitimate. It's observed that these circulars had not been submitted to court. None of the payments were based on ad hoc decisions taken by the OR. The minimum sum paid was Rs. 50,000/= and not Rs. 20,000/=

The total number of claims on account of injured victims listed in X7 (Batticaloa), X8 (Colombo) and X9 (Katuwapitiya) was four hundred and thirty eight (438). In the final assessment, monetary relief was in fact granted to five hundred and two (502) injured victims i.e. Sixty four (64) more than the total number in the said lists. This is due to the fact that OR received applications after July 2019 as well.

There were fifty eight (58) persons who had been granted the maximum sum payable for injury (ie. Rs. 500,000/=), as per the certifications of the Govt. Medical Officers. All fifty eight (58) files were examined and the findings were as follows-

- a. the Medical Certificates in respect of seven (07) persons stated that they had suffered permanent total disablement, and were eligible to receive Rs. 1 million rather than Rs. 500,000/=. The balance has been paid to six (06) of them and payment to a minor who is overseas is being processed.
- b. The Medical certificates in respect of two (02) persons required follow up medical assessments to determine the degree of disablement. The OR is facilitating the obtaining of these Medical Certificates and will, on receipt, determine if they can be granted further monetary relief, in compliance with the circulars.
- c. Four (04) persons were overpaid sums ranging from Rs. 250,000/= to Rs. 450,000/=. Covering approval has been granted for these on the ground that the overpayments were errors made bona fide.

**6. AMOUNTS PAID**

The Tables at Annex 6 set out the sums paid.

**7. CONCLUSIONS**

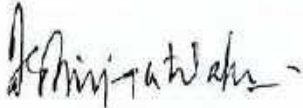
**[A] Re. Payments on account of deceased victims -**

1. There were no underpayments on account of any of the victims.
2. All the eligible next of kin of the victims who died (except five) received Rs. 1 million per deceased family member, in compliance with the Cabinet decision.  
Each of three (03) other families received Rs. 500,000 in excess of Rs 1 million and two (02) families received Rs 100,000 in excess of Rs. 1 million.
3. The Office for Reparations has not made any ad hoc decisions.
4. The families of the seven (07) victims referred to in the submissions of Counsel for the Archbishop of Colombo as well as of the three (03) other victims in document X10, had in fact been granted Rs. 1 million in compliance with the Cabinet decision. The document at Annex 5 contains the details of the payments.

5. The documents X5 and X6 were dated July 10, 2019, ie. prior to the completion of the payment process, and did not reflect the full payments made to families of the ten victims.

[B] Re. Payments to injured victims -


1. The decision of the Cabinet was to grant a sum of Rs. 1 million to those who were permanently totally disabled and to grant a maximum sum of Rs. 500,000/= to injured persons (interpreted to mean "to other injured persons who were not in the category of *totally, permanently disabled.*").
2. There was no decision by the Cabinet to pay Rs. 500,000/= to *all* injured persons.
3. It was correct to adopt the criteria in the three circulars to determine the sum payable to victims (who were not in the category of permanently totally disabled), subject to a maximum of Rs. 500,000/=, based on the certification of a Govt. Medical Officer.
4. The circulars had not been submitted to court with documents marked X5 to X10.
5. None of the injured were granted Rs. 20,000/=. The minimum sum granted was Rs. 50,000/= which was in compliance with the circulars and the certification of the Medical Officer.
6. No payments were made on an ad hoc basis by the Office for Reparations. All payments were made as per the Cabinet decisions and the circulars.



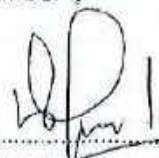
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Dhara Wiayatilake, AAL,  
Chairperson

March 14, 2023.

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Maj. Gen. Palitha Fernando (retd.)  
Member


  
14/03/2023

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Dr. A.M. Mubarak  
Member

  
14/03/2023

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Rasika Dissanayake, AAL  
Member

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Priya Sivagananathan, AAL  
Member

  
14/03/2023