



OFFICE ON MISSING PERSONS

ANNUAL REPORT

2018

Message from the Chairperson	4
1. Introduction	6
2. Legal and Policy Interventions	7
Certificate of Absence	7
Enforced Disappearances Act	8
Prevention	9
Counter Terrorism Bill	9
Draft Law on Inquests	11
Interim Relief	11
3. Investigations and Inquiries	12
Mannar mass grave	13
Victim and witness protection	14
Complaints	14
Collating existing data related to missing and disappeared persons	15
Database	15
4. Institutional Development	16
Establishing physical premises and staff recruitment	16
Development of procedures and rules	18
Psychosocial support	18
Capacity building and knowledge sharing	19
5. Outreach	21
Public Events	21
Engagements with the media	23
Communications campaign	23
Digital presence	24
6. Commemoration and Memorialisation	24
7. Finance	25
Annex A	29
Interim Report	29

Abbreviations

CoA	Certificate of Absence
DMS	Department of Management Services
HRC	Human Rights Commission
ICRC	International Committee of the Red Cross
MNIR	Ministry of National Integration and Reconciliation
OMP	Office on Missing Persons
PSU	Psychosocial Support Unit
PTA	Prevention of Terrorism Act
SCRM	Secretariat for Coordinating Reconciliation Mechanisms
UNDP	United Nations Development Program

Message from the Chairperson

The enactment of the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act No. 14 of 2016 represents a milestone in Sri Lanka's efforts to establish the truth about the fate of the missing and disappeared. Unlike previous mechanisms established by the State, the OMP is a permanent and independent commission with an explicit mandate to establish the fate of persons who went missing or were disappeared in connection with the civil war, political unrest or civil disturbances, or as a result of enforced disappearances. The OMP's mandate is not limited to any particular period, region or community. The establishment of the OMP represents an acknowledgement of the widespread disappearances that occurred over four decades in multiple contexts and is an explicit recognition of the responsibility of the State to provide answers to the thousands of affected citizens in our country.

From 28 February 2018, when the Commissioners of the OMP were appointed, to 31 December 2018, the OMP made progress in a number of areas, particularly in the operationalisation of the office and outreach to families of the missing and disappeared. In addition, the OMP made a number of key legal and policy interventions and advanced individual investigations and inquiries.

My fellow Commissioners and I recognise the urgency and the magnitude of the task before us and the need to build a credible and permanent institution. The OMP faced a variety of challenges, including scepticism and distrust from some families of the missing and disappeared, lack of recognition of its mandate and its status as an independent commission, and delays in securing approval from key state agencies. Further, despite the formal acknowledgement of the widespread disappearances that the establishment of the OMP represents, much work needs to be done to create awareness among the general public and state actors of its systemic nature and to generate empathy for the devastating consequences it continues to have on the families of the missing and disappeared.

In order to create an environment conducive to the work of the OMP and in order to ensure non-recurrence, the OMP made a number of legal and policy reform recommendations with respect to the Draft Law on Inquests, the Counter Terrorism Bill, Certificates of Absence (CoA) and the Enforced Disappearances Act. In its Interim Report the OMP made six interim relief recommendations to be included in the 2019 Budget, in recognition of the dire economic situation of the most vulnerable among the families of the missing and disappeared.

The OMP received and prepared analysis of information relating to a number of emblematic cases. Since June 2018, the OMP acted as an observer in the excavation of the Mannar mass grave and assisted the investigation by proposing measures to ensure public confidence in the process and providing financial assistance. The OMP does not have authority to prosecute cases; however, it believes that ensuring justice is central to addressing the rights of the missing and disappeared. To this end, the OMP initiated follow up action on the recommendations made in its Interim Report to ensure the unimpeded progress of investigations and prosecutions of individual cases involving abductions and related crimes.

Further, the OMP intervened in individual cases raised by families to facilitate the issuance of CoAs and to ensure that CoAs are duly recognised by state and non-state actors to enable access to services and benefits by relatives of the missing and disappeared. His Excellency the President, Maithripala Sirisena issued a call to the general public for complaints related to missing and disappeared persons to be submitted to the MNIR. The MNIR then handed over the 14,641 submissions it received to the

OMP. In order to process the complaints and create a centralised list of the missing and disappeared, the OMP established a temporary database which will also facilitate referral services and future investigations.

As part of its efforts to commemorate the missing and the disappeared, on 30 August 2018, the OMP held the first State-led commemoration of the International Day of the Disappeared in Sri Lanka with the participation of six hundred and fifty members of families of the missing and disappeared.

The OMP believes that in order to achieve reconciliation in Sri Lanka, the rights of the families of the missing and disappeared persons to truth and justice must be realised. To this end, over the past eight months the OMP laid the foundations to fully operationalise its mandate and will endeavour to carry out its functions and duties with the full cooperation of relevant state agencies and departments.

Saliya Pieris P.C.
Chairperson
Office on Missing Persons

1. Introduction

- 1.1. The Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act No. 14 of 2016 was enacted in August 2016. The seven Commissioners of the OMP were appointed by His Excellency the President, Maithripala Sirisena on the recommendations of the Constitutional Council for a period of three years.¹ On the 28thth of February 2018, His Excellency the President appointed Mr. Saliya Pieris P. C. as Chairperson of the OMP and Dr. Nimalka Fernando, Mr. S. K. Liyanage, Attorney-at-Law, Major General (Retired) Mohanti Peiris, Ms Jeyatheepa Punniyamoorthy, Mr. Mirak Raheem and Mr. Kanapathipillai Venthan as Commissioners.
- 1.2. The OMP has an explicit mandate to clarify the circumstances in which persons went missing and their fate; to make recommendations to relevant authorities to ensure non-recurrence; to protect the rights and interests of missing and disappeared persons and their relatives; to identify proper avenues of redress for missing and disappeared persons; and to collate data related to missing and disappeared persons from existing sources and centralise all available information in a database.²
- 1.3. The OMP is charged with a range of functions and duties which include issuing interim reports to relatives to enable the Registrar General to issue CoAs; providing or facilitating the provision of administrative assistance and welfare services that includes psycho-social support to the relatives of the missing and disappeared; making recommendations to a relevant authority to grant reparations to the missing or disappeared person or their relatives; developing and enforcing a system for victim and witness protection; creating, managing and maintaining a database which will include all particulars concerning missing and disappeared persons; creating public awareness and sensitivity to the pain and harm caused to the families of missing and disappeared and facilitating support among the general public to fulfil their needs and ensure access to economic, psycho-social, legal and administrative support.³
- 1.4. The OMP has general powers to make rules, develop guidelines that are gender sensitive, appoint and dismiss staff, and establish Units as required for its effective operation.⁴ Further, the OMP has the power to make recommendations to other state authorities relating to a broad array of issues which includes preventing future disappearances; the means and methods of commemoration and acknowledgment of disappearances; the handling of unidentifiable remains and identifiable remains; the publishing of information on issues of missing persons for public knowledge; developing national laws and regulations related to missing persons; granting of reparations psycho-social support and other means to improve social and economic conditions of missing and disappeared persons and their relatives.⁵
- 1.5. In order to conduct its investigations, the OMP has specific powers to receive complaints, initiate inquiries and investigate into the whereabouts of a missing or disappeared persons; to

¹ The Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act No. 14 of 2016, Sections 4, 5, 6. (**OMP Act**)

² OMP Act, Section 10.

³ OMP Act, Section 13.

⁴ OMP Act, Section 11.

⁵ OMP Act, Section 13(1) (k).

take all necessary steps to investigate cases which includes summoning any person to be present before the OMP or producing any document or other thing; to accept confidential information or information in camera; to accept information on the condition of confidentiality; to apply to a Magistrate's Court for an order to carry out an excavation or an exhumation and to act as an observer; to request any necessary assistance from any state actor; to search without warrant any place of detention; and to report offences that have been committed to relevant law enforcement or prosecuting authority.⁶ Any person can be held guilty of an offence of contempt against the authority of the OMP for a range of causes including when a person fails to appear before the OMP or produce a document or other thing pursuant to summons issued by the OMP; refuses without cause to answer questions or to comply with requirements of a notice or written order made to him or her by the OMP; resists or obstructs an Officer of the OMP to exercise their powers; or knowingly hinders the OMP's work.⁷

- 1.6. The OMP has sought to operationalise its mandate in a manner that recognises the centrality of the rights and interests of the missing and disappeared and their families. In addition, the OMP has carried out its functions and duties in a manner that upholds the rule of law and facilitates the implementation and enforcement of existing laws and policies.

2. Legal and Policy Interventions

- 2.1. The OMP has an explicit mandate to make recommendations relating to missing and disappeared persons and to take action to protect their rights and those of their relatives.⁸ Further, the OMP is charged with the function of facilitating access to families of the missing and disappeared to economic, psycho-social, legal and administrative support.⁹ The OMP has the authority to make recommendations to other state authorities on a number of issues which include preventing future disappearances, handling of human remains, and improving the social and economic conditions of missing and disappeared persons and their relatives.¹⁰ In order to carry out its functions it is necessary for the OMP to ensure that the legal and policy framework is conducive to the implementation of its mandate.
- 2.2. The OMP made a number of key law reform recommendations and policy interventions relating to the CoA, Draft Law on Inquests, Enforced Disappearances Act, and the Counter Terrorism Bill. These interventions were made with a view to facilitate non-recurrence of enforced disappearances, protect the rights and interests of families of the missing and disappeared, and to ensure that the broader legal framework explicitly recognises and complements the mandate of the OMP.

Certificate of Absence

- 2.3. The Government of Sri Lanka passed the Registration of Deaths (Temporary Provision) (Amendment) Act No.16 of 2016, to enable the issuance of a CoA to families of the missing

⁶ OMP Act, Section 12.

⁷ OMP Act, Section 24.

⁸ OMP Act, Section 2(b), 10.

⁹ OMP Act, Section 13 (e), (f).

¹⁰ OMP Act, Section 13(k)(i),(iii),(vii).

and disappeared. The CoA is a legal document which provides for the legal status of a missing or disappeared person and enables families of the missing and disappeared to access administrative and financial services and other benefits in the absence of a Certificate of Death. The OMP is mandated to issue interim reports to families of the missing or disappeared, which enables them to obtain CoAs from the Office of the Registrar General.¹¹

- 2.4. A CoA can be issued in respect of persons who are missing or disappeared as a result of the conflict which took place in the North and East, due to political unrest, civil disturbances, enforced disappearances or as a member of the armed forces or the police reported missing in action.¹² The OMP is engaging with families of the missing and disappeared as well as the general public to create awareness of the process obtaining a CoA and its validity.
- 2.5. However, many families who are in possession of CoAs face difficulties when dealing with local government bodies, banks and other financial institutions and foreign missions due to a lack of awareness or a lack of clarity as to the validity and purpose of CoAs, as these institutions refuse to accept the CoA. The OMP conducted discussions with affected families and relevant authorities and identified policy reforms, and interventions in response to individual complaints related to CoAs.
- 2.6. The OMP intervened with local banks to address complaints made by families with regard to accessing banking services using a CoA. Further, the OMP initiated a discussion with the Governor of the Central Bank to address issues raised by financial institutions that accepting CoAs could conflict with their regulatory obligations.
- 2.7. Families of the missing and disappeared made representations to the OMP concerning difficulties they faced when applying for a visa in the absence of a death certificate. In response, the OMP made interventions by writing to the Secretary to the Ministry of Foreign Affairs and all foreign missions established in Sri Lanka, explaining the purpose and validity of CoAs with regard to a parent, or child who is missing or disappeared.
- 2.8. Further, families of the missing and disappeared highlighted to the OMP difficulties they faced in securing the documentation required by Regional Registrars to obtain a CoA. The OMP initiated discussions with the SCRM to create awareness among government officials at state and local government level.

