

RPSL MEMORANDUM
ON THE DISPOSAL OF BODIES OF COVID-19 VICTIMS

SYNOPSIS

While appreciating with gratitude the efficient measures taken by the government and the services rendered by its agencies, particularly the medical services, the tri-forces and police as well of those of the many allied and essential services in the frontline to combat the deadliest pandemic COVID- 19, the question has been posed as to whether the decision makers in Sri Lanka paid adequate attention to resolve the dilemma with regards to the issue of final disposal of the dead due to COVID-19 in an accepted ethical, scientific and legal basis.

In line with the mechanism to combat COVID-19, the Muslim, Christian and other minority communities of Sri Lanka believe that respecting the religious and other concerns of the affected people would greatly enhance the effectiveness of measures taken by the government to fight the virus. It is in that context that the scientific and societal issues have been adverted to in this memorandum with a view to persuading the government to revise the guidelines and regulations issued pertaining to the very sensitive question of disposal of the bodies of COVID-19 victims.

The World Health Organization has consistently taken the view that burial is not only an appropriate but also the preferred mode of disposal of bodies of COVID-19 victims. However, much less consistency in this regard has been shown by the Sri Lankan authorities, as it may be seen from the events that transpired between 25th to 31st March 2020, during which short period, the applicable guidelines were changed twice to shift from the then operative exclusive cremation mode to burial or cremation (on 27th March), and then again (on 31st March) back to the exclusive cremation mode. Furthermore, the scientific evidence discussed in depth in this memorandum makes it very clear that the fears of infection raised in certain quarters regarding the burial of Covid-19 victims is without any scientific or rational basis.

A - Introduction

The coronavirus outbreak [COVID-19] has posed unprecedented challenges to societies all over the world. It is a serious public health risk that requires exceptional and extraordinary measures. The current efforts taken by the Government of Sri Lanka and specifically the medical services, the armed services and those of the many allied services in the government and private sector deserve unstinted support, praise and appreciation. It is clear from the global collective experience that a well-informed public actively co-operating with the efforts of the health authorities is the best weapon against COVID-19. This is why it is felt that respecting the religious and other concerns of the affected people would greatly enhance the effectiveness of measures taken by the government to fight the virus.¹

In this context, the decision of the Ministry of Health taken on 27th March 2020 to permit both cremation and burial of victims of COVID-19 is laudable. The said decision is not only consistent with the constitutionally guaranteed fundamental rights and freedoms² but is also in conformity with the applicable WHO Guidelines. In this regard it is material to note that the *World Health Organization (WHO) Guidelines(2014)*³ and the *WHO Interim Guidance on Infection Prevention and Control (2020)*,⁴ permit burial, and have been adopted in practice by the vast majority of nations.

¹ *European Center for Disease Prevention and Control, Rapid Risk Assessment: Outbreak of Novel Coronavirus Disease 2019 (COVID-19): increased transmission globally – fifth update (2nd March 2020)*, p. 9, accessible at, <<https://www.ecdc.europa.eu/en/publications-data/rapid-risk-assessment-outbreak-novel-coronavirus-disease2019-covid-19-increased>>

² Arts. 12(1), 12(2) and 14(e) and 14(f) of the *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978.

³ *WHO Guidelines on Infection Prevention and Control of Epidemic and Pandemic Prone Acute Respiratory Infections in Health Care (2014)* which may be accessed at the WHO website at, <https://www.who.int/csr/bioriskreduction/infection_control/publication/en/>

⁴ *WHO Interim Guidance on Infection Prevention and Control for the Safe Management of a Dead Body in the Context of COVID-19 (2020)* dated 24th March 2020 (hereinafter referred to as the “WHO Guidelines (2020)”) accessible at, <https://apps.who.int/iris/bitstream/handle/10665/331538/WHO-COVID-19-IPC_DBMgmt-2020.1-eng.pdf>

It is also significant that the *Provisional Clinical Practice Guidelines on COVID-19 (Version 3 – dated 27th March 2020* published by the Sri Lankan Ministry of Health⁵ [27th March MOH Guidelines] permitted cremation or burial of victims of categories I, II and III of COVID-19 cases - confirmed or suspected, and it was also stated by the Director General of Health Services Dr. Anil Jasinghe in mainstream media that COVID-19 victims would be either cremated or buried under the supervision of the Judicial Medical Officer (JMO) and the Public Health Inspector (PHI). These measures and assurances were comforting not only to Muslims and Christians but also others who for reasons other than faith, favoured burial as opposed to cremation.

In this backdrop, it came as a shock to many that the body of the first Muslim COVID-19 victim who died on Monday 30th March 2020 was cremated without the consent of his next of kin or family late in that night⁶ in violation of WHO Guidelines and as well as Sri Lanka's 27th March MOH Guidelines, and almost immediately thereafter, the Ministry of Health replaced the 27th March MOH Guidelines with the *Provisional Clinical Practice Guidelines on COVID-19 (Version 4)* dated 31st March 2020⁷ [31st March MOH Guidelines], making cremation the only option for COVID-19 victims. In an effort to give legal effect to the 31st March MOH Guidelines, the Minister of Health also made regulations on 11th April 2020⁸ purportedly in terms of sections 2 and 3(1)(i) of the Quarantine and Prevention of Deceases Ordinance⁹ specifically providing that “the corpse of a person who has died or is suspected to have died of Coronavirus Decease 2019 (COVID-19) shall be cremated.”

