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PART I : SECTION (I) — GENERAL

Government Notifications

REPARATIONS POLICIES & GUIDELINES 2021

Formulated by the Office for Reparations in compliance with Section 2(a) read with Section 11(1)(g) of the Office for Reparations Act, No. 34 of 2018 and approved by the Cabinet of Ministers.

THE POLICIES

THE public consultations conducted in multiple regions of the country revealed similar needs amongst the aggrieved persons, be they inhabitants in the North, East, South, or West of the country. It may be noted that some of the concerns addressed herein are common to the wider communities as a whole, and consequently, although some of the interventions that can be offered as reparations are those that are needed by the wider grouping in the community, the increased vulnerability of the aggrieved persons require that their needs be addressed as a priority, which is required by the Act. ¹

On a consideration of what relief measures and support the Government will need to provide to the aggrieved persons to rebuild and restore their lives, and thereby advance the wellbeing and security of all Sri Lankans, including future generations, it is recommended that the following types of reparations be granted, based on need.

1. Livelihood Support

Generation of livelihood support was identified as an immediate need. This would entail the implementation of wide measures and initiatives, as far as practicable, which would meaningfully assist and enable aggrieved persons to rebuild and restore their lives through their economic empowerment. On the one hand this would empower the aggrieved persons to charter their own course, and on the other, eliminate their dependence on government subsistence. The following types of interventions will contribute towards livelihood support of aggrieved persons:

¹Section 12(1)(d)(viii)



- Access to water supply for irrigational/ agricultural activities to assist farmer communities;
- Integrating the aggrieved persons to the numerous poverty alleviation programmes carried out by the Government;
- Generation of livelihood avenues, and self-employment opportunities in the affected areas.

2. Compensation & Financial Support

Although the award of compensation may not necessarily restore aggrieved persons to the position they were in earlier and reestablish the status quo *ante*, yet the receipt of timely and adequate compensation is an important element in enabling them to rebuild their lives. Another initiative is the establishment of meaningful social security systems. The establishment of monthly social security payment schemes based on the level of indigence and need of the aggrieved persons, and support towards debt relief - where aggrieved persons who are unable to settle loans are provided with assistance to meet financial debts or relief measures to mitigate their indebtedness are needed interventions. Given the need to provide reparations based on availability of resources², it is important to be guided by a maximum sum that may be awarded as monetary compensation for loss of life and proportionate amounts for disability. A recommendation in this regard is set out in the Guidelines.

3. Restitution of Land Rights

Restitution of land rights is of particular importance in the Sri Lankan context. Some of the aggrieved persons are affected in respect of land rights as noted below -

- Those whose land had been legally acquired by the State under the land Acquisition Laws and have not received compensation ;
- Those whose land had been taken for public/state purposes other than through the Land Acquisition Laws, and have not received any form of compensation or alternative land.

In the aforesaid context, expeditious release of land, where possible, to the rightful owners, and where release is not possible, expeditious payment of compensation or provision of alternate land to the rightful owners, will significantly mitigate the issue.

In order to respond to the concerns raised by some aggrieved persons who have met with bureaucratic difficulties in their efforts to recover their land or secure compensation, due to lack of documentation which have been lost during the conflict or displacement, the intervention of Divisional Secretaries is vital. Such aggrieved persons could be assisted to established ownership with reference to documents maintained at Land Registries. Where the Land Registry documents are not available, a simplified system of establishment of ownership of land could be considered. The assistance of the relevant authorities to recover the compensation payable to aggrieved persons under the Land Acquisition Laws expeditiously will resolve these issues.

By integrating land restitution as a form of reparation, it is possible to address the issues relating to poverty and lack of opportunity that stem from the absence of land and the resources of ownership among aggrieved persons, in particular the women.

4. Provision of Housing

A further impediment to the restoration of normalcy of life to the aggrieved persons identified in the course of the public consultations is lack of housing, mainly in the North and East. There were three categories of such aggrieved persons:

- Those without any form of immovable property ;
- Those who have a land but do not have adequate funds to build a house thereon ;

² Section 12(1)(d)(v)

3. Those who have been given partial financial assistance by Government to build their own houses but the funds so provided are inadequate to complete building.

Continuation of the Government policy of providing shelters to all, would benefit aggrieved persons who are without adequate housing. Necessary relief measures are building or rebuilding houses by the State or giving meaningful financial assistance to persons affected, to build their own houses or providing new housing to the displaced persons. “Meaningful financial Assistance” in this context would mean enabling the beneficiaries to secure adequate shelter, based on the standard of living of the aggrieved person, as well as the requirements of the geographical locations thereof.