Enforced Disappearances Act

- 2.9. Sri Lanka signed the International Convention for the Protection of All Persons from Enforced Disappearances on 10 December 2017. The obligations under the Convention were incorporated into domestic law through the enactment of the International Convention for the Protection of All Persons from Enforced Disappearances Act. No. 5 of 2018 (The Enforced Disappearances Act).
- 2.10. As noted in the OMP's Interim Report, the criminalisation of enforced disappearances is a welcome achievement in the fight against impunity. However, in its Interim Report, the OMP

¹¹ OMP Act, Section 13(1)(a).

¹² The Registration of Deaths (Temporary Provision) (Amendment) Act No.16 of 2016, Section 8A.

expressed concern that the criminalisation of enforced disappearances under domestic law remains inadequate. The definition of enforced disappearances fails to recognise the continuing nature of the crime, as it fails to explicitly include instances where some elements of the crime occurred prior to the enactment of the Enforced Disappearances Act. The Act does not to capture the full range of perpetrators who may be involved, as well as the scope of command responsibility over the crime of enforced disappearances. Further, the Act does not recognise enforced disappearances as a crime against humanity, and does not sufficiently recognise the mandate of the OMP in addition to that of the HRC on investigating complaints related to missing and disappeared persons.

- 2.11. The OMP made recommendations to the relevant state authorities including His Excellency the President, the Honourable Prime Minister, the Attorney-General and Minister of Justice and Prison Reforms to enact amendments concerning the above.

Prevention

- 2.12. The OMP made a number of observations concerning legal and institutional reforms that must be implemented to prevent enforced disappearances. Deprivations of liberty are a core element of enforced disappearances and the robust implementation of a strong legal framework relating to deprivations of liberty is a critical protection measure against non-recurrence. In its Interim Report the OMP noted that there are ongoing reports of arbitrary arrests, mistreatment of detainees as well as torture and deaths in custody.
- 2.13. The OMP made recommendations to the Inspector General of Police to investigate alleged abuses of persons in detention and to ensure that due process is followed when carrying out arrests and detentions. Further recommendations were made to the Inspector General of Police to publish a full list of all detention centres as well as detainees, and to ensure that persons are not detained in any unauthorised detention centres.
- 2.14. Additionally, the OMP made recommendations to the Secretary of Defence to issue directions to the Commanders of the Sri Lanka Army, Navy and Airforce to offer their full cooperation in investigating alleged abuses of persons in detention, including allegations concerning persons in military detention. Furthermore, the OMP recommended that the security sector ensures that all detainees within their custody are granted due process, and records concerning detention are maintained in strict compliance with the law.

Counter Terrorism Bill

- 2.15. In October 2018 the government tabled a Bill titled Counter Terrorism Bill in Parliament which sought to repeal and replace the Prevention of Terrorism Act (PTA). The OMP welcomed the decision to repeal the PTA and to include a number of safeguards against arbitrary detention in the proposed Bill.
- 2.16. The conclusions and recommendations of past commissions of inquiry and Sri Lanka's status of having the world's second highest rate of reported disappearances highlights the importance of ensuring that the proposed Counter Terrorism Bill provides an appropriate balance between national security and the protection of fundamental rights.

2.17. The OMP asserts that in order to prevent enforced disappearances and reduce the incidence of missing and disappeared persons, it is critical to ensure that detainees are accounted for at all times, and a robust system of checks and balances are in place to ensure that no one agency or actor has unchecked power over them. Limiting the powers of arrest, providing for judicial oversight of detention orders, guaranteeing access to a legal representative and or family members, and excluding the possibility of secret detention are vital to ensuring the safety and security of detainees.

2.18. The OMP expressed a number of concerns to His Excellency the President and the Honourable Prime Minister and recommended that the following in respect of the Counter Terrorism Bill:

- a) Permit only Police Officers of a higher rank and the commissioned officers of a comparable rank in the Army, Navy, Air Force and CoAst Guards to arrest without warrant.¹³
- b) The authority to grant Detention Orders should not be expanded to Deputy Inspectors Generals of Police. Such powers must be vested in judicial authorities via an application by a Deputy Inspector General and in any event, should be reviewable by judicial authorities.¹⁴
- c) Relevant safeguards included in His Excellency the President's 2016 Directives on Arrest and Detention under the PTA (based on the recommendations of the HRC) be included in the Counter Terrorism Bill.¹⁵
- d) Amend section 48(1) to remove the discretion afforded to an officer in charge to ensure that a suspect has immediate access to their family and to a legal representative.¹⁶
- e) Amend section 31(6) to require that approved places of detention be gazetted at least a month prior to their use. Further, where it is determined that an existing gazetted place of detention will cease to be a place detention, the same should be gazetted within fourteen days of the determination.¹⁷
- f) Include provisions criminalising the failure to issue a notification of arrest as well as the failure to keep accurate and timely records of the detentions.¹⁸
- g) In accordance with the OMP's powers and functions¹⁹ amend section 26(3) to require the Inspector General of Police to provide information to the OMP whenever the OMP or HRC requests, and amend section 34 to permit an authorised officer of the OMP or the HRC to visit an approved place of detention.²⁰
- h) In order to ensure that the Counter Terrorism Bill is not used to clamp down on dissent, and in particular the work of families and human rights defenders, review the range of acts

¹³ See Counter Terrorism Bill, Section 17.

¹⁴ See Counter Terrorism Bill, Sections 31(1), 41.

¹⁵ See Directives Issued by His Excellency Maithripala Sirisena on Arrest and Detention Under the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (2016).

¹⁶ See Counter Terrorism Bill, Sections 48(1), 44.

¹⁷ See Counter Terrorism Bill, Section 31(6).

¹⁸ See Office on Missing Persons, Interim Report (2018), Para 47(f); Final Report of the Commission of Inquiry into Involuntary Removal or Disappearances of Persons in the Western, Southern and Sabaragamuwa Provinces, Sessional Paper No. V (1997), 114-115; Final Report of the Commission of Inquiry into Involuntary Disappearance of Certain Persons (All Island) Sessional Paper No-1 (2001), 24-25.

¹⁹ See Office on Missing Persons, Section 12 (e),(f),(g).

²⁰ See Counter Terrorism Bill, Sections 26(3), 34.

that amount to terrorism and strengthen the Bill's exclusionary clauses to ensure that all legitimate exercise of fundamental rights do not amount to acts of terrorism.²¹

- i) Limit the authority to make Prescription Orders, Restriction Orders, Curfew Orders, Orders to declare any public or private place as a Prohibited Place and Proclamations to call out armed forces by principles of necessity and proportionality.²² Ensure that the existence of one or more such orders do not limit the access of the HRC, OMP or a Magistrate to a detainee or a place of detention.

Draft Law on Inquests

2.19. In September 2018, the OMP submitted proposals to the 'Committee on Reforms to the Laws, Procedures and Practices Relating to the Conduct of Inquests of Death' initiated by the Ministry of Justice and Prison Reforms. Reforms to the Law on Inquests into Death are needed to address gaps in the legal framework concerning the handling of human remains, and to further the OMP's mandate to conduct investigations, including to assist in the identification of human remains.

2.20. The OMP stressed the importance of expediting the enactment of Laws on Inquests into Deaths and establishing protocols and standard operating procedures which will address serious lacunas in existing law and practices. The OMP made recommendations to lower the evidentiary burden for the presumption of death; for the Magistrate's Court to retain the jurisdiction for inquests into mass casualties caused by natural and manmade disasters with the option of referring the matter to the High Court where necessary; to enable the Magistrate's Court to seek the assistance of the OMP to identify unidentified human remains; and to take reasonable measures to preserve biological samples prior to inhumation.

Interim Relief

2.21. In its Interim Report, the OMP recommended that interim relief be provided to families of the missing and disappeared who are left most vulnerable as a result of their missing loved one. Such interim relief measures are intended to provide immediate assistance to families to relieve them of harms they have suffered and should be distinguished from reparations. The OMP welcomes the enactment of the Office for Reparations Act No. 34 of 2018 and reiterates the obligation of the State to provide full reparations to families of the missing and disappeared in order to remedy the violations that have been inflicted upon them.

2.22. In its Interim Report the OMP recommended that the following interim relief measures be included in the 2019 Budget:

- a) Financial aid programme: Implementation of a financial aid programme to provide a monthly living allowance of Rs. 6,000 to the surviving spouse, child/children and/or surviving parent/s of a missing or disappeared person, who has no permanent income. This will be adopted as an interim measure and will cease when final reparations are provided.

²¹ See Counter Terrorism Bill, Sections 3, 4, 5, 6(b),(d), 8,10.

²² Counter Terrorism Bill, Sections 81(1), 82(1), 83(1), 84(1), 85(1).

- b) Debt relief programme: Inclusion of the families of the missing and disappeared as a separate priority category in (a) the debt relief programme aimed at writing off debt (example: microfinance loans) valued at or below an amount determined by the Ministry of Finance; or (b) financial aid programmes and loan schemes such as ‘Enterprise Sri Lanka’ of the Ministry of Finance, aimed at achieving economic stability and self-reliance.
- c) Housing development programme: Facilitation of families of the missing and disappeared to be a separate priority category within the existing housing programmes of the Ministry of Housing; implementation of new housing programmes for the construction of permanent houses; or providing financial assistance for the completion of partially built houses.
- d) Educational support programme: Introduction of a scholarship scheme under the Ministry of Education for the children of the missing and disappeared in the form of a monthly allowance of Rs. 2,000 to cover essential educational expenses required for the completion of their primary and secondary education.
- e) Vocational training and livelihood development programmes: Introduction of technical training, and personal development courses with provision for on-the-job training.
- f) Employment quota: Introduction of an employment quota of 1% within the state sector in order to facilitate family members of the missing and disappeared who have requisite skills, when vacancies in the public and semi-governmental sectors are being filled.

2.23. The OMP initiated follow up action concerning the above recommendations with the Ministry of Public Administration Management Law and Order, the Ministry of Labour and Trade Unions, the Ministry of Education and Ministry of Housing and Construction. Further, the OMP has engaged with the Ministry of Finance and Mass Media to ensure the inclusion of the proposed interim relief measures in the 2019 Budget.