Nowhere in the 31st March MOH Guidelines (Version 4) or in any announcement or statement made in that connection, the Ministry has explained the reasons for deviating from the *World Health Organization (WHO) Guidelines (2014)*¹⁰ which applies to COVID-19 as well, and

⁵ See, the Sri Lanka Ministry of Health *Provisional Clinical Practice Guidelines on COVID-19 (Version 3 - dated March 27th, 2020* published in collaboration with Ceylon College of Physicians, p. 28, which was till 31st March 2020 accessible at, <http://www.epid.gov.lk/.../Corona_virus/covid-19-cpg_march-20...> In view of its unavailability in the said website, a copy thereof is annexed to this memorandum.

⁶ See, Hilmy Ahamed, “Covid Racism – Another Sri Lanka’s 1st”, (April 13th 2020) Colombo Telegraph, accessible at, <<https://www.colombotelegraph.com/index.php/covid-racism-another-sri-lankas-1st/>>

⁷ See, the Sri Lanka Ministry of Health *Provisional Clinical Practice Guidelines on COVID-19 (Version 4- dated March 31st 2020)* accessible at: <<http://www.epid.gov.lk/web/>>

⁸ See, MOH Regulations dated April 11th, 2020 and published in the Gazette Extraordinary bearing No. 2170/8 dated April 11th, 2020.

⁹ Quarantine and Infectious Deceases Ordinance of 1897 as subsequently amended (Cap. 553).

¹⁰ WHO *Guidelines (2014)* *supra* note 3.

permitted burial subject to certain conditions. Nor has the Ministry of Health explained the reasons for deviating from the *WHO Interim Guidance on Infection Prevention and Control (2020)*,¹¹ that was published by WHO only on 24th March 2020, the contents of which the Sri Lankan Director General of Health Services should have been familiar with as the Vice Chairman of the Executive Council of the WHO, which is believed to have been a compelling reason for the issuance of the 27th March MOH Guidelines (Version 3)¹² by the Ministry of Health.

B - Funeral rites during a pandemic

Among those who may not wish their dead to be cremated in Sri Lanka are not only Muslims but also Christians and those belonging to other faiths as well as some who irrespective of their faith, do not regard cremation as a preferred environmentally friendly practice. However, this paper would focus on the beliefs and practices of the Muslims, according to whose religion, the cremation of the dead is forbidden.

In Sri Lanka, Muslims are presumed by law to be governed by the teachings of the *Shaffei* sect, and the leading and much revered Shaffei text, *Minhaj et Talibin* requires that the dead be buried with dignity in accordance with certain prescribed funeral rites.¹³ Cremation of the body is not permitted or regarded as lawful.

The Islamic world has past experience of facing pandemics such as plagues from the days of the Prophet of Islam. The shariah has recognized the need to prevent infection as an essential element of the need to protect life (*hifz al-nafs*), which is one of the most fundamental principles of Islam (*maqasid al-shariah*).¹⁴

It is in this context material to note that the primary consideration of protecting public health and saving lives permitted compromises in the public interest, and out of the four essential Islamic funeral rites, three can be dispensed with the objective of preventing infection and saving lives in

¹¹ WHO *Interim Guidance (2020)*, *supra* note 4.

¹² See, the MOH *Provisional Guidelines (Version 3 - dated March 27th, 2020)*, *supra* note 5.

¹³ See, Mahiudin Abu Zakaria Yahya Ibn Sharif en Nawawi, *Minhaj et Talibin*, (Navrang, 1992) Bk 4, Section 4, pp. 75-79.

¹⁴ See, Y.S.M. Abdel, Protection of Life in Islamic Law, (2016) 9 (5) *International Journal of Business, Economics and Law* <ijbel.com/wp-content/uploads/2016/06/KLiISC_14.pdf>

a pandemic situation as currently being faced in Sri Lanka. The four essential rites applicable to a Muslim are as follows: -

1. Washing the body - not required during a pandemic
2. Shrouding - not required during a pandemic
3. Prayer - need not be performed in close proximity to the dead body.
4. *Burial* - *in accordance with all international and national standards*

Of the four funeral rites noted above, *only the act of burial requires to be performed in Islam during a pandemic*. It is reiterated that there is no requirement during serious pandemics for washing, shrouding or prayer in the proximity of the body.

Death of a loved one is by itself a stressful event, and the death due to a pandemic, whilst being quarantined, adds to the sense of despair. The fact that the deceased was not buried according to the core Islamic practice and was cremated would drastically aggravate the emotional distress caused to the loved ones of the deceased, and the long-term mental health effects of these stressful events cannot be ignored from a public health perspective. It is therefore significant that the 27th March MOH Guidelines, recognized the religious rites of the deceased, and provided¹⁵ that: -

“The body should never be washed under any circumstance; Cremation or burial is allowed. However, burial is allowed provided that all steps to prevent contact with body is ensured;

1. *The body has to be placed in an airtight sealed body bag and a sealed coffin;*
2. *The grave should have a depth of 6 feet (deep burial) and it should not contaminate with ground-water;*
3. *The grave should be identifiable and traceable;*
4. *The disposal of bodies must be monitored by police, MOH and PHI; and*
5. *The police and other government agencies must follow the legal aspect and their procedures”*

¹⁵ See, the MOH Provisional Guidelines (Version 3 - dated March 27th, 2020, *supra* note 5, at p. 28.

