

EXECUTIVE SUMMARY
ASSESSMENT OF COMPENSATION PAYABLE TO THE PERSONAL
REPRESENTATIVES OF DECEASED PERSONS

Background

1. The Committee wishes to highlight certain parts of the Report of the Commission of Enquiry that have informed its approach to the matter of compensation for fatalities.

2. In Chapter 9, Part C of its report, the Commission addressed the issues raised in its Terms of Reference (H) that is:

“Whether, and if so, under what circumstances, civilians, police officers and soldiers of the Jamaica Defence Force were shot and killed or injured during May 2010 in connection with the security forces seeking to effect the arrest of Christopher “Dudus” Coke on a Provisional Warrant in Extradition Proceedings.”

3. The Commission made certain observations as a preface to its discussion; and for the present purposes the following observations are particularly relevant:

“9.3 We wish to make it plain, however, that the matters addressed in Parts A, B, C and D of this Chapter relate only to persons of whom evidence was adduced at the Enquiry. They do not purport to be exhaustive of injuries and deaths of all persons

who may have suffered during the internal security operation or, indeed, during May 2010.¹

...

9.5 We have eschewed making definitive findings of fact in relation to allegations of extra-judicial killings and other criminal offences for four reasons:

(i) ...

(ii) ...

(iii) ...

(iv) The Commission was made aware that Independent Commission of Investigations (INDECOM) is currently investigating some, if not all, of the very matters on which we heard evidence. In those circumstances, it would also be imprudent for the Commission to appear to be foreclosing those investigations by making definitive findings of fact.²

4. The recommendations of the Commission maintained the tone of these observations, in that, at Recommendation 15.12(ii) dealing with the establishment of a Compensation Committee, the Commission noted:

“(ii) On completion of this exercise, the Compensation Committee should investigate and determine the quantum of compensation payable to injured persons and to the personal representatives of deceased persons without prejudice to the investigations of INDECOM.” [Emphasis supplied]

¹ Paragraph 9.3, page 215

² Paragraph 9.5, page 216

5. The Committee is equally aware of the significance of the investigations of INDECOM and its recommendations are made without prejudice to the outcome of those investigations.

Categories of Fatalities

6. Against that background, the Committee has identified four discernable categories of fatalities, namely:
 - a) **Category A** - Fatalities considered by the Commission in respect of which it ruled that the right to life may have been intentionally violated (extra-judicial killings);
 - b) **Category B** - Fatalities considered by the Commission in respect of which it ruled that the right to life may have been violated in instances where deaths were caused by the use of mortars;
 - c) **Category C** - Fatalities not considered by the Commission in respect of which claims have been made by the Administrator General or other personal representatives on behalf of estates; and
 - d) **Category D** - Fatalities not considered by the Commission where claims have been submitted through the Office of the Public Defender but no evidence provided as to loss or whether a personal representative has been appointed.
7. Save for Category D, written submissions were received in all categories from the Administrator General, through her attorneys Nunes Scholefield

DeLeon & Co (Ms. Sherry-Ann McGregor); Mr. Seymour Stewart and Archer Cummings & Co (Mrs. Jacqueline Cummings).

8. Mrs. Jacqueline Samuels-Brown, Q.C. provided written submissions in the estate of one individual whose mother was appointed Administratrix in his estate.
9. The Attorney General (through Mrs. Susan Reid-Jones, Director of Litigation) responded to the submissions of Nunes, Scholefield, DeLeon & Co and Mr. Seymour Stewart. The Committee has not received submissions from the Attorney General in response to the submissions of Archer Cummings & Co and Mrs. Samuels-Brown, Q.C.
10. Attached to this Executive Summary are four summaries of each category; and, in the cases of Categories A, B and C, each summary provides a breakdown of the sums recommended.

General Approach of the Committee to Particular Matters

Relaxation of strict legal requirements

11. The Committee did not sit as a court of law; and within appropriate confines applied its discretion to what may be considered reasonable in all the circumstances.

12. It was clear from a review of the claims that strict legal requirements could not be applied to the assessment process. In the vast majority of the estates, much of the arrangements relating to employment and dependency were informal. For instance, in cases where there was no documentary proof of earnings, but information sufficient to conclude that a deceased individual was employed or had prospects of being gainfully employed, the minimum wage was applied in the assessment process.
13. The deaths were considered on paper only. Time would not have permitted oral submissions and it did not, in any event, appear to the Committee that a hearing would have enhanced the written submissions provided in support of the claim. The Committee placed much weight on the fact that the Administrator General would have carried out investigations sufficient to satisfy her as to the veracity of information received in connection with taking out of Letters of Administration in a deceased person's estate such as age, date of death, occupation, dependents and beneficiaries.

Statutory bases for amounts recommended

14. In Categories A, B and C, and where a claim permitted it, compensation was considered under the:
 - i. Fatal Accidents Act ("FAA"); and
 - ii. Law Reform (Miscellaneous Provisions) Act ("LRMPA").
15. In Categories A and B compensation was also considered under the Constitution of Jamaica.