3. Investigations and Inquiries

- 3.1. The OMP has a core mandate to provide a mechanism for the search and tracing of missing and disappeared persons and to clarify the circumstances in which such persons went missing.²³ The OMP began the process of investigating and inquiring into complaints by receiving information relating to key cases; assisting the investigation of the Mannar mass grave; and processing complaints submitted to it by the MNIR.
- 3.2. Over the past eight months the OMP met with a range of stakeholders and received, reviewed and analysed information concerning a number of key cases involving missing and disappeared persons.
- 3.3. The OMP’s Interim Report noted that state actors have demonstrated a systemic inability and unwillingness to investigate and prosecute cases involving abductions and related crimes. The OMP made recommendations in its Report to expedite the process of investigating and prosecuting cases involving abductions and related crimes. Further the OMP expressed concern that some individuals suspected or accused of having committed enforced

²³ OMP Act, Section 2(a), 10(1)(a).

disappearances and related offences are being permitted to remain in positions of power – especially within the armed forces and the police – where they can influence the progress of an investigation.

- 3.4. Additionally, the OMP expressed grave concern that members of the armed forces and the police who have cooperated with ongoing investigations have been subjected to harassment.
- 3.5. Following up on the recommendations made in the Interim Report, the OMP initiated further action and requested the cooperation of the Attorney-General and Inspector General of Police to take steps to expedite investigation and prosecution of cases involving abductions. The OMP also made recommendations to the Secretary of Defence as well as the Commanders of the Sri Lanka Army, Navy and Airforce to offer their full cooperation to investigations involving abductions and related crimes. Furthermore, the OMP intervened in individual cases and made recommendations to state authorities to ensure that witnesses are neither threatened, coerced or pressurised and that the investigation and prosecution of such cases proceed unimpeded.

Mannar mass grave

- 3.6. Under its investigative powers, the OMP has the authority to apply to a Magistrate's Court to act as an observer at an exhumation or an excavation.²⁴ Further it has specific authority to make recommendations to state authorities concerning the handling of human remains, and to protect the rights and interest of missing and disappeared persons and their relatives.²⁵
- 3.7. On 25 February 2018, the Consultant Judicial Medical Officer led the process of excavating the Mannar mass grave located at the Sathosa building, Mannar town. Pursuant to its application to the Mannar Magistrate's Court, the OMP was granted permission to act as an observer at the excavation of the suspected grave site on 4 June 2018. The OMP has been observing the process of excavation since.
- 3.8. Since July 2018, the OMP has supported the costs of food and lodging of the excavation team and provided additional funds for covers to protect the grave site from the rain. In addition, the OMP has been working collaboratively with relevant authorities to ensure the grave site is investigated in a manner that ensures public confidence and trust.
- 3.9. As of December 2018, the Judicial Medical Officers have unearthed two hundred and seventy-eight skeletons, which include remains of men, women and children. Judicial Medical Officers have been gathering evidence to determine the cause of death, the contributing circumstances, and the identity of the skeletons found at the site. In order to determine which period or periods the skeletons belonged to, it was determined that bone and teeth samples should be sent for carbon dating. Carbon dating calculates the amount of Carbon-14 in bone and teeth samples and establishes the approximate time when an animal or plant was alive.
- 3.10. As part of its assistance to the Honourable Mannar Magistrate and the Judicial Medical Officers, the OMP recommended guidelines for selecting and recording the bone and teeth

²⁴ OMP Act, Section 12(d).

²⁵ OMP Act, Section 13(1)(k)(iii), 2(c).

samples as well as measures for securing the chain of custody of the samples. The process of selecting bone and teeth samples was conducted from the 18 to 20 December 2018, at the grave site, under the auspices of the Mannar Magistrate, Honourable T. Saravananaraja. OMP Commissioners Mr. Mirak Raheem and Mr. K. Venthan observed the process along with lawyers representing families of the missing and disappeared and a member from the Mannar Citizens' Committee.

- 3.11. The selected samples will be tested at a laboratory abroad and the results along with a preliminary excavation report will be submitted by the investigation team to the Mannar Magistrate.

Victim and witness protection

- 3.12. The OMP has the authority to develop and enforce a system for victim and witness protection.²⁶ It developed procedures for receiving and recording complaints from victims and witnesses and followed up on recommendations made in its Interim Report. The OMP requested the cooperation of the Attorney-General, Inspector General of Police, and Defence Secretary to take action to prevent, as well as to investigate, incidents where victims, witnesses and other justice collaborators have been threatened or intimidated.
- 3.13. The OMP made interventions to relevant authorities in individual cases where families of the missing and disappeared and civil society organisations that work on disappearances had been harassed, intimidated or threatened.
- 3.14. Further, in individual cases, the OMP made recommendations to defence authorities to take action to address possible threats to witnesses, in cases involving disappearances.

Complaints

- 3.15. The OMP is empowered to receive complaints from a relative of a missing or disappeared person, or any other person or organization relating to missing persons, irrespective of when such person may have become a missing or disappeared person.²⁷ The OMP has initiated the process of receiving new complaints as well as responding to and processing existing complaints that have been submitted to it by the MNIR.
- 3.16. In 2017, the MNIR distributed Feedback Data Sheets among the families of the missing and disappeared. The Data Sheet required a family of a missing person to provide information concerning such person, the context and circumstances in which the disappearance took place, any follow up action taken, and the nature of the assistance or remedy sought. Completed Feedback Data Sheets were forwarded to the MNIR by the respective District Secretaries with the assistance of Divisional Secretaries. A total of 14,641 files covering all the Districts were handed over to the OMP on 15 March 2018. The OMP has begun the process of responding to complaints handed over to it by the MNIR.

²⁶ OMP Act, Section 13(1)(g), 18.

²⁷ OMP Act, Section 12(a).

3.17. Additionally, the OMP has received one hundred and twenty-nine new complaints through letters, telephone calls, visits to the OMP Head Office, public meetings and through direct meetings with families of the missing and disappeared. Additionally, a number of complaints have been received through civil society organisations and lawyers assisting families to lodge their complaints with the OMP. The OMP has responded to complaints it has received and provided relevant legal advice and facilitated access to other forms of administrative assistance as necessary.

Collating existing data related to missing and disappeared persons

3.18. The OMP has the mandate to collate data related to missing and disappeared persons obtained by processes presently being carried out, or which were previously carried out by other institutions, organizations, Government Departments, Commissions of Inquiry and Special Presidential Commissions of Inquiry and centralize all available data within the database established under the Act.²⁸

3.19. The records of previous Commissions of Inquiry pertaining to involuntary removals and disappearances are stored at the DNA under the Presidential Seal for a period of thirty years. These records include documentation relating to individual cases, hand written statements and official institutional correspondence. The DNA is the legal repository of the originals of these records.

3.20. The OMP made formal requests to His Excellency the President, and the Director General of the DNA to grant access to the relevant records and to digitise them to ensure their long-term preservation.

3.21. The OMP was granted initial permission from the Presidential Secretariat to access sealed records stored at the DNA in July 2018. However, the OMP is yet to be granted formal approval to begin the process of reviewing and digitizing the relevant records.

Database

3.22. The OMP is required to create, manage and maintain a database which will include all particulars concerning missing persons²⁹ and take all necessary steps, including technical safeguards to ensure the security of all its databases and data.³⁰

3.23. The OMP has created a temporary database and has begun the process of consolidating different types of data collected from complainants and the families of the missing and disappeared. This includes personal data concerning the missing or disappeared person and the complainant, details of the disappearance and alleged perpetrators. The temporary database provides a registry of information concerning missing persons, events and gravesites, with the long-term objective of facilitating the investigative and tracing function of the OMP.

²⁸ OMP Act, Section 10(1)(e).

²⁹ OMP Act, Section 13(1)(h).

³⁰ OMP Act, Section 15(3).

3.24. The OMP recruited six Data Entry Operators who are proficient in Sinhala, Tamil and English in October 2018 and provided three training sessions in the successive months. Since November 2018, the Data Entry Operators have entered data from complaints submitted to the OMP from MNIR. As of 31 December 2018, 440 files have been processed by the OMP.

4. Institutional Development

4.1. A significant challenge that required the immediate attention of the OMP over the past year was to operationalise the office by securing a physical premise, recruiting permanent staff, establish its organisational structure and developing its internal rules and procedures. In the course of setting up its internal rules, procedures and operations it was necessary to ensure that as per the OMP's mandate, the OMP upheld the principles of psychosocial responsiveness.

Establishing physical premises and staff recruitment

4.2. On 15 March 2018, Mr. M. I. M. Rafeek was appointed as the Secretary of the OMP. The first board meeting including all seven Commissioners and the Secretary was held at the SCRM on 13 March 2018. The Board has held ten meetings as of 31 December 2018 and thirty-seven meetings among the Commissioners.

4.3. Under the OMP Act, in order for the OMP to be operationalised it was necessary for the relevant Minister to appoint a date published by order in the Gazette.³¹ Therefore, it was necessary for the OMP to be gazetted under a specific ministry. As ministries and subjects attached to them frequently changed over the past eight months, there were periods when the OMP did not have a responsible line ministry, thwarting its ability to access funds. At the outset the OMP was gazetted under the MNIR.³² In May 2018, the OMP was then gazetted under the State Ministry of National Unity and Co-Existence.³³ In December 2018, the OMP was once again gazetted under the Ministry of National Reconciliation, Integration and Official Languages.³⁴

4.4. In March 2018, the OMP established its temporary office at the MNIR at No. 34, Narahenpita Road, Nawala.

4.5. On 15 November 2018, the OMP moved to a new address to "Srawasthi" No. 32, Sir Marcus Fernando Mawatha, Colombo 7. The complex was allocated to the OMP by the Honourable Speaker, Karu Jayasuriya, as Srawasthi is under the purview of the Parliament.

4.6. Throughout its first year, the OMP devoted significant resources to recruit necessary staff with relevant skills and experience. Obtaining approvals from state authorities to recruit persons at appropriate levels of seniority and at competitive rates of remuneration has been a key challenge.

³¹ OMP Act, Section 1(2)

³² Gazette 2036/21, 12th September 2017.

³³ Gazette 2073/19, 31st May 2018.

³⁴ Gazette 2103/33, 28th December 2018.