C - WHO and other international and national guidelines on burial of victims of COVID-19

WHO and other International and Regional Guidelines

The WHO guidelines titled *Infection Prevention and Control of Epidemic and Pandemic Prone Acute Respiratory Infections in Health Care* (2014)¹⁶ provides¹⁷ as follows;

“Packing and transport of the dead body of patients with ARI of potential concern, to a mortuary, crematorium or burial

- *Ensure that the body is fully sealed in an impermeable body bag before being removed from the isolation room or area, and before being transferred to the pathology department or the mortuary, to avoid leakage of body fluid.*
- *Transfer the body to the mortuary as soon as possible after death.*
- *When properly packed in the body bag, the body can be safely removed for storage in the mortuary, sent to the crematorium, or placed in a coffin for burial.*
- *If an autopsy is being considered, the body may be kept in refrigeration in the mortuary and the autopsy conducted only when a safe environment can be provided.”*

The WHO Interim Guidance titled *Infection Prevention and Control for the Safe Management of a Dead Body in the Context of COVID-19* (2020) published on 24th March 2020,¹⁸ provided detailed instructions on (1) the preparation and packing of the body for transfer from a patient room to an autopsy unit, mortuary, crematorium, or burial site; (2) the handing of the body by health care workers or mortuary staff and family viewing; (3) applicable health care measures for autopsy including engineering and environmental controls; (4) environmental cleaning and control and (5) burial.¹⁹ It is interesting to note that under the sub-head “Burial”, the WHO Interim Guidance of 24th March 2020, specifically stated²⁰ as follows:-

“Burial

- *People who have died from COVID-19 can be buried or cremated.*

¹⁶ WHO *Guidelines* (2014) *supra* note 3.

¹⁷ *Ibid.*, p. 63 at F1.

¹⁸ WHO *Interim Guidance* (2020), *supra* note 4.

¹⁹ *Ibid.*, pp.1-3.

²⁰ *Ibid.*, p.2.

- *Confirm national and local requirements that may dictate the handling and disposition of the remains.*
- *Family and friends may view the body after it has been prepared for burial, in accordance with customs. They should not touch or kiss the body and should wash hands thoroughly with soap and water after the viewing.*
- *Those tasked with placing the body in the grave, on the funeral pyre, etc., should wear gloves and wash hands with soap and water after removal of the gloves once the burial is complete”*

The WHO Interim Guidance (2020) even provides for burials by family members in the following manner²¹: -

“Burial by family members or for deaths at home

In contexts where mortuary services are not standard or reliably available, or where it is usual for ill people to die at home, families and traditional burial attendants can be equipped and educated to bury people under supervision.”

The WHO Interim Guidance of 2020 then provide detailed instructions on how to handle the body at such family and traditional burials for any person preparing the body for burial and applicable safety measures,²² which need not be reproduced here, but which make it abundantly clear that according to the WHO Guidelines applicable to COVID-19 victims cremation is not the only option. In addition, the latest WHO’s interim guidance on *Practical considerations and recommendations for religious leaders and faith-based communities in the context of COVID-19* issued on 7th April 2020²³ emphasizes the critical role of religious leaders, faith-based organizations, and faith communities in containing spreading of COVID-19, and in particular their involvement towards to grieving families to ensure that their departed loved ones receive respectful, appropriate funerals and burial rites according to the safe burial practices.²⁴

²¹ *Ibid.*, pp 2-3.

²² *Ibid.*

²³ WHO Interim Guidance on *Practical considerations and recommendations for religious leaders and faith-based communities in the context of COVID-19* (April 7, 2020) at: <<https://www.who.int/publications-detail/practical-considerations-and-recommendations-for-religious-leaders-and-faith-based-communities-in-the-context-of-covid-19>>

²⁴ *Ibid.*

1. *When acceptable or appropriate according to respective faith traditions, embalming, burial, and cremation should be allowed for the remains of persons who have died of COVID-19.*
2. *Religious leaders and local religious communities can work with families to integrate appropriate religious and cultural practices with burial and funeral steps that reduce the chances of infection. For example:*
 - *If washing the body or shrouding are part of faith traditions, modifications will be needed to protect mourners:*
 - *At a minimum, people conducting these activities should wear disposable gloves.*
 - *If splashing of body fluids is possible, additional personal protective equipment may be required for those participating in the ritual (such as disposable gowns, face shields or goggles and medical masks).*
 - *If the family of the deceased wishes to view the body after its removal from the medical facility where the family member has died, they may be allowed to do so, in accordance with local physical distancing restriction, with no touching or kissing of the body and thorough handwashing before and after viewing.*
 - *As modifications to burial and funeral rites are adopted, particular attention should be paid to protect children and older adults in attendance.*

It is material to note that the WHO has consistently allowed burial as a mode of disposal of bodies of victims of other widespread infections in the past including SARS²⁵ and Ebola.²⁶ In fact, there are reasons to prefer burial as against cremation. One of the disadvantages of cremation is the resultant air pollution.²⁷