Assessment of compensation under the FAA and LRMPA

16. Under the FAA, compensation is for the benefit of dependents of the deceased. In assessing compensation one seeks to find the actual reasonably expected pecuniary loss caused to each of the deceased's dependents by reason of his death. A dependent is a person in respect of whom it can be proved was in receipt of a benefit from the deceased and that the death has deprived him of his benefit.
17. Under the LRMPA the compensation is for the benefit of the deceased's estate. A dependent under the FAA may not necessarily be a beneficiary under an estate; and so the FAA allows near relations who may not be entitled to benefit under the estate to nevertheless recover the value of their dependency on the deceased.
18. To avoid duplication of awards where an individual is both a dependent and beneficiary, the Committee took the approach well-settled by legal authorities; that is, where the award to a beneficiary under LRMPA exceeds the award to that person under the FAA, then no recommendation is made under the FAA.
19. If, however, the award under the FAA exceeds that under the LRMPA, then the award under the FAA would be the difference between the award under the estate and that under the FAA.
20. In claims under the FAA and the LRMPA, two critical components are the multiplicand and the multiplier. Under the FAA, the multiplicand is the

annual dependency and the multiplier is the estimated length of dependency. Under the LRMPA, the multiplicand is the net income³ of the deceased minus an amount representing what the deceased would have spent exclusively on himself. The multiplier is the number of years for which earnings would have been lost.

21. The Committee received submissions from the parties as to the multiplicand and multiplier to be applied; and conducted its own review and research by reference to case law and the various volumes of *Khan's Recent Personal Injury Awards*.
22. The Attorney General accepted, in all cases on which she provided submissions, the multiplier proposed by the claimants. The Committee, on its own review, however considered a few instances where it would have been appropriate for a lower multiplier to be utilized according to settled authority and therefore applied the lower multiplier.

Assessment of Compensation under the Constitution

23. Having regard to its Terms of Reference, the Committee confined itself to considering compensation for infringement of the right to life. In Categories A and B, the Commission of Enquiry had found that the right to life of the individuals in those categories might have been violated.
24. The Committee was made aware that a number of the estates which advanced claims before it for compensation also commenced claims in the

³ Gross income less income tax, statutory deductions

Supreme Court seeking damages for negligence, public misfeasance and infringements of various rights under the Constitution including the right to life.

25. In the light of its mandate, the Committee advised the Administrator General and counsel that it has no jurisdiction to consider claims for damages for other infringements of the constitution, and public misfeasance.
26. Counsel for the estates limited their submissions to those areas within the Committee's remit; and the claims were considered accordingly. There was no express election by any estate to pursue the claim before the Committee; nor has any estate to the Committee's knowledge abandoned its Supreme Court claim.
27. It therefore appears to the Committee that it remains open for the estates to pursue the claim before the Courts if dissatisfied with the recommendation.
28. Having considered the submissions of the parties in these categories, the Committee considers it appropriate that:
 - a) in Category A, where the right to life may have been violated through extra-judicial killings, an award for infringement of the constitutional right to life be made to each estate in the sum of \$4,800,000.00; and
 - b) in Category B, where the right to life may have been violated by the use of mortars which did not carry with it the deliberate acts as

under Category A, an award for infringement of the constitutional right to life be made to each estate in the sum of \$3,800,000.00.

Approach to Categories of Claims

29. In the light of the Commission of Enquiry's findings as to liability for the deaths of individuals listed in Categories A and B, the Committee makes its recommendation subject only to investigations of INDECOM.
30. The recommendations in Category C are also subject to the investigations of INDECOM; however, the Committee wishes to make two further observations at paragraphs 31 and 32 below in relation to how it approached this category.
31. The Committee notes, however, that the Commission did not hear evidence in relation to the deaths of the individuals listed in Category C. There are, therefore, no express findings of liability on the State.
32. The examination of the claims in Category C was therefore conducted with a view to providing the State with a guide as to what in the Committee's opinion would be an appropriate award were the State to consider an ex gratia award or be found liable for the deaths of these individuals.
33. The Committee can make no monetary recommendation for the deaths in Category D. Not only is there no finding as to liability by the Commission, the claims submitted through the Office of the Public Defender are not supported by any evidence that would allow for an assessment of a likely

sum to be awarded, and there is also no evidence as to whether personal representatives were appointed in these estates.

Recommendations

34. The recommendations of the Committee may be summarized as follows:

CATEGORY	NUMBER OF ESTATES	TOTAL RECOMMENDED
A	14	\$102,404,000.00
B	2	\$9,367,000.00
C	13	\$22,798,000.00
		<u>\$134,569,000.00</u>

HON. MR. JUSTICE SEYMOUR PANTON (RT'D), OJ, CD
REVEREND RENNARD WHITE, JP
REVEREND HERRO BLAIR

SEPTEMBER 19, 2017