- 4.7. From March to June 2018, the OMP conducted its operations with only two officers, one trainee and one office aide. On 29 March 2018, the Department of Management Services approved twenty-eight positions for the OMP. In April 2018 twenty-seven of these positions were advertised including Assistant Director of Administration, Media Officer, Research and Support Officer, six Management Assistants, six Data Entry Operators, one Translator /Interpreter, and three Office Aides. The process of shortlisting candidates and conducting interviews was overseen by commissioners nominated by the Chairperson, Mr. Saliya Pieris.
- 4.8. During the months of March and June 2018 owing to a lack of personnel, all expenditure of the OMP was administered by the accountant of the MNIR.³⁵ A Director of Finance and Procurement for the OMP was appointed on the 5 June 2018, and since then all expenditure has been internally processed. Further, in June 2018 the OMP appointed a Director of Administration to oversee its internal operations.
- 4.9. Following several rounds of correspondence with the Ministry of Finance and Mass Media and the Department of National Budget from August to October 2018, the Director Budget approved four vehicles for the OMP. The Ministry of National Integration, Reconciliation and Official Languages initiated the process of leasing vehicles for the OMP's use. In September 2018, the OMP advertised, interviewed and selected drivers; however, final appointments were not made as the OMP is not yet in possession of any vehicles.
- 4.10. In the long-term, in addition to the Head Office in Colombo, the OMP proposes to establish four regional offices and eight sub-regional offices. In order to operationalise all its offices, the OMP requires two hundred and fifty-four permanent staff. In the Interim Report the OMP proposed to establish its Matara and Mannar offices by the end of 2018. The OMP advertised for suitable office spaces for its regional offices and carried out visits to assess the suitability of spaces for this purpose. Further in August 2018, the OMP requested approvals for recruiting twenty-five staff positions from the DMS. These twenty-five positions included eighteen positions for two regional offices in Matara and Mannar.
- 4.11. The DMS granted approval for the twenty-five positions subject to approval of Schemes of Recruitment, which sets out the position title, salary and service category. The OMP expressed its concerns about the terms proposed for select positions to the DMS on 27 August 2018.
- 4.12. Requests to fill the two hundred and twenty-nine positions were sent to the DMS on the 26 September 2018. The remaining twenty-five positions were re-sent in December 2018. Between September and December 2018, the OMP had five meetings with the DMS to address outstanding issues concerning the requests for approval of staff recruitment.
- 4.13. As of 31 December 2018, out of two hundred and fifty-four positions requested, the OMP has received approval for fifty-six positions. The OMP continues to engage with the DMS with a view to secure approval for outstanding staff positions.

³⁵ Gazette 2073/19, 31st May 2018.

Development of procedures and rules

- 4.14. The OMP has an explicit authority to develop rules and procedures for its effective functioning.³⁶ The OMP initiated the process of developing rules to guide the exercise of its functions and powers including the rules for the Board, a code of conduct for the Commissioners, guidelines for securing confidentiality of information, a procedure for receiving new complaints relating to missing and disappeared persons, a procedure for receiving and recording complaints from victims and witnesses, and guidelines for searching places of detention.

Psychosocial support

- 4.15. The OMP has an explicit mandate to provide or facilitate administrative or welfare services and when required, psychosocial support to relatives of missing and disappeared persons.³⁷ The psychosocial support services of the OMP seeks to integrate psychosocial responsiveness into the systems and functioning of the OMP, and facilitate the organization's capacity to address psychosocial issues facing families of missing and disappeared persons. Psychosocial support services form a core component of the OMP's mandate to enhance the well-being of families of missing persons and uphold their rights and dignity.
- 4.16. Families of the missing and disappeared face the challenge of seeking the truth about what happened to their family members and the psychological effects of living with unresolved loss. Simultaneously, they experience a range of psychosocial issues, such as adapting to uncertainties concerning family and social roles and responsibilities; economic problems; social stigma and marginalization and sexual harassment and exploitation. Whilst the need to know what happened to their missing or disappeared family member is often their foremost priority, the families also need support to address basic issues that affect their daily lives.
- 4.17. The psychosocial support team has initiated a process to develop a strategy to integrate psychosocial responsiveness in the operationalizing of the OMP. The three-pronged strategy focuses on a) strengthening the internal capacity of the OMP to effectively recognize and respond to psychosocial concerns of families of missing persons and safeguard staff wellbeing; b) through referrals, facilitate focused therapeutic and other psychosocial care to members of families of missing and disappeared persons whose wellbeing is critically affected; and c) enable wider policy and social environment to recognize the challenges of living with uncertainties around missing and disappeared loved ones. The latter also looks at promoting favourable policies and community support to families of missing and disappeared persons.
- 4.18. The psychosocial support team drafted a workplan to develop staff capacity on psychosocial responsiveness, and two workshops were conducted in October and November 2018. The first workshop was a general awareness raising for staff on dimensions of psychosocial well-being and how these insights can help in interactions with families of missing and disappeared persons. The second workshop was conducted for the Data Entry Operators of the OMP. It focused on supporting the team to deal with stress that may arise from processing distressing information and how self and team care can help in managing such challenges.

³⁶ OMP Act, Section 11(b), 26.

³⁷ OMP Act, Section 13(1)(e).

4.19. Supporting other units to enhance psychosocial sensitivity in their work is a significant component of the psychosocial support services of the OMP. Among such support was the assistance given to designing the communications campaign to raise public awareness of the OMP, and support given to the Legal Unit to incorporate psychosocial considerations in their interaction with families of missing and disappeared persons.

Capacity building and knowledge sharing

4.20. The OMP participated in a range of meetings with national and international stakeholders with expertise and knowledge in investigations into missing and disappeared persons and human remains, transitional justice, archiving and database management. The OMP had a number of meetings with international and national stakeholders and experts on thematic issues with a view to obtain advice that could inform the OMP's own work.

4.21. Among national stakeholders, the OMP had meetings with the Presidential Secretariat, the Office of the Honourable Prime Minister, the Office of the Honourable Speaker, State Ministry of National Unity and Co-Existence, the SCRM, Judicial Medical Officers, the Ministry of Finance and Mass Media, the Department of Government Information and District Secretariats.

4.22. The OMP engaged in technical cooperation with the ICRC and UNDP and obtained advice from institutions with similar mandates to the OMP in Cyprus, Bosnia and Herzegovina and Guatemala. The OMP also met with a number of foreign missions including the Embassy of the United States, the Embassy of Switzerland, the High Commission of the United Kingdom, Embassy of Canada, the High Commission of Australia, and the Delegation of the European Union.

4.23. The OMP held an internal workshop for all staff at Hotel Janaki in Colombo, on 20 October 2018. The workshop sought to raise awareness of the OMP's mandate and work among staff, and to receive feedback on the OMP's work from its staff.

4.24. Additionally, the Chairperson, Commissioners and Officers of the OMP participated in the following events.

Date	Event
17 - 19 March 2018	The Chairperson and Commissioners participated in a workshop organized by the SCRM.
21 April 2018	Commissioners Mr. Mirak Raheem, Major General (Retired) Mohanti Peiris and Chairperson Mr. Saliya Pieris represented the OMP at a meeting convened by the ICRC on the Draft Law on Inquests on Deaths attended by the Ministry of Justice and Prison Reforms, College of Forensic Pathologists of Sri Lanka, Judges of the Hight Court, and Judicial Medical Officers.
5 May 2018	Commissioner Mr. Mirak Raheem delivered a presentation on the OMP at a transitional justice training programme for the staff of the Human Rights Commission of Sri Lanka.

26 June to 4 July 2018	Commissioners Major General (Retired) Mohanti Peiris and Ms. Punniyamoorthy Jeyatheepa participated in a course titled “Dealing with the Past” for policy makers and professionals organized by the Swiss Federal Department of Foreign Affairs in collaboration with Swiss Peace, in Munchenwiler, Switzerland. Commissioner Peiris provided a brief presentation on the OMP relating to its establishment, constitution, composition, mandate and powers.
29 June 2018	Commissioner Mr. Mirak Raheem delivered a lecture on the role of the OMP to the 2018 batch of cadets of the Sri Lanka Foreign Service, as part of their induction course held at the Bandaranaike International Diplomatic Training Institute.
2 - 10 July 2018	Commissioners Mr. K. Venthen, Mr. Mirak Raheem, Mr. S. K. Liyanage and Dr. Nimalka Fernando travelled to Cyprus for a study tour of the Committee on Missing Persons in Cyprus.
21 - 22 July 2018	The Chairperson Mr. Saliya Pieris addressed senior officers of the Attorney-General’s Department and media personnel at a workshop conducted by SCRM in Panadura.
24 July 2018	Commissioner Mr. Mirak Raheem delivered a presentation on the OMP and challenges it faces to a group of Afghan civil society stakeholders.
15 August 2018	Commissioner Dr. Nimalka Fernando delivered a presentation at a workshop on the OMP and the Office for Reparations organized by the Centre for Equality and Justice
23 August 2018	Commissioner Dr. Nimalka Fernando represented the OMP at an event in Colombo, hosted by the Rotary Peace Centre, Chulangkorn University.
13 September 2018	Commissioner Ms. Punniyamoorthy Jeyatheepa delivered a presentation on the OMP’s mandate at an event attended by Sinhala, Tamil and Muslim families.
21 September 2018	Commissioners Ms. Punniyamoorthy Jeyatheepa and Mr. S. K. Liyanage participated at a meeting held in Kurunagala to raise awareness of the OMP’s mandate and work among families of the missing and disappeared.
26 September 2018	Commissioner Mr. Mirak Raheem represented the OMP at a workshop on identification of human remains organised by the ICRC in Colombo.
2 October 2018	Commissioner Dr. Nimalka Fernando delivered a presentation at a workshop on stakeholder dialogue on zero tolerance for sexual exploitations and sexual bribery of women in Sri Lanka, held in Colombo.
3 - 5 October 2018	The Chairperson Mr. Saliya Pieris participated at the International Conference on Integrated Actions towards clarification of the Fate and Whereabouts of the Missing Persons and Support to their Families, in Ukraine, organized by the ICRC.
12 - 15 October 2018	Commissioners Ms. Punniyamoorthy Jeyatheepa. Mr. K. Venthan and Mr. Mirak Raheem participated at a three-day workshop in Batticaloa to discuss strategies for psychosocial responsiveness of the OMP with civil society stakeholders and families of the missing and disappeared.

23 - 26 October 2018	Commissioner Mr. K. Venthan and Media Officer, Mr. P. Rudrakumar participated at a workshop concerning the multi-ministerial Reconciliation Action Plan (RAP) 2019 of the Government of Sri Lanka in Beruwala.
27 October 2018	Chairperson Mr. Saliya Pieris and Commissioners Mr. Mirak Raheem and Mr. S. K. Liyanage attended the National Commemoration for the Disappeared, organised by the Families of the Disappeared in Seeduwa. Chairperson Mr. Saliya Pieris also delivered special remarks at the event.
29 October 2018	Commissioner Mr. Mirak Raheem delivered a presentation at a panel discussion on human rights awareness for journalists, organized by the Human Rights Commission in Colombo.
1 November 2018	Commissioner Ms. Punniyamoorthy Jeyatheepa participated in a workshop on Gender Sensitive Transitional Justice Processes held in Colombo.
10 November 2018	Commissioner Dr. Nimalka Fernando delivered a presentation on the OMP's mandate and challenges ahead, at a workshop organized by Women Affected by War, a platform convened by parents of soldiers missing in action.
19 - 23 November 2018	Chairperson Mr. Saliya Pieris and Commissioners Ms. Jeyadeepa Punniyamoorthi and Major General (Retired) Mohanti Peiris attended a study tour in Cyprus organised by the ICRC.
7 December 2018	Commissioner Dr. Nimalka Fernando delivered a presentation on the mandate and challenges faced by the OMP at a training session convened by the National Peace Council to raise awareness among law students.
11 December 2018	Commissioner Ms. Punniyamoorthy Jeyatheepa delivered a presentation on the OMP's mandate at a transitional justice workshop held in Ampara. The workshop was attended by women who are working with victims of the civil war and are seeking to create linkages among Sinhala, Tamil and Muslim families across villages in Batticaloa and Ampara.