5. Development of Community Infrastructure

A further area to be addressed in the Reparations programme is the issue of lack of community infrastructure and basic amenities in some of the interior settlements, such as lack of safe roadways, bridges, drinking water, sanitation facilities, Public transportation, Hospitals, clinics and schools. These less visible spaces, where large numbers of aggrieved persons live, require targeted support and assistance.

In order to address concern of the lack of easy access to secondary school education in some areas, necessary interventions to facilitate easy access including the renovation of pathways and the provision of transport, are required. Provision of appropriate sanitation facilities in the rural schools is essential to enable female students to attend school. The establishment of pre-schools, in particular in and within proximity to interior villages, is a further necessary intervention.

In the aforesaid circumstances, inclusion of initiatives in the Reparations programme to provide community infrastructure and basic amenities, such as roadways, bridges, drinking water, wells, public utilities, community centers, public transport, hospitals and/or clinics, schools and other such basic facilities for the less-visible interior rural settlements, would vastly assist the aggrieved persons in the restoration and rebuilding of their lives.

6. Administrative Relief

Many aggrieved persons have lost their valuable documentation during the conflict or displacement. Therefore, a system of simplification of the documentation process is necessary.

Assistance by the relevant authorities extended to aggrieved persons to secure necessary documentation in a timely manner, for example, certificates of absence, certificates of death, other necessary administrative documentation, as well as assistance towards registration in electoral lists, regularization of title to properties, and facilitation of issuance of driving licenses and National Identity Cards, is required to significantly mitigate this issue.

7. Psycho-Social Support

A healthy and peaceful Nation would essentially comprise of a healthy populace, both in body and mind, and consequently there is need for many of the aggrieved persons, who have suffered trauma of one form or another to be permitted to find catharsis closure through psycho-social support. In order to render the support meaningful, factoring in gender sensitivity in the provision of psycho-social support to women, particularly in respect of issues relating to sexual violence, will prove to be of value.

It has been assessed by experts that the larger percentage of those who require psycho-social support, suffer from relatively minor forms of psychological issues, whereas a lesser number of aggrieved persons may suffer from complex mental/psychological conditions, which require specialized counseling or treatment by psychologists/ psychiatrists. In this context, given the varied types of need, it will be necessary to assess the different levels of interventions required, and formulate a workable referral system, which will include where possible, existing government resources available through the Ministry of Health and other state institutions, which are able to extend psycho-social support.

Given the stigma associated with mental illness and the lack of awareness about mental health and psychosocial support, those requiring psychosocial support may not identify psychosocial support as a requirement. Hence, a mechanism which will not be totally dependent on requests for such support, is required. The scope of services should extend to providing counseling, therapy, and other such support to the aggrieved persons as a matter of Course.

8. Measures to advance unity, Reconciliation and Non-Recurrence of Violence

Granting of Reparations, not only assists in the restoration of the status of the aggrieved persons, but more importantly initiates an essential process of catharsis, enabling aggrieved persons to move towards closure, and building trust among communities. This is essential for forgiveness, resolution and eventual reconciliation. It signals to the citizen that he/she is protected by the law, and where the law is breached and some form of harm is caused to him/her the State would step in and redress the harm. In essence, it gives the very valuable message that the State is committed protect its citizen.

By granting reparations, the State assumes responsibility for distributing redress as part and parcel of its duty to protect its citizens, regardless of who perpetrated the harm. The ultimate objective of Reparations, whilst addressing the needs of the individual and groups of aggrieved persons, is to ensure non-recurrence of violence in the country, and to unite the Sri Lankan populace. Following are possible interventions that will contribute to forging a united community:

- (i.) Educational system reforms - promoting multi-ethnic, multi-religious schooling systems (current system of Buddhist, Christian, Muslim, Hindu schools propagate homogenous societies, which does not harbor well for a diverse, multi-cultural, multi ethnic, multi religious nation as Sri Lanka) ;
- (ii.) Change of School curriculum to promote inter-ethnic, inter-religious education, which would permit communities to learn of each other, and inclusion in school curricula lessons on the value of communal harmony & co-existence, and inculcating in the minds of the young, religious values taught by all great religious teachers, including the revered Buddhist principle - ‘*Avihimsa*’ (“*cause no suffering to any living being*”) ;
- (iii.) Making all three languages mandatory subjects to be followed in all schools ;
- (iv.) *De facto* recognition of language rights ;
- (v.) Developing inter-regional exchange student programmes ;
- (vi.) Government driven positive publicity *via* the State media (and the private media) in advancing communal harmony & co-existence and the “Sri Lankan” identity (as opposed to fragmented identities based on religion and/or ethnicity) ;
- (vii.) Institutional and structural reforms ;
- (viii.) Human rights training & the promotion of human rights standards in public service ;
- (ix.) Legal reform and strengthening judicial independence ;
- (x.) Protection and preservation of existing places of religious significance and religious symbols ;
- (xi.) Promoting mutual understanding and friendship amongst the communities (eg. Taking a leaf from Singapore’s experience of communal living, when Government provides housing complexes, to distribute housing units in a manner including mixed communal living) ;
- (xii.) Development of infrastructure in the affected areas, including the interior rural settlements, so that aggrieved persons have a sense of equal treatment in the development agenda of the Government ;
- (xiii.) Creation of educational, training, and skills development programmes to aggrieved persons ;
- (xiv.) Creation of community development programmes or services in affected areas.