National and Regional Guidelines

It may be relevant to look at how other nations have dealt with the question of disposing with the bodies of victims. For instance, Singapore, which has been hailed as one of the nations that had implemented the most prudent practices of health care in the wake of COVID-19 and a nation that

²⁵ WHO, “Hospital infection control guidance for Severe Acute Respiratory Syndrome (SARS) Outpatient/triage setting”, Strengthening health security by implementing the International Health Regulations (2005) at, <<https://www.who.int/ihr/lyon/surveillance/infectioncontrol/en/>>

²⁶ World Health Organization, ‘Publications and Technical Guidance on Ebola’, accessible at, <https://www.who.int/health-topics/ebola/#tab=tab_1>; World Health Organization, *How to conduct safe and dignified burial of a patient who has died from suspected or confirmed Ebola or Marburg virus disease* (WHO, Interim Guidance, 2017).

²⁷ WHO/SEARO Technical Notes for Emergencies, Disposal of Dead Bodies in Emergency Conditions, at, <https://www.who.int/water_sanitation_health/hygiene/emergencies/deadbodies.pdf>

has successfully responded to COVID-19 while maintaining social cohesion, permits burials of victims.²⁸ The National Environment Agency Guidelines²⁹ require that: -

“The bodies of those infected with COVID-19 will be *prepared for cremation or burial* by healthcare workers in hospitals as part of a set of guidelines issued by the National Environment Agency (NEA). The protocols include double-bagging the bodies before they are placed in airtight coffins.

The agency has also issued guidelines to funeral directories and parlours for *additional precautionary measures at funerals and wakes*. These include limiting the number of attendees to below 250 and implementing social distancing.” (*emphasis added*)

Other nations in the region also do not insist on cremation, and burial is general norm in Indonesia, where the Ulema Council issued a fatwa curtailing conduct of prayers in congregation and laying down additional precautionary measures for burial of Covid-19 burials.³⁰ In Malaysia, the Perlis Islamic Religious and Malay Custom Council (MAIPC) issued guidelines requiring that the washing and enshrouding of the remains must be done in a hospital or any premises permitted by the authorities, under the advice of the Health Ministry officials and funeral rites at burials must be carried out with greater caution to avoid the possibility of harm to the lives of those handling the remains³¹, and India, the government issued guidelines based on the WHO guidelines, which allow burial but prohibiting the bathing, kissing and hugging of the dead body.³² Hong Kong, where also burial of the body is permitted, the guidelines issued in 2014 were revised in February

²⁸ For Singapore, *Coronavirus: Bodies of patients to be handled according to strict protocols*, accessible at <<https://www.straitstimes.com/singapore/bodies-of-covid-19-patients-to-be-handled-according-to-strict-protocols-which-include>>.

²⁹ See: for news report <<https://www.straitstimes.com/singapore/strict-guidelines-to-be-followed-for-cremation-or-burial-of-victims>>

³⁰ Jakarta Post (17 March 2020) at, <<https://www.thejakartapost.com/news/2020/03/17/indonesian-ulema-council-urges-govt-to-map-covid-19-prone-areas-to-support-fatwa-on-mass-prayers.html>>

³¹ See, <<https://www.malaymail.com/news/malaysia/2020/03/22/covid-19-maips-issues-guidelines-for-muslim-burial-rites-in-perlis/1849031>>.

³² See, for India report at, <<https://www.livemint.com/news/india/coronavirus-govt-shares-dead-body-management-guidelines-11584438633450.html>>.

2020 imposing additional measures for preventing infection due to improper handling of dead bodies.³³

It is interesting to note that in Thailand, where burial of the COVID-19 victims is the norm, the Director-General of the Department of Medical Services (DMS), Dr. Somsak Akhasilp, went public with his widely quoted words: “The virus dies when its host dies”³⁴ in a move to dispel fears when the country suffered three more deaths on 24th March, 2020.

Similarly, in Australia³⁵, New Zealand³⁶ and the United States burial is permitted of COVID-19 victims, where it has been pointed out that cremation can not only result in air pollution but the energy costs may be exorbitant.³⁷ In the United Kingdom, recently in the face of controversy on the issue of whether the modes of disposal of bodies of COVID-19 victims should be confined to cremation,³⁸ the UK Parliament enacted the *Coronavirus Act of 2020 on 25th March 2020*, and the Act received the Royal Assent on 25th March 2020.³⁹ It is significant to note that the Act contains broadly defined powers for national and local authorities to direct matters related to the transportation, storage and disposal of dead bodies.

It is most significant to note that the Coronavirus Act specifies that any local or national authority exercising this power, when it is activated, must “*have regard to the desirability of*” disposing of a dead person’s body *in accordance with the person’s wishes, or otherwise in accordance with the*

³³ See, Hong Kong Department of Health: “Precautions for Handling and Disposal of Dead Bodies” (2014, Revised Ed. February 2020) accessible at, <https://www.chp.gov.hk/files/pdf/grp-guideline-hp-ic-precautions_for_handling_and_disposal_of_dead_bodies_en.pdf>

³⁴ See for Thailand, an interesting news report published in Bangkok Post of March 25th, 2020 at, <<https://www.bangkokpost.com/thailand/general/1885840/covid-19-corpses-not-contagious>>

³⁵ For New South Wales, ‘COVID-19 – Handling of Bodies by Funeral Directors’, last updated April 2, 2020, at, <<https://www.health.nsw.gov.au/Infectious/factsheets/Pages/covid-19-funeral-directors.aspx>>

³⁶ For New Zealand, see: Ministry of Health, *COVID-19 Funerals and Tangihanga*, (Ministry of Health, New Zealand Last updated April 2, 2020) accessible at <www.health.govt.nz>.