5. Outreach

5.1. The OMP has a mandate to create public awareness of the causes, incidence and effects of missing and disappeared persons and create public support to fulfil the needs of their relatives.³⁸ The outreach unit aims to raise awareness of the OMP's mandate and work among families of the missing and disappeared and the general public. To this end the OMP held a number of public events, media engagements, launched media campaigns and established a digital presence.

Public Events

³⁸ OMP Act, Section 13 (j).

5.2. As part of its efforts to engage with the public and the families of missing and disappeared persons, the OMP held seven public meetings across the country in Mannar, Matara, Mullaitivu, Trincomalee, Jaffna, Killinochchi and Colombo. Each event was attended by families of the missing and disappeared, civil society organisations, and journalists from print and broadcast media organisations. The details of each event are presented below.

Date	District	Family members of the missing and disappeared	Journalists and civil society organizations
11 - 12 May 2018	Mannar	300	24 members from civil society organisations were present.
19 May 2018	Matara	100	23 members from civil society were present. Media personnel representing the following organizations were in attendance: news.lk, Virakesari, IBC Tamil, Hiru News, Shakthi TV, Al-Jazeera
1 - 2 June 2018	Mullaitivu	40	16 members from civil society organizations were present. Media personnel representing the following organizations were in attendance: ITN, Research Forum, Media SCRM, CRD, Derana, Athavan TV, News 1 st , Youth FM
12 - 13 June 2018	Tincomalee	760	38 members from civil society organizations were present. Media personnel representing the following organizations were in attendance: Lakehouse, Lankadeepa, Information Department, Shakthi TV, BBC, Rupawahini, Thinakural.
14 July 2018	Jaffna	746	18 members of civil society were present. Media personnel representing the following organizations were in attendance: Danto, Kalaikathir, Vasantham, Thinakaran, Vidivelli, Shakthi FM, News 1 st .
15 July 2018	Killinochchi	20	13 members of civil society organizations were present. Media personnel representing the following organizations were in attendance: Capital, Udayan, DLD TV, ITN, Virakesari, Lanka Siri, Wassantham, News 1 st , News 1 st (FM).

Engagements with the media

5.3. The OMP released the following press releases in 2018

Date	Subject
22 May 2018	Mulaitivu District regional meeting
06 June 2018	Trincomalee District regional meeting
04 July 2018	Jaffna, Kilinochchi Districts regional meeting
16 August 2018	International Day on Disappeared Commemoration
28 December 2018	Office on Missing Persons assists investigation of human remains at the Mannar mass grave

5.4. The OMP conducted the following media engagements.

Date	Event
20 March 2018	Chairperson Mr. Saliya Pieris conducted an interview with the Daily Mirror newspaper.
30 March 2018	Chairperson Mr. Saliya Pieris conducted an interview with the Daily News newspaper
30 March 2018	Commissioner Mr. S K Liyanage conducted an interview with Rasa newspaper.
29 April 2018	Chairperson Mr. Saliya Pieris conducted an interview with Anidda newspaper.
22 July 2018	Chairperson Mr. Saliya Pieris conducted an interview with the Virakesari newspaper
17 August 2018	Commissioner Mr. S. K. Liyanage conducted an interview with the Anidda newspaper
23 August 2018	The Chairperson and the Commissioners participated in a public press conference at the Department of Information.
27 August 2018	Commissioner Mr. S. K. Liyanage conducted an interview with the Thinamina newspaper
31 August 2018	Commissioner Mr. Mirak Raheem conducted an interview with The Daily Mirror newspaper

Communications campaign

5.5. The OMP conducted a communications campaign seeking to raise awareness of Sri Lanka's history of enforced disappearances around the International Day of the Disappeared in print media. The advertisements were printed in Sinhala, Tamil and English in the following ten newspapers: Daily News, Ravaya, Lankadeepa, Anidda, Virakesari, Uthayan, Valampuri, Daily Mirror, Thinakaran and Dinamina.

5.6. The OMP designed and developed a communications campaign to be disseminated via digital media, radio and television. Five advertisements have been produced in Sinhala, Tamil and English to raise public awareness of the OMP's mandate. The advertisements are expected to

be aired from 5 January 2019 to 28 February 2018 which marks a year since the establishment of the OMP.

Digital presence

- 5.7. The OMP established a digital presence on Twitter on 24 June 2018 and on Facebook on 23 of October. As of 31 December 2018 the OMP had 233 followers on Facebook and 870 followers on Twitter.
- 5.8. The OMP is in the process of developing its website and it is expected that the site will be operational in the first quarter of 2019.

6. Commemoration and Memorialisation

- 6.1. The OMP has authority to take steps towards creating public support for fulfilling the needs of relatives of missing and disappeared persons and to make recommendations concerning commemoration and acknowledgement.³⁹
- 6.2. On 30 August 2018, the OMP hosted an event at the J. R. Jayawardena Centre in Colombo, to commemorate the International Day of Enforced Disappearances. The event marked the first time a Sri Lankan State institution commemorated the missing and disappeared. Civil society organisations from across the country, families of missing and disappeared persons, members of the diplomatic community, Members of Parliament, and religious dignitaries attended the event.
- 6.3. Chairperson of the Human Rights Commission, Dr. Deepika Udagama delivered the key note address. M. Shain Shaibunnisha, a family member from Puttalam, Visaka Dharmadasa, mother of a soldier missing in action, Yogendran Veena a family member from Batticaloa and Anula Ariyavathi, a family member from Matara, spoke about their experiences, their advocacy on behalf of missing and disappeared persons and their expectations and hopes for the OMP.
- 6.4. Prior to the event, civil society organisations representing missing and disappeared persons organised a march from Viharamadevi Park to the J. R. Jayawardena Centre via Lipton Circle to raise awareness of widespread of enforced disappearances in Sri Lanka among the general public.
- 6.5. Further, in its Interim Report, in recognition of the long-term marginalisation of families of the missing and disappeared, the OMP made a number of recommendations in relation to memorialisation including to designate a National Day for the Disappeared; restore the “Ahinsakaramaya” – Memorial for Innocents in Battaramulla; and preserve mass grave sites as memorial spaces.

³⁹ OMP Act, Section 13(1)(j),(k)(ii).

7. Finance

EXPENDITURE REPORT **1 July 2018 to 31 December 2018**

The OMP was established in February 2018 and MNIR administered the accounts of the OMP until July 2018. The Finance and Procurement Division of the OMP began administering the OMP's finances in July 2018.

(All figures are in Sri Lankan Rupees)

	Description	Total (in LKR)
1	Fixed Assets	7,718,695.00
2	Personal Emoluments	14,504,943.00
3	Excavations and Identification of mass graves	1,487,545.00
4	Communications	1,094,518.21
5	Outreach Programmes	2,776,290.61
6	Staff Training	95,750.00
7	Transport Charges	537,281.00
8	Foreign Travel	335,585.00
9	Building Maintenance	835,320.00
10	In-house Meetings	185,846.00
11	Supplies	839,386.18
12	Other Services	38,840.00
	TOTAL	LKR 30,450,000.00

Quarterly Expenditure Report from 1 July 2018 to 31 December 2018

(All figures are in Sri Lankan Rupees)

No	Description	July-September	October-December	Total (in LKR)
1	Fixed Assets	196,533.00	7,522,162.00	7,718,695.00
2	Personal Emoluments	7,760,676.00	6,744,267.00	14,504,943.00
3	Excavations and Identification of mass graves	576,785.00	910,760.00	1,487,545.00
4	Communications	691,648.00	402,870.21	1,094,518.21
5	Outreach Programmes	2,425,090.61	351,200.00	2,776,290.61
6	Staff Training	45,000.00	50,750.00	95,750.00
7	Transport Charges	198,300.00	338,981.00	537,281.00
8	Foreign Travel		335,585.00	335,585.00
9	Building Maintenance	236,330.00	598,990.00	835,320.00
10	In-house Meetings	53,030.00	132,816.00	185,846.00
11	Supplies	298,812.79	540,573.39	839,386.18
12	Other Services	10,750.00	28,090.00	38,840.00
	TOTAL			LKR 30,450,000.00

Annex A
Interim Report



THE OFFICE ON MISSING PERSONS

INTERIM REPORT

AUGUST 2018

Interim Report

Executive Summary	3
1. On-going Activities of the OMP	4
2. Challenges	6
3. The Responsibility of the State to Ensure Justice	8
4. The Responsibility of the State to Provide Reparations.....	12
5. Urgent Recommendations.....	13
5.1. Interim Relief Proposals.....	14
5.2. Justice Related Recommendations.....	15

Executive Summary

The establishment of the Office on Missing Persons (OMP) marks a significant milestone in the efforts of the Government of Sri Lanka to address the issues of the missing and the disappeared. Established under the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act No. 14 of 2016 as an independent commission, the OMP's objectives are to trace and search for the missing, make recommendations towards non-recurrence, ensure the protection of the rights of the missing, the disappeared and their relatives, and to identify proper avenues of redress.

With the appointment of the OMP Commissioners in February 2018, the operationalisation of the Office commenced. The process of operationalisation includes designing and setting up units and regional offices, hiring staff, and developing policies, rules and procedures. The OMP also engaged in public consultations with the families of victims and held confidential meetings when requested by affected families. In order to secure expert knowledge required to perform specialised tasks, such as forensics, legal and archiving of data, the OMP consulted with national and international organisations and experts, and also established key relationships with several government bodies and international organisations. Furthermore, the OMP is engaged in inquiries on specific cases, supporting the ongoing excavation and exhumation of a mass grave in Mannar, consolidating existing records of missing persons and preparing recommendations and clarifications on legal issues affecting victims and families.

The challenges faced by the OMP are many and need to be balanced with the urgency of the needs of families of victims enduring years of physical and mental suffering. The failure of successive state institutions to provide families with truth, justice and reparations has created a deep distrust of the State and by extension the OMP. The OMP recognises the multiple needs and positions of various families and the importance of securing their trust.