THE GUIDELINES

Any determination with regard to the award of monetary compensation and providing other relief measures shall be based on the principles set out in the Act. In particular, in compliance with the provisions of Section 11(1)(g) of the Act, the following guidelines will be adopted in determining the reparations to be granted:

1. Victim Centrality -

The Act stipulates victim centered reparation policies.³ This would mean the granting of individual and collective reparations, which would meaningfully address the needs of the aggrieved persons. Needs of the victims will differ from victim to victim, region to region, circumstance to circumstance. Therefore, flexible reparations schemes must be adopted, where aggrieved persons are given reparations based on individual circumstances. The reparations schemes must be flexible and amenable to adopt subjective criteria based on the needs of the aggrieved persons.

2. Criteria for eligibility for aggrieved persons to obtain reparations, including criteria relating to the nature and severity of grievances for which reparations will be available -

The essential criterion is that the claimant for reparations is in fact a person aggrieved as a result of the loss of life of a relative (as defined in section 27 of the Act) or suffered loss as a result of injury to the person or damage to property or suffered loss collectively as a group, arising from the circumstances set out in the Section 27 of the Act. Authentic evidence of the loss must be submitted.

Under the provisions of the Act, a person can be considered an aggrieved person, regardless of who caused the harm/loss/damage. The Office for Reparations has no mandate to investigate into the circumstances of the violations and consequently, has no statutory authority to identify the person responsible for the violation.

The individual reparations, including the quantum and form, will differ based on the nature and severity of the grievance and the resulting situation in which the aggrieved persons have been placed as a result of the harm caused. Accordingly, in granting individual reparations, consideration shall be given to the following factors which result from the harm or damage caused -

- a. The financial situation of the survivors as a result of the death, disappearance or disablement of the family member ;
- b. The extent to which the resources to pursue education of surviving family members has been affected as a result of the death, disappearance or disablement of the family member ;
- c. The impact on livelihood as a result of the damage or harm caused, and the need for assistance with economic empowerment measures ;
- d. The seriousness of the emotional damage caused and the interventions required to restore normalcy ;
- e. The seriousness of the injury to the person and the degree of the resulting disablement.

3. The form, and where appropriate, the quantum of reparations that will be provided to eligible aggrieved persons -

The form of reparations shall be in the nature of interventions that are set out in the policy document, and the quantum shall be determined taking into account whether the loss is death of a relative, injury to the aggrieved person and the resulting degree of disablement, or loss or damage to property.

³ Section 12(1)(c)

As provided for in the Act, in awarding monetary reparations, the availability of resources will be considered and a determination made with regard to whether compensation should be in the form of a lump sum payment or staggered payments. The need to restrict monetary reparations to aggrieved persons who have the most serious grievance will also be a criterion. In all instances, the best interests of the aggrieved persons will be guiding consideration. In determining the form and quantum of relief, any relief already received by an aggrieved person shall also be taken into account.

4. The criteria of eligibility of aggrieved persons to financial compensation -

All aggrieved persons shall be eligible for financial compensation subject to availability of resources. This is a principle recognized in the Act.

In keeping with the quantum that has been awarded in respect of past incidents, it would be reasonable to be guided by an award of a maximum sum of Rs. 1 million per death, and proportionate sums for disabilities based on medical Certifications as to the degree of incapacitation, ranging from a maximum sum of Rs. 500,000/- for total disability. These sums can be reviewed periodically to be relevant in terms of the value of the currency.

In considering financial compensation, it must be noted that in some instances, even when the immediate consequences of the harm have been dealt with, the aggrieved persons may remain extremely vulnerable, needing long term medical care, or they may no longer be able to earn an income, or likely to have lost their homes and belongings. In compliance with the statutory provisions in the Act, “the best interest of the aggrieved persons” shall be the key criterion to be considered.⁴ Hence, financial compensation may be supplemented by other forms of assistance to enable the pursuit of avenues of livelihood, where appropriate.