³⁷ Intelligent Living, Andrea D. Steffen, “The Future Of Eco-Friendly Deathcare Could Be Human Composting” accessible at, <<https://www.intelligentliving.co/the-future-of-eco-friendly-deathcare-could-be-human-composting/>>

³⁸ See, the report accessible at, <<https://5pillarsuk.com/2020/03/22/over-137k-sign-petition-to-protect-muslim-coronavirus-victims-from-cremation/>>

³⁹ UK Parliament, Coronavirus Act, 2020, accessible at, <<https://services.parliament.uk/bills/2019-21/coronavirus.html>>

*person's religion or beliefs, if known.*⁴⁰ It is also relevant to note that on 31st March 2020 the British government published a comprehensive Guidance for care of the deceased with suspected or confirmed coronavirus (COVID-19),⁴¹ and the British Islamic Medical Association (BIMA) has also published a set of Guidance on the Performance of *Ghusl* (ritual washing) for Deceased Persons.⁴²

It is necessary to add that as far as the European Union is concerned, the *European Centre for Disease and Prevention Control, Stockholm (2020)* guidelines also permits burial with standard safety procedure.⁴³

D - The state of preparedness of the Muslim Community

It is in this context that it becomes necessary to stress that the Muslim community has done its very best within the time available from the onset of the COVID-19 outbreak to prepare itself to the requirements of preventing infection during and after a burial of a victim. The work undertaken by the *All Ceylon Jamiyyathul Ulama (ACJU)* and the *Colombo District Masjid Federation (CDMF)* and *District Masjid Federations (DMF)*, included the selection and dedication of burial grounds in every district in Sri Lanka which are suitable for safe burials with zero risk of contamination, efforts to manufacture water proof coffins in required numbers, making available necessary equipment and other apparel for safe handling of coffins up to the time of burial and the training of staff for safe burials.

⁴⁰ Catherine Fairbairn, "Coronavirus: Powers to direct between burials and cremation" (27th March 2020) House of Commons Library accessible at, <<https://commonslibrary.parliament.uk/home-affairs/communities/coronaviruspowers-to-direct-between-burials-and-cremation/>>

⁴¹ Public Health, England *Guidance for care of the deceased with suspected or confirmed coronavirus (COVID-19)* at, <<https://www.gov.uk/government/publications/covid-19-guidance-for-care-of-the-deceased/guidance-for-careof-the-deceased-with-suspected-or-confirmed-coronavirus-covid-19>>

⁴² British Islamic Medical Association (BIMA) Guidance on the Performance of *Ghusl* for Deceased Persons', accessible at, <<http://masjidenoor.org.uk/gmbc/bima-ghusl-guidelines.pdf>>

⁴³ *Considerations Related to the Safe Handling of Bodies of Deceased Persons with Suspected or Confirmed COVID-19* (European Centre for Disease Prevention and Control (ECDC), 2020) accessible at ECDC website, <<https://www.ecdc.europa.eu/en/publications-data/considerations-related-safe-handling-bodies-deceased-personssuspected-or>>.

The *Young Muslim Men Association* (YMMA) has proposed some measures, which are detailed below, that will meet WHO and international safety standards and will ensure that safe burial procedures are followed when Muslim COVID-19 victims are buried in Sri Lanka.⁴⁴ These measures include the placing the body of the deceased in a water-proof coffin which would prevent contamination of the environment including the air, soil and ground water table. It is significant that the YMMA has undertaken to fund the manufacture of such coffin by a supplier authorized by the government under the supervision of a government technical team to ensure prevention of any contamination whatsoever. This measure, along with the action taken by the ACJU in collaboration with the CDMF and DMFs to have suitable burial grounds dedicated for the purpose of burial of COVID-19 victims with sufficient PPE Kits to be provided by the YMMA to the trained and supervised staff handling deceased from the placement of the body in a body bag in a sealed coffin and subsequent transport of same to the dedicated burial ground, where deep burial will be possible, will ensure that the WHO and National Health guidelines and directives are complied with under the supervision of the appointed authorities.

While the aforementioned Muslim organizations are keen to adhere to safety procedures and precautionary measures when handling COVID-19 burials according to international standards, it is expected that the Sri Lanka Ministry of Health, as an important stakeholder in implementing safe burial procedures will continue in the provision of necessary guidance, assistance, training and other facilities for providing every Sri Lankan Muslim and any other Sri Lankan who may become a COVID-19 victim, a dignified burial despite the circumstance of the pandemic outbreak.⁴⁵

E - Water and soil contamination

There have been concerns expressed with regard to possible soil and water contamination that may result from the burial of a COVID-19 victim. It is well known that the *Severe Acute Respiratory*

⁴⁴ 'Request for Permission to Bury Muslim Victims Who Die of COVID-19 in Sri Lanka', Letter written by YMMA to the Hon. Prime Minister of the Democratic Socialist Republic of Sri Lanka, letter dated 3rd April 2020.