For the OMP to be effective, it requires the active cooperation of other arms of the State. The harms suffered as a result of the violation of the rights of the missing and disappeared need to be addressed through reparations. Therefore, the enactment of a bill for a credible and effective Office for Reparations is vital. The OMP, however, recognises the urgency of the needs where families have become destitute due to the disappearance of a family's sole or primary breadwinner. Hence the OMP identifies the provision of interim relief to families of victims as a priority and is recommending a number of such measures. It is duly noted that interim relief in the form of welfare or other measures does not amount to reparations. Victims retain their right to reparations even if they accept interim relief from the State.

The OMP also recognises the critical need for justice to address the issue of the missing and disappeared. The OMP welcomes the enactment of the International Convention for the Protection of All Persons from Enforced Disappearances Act No. 5 of 2018 (The Enforced Disappearances Act) as it criminalises enforced disappearances and reinforces the State's obligation set out in the Constitution and according to national laws. However, incorporation of the crime of enforced disappearances into domestic law remains inadequate. The OMP, whilst noting multiple areas for reform with regard to justice, makes recommendations to address urgent issues where there is credible evidence of violations and specific hurdles in pursuit of justice, including incidents of intimidation and harassment of families, activists and lawyers working on human rights issues.

1. On-going Activities of the OMP

1. On the 28th of February 2018, His Excellency President Maithripala Sirisena handed over the letters of appointment to the Chairperson and the members of the OMP. Over the course of six months the OMP has engaged in a range of activities to fulfil its mandate, establish structures and processes required to carry out its key functions, and implement measures that seek to provide recourse for victims and families of the missing and the disappeared.
2. The Act establishing the OMP - Office on Missing Persons (Establishment, Administration and Discharge of Functions) (OMP Act) No. 14 of 2016 - outlines four main functions of the Office: 1) to search for and trace missing persons and to clarify the circumstances in which such persons went missing and their fate; 2) to make recommendations to the relevant authorities in order to reduce incidents of the missing and the disappeared persons and to ensure non-recurrence; 3) to protect the rights and interests of missing persons and their relatives and 4) to identify proper avenues of redress.
3. The OMP Act establishes a permanent office and defines a missing person as someone “*whose fate or whereabouts are reasonably believed to be unknown and which person is reasonably believed to be unaccounted for and missing*” in contexts including the war, political or civil disturbances and enforced disappearances and includes the missing in action of the armed forces and the police.¹
4. The OMP’s operations are guided by the Constitution of the Democratic Socialist Republic of Sri Lanka, the OMP Act, Sri Lanka’s domestic laws and other relevant international legal obligations.

Operationalising the Office

5. An immediate task of the members of the OMP has been to operationalise the Office. Whilst designing the separate units for carrying out its mandate, the OMP is currently engaged in developing codes of conduct, guidelines, rules and procedures so as to ensure victim-centric, responsive and effective assistance. For this process of conceptualisation and operationalisation, the OMP has relied on the OMP Act, the recommendations of previous commissions, including the Consultation Task Force on Reconciliation Mechanisms (CTF), and consultations, as outlined below, whilst consulting relevant national and international laws. The OMP has hired temporary staff and is in the process of securing approval from the Government for its

¹ The Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act No. 14 of 2016 (**The Office on Missing Persons Act**), section 27 lists out three contexts “i) in the course of, consequent to, or in connection with the conflict which took place in the Northern and Eastern Provinces or its aftermath, or is a member of the armed forces or police who is identified as “missing in action;” or ii) in connection with political unrest or civil disturbances; or iii) as an enforced disappearance as defined in the “International Convention on Enforced Disappearances.””

permanent staff cadre. It is temporarily housed at No. 34, Narahenpita Road, Nawala and is presently making arrangements to establish its permanent head office in Colombo. In order to ensure greater access for families across the country, the OMP will set up twelve offices in the regions. The first two offices located in Mannar and Matara will be functional before the end of the year.

Consultations with and outreach to victims

6. Consultations proved to be a vital tool used by the OMP in the initial stages of the design process. The OMP held six public meetings across the country—in Mannar, Matara, Mullaitivu, Trincomalee, Jaffna and Killinochchi with a total of 2,147 persons. In addition, the OMP met with families of the disappeared who sought meetings with the Chairperson and Members of the OMP in Colombo. These meetings provided the OMP an opportunity to increase awareness of the Office, its proposed activities and receive feedback. Direct engagement with families also afforded the opportunity to listen to the narratives of families from all ethnicities and to understand and appreciate the extent of suffering caused to all who experienced the trauma of a missing loved one as well as the diversity of viewpoints, needs and interests even within the same community or region.
7. Families and civil society representatives in the districts made a number of recommendations that the OMP will take forward, including the use of mobile offices for more remote areas, prioritisation of the cases of persons who have reported to have surrendered to the military in May 2009 and then disappeared, and the need for immediate relief.

Consultations and collaborations with local and international organisations and state agencies

8. The OMP held bilateral and collective meetings with national and international organisations and individuals with expertise and knowledge in tracing, excavation and exhumation, forensics, genetics, psychosocial support, legal affairs, documentation, database management and archiving. The OMP sought out the experiences, views, learnings and suggestions, particularly from international institutions—both state and non-state—tasked with carrying out similar functions as the OMP. The Office has also established working relationships with some of these organisations. Constructive relationships both within the government and outside, including the Presidential Secretariat, the Prime Minister's Office, Speaker's Office, the State Ministry of National Unity and Coexistence, the Secretariat for Coordinating Reconciliation Mechanisms (SCRM), Judicial Medical Officers and Department of Government Information, in addition to District Secretariats, which hosted public meetings for the OMP, have all proved vital to the work of the Office.

Investigation and tracing

9. In the past few months, the OMP has initiated measures in relation to its primary task of investigation and tracing, taking preliminary steps to ensure that the rights and

interests of the victims are protected, including to carry out inquiries with relevant authorities on specific cases. In particular, the OMP has supported the excavation and exhumation work in the Mannar Mass Grave at the Sathosa building including by providing financial assistance. The OMP will continue to support and engage with the investigation in order to ensure the integrity, as well as uninterrupted and transparent continuation of the process.

Legal and policy interventions

10. The OMP has also intervened in order to provide input into on-going legal and policy reforms and is undertaking steps to ensure greater understanding of these laws and policies so that families of the missing and the disappeared are not further inconvenienced. Amongst such legal reforms to which the OMP is in the process of making recommendations is the proposed law pertaining to inquests into sudden deaths and the issues surrounding Certificates of Absence (CoA).

Creating a list of the missing and the disappeared

11. The OMP recognises the vital importance of multiple lists of the missing and the disappeared compiled by state agencies, commissions and civil society. At present there is no one accepted statistic for the total number of the missing and the disappeared in Sri Lanka. The Office thus will take on the critical role of compiling these records and developing a centralised list for its work and the interventions of other agencies and institutions. The OMP is currently in the process of consolidating existing records, including those from previous commissions of inquiry.

2. Challenges

Over the course of the past six months the OMP has faced the following challenges:

Polarized context

12. The operationalisation of the OMP is taking place in a polarised context where even the need to address the issue of the missing and the disappeared is questioned by segments of society. On the one hand, the debate on the need to address disappearances as a result of the war and the need for an institution such as the OMP, and on the other, the historic failure of local mechanisms and the lack of commitment on the part of the State to address disappearances and transitional justice, presents a particularly difficult context for the OMP. The OMP recognises the importance of establishing an independent and credible institution whilst in parallel encouraging the Government to address related issues of justice, truth seeking, reparations and institutional reforms, and establish specific mechanisms as it has committed to do so.²

² Human Rights Council, 30/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka, UN Doc. A/HRC/RES/30/1 (14 October 2015). (**Human Rights Council Resolution 30/1**)

Distrust and scepticism among families and civil society

13. The OMP has found it particularly challenging to secure the confidence and trust of the relatives of victims, mainly with respect to viewing the OMP as an effective, independent and credible national mechanism. The deep cynicism, especially amongst some families of victims, about the ability and willingness of state institutions to provide remedies for human rights violations has a direct impact on the OMP. This cynicism is based on the past experiences of the families of victims.
14. The OMP has encountered mixed responses during initial consultations. Some families expressed deep scepticism and distrust of the OMP and conducted protests outside the OMP's public meetings, whilst others were more hopeful and positive. Still others, whilst expressing reservations, have sought to engage with the OMP. Many see the OMP as yet another state institution that they need to work with as they have no other option. The OMP has also received complaints from civil society and families in the affected areas about how protestors have sought to thwart their access to the OMP's public meetings. The OMP reiterates the importance of respecting the rights of all families, such as their right to make their own decisions, including to or not to engage with the OMP.
15. The Commissioners acknowledge the suffering and the long struggle endured by these families in searching for their missing loved ones and are deeply humbled by the courage and determination demonstrated by the families.
16. Amongst the thousands of families, the OMP recognises the diversity of affected families and their needs and opinions. The Office remains committed to engaging with all affected families, including those who staged and may continue to stage protests, and civil society actors in order to take advice, secure their valuable information and to ensure that the rights of all those affected are protected.

Lack of awareness

17. The OMP is aware of a range of misperceptions being perpetuated about the Office and its mandate. These include the myth that it excludes specific groups of the disappeared and that it is a judicial mechanism. The existence of the OMP is not understood or even known among some families and state officials. In order to counter these misperceptions and to increase general awareness about the OMP and its role, the Office is in the process of developing and implementing a communications and outreach strategy.

Administrative challenges

18. The OMP has faced a number of administrative challenges that have resulted in delays and created additional work. An unexpected issue is the lack of recognition of its status as an independent commission on the part of some key state authorities, necessitating clarification and resulting in delays. Similar to other independent commissions established under the 19th Amendment to the Constitution, the

remuneration to the Chairperson and Commissioners of the OMP require approval from Parliament. The process of seeking approvals for staff recruitment and procurement have proved to be challenging, time consuming and have acted as a serious hurdle for swift operationalising of the OMP. The support, cooperation and active assistance of state agencies and the recognition of the OMP as an independent commission similar to those established under the Constitution and other laws is vital to the effective functioning of the OMP.

Continuing incidents of harassment and violence

19. The OMP notes with deep concern the multiple forms of harassment experienced by families of the missing and the disappeared. Past commissions of inquiry, as well as the CTF, have reported the incidence of sexual harassment and bribery, where female relatives were asked for sexual favours in exchange for information about their missing relative as well as for the provision of basic administrative services. The OMP notes with grave concern the attacks by unidentified persons on Ms. Amitha Priyanthi on the 6th of July 2018 near Aluthgama and on Ms. Srishobana Yogalingam on the 14th of July 2018 in Vaddukodai, Jaffna. Such acts of intimidation or reprisal aimed at complainants, witnesses, relatives of the disappeared person or their defence counsel or persons conducting investigations are a serious threat to justice and undermine public confidence in the State.