In circumstances where there has been a delay in awarding monetary compensation due to administrative delays, a reasonable additional sum shall be considered to be paid to the aggrieved person based on an acceptable criterion.

5. The criteria of eligibility of aggrieved persons to urgent reparations -

Urgent reparations shall be considered in the case of urgent medical needs, where survivors are left in an indigent state and need financial resources to meet urgent commitments, and where there is risk of further harm to be caused to the aggrieved persons, if relief is not provided urgently. In the case of children too, relief shall be provided on an urgent basis so as to avoid traumatization and emotional disturbances.

6. Bodies which may assist in the provision or delivery of different forms of reparations to aggrieved persons -

The Act⁵ recognizes that the office for Reparations can request and receive assistance necessary for the achievement of its objectives from any State, Governmental, provincial or local authority or agency, or any officer thereof, or from any other person or body of persons. Accordingly, the office for reparations will refer the identified needs and seek the assistance of all such State entities - line ministries, Government, Provincial or local government authorities, departments and agencies, and all public authorities responsible for the particular subject area, for the purpose of responding to the grievance.

Based on the consultations had prior to formulating this Policy, it appears that the following Government Institutions are the most likely to be relevant in providing relief ; Ministries or other Government agencies responsible for the Subjects of Housing Lands, Livelihood Development, Children’s and Women’s Affairs, Road Development, Social Services, Elderly Care, Health Education, Vocational Training and Poverty alleviation. It’s consequent to an assessment of the needs of aggrieved persons that recommendations will be made regarding reparations that may be provided by these and other State Institutions.

⁴ Section 12(1)(d)(v)

⁵ Section 11(1)(t) of the Act

In addition, the cooperation of Non-Governmental Organisations engaged in Gender related issues and poverty alleviation programmes can be sought to deliver assistance as appropriate.

7. The criteria on which verified applications for reparations shall be prioritized -

Grant of individual Reparations shall be prioritized based on the gravity of the harm suffered, the urgency and/or imminence of the need for assistance, the level of indigence of the aggrieved persons, and the vulnerability of the aggrieved person. In particular, in accordance with the provisions of the Act,⁶ vulnerable categories of persons, such as women, children and disabled persons must receive priority in granting individual Reparations. In Prioritizing applications, following factors may be considered, *inter alia*, -

- a. Where the claimant is in absolutely indigent circumstances and/or need of assistance as a matter of urgency ;
- b. Where the claimant is in lesser levels of indigence and necessity ;
- c. Where the claimant has adequate revenue earning capacity but needs to be compensated as a means of recognition of the grievance.

8. Criteria for verification of authenticity -

The statutory requirement that the reparations regime should be victim centric means that aggrieved person should be afforded easy access to the reparation process. In this context, it is necessary to recognize that large numbers of aggrieved persons have either lost and misplaced personal documentation and certification of violations or been unable to obtain any, during conflicts and displacement. Hence it is vital that a flexible approach be adopted in recognizing eligibility for relief.

Therefore, in upholding the spirit of the Act, care will be taken not to overburden the process with extensive documentation and procedural requirements. The process of verification will be simplified, user friendly and easy to access, bearing in mind that the greater majority of the applicants, will be from the rural sector, many of whom may not possess the knowledge, the capacity or the financial resources to secure assistance to engage in formal procedures involving detailed documentation and hearings. The test for establishment of authenticity shall be reasonableness, i.e the Office for Reparations will accept reasonable and credible evidence of eligibility.

9. Criteria for remembrance of the dead and memorials -

Memorialization contemplated under the Act addresses the emotional need of the families and loved ones to grieve, commemorate and remember the dead, and not to initiate a public display of political slogans or protests. It is dedication to the collective victims that is contemplated under the Act, for instance dedicating a public space such as a park to all lives lost during the entire conflict without distinction, or to all those who lost their lives in a particular incident such as the Easter Sunday Attack, or a museum that records the history of communal harmony that has existed in history etc. excluding the commemoration in any manner of terrorists or separatists.

10. Addressing the special needs of specific groups aggrieved persons -

Recognizing the special needs of specific groups of aggrieved persons, based on their specific circumstances, the Reparations programme shall include specialized reparations to address the needs of specific groups of aggrieved persons, including ;

- a. Women ;
- b. Children ;

⁶ Sections 12(1)(c) & (d) of the Act

- c. The Elderly ;
- d. The Disabled, including disabled members of the Government Armed Forces, the Police and Officials of the Civil Security Department ;
- e. Displaced persons ;
- f. Families of missing/deceased persons, including the families of members of Government Armed Forces, the Police and of Officials of the Civil Security Department, missing in action ;
- g. Victims of sexual violence ;
- h. Rehabilitated ex-LTTE cadres, including former child soldiers.

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