⁴⁵ There are some short comings including non-availability of sufficient PPE kits in which assistance of the Ministry of Health is solicited.

Syndrome Coronavirus – 2 (SARS-CoV-2) causing COVID-19 is an enveloped single stranded RNA virus belonging to the family of coronavirus and sub-family of *Orthocoronaviridae*.⁴⁶ This virus is easily inactivated with simple household disinfectants like 0.1 – 0.5% sodium hypochlorite or detergents like soap and water.⁴⁷ That is why wide publicity is given to the fact that washing hands with soap and water for twenty seconds at least and disinfecting of other inanimate surfaces with hypochlorite will remove the viruses effectively.⁴⁸ According to the WHO, there is no evidence to support the presence of surrogate coronaviruses in surface and groundwater sources or transmission through contaminated drinking water.⁴⁹

The WHO's, *Interim Guidance on Water, Sanitation, Hygiene, and Waste Management for the COVID-19* issued on 19 March 2020 unambiguously states⁵⁰ that-

“while there is no evidence to date about survival of the COVID-19 virus in water or sewage, the virus is likely to become inactivated significantly faster than non-enveloped human enteric viruses with known waterborne transmission (such as adenoviruses, norovirus, rotavirus and hepatitis A). For example, one study found that a surrogate human coronavirus survived only 2 days in dechlorinated tap water and in hospital wastewater at 20°C. Other studies concur, noting that the human coronaviruses transmissible gastroenteritis coronavirus and mouse hepatitis virus demonstrated a 99.9% die-off in from

⁴⁶ Wu, Yi-Chi, Ching-Sung Chen, and Yu-Jiun Chan. *Overview of the 2019 Novel Coronavirus (2019-nCoV): The Pathogen of Severe Specific Contagious Pneumonia (SSCP)* (2020) Journal Chinese Medical Association

⁴⁷ National Environment Agency, ‘Interim Guidelines for Environmental Cleaning and Disinfection of Areas Exposed to Confirmed Case(s) of 2019 Novel Coronavirus (2019-nCoV) in Non-Healthcare Commercial Premises’, accessible at, <<https://www.nea.gov.sg/>>

⁴⁸ Environmental Cleaning and Disinfection Principles for Health and Residential Care Facilities accessible at, <<https://www.health.gov.au/sites/default/files/documents/2020/03/coronavirus-covid-19environmental-cleaning-and-disinfection-principles-for-health-and-residential-care-facilities.pdf>>

⁴⁹ World Health Organization ‘Water, Sanitation, Hygiene and Waste Management for COVID-19’, (WHO, March 2020) pp. 1–9, at < <https://www.who.int/publications-detail/water-sanitation-hygiene-and-waste-management-forcovid-19>>

⁵⁰ World Health Organization, *Water, Sanitation, Hygiene, and Waste Management for the COVID-19 Virus* (WHO, Interim Guidance, 19 March 2020); Also see, Wang XW, Li JS, Zhen B, Kong QX, Song N, Xiao WJ et al. ‘Study on the Resistance of Severe Acute Respiratory Syndrome-Associated Coronavirus’ (2005) *J Virol Methods*. 171–7. doi:10.1016/j; Gundy P, Gerba CP, Pepper IL., ‘Survival of Coronaviruses in Water and Wastewater’(2009) 1 *Food Environ Virol*. 10-14. doi:10.1007/s12560-008-9001-6.

2 days at 23°C to 2 weeks10 at 25°C. Heat, high or low pH, sunlight, and common disinfectants (such as chlorine) all facilitate die off.”

Accordingly, the related studies further confirm that, enveloped viruses are less stable in the environment and are more susceptible to oxidants such as chlorine. Decrey et al., demonstrate that single stranded RNA viruses such as coronavirus are highly susceptible to inactivation by ammonia⁵¹ which is produced during the decomposition of human remains.⁵² Shedge et al., argue that for a virus to replicate it should be present within a living cell. Viruses cannot be propagated in dead cells. Immediately after death of a human cell hypoxia or oxygen deficiency begins and cells undergo autolysis (cell destruction), and thus the cellular environment become unfavourable for a virus to survive.⁵³ Hoffman and Healing affirm that none of the organisms that caused mass death in the past-for example, plague, cholera, typhoid, tuberculosis, anthrax, smallpox-is likely to survive long in buried human remains.⁵⁴ Most of the pathogenic microbes do not survive for long after the host dies or are not readily transmissible in that context. Long-buried bodies reduced to skeletons are not hazardous.⁵⁵ Therefore, it is an established argument that after the death of a human being, there will not be further replication of viruses inside the body. From the moment death occurs, the viral load starts to fall and after three to five days, there will not be any viable virus. Hence the need to protect the grave of a COVID-19 victim will exist only for about five days after burial. This is why burial in deep graves is recommended, and the WHO minimum standard is burial in a grave which is six feet deep.⁵⁶

⁵¹ Decrey L, Kazama S, Kohn T. ‘Ammonia as an *In Situ* Sanitizer: Influence of Virus Genome Type on Inactivation’ (2016) 82 (16) *Applied and Environmental Microbiology* 4909-4920 [DOI: 10.1128/AEM.01106-16].