Urgency and complexity of tasks

20. The delays by the State in dealing with fundamental issues relating to disappearances as well as the expectations and situations of affected families serve as a reminder of the need to expedite the implementation of the OMP Act. However, the OMP recognises that carefully considered and informed action is needed to ensure effective and sensitive processes and structures are put in place to avoid further disappointment and suffering for the families. The experiences of similar institutions in other global contexts mandated to trace and investigate the whereabouts of the missing and the disappeared also highlight the time, often years, required to carry out this work. Whilst noting the complexity of the tasks, the OMP is focussed on ensuring immediate steps in the interim whilst committing itself to creating durable and credible structures and processes.

Loss of vital evidence

21. It has been brought to the OMP's attention that in specific sites vital evidence—including human remains, found during construction, agricultural work, excavation and other activities—is not being reported to the police and relevant authorities. Both the general public and state authorities need to act proactively on this issue.

3. The Responsibility of the State to Ensure Justice

22. The OMP believes the obligation to provide justice is central to addressing the rights and needs of the missing and the disappeared. Bringing perpetrators of enforced

disappearances to justice is not just an essential component of providing remedies to victims and their families but is important for society at large as it can challenge the systemic impunity which facilitated the crime of disappearance. The obligation to provide justice is reinforced by Sri Lanka's Constitution,³ national laws⁴ and international law, including the Convention on Enforced Disappearances.⁵ Previous commissions of inquiry as well as the CTF have recommended the investigation and prosecution of enforced disappearances and related human rights violations.⁶ Whilst the OMP is not empowered to prosecute alleged perpetrators of enforced disappearances, the Office is bound to investigate reports of missing and disappeared persons, and to refer instances where it appears that an offence has been committed, to law enforcement and prosecuting authorities.⁷

Enforced Disappearances Act

23. Sri Lanka signed the International Convention for the Protection of All Persons from Enforced Disappearances (the Convention) on the 10th of December 2017. This year's international day to commemorate victims of enforced disappearances, which falls on the 30th of August, is especially significant for Sri Lanka, as it marks the first commemoration of this day since Sri Lanka ratified the Convention.
24. The obligations under the Convention were incorporated into domestic law through the enactment of the International Convention for the Protection of All Persons from Enforced Disappearances Act No. 5 of 2018 (The Enforced Disappearances Act). The core obligations imposed by the Convention to search for the missing and to grant remedies are also encompassed by the mandate of the OMP. Thus, the Convention reinforces the role of the OMP and strengthens the rights of the victims, and the families of the missing and the disappeared.

³ The Constitution of the Democratic Socialist Republic of Sri Lanka (As Amended), sections 17, 27(1), 27(2)(a), 27(12), 126.

⁴ International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018, sections 3, 4, 6 (**Enforced Disappearances Act**).

⁵ International Convention for the Protection of All Persons from Enforced Disappearances, article 3, 6, 8 (**ICPPED**); International Covenant on Civil and Political Rights, article 2 (**ICCPR**); Human Rights Committee, General Comment No. 31, CCPR/C/21/Rev.1/Add.1 (2004), ¶15,18 (**General Comment 31**); International Convention on the Elimination of All Forms of Racial Discrimination, article 6 (**ICERD**); Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, articles 2, 5, 7, 14 (**CAT**); Convention on the Rights of the Child, article 4, 19, 39 (**CRC**); Human Rights Council Resolution 30/1, (n 2), ¶6.

⁶ Final Report of the Consultation Task Force on Reconciliation Mechanisms, Volume I, (17 November 2016), 427, 430-432, 443-445 (**Final Report of the CTF**); Report on the Second Mandate of the Presidential Commission of Inquiry into Complaints of Abductions and Disappearances, (August 2015), ¶642 (**Report of the Paranagama Commission**); Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (15 November 2011) ¶9.51, 9.53-9.55, 9.120, 9.213 (**Report of the LLRC**); Final Report of the Commission of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island), Volume I, Sessional Paper No. I (2001), 16 (**All Island Final Report**); Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Province, Volume I, Sessional Paper, No. V (1997), 68, 69 (**Western, Southern and Sabaragamuwa Final Report Volume I**).

⁷ Office on Missing Persons Act (n 1), section 12(i).

25. For over three decades, victims, human rights defenders and political dissidents have campaigned for the explicit criminalisation of enforced disappearances. Although existing national law did provide for the prosecution of perpetrators of abductions, there was a lack of a comprehensive prohibition on the crime of enforced disappearances. Thus, its recognition as a crime marks an important milestone in the fight against impunity for enforced disappearances.
26. Whilst welcoming the Government's decision to ratify the Convention, as well as its incorporation into domestic law, the OMP reiterates the concerns of other state agencies that the criminalisation of enforced disappearances under domestic law remains inadequate.⁸ The definition of enforced disappearances fails to recognise the continuing nature of the crime, as it fails to explicitly include instances where some elements of the crime occurred prior to the enactment of the Enforced Disappearances Act. The Act fails to capture the full range of perpetrators who may be involved, as well as the full scope of command responsibility over the crime of enforced disappearances. Further, the Act does not recognise enforced disappearances as a crime against humanity. In this regard, the OMP notes that previous commissions of inquiry have concluded that enforced disappearances have taken place in Sri Lanka in a widespread and systematic manner both within and outside the conflict zones. Additionally, the Act does not sufficiently recognise the mandate of the OMP in addition to that of the Human Rights Commission over the investigation of complaints relating to missing and disappeared persons.⁹

Investigation and prosecution

27. The OMP notes with concern patterns of behaviour by state actors which enable enforced disappearances to be met with persistent impunity. Previous commissions of inquiry as well as the CTF have reported that such practices include the recording of incorrect information or the withholding of relevant information, as well as the systemic inability and unwillingness to investigate and prosecute cases, particularly where credible evidence of violations exist.¹⁰
28. Some individuals suspected of having committed enforced disappearances and related offences are being permitted to remain in positions of power—especially within the armed forces and the police—where they can influence the progress of an investigation. There have been instances where members of the armed forces, who were willing to provide information on disappearances, were subject to harassment. The OMP notes with concern that in at least one case, an officer of the armed forces who is a suspect in an on-going court case relating to abductions and enforced disappearances has neither been suspended nor removed from exercising the duties and functions of his office. Of equal concern is that there are reports that in at least

⁸ See Human Rights Commission of Sri Lanka, Letter to President His Excellency Maithripala Sirisena on the International Convention for the Protection of All Persons from Enforced Disappearances Bill (28 September 2017).

⁹ See Enforced Disappearances Act, (n 4), sections 15 (3), 20 (3).

¹⁰ Western, Southern and Sabaragamuwa Final Report Volume I, (n 6), 53, 54, 56, 57, 59; Report of the CTF Volume I, (n 6), 188, 189.

one case an officer has been granted a promotion within the armed forces, whilst the case against him is still pending. OMP notes that under relevant regulations as well as the rules and established practices it is reasonably expected for such suspected officers to be suspended from exercising the duties and functions of their office.¹¹

29. There are a number of cases before different courts, some of which have continued for ten years or more, where victims have not been provided any answers as to the whereabouts of their loved ones. Amongst these cases are *habeas corpus* applications and criminal proceedings in respect of abduction and murder.
30. There is an inherent conflict of interest, with the Attorney-General's Department being required to act as both the prosecutor of alleged enforced disappearances, as well as to defend the respondents in legal proceedings including in relation to *habeas corpus* writs. The OMP is of the view that in *habeas corpus* applications the Attorney General's Department should not represent the interests of persons who are alleged to be perpetrators but rather should represent the interests of the state in a manner that would respect, secure and advance the fundamental rights of the people.¹² The OMP notes with concern that in *habeas corpus* applications relating to the disappeared that technical objections have been raised standing in the way of obtaining justice. It is also observed that the establishment of the OMP should not be raised as an objection to parties seeking recourse in court for the constitutional remedy of *habeas corpus*.
31. A number of previous commissions of inquiry and the CTF have made important recommendations to address these structural challenges. Two previous commissions of inquiry have called for the establishment of an independent human rights prosecutor.¹³ Further, under Human Rights Council Resolution 30/1, the Government committed to establishing a special judicial mechanism to investigate and prosecute human rights abuses and violations of international humanitarian law.¹⁴

Prevention

32. The OMP notes that further legal and institutional reforms must be implemented to prevent enforced disappearances. There are ongoing reports of arbitrary arrests, the mistreatment of detainees as well as torture and deaths in custody.¹⁵ The OMP recognises the importance of the directives issued by His Excellency President Maithripala Sirisena to the police and security forces concerning the rights of detainees under the Prevention of Terrorism Act in June 2016. However, the proposed reforms to the Prevention of Terrorism Act have not yet been enacted,

¹¹ Army Officers Service Regulations (Regular Force) (1992), section 2(1)(a) read together with Sri Lanka Army Pay Code (1982), sections 2(3)(a),(f); Naval Pay Code (1993), section 2(3)(a) as amended by Gazette Notification no. 1,010/1 (1998.01.13) section 2; Air Force Officers Regulations (Regular Force), section 2(1)(a) read together with Air Force Pay Code (1982), sections 2(3)(a),(f).

¹² The Constitution, (n 3), article 4(d).

¹³ Western, Southern and Sabaragamuwa Provinces Final Report Volume I, (n 6), 69, 83; All Island Final Report Volume I, (n 6), 16, 17.

¹⁴ Human Rights Council Resolution 30/1, (n 2) ¶6.

¹⁵ Human Rights Commission of Sri Lanka, Report of the Human Rights Commission of Sri Lanka to the Committee Against Torture Review of the 5th Periodic Report of Sri Lanka (October 2016).

which in practice has been used for the prolonged detention of individuals without judicial review. Further, it is noted that there is a legal requirement for lists of all detainees to be maintained and a list of all detention centres to be gazetted.

4. The Responsibility of the State to Provide Reparations

33. The OMP acknowledges the range of physical, psychological, social and economic harms inflicted upon relatives of the missing and the disappeared. Repairing the harm suffered by these families is of central importance not just to the families, but also to the broader community to which the missing and the disappeared belong, as well as to the stability and well-being of society overall.
34. The OMP acknowledges that all relatives of the missing and the disappeared suffer a core human rights violation, that of a right to protection of family life. Furthermore, many relatives of the disappeared continue to suffer from a range of human rights violations, including economic, social and cultural rights, including the right to health, property, housing and education.
35. Some families of the missing and disappeared have suffered for over 30 years with no state assistance, whilst others acknowledge receiving limited or sporadic support. In many cases, the families have lost their primary bread winner. In addition to losing their primary source of income, many families are not able to access welfare benefits, wages and social assistance to which the disappeared person is entitled. The OMP acknowledges with grave concern the situation of extreme poverty that some relatives of the disappeared continue to face. The conditions of extreme poverty are often also a consequence of enforced disappearances, especially since after losing their primary breadwinner, the relatives often expend significant resources, energy and time in search of their missing loved one.
36. In the consultations held by the OMP, multiple forms of reparations were suggested by families, representatives of civil society, grama niladharis and other affected persons including one-off compensation payments, houses, employment opportunities, support for education, psychosocial support, health services, reconstruction and construction of monuments. The extension of services, particularly psychosocial and health measures, can provide essential support and care, whilst efforts at memorialisation and public declarations can give some sense of closure, and alleviate some of the marginalisation and isolation of the victims. Many of these suggestions were received in the OMP's recent round of consultations and reiterated recommendations made by previous commissions of inquiry dating back twenty years.¹⁶ The OMP notes that these measures have been recommended in addition to ascertaining the truth about the disappeared person and bringing perpetrators to justice. In all circumstances, the provision of reparations should not be considered as a substitute to providing justice for the victims.

