



THE OFFICE ON MISSING PERSONS

INTERIM REPORT

AUGUST 2018

Interim Report

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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; ICCPED, (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,
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**Mr Mirak Raheem,
Commissioner**

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

30 August 2018