⁵² Janaway RC, Percival SL, Wilson AS., *Decomposition of Human Remains. In Microbiology and Aging* (Human Press, 2009) 313-334.

⁵³ See, for instance, Shedge, R., Krishan, K., Warriar, V., Kanchan T, *Postmortem Changes*[StatPearls Publishing accessible at <https://www.ncbi.nlm.nih.gov/books/NBK539741/>] last visited 4/7/2020.>

⁵⁴ See, P.N. Hoffman, MD T.D. Healing, MD, ‘The Infection Hazards of Human Cadavers’ in Shaheen Mehtar edi. *Guide to Infection Control in the Hospital* (International Society for Infectious Disease USA, 2018).

⁵⁵ *Ibid.*

⁵⁶ See, the MOH *Provisional Guidelines (Version 3 - dated March 27th, 2020, supra note 5, at p. 28.*

SARS-CoV-2 is mainly transmitted through respiratory droplets (>5 micrometer) produced during coughing or sneezing, indirect transmission through contact from different surfaces like table tops, door knobs, lifts etc., and during aerosol generating procedures.⁵⁷ After death of a COVID-19 patient, no respiratory droplets are produced; no aerosol producing procedures performed in the dead body; contact is interrupted through sealing the dead body which is kept in the coffin. According to the WHO, only the bodies of those who die of viral haemorrhagic fevers like *Ebola*, *Marburg* and bacterial diseases like cholera are contagious to the handlers. Of epidemics and pandemics so far, Ebola virus infection has had the greatest case fatality rate of 50 percent. Despite, this, burial of the deceased was permitted by the WHO. Furthermore, of all those buried since the SARS virus epidemic and other epidemics since 2002, there has not been a single case reported in the world literature of viral disease transmission consequent to the practice of burial. Only the lungs and body fluids of those who die of pandemic influenza, including COVID-19, can be infectious for a limited time after death, and that too only if handled improperly during an autopsy. Otherwise cadavers of Covid-19 are not known to transmit the virus.⁵⁸

In most circumstances, the infected decease, living beings are a much greater hazard than are the dead. Whilst a person is alive, invading pathogens can multiply and are readily transmitted and thus the infected patient is considered a continuing source of infection. Once the host is dead, *most pathogenic microbes stop multiplying and die rapidly due to microbial competition as the body decomposes*.⁵⁹

It is well known that the no viruses move without a host, and therefore cannot spread through the ground by themselves. The water table or ground water will not have any significant impact on infection levels from SARS CoV-2 since ground water (which should not be confused with waste water) is often too deep to be in contact with the body and in any case moves far too slow to reach

⁵⁷ Public Health Wales, Public Health England ‘Guidance for Infection Prevention and Control in Healthcare Settings’ (2020) ‘COVID-19’, pp. 1–52. Version 1.1, 27/03/20.); See also, “How Coronavirus Spreads”, accessible at, <<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>>.

⁵⁸ WHO *Interim Guidance* (2020), *supra* note 4, pp., 1–6.

⁵⁹ See, Ball J, Desselberger U and Whitwell H., ‘Long-lasting Viability of HIV After Patient's death’ (1991) 338 *Lancet*, 63. de Ville de Goyet C. Stop Propagating Disaster Myths (2000) 356 *Lancet*, 762–4.

a rivers or a reservoir. If burial takes place using appropriate safety procedures the possibility of infection will be extremely remote.

It is also accepted that faecal leakage from bodies is common in gastrointestinal pathogens such as Hepatitis A and cholera to list a few. The viruses belonging to the family of coronavirus, which SAR, MERS, COVID-19 and common cold viruses are predominantly respiratory, and not gastrointestinal pathogens. Hoffman and Healing recommended that cremation or deep burial with the cadaver in a leak-proof plastic body bag be the only safe procedures even for highly infectious pathogens such as Hepatitis B, C and Ebola.⁶⁰ According to the WHO, to prevent contamination of the environment from excreta at least a distance of 1.5 meters must exist between bottom of the pit and the ground water table. If there is a high ground water table or lack of space, the human remains should be kept in an impermeable storage for some time to ensure reduction in the viral load.⁶¹ Furthermore, the body is disinfected and sealed in a double body bag and thus there will not be any leakage even for weeks minimizing the theoretical risk of virus reaching the soil. Even if the bag ruptures after one week, there will not be any infectious SARS-CoV-2 to reach the soil, since the sealed body is kept in a water-proof coffin further minimizing chances of soil contamination with SARS-CoV-2 from a dead body.

Furthermore, deep burial of cadavers of covid-19 victims in properly sealed body bags will have no significant risk of re-emergence or infection through contamination of waters. It is very premature to argue that the faecal leakage from cadavers of Covid-19 victims may pose health risk through contamination. The geo-hydro syntaxes in the deeper layer of the soil has no proven scientific basis, and the maximum duration that the coronavirus can survive out of living cells has been reported to be 9 days.⁶²

⁶⁰ P.N. Hoffman, MD T.D. Healing, MD, *supra* note 54. The authors suggest burial graves with ‘at least one metre (3 feet) of earth over the cadavers (to prevent access by scavengers and pests) to allow subsequent exhumation if permitted.’