¹⁶ Western, Southern and Sabaragamuwa Provinces Final Report Volume I, (n 6), 84-91; All Island Final Report Volume I, (n 6), 35; Report of the LLRC, (n 6), 9.52, 9.58; Final Report of the CTF Volume I, (n 6), 227, 229, 230.

Legal obligations to provide reparations

37. Reparations aim to repair the harm suffered by victims due to the violation of their human rights. Reparations can include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁷ Sri Lanka has national and international obligations to provide reparations to victims of enforced disappearances.¹⁸
38. Under Sri Lanka's Constitution the Supreme Court is empowered to order relief and redress where a fundamental right has been infringed.¹⁹ The Assistance to and Protection of Victim and Witnesses Act No. 4 of 2015 (Victim and Witnesses Protection Act) provides victims of crimes with a right to reparation and restitution for harm they have suffered.²⁰ Further, where an enforced disappearance has been committed perpetrators can be liable to pay compensation to victims under the Enforced Disappearances Act.²¹
39. The proposed Office for Reparations will play a critical role in providing redress to victims of the missing and the disappeared as well as others affected by the conflict.²² An independent Office for Reparations with a robust mandate and strong implementation powers is urgently required. The OMP urges all Members of Parliament to strengthen the Office for Reparations Bill and ensure its prompt enactment and operationalisation.

5. Urgent Recommendations

40. A key objective of the OMP is to make recommendations to relevant authorities in order to reduce the number of incidents of missing persons and identify avenues of redress that take into account the best interest of the victims and the families.²³ Specifically, the OMP is empowered to make recommendations with regard to commemorations,²⁴ reparations,²⁵ non-recurrence,²⁶ and legal reform.²⁷ Furthermore, the Act empowers the OMP to provide or facilitate the provision of interim relief and welfare measures to families of missing and disappeared persons.²⁸

¹⁷ United Nations, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (21 March 2006) (**Basic Principles**).

¹⁸ Universal Declaration of Human Rights, article 8; ICPPED, (n 5), article 24; ICCPR, (n 5), article 2; ICERD (n 5), article 6; CAT (n 5), article 14; CRC (n 5), article 39; Basic Principles, (n 16); General Comment (n 5), ¶16; Human Rights Council Resolution 30/1, (n 2) ¶1, 3, 4.

¹⁹ The Constitution of Sri Lanka, (n 3), section 126(2).

²⁰ Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015, section 3(c).

²¹ Enforced Disappearances Act, (n 4), sections 3(1), 3(2).

²² The Office for Reparations Bill (2018).

²³ Office on Missing Persons Act, (n 1), sections 2(b), 2(c), 2(d), 10(b), 10(d).

²⁴ *Ibid*, section 13(1)(k)(ii).

²⁵ *Ibid*, section 13(1)(k)(vii).

²⁶ *Ibid*, section 13(1)(k)(i).

²⁷ *Ibid*, section 13(1)(k)(vi).

²⁸ *Ibid*, section 13(1)(e).

41. The current socio-economic situation of many families of the missing and the disappeared is dire and cannot wait until a final reparations scheme is devised. In the interim, a key set of measures is required to provide urgent and immediate relief to the families.
42. In addition, there is an overwhelming demand and need for investigation and prosecution of enforced disappearances. These are not merely crimes of the past but are of a continuing nature until the fate of the missing or their whereabouts are clarified. Therefore, it is urgent for the State to ensure an adequate legal framework and empower relevant state actors to discharge their functions to ensure prompt and effective investigations and prosecutions.

5.1. Interim Relief Proposals

43. The OMP wishes to draw attention to the distinction between relief and reparations. **Relief** is the immediate assistance provided to the affected to relieve them of the economic, social and other burdens they have suffered, whilst **Reparations** cover measures to address the rights that have been violated and where the State is obliged to repair the consequences of the violations.
44. The acceptance of relief measures cannot be regarded as a waiver of the right to adequate, prompt and effective reparation for the damage caused and the right to seek judicial remedies for accountability. Previous efforts at compensation have created distrust amongst victims and in turn have created doubt over the State's willingness to provide truth and justice.
45. The OMP makes the following recommendations to the Government for immediate policy formulation and implementation by way of interim relief:
- a) **Financial aid programme:** Implementation of a financial aid programme to provide a monthly living allowance of Rs. 6,000 to the surviving spouse, child/children and/or surviving parent/s of a missing/disappeared person, who has no permanent income. This will be adopted as an interim measure and will cease when final reparations are provided.
 - b) **Debt relief programme:** Inclusion of the families of the missing or disappeared as a separate priority category in (a) the debt relief programme aimed at writing off debt (example microfinance loans) valued at or below an amount determined by the Ministry of Finance, or (b) financial aid programmes and loan schemes such as 'Enterprise Sri Lanka' of the Ministry of Finance, aimed at achieving economic stability and self-reliance.
 - c) **Housing development programme:** Facilitation of families of the missing or disappeared to be a separate priority category within the existing housing programmes of the Ministry of Housing; implementation of new housing programmes for the construction of permanent houses; or providing financial assistance for the completion of partially built houses.

- d) **Educational support programme:** Introduction of a scholarship scheme under the Ministry of Education for the children of the missing or disappeared in the form of a monthly allowance of Rs. 2,000 to cover essential educational expenses required for the completion of their primary and secondary education.
- e) **Vocational training and livelihood development programmes:** Introduction of technical training personal development courses with provision for on-the-job training.
- f) **Employment quota:** Introduction of an employment quota of 1% within the state sector in order to facilitate family members of the missing/disappeared who have requisite skills, when vacancies in the public and semi-governmental sectors are being filled.

46. These proposals shall be applicable to families of missing and disappeared persons as defined under the Office on Missing Persons Act, including those missing consequent to the war, insurrections or are missing in action, and those forcibly disappeared.²⁹ The proposals should focus on providing relief to the most vulnerable, including those who are in situations of poverty, single-headed households, and those with vulnerability levels based on the presence of children, caring for persons with disabilities or having disabilities themselves, special care for elderly persons, and victims of sexual violence.

5.2. Justice Related Recommendations

47. In recognition of the urgent need for justice and accountability, the OMP recommends the judicious adoption of the following measures to ensure prompt and effective investigation and prosecution of enforced disappearances as well as their non-recurrence:

Enforced Disappearances Act

- a) Recognise the continuing nature of enforced disappearances, including where some elements of the crime were committed prior to the enactment of the Act.
- b) Amend section 3 of the Act to capture the full range of perpetrators that may be involved in the commission of enforced disappearances. In particular, the Act should be amended to encompass circumstances where the two elements of the crime, i.e. the deprivation of liberty and the refusal to acknowledge the deprivation of liberty, were committed by two or more different individuals.

²⁹ Office on Missing Persons Act (2016), section 27 defines a ‘*missing person*’ as a person whose fate or whereabouts are reasonably believed to be unknown and which person is reasonably believed to be unaccounted for and missing- (i) in the course of, consequent to, or in connection with the conflict which took place in the Northern and Eastern Provinces or its aftermath, or is a member of the armed forces or police who is identified as “missing in action”; or (ii) in connection with political unrest or civil disturbances; or (iii) as an enforced disappearance as defined in the “International Convention on Protection of All Persons from Enforced Disappearances”.

- c) Expressly recognise enforced disappearances as a crime against humanity.
- d) Amend section 3(3) to expressly recognise the full scope of command responsibility, including the ordering of enforced disappearances.
- e) Amend section 15(3) of the Act to permit the OMP along with the Human Rights Commission of Sri Lanka and law enforcement authorities to have access to places where persons are being deprived of their liberty.
- f) Amend section 15 of the Act to impose a time limit for entering a name of a detainee into the official register. Further introduce a penalty for the wilful omission of a name from the register or obstructing an officer from entering a name.
- g) Amend section 20(3) of the Act to permit the High Court to refer a petition made to it in relation to enforced disappearances to the OMP in addition to the Human Rights Commission of Sri Lanka for an inquiry and report.
- h) Amend section 6 of the Act to remove the exclusive jurisdiction of the Colombo High Court, and grant jurisdiction to High Courts where the offence occurred.

Investigation and Prosecution

- i) Expedite and give highest priority to prosecutions and other ongoing cases involving enforced disappearances.
- j) Investigate all incidents of arbitrary arrest, torture and deaths in custody.
- k) Ensure that state officials including members of the armed forces and police who are named as suspects or accused in criminal actions relating to abductions and enforced disappearances are suspended pending the final determination of such cases. In particular, ensure that suspected officials are not transferred, promoted or offered any other office in the armed forces, police or the public service while cases against them are pending.
- l) In order to guarantee proper identification of human remains, expedite on going reforms to the legal framework pertaining to inquests into deaths and related protocols, and ensure a multidisciplinary coordination system between institutions responsible for search, recovery and identification.
- m) Provide adequate material and human resources to law enforcement officials, the Attorney-General's Department as well as the judiciary to investigate, prosecute and punish perpetrators of enforced disappearances.
- n) Require state officials as well as the public to report the discovery of bones and other human remains.

Prevention

- o) Ensure adherence to due process when carrying out arrests and detentions.
- p) Publish a full list of all detention centres as well as detainees and ensure that persons are not detained in any unauthorised detention centres.
- q) Repeal and reform provisions of the Prevention of Terrorism Act which permit prolonged detention of individuals without judicial review.

Urgent recommendations for memorialisation

48. In recognition of the long-term pain and suffering of families of the missing and the disappeared, as well as the need for the people of Sri Lanka to recognise that many thousands of people belonging to all communities were disappeared over several decades, the OMP recommends the prompt implementation of the following measures to memorialise the disappeared:

- a) Designate a National Day for the Disappeared.
- b) Restore ‘*Ahinsakaramaya*’ – Memorial for the Innocents - in Battaramulla in a manner that reflects the views of the public as well as the families of the missing and the disappeared.
- c) Following excavations, preserve mass grave sites as memorial spaces.

**Mr Saliya Pieris, PC,
Chairperson**

**Mr S. K. Liyanage, Attorney at Law,
Commissioner**

**Dr Nimalka Fernando,
Commissioner**

**Mr Kanapathipillai Venthan,
Commissioner**

**Ms Jayatheepa Punniyamoorthy,
Commissioner**

**Mr Mirak Raheem,
Commissioner**

**Major General (Rtd) Mohanthi Peiris,
Commissioner**

30 August 2018