⁶¹ World Health Organization, *Water, Sanitation, Hygiene and Waste Management for COVID-19*, (WHO March, 2020) pp. 1–9.

⁶² Chin A, Chu J, Perera M, Hui K, Yen HL, Chan M, Peiris M, Poon L., *Stability of SARS-CoV-2 in Different Environmental Conditions*, (medRxiv. 1st January, 2020).

In this context, it is significant that the WHO, *Interim Guidance 24 March 2020*,⁶³ in clear term states that-

“It is a common myth that persons who have died of a communicable disease should be cremated, but this is not true.”

WHO has recognized that cremation as much as burial is a matter of cultural choice and available resources, and stressed the need to respect the cultural and religious values of COVID-19 victims, stating in its Interim Guidance of 2020 that “the dignity of the dead, their cultural and religious traditions, and their families should be respected and protected throughout.”⁶⁴

F - Summary and Conclusion

The importance of preserving social harmony and national unity in the combat of one of the most devastating pandemics to strike our nation cannot be over-emphasized. While families and societies celebrate birth, marriage, and even their anniversaries, death is a much more solemn occasion in which grieving families get together in prayer and mourn the dead. The funeral is the way of bidding farewell to the dead and most funeral rites are dictated by faith and culture. As far as Muslims are concerned, burial has been a core funeral rite that had been practiced consistently even at times of pandemics. The WHO guidelines relating to pandemics including COVID-19, as already seen, has been consistent in ensuring that as much as possible of these rites are carried out within the constraints of the pandemic, and taking care not to spread the virus through person to person infection or other means. The 27th March MOH Guidelines⁶⁵ which follow the WHO Provisional Guidelines of 2014⁶⁶ and WHO Interim Guidance of 24th March 2020,⁶⁷ demonstrates how public health safety concerns can be met without the bereaved, of any denomination of faith, having to forego a deeply sensitive, much-revered funeral rite of the deceased.

From the foregoing it is evident that the community is in a state of preparedness to undertake safe burials with the assistance of the State. The placement of the body in a sealed body bag and a

⁶³ WHO *Interim Guidance* (2020), *supra* note 4, p. 3.

⁶⁴ *Ibid.*,

⁶⁵ See, the MOH *Provisional Guidelines (Version 3 - dated March 27th, 2020, supra* note 5.

⁶⁶ WHO *Guidelines* (2014) *supra* note 3.

⁶⁷ WHO *Interim Guidance* (2020), *supra* note 4.

water-proof coffin for the purpose of burial in a deep grave as prescribed in the WHO guidelines adequately meet the public health concerns that have been adverted to justify the imposition of cremation as the only mode of disposal of the body of a COVID-19 victim despite him or her being a Muslim.

Sri Lanka being a multi-ethnic multi-religious multi-cultural nation, it is understandable that there are diverse views on disposal of dead bodies upon death. Some of these beliefs are part of the faith and some part of the culture of its citizens. Muslims of Sri Lanka are adherents of Islam, and Islamic bioethics is intimately linked to the broad ethical teachings of the Qur'an and the traditions of Prophet Muhammad. The Muslim community is conscious of the need to protect life (*hifz alnafs*), which is one of the most fundamental principles of Islam (*maqasid al-shariah*). The application of these principles made it possible for the Sri Lankan Muslim community to make adjustments to meet the contingencies of the pandemic and cancel congregational prayers including the Friday Jumma prayers, and even in three out of the four funeral rites afforded to a deceased Muslim who passes away due to COVID-19 infection. As already observed, the common myth that bodies of persons who die of COVID-19 must be cremated has been exploded by the WHO applying scientific principles and evidence and it is urged that the WHO call to all governments to respect cultural and religious values of COVID-19 victims should be complied with by the Sri Lankan Government with a view of fostering of national unity without in any way compromising safety standards.

The Muslim community in particular, is affected by the imposition of a mode of disposal of bodies that is not only contrary to Islam but is also repugnant to its cultural practices. The community feels that the question is not whether cremation is the right disposal mode but rather what is the right scientific ethical and administrative procedure for deciding on matters that affect not only the public health, but also the sanctity and dignity accorded to a demised individual and the harmonious relationships that have prevailed among the several communities living in Sri Lanka. The community is not satisfied that the decision to make cremation the exclusive procedure for disposal of bodies of Covid-19 victims was taken in the right spirit or in accordance with well established guidelines issued by the World Health Organization (WHO). It is for this reason that the community was much relieved to hear that a committee of experts will be appointed to review

the decision to single out cremation as the only means of disposing of a COVID-19 victim, but no such appointment has been made to date.

It is in these circumstances that the Muslim community seeks the intervention of HE the President of Sri Lanka, the Hon. Minister of Justice and the Director General of Health Services to revise the Guidelines issued by the Ministry of Health and the regulation made by the Minister of Health to enable the burial of victims of COVID-19 whether they be Muslims, Christians or others who seek to have their dead buried with the dignity that the solemn occasion of a funeral demands. Such a measure of relief will be very much appreciated by those who do not wish their dead to be cremated by reason of their faith or such other rationale they adopt according to their conscience.

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