



OFFICE ON MISSING PERSONS

ANNUAL REPORT

2020

Abbreviations

CoA	Certificate of Absence
CoI	Commission of Inquiry
CoD	Certificate of Death
CTF	Consultation Task Force on Reconciliation Mechanisms
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearances
ICRC	International Committee of the Red Cross
LLRC	Lessons Learnt and Reconciliation Commission
MoU	Memorandum of Understanding
MNIR	Ministry of National Integration, Reconciliation, Official Languages, Social progress and Hindu Religious Affairs
OMP	Office on Missing Persons
PSS	Psychosocial Support Strategy
SCRM	Secretariat for Coordinating Reconciliation Mechanisms
WGIED	United Nations Working Group on Involuntary and Enforced Disappearances

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1. Introduction

- 1.1. The Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act No. 14 of 2016 (OMP Act) was enacted in August 2016. On the 28th of February 2018, His Excellency the then President, Maithripala Sirisena, on the recommendations of the Constitutional Council 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
- 1.2. The OMP has a mandate to clarify the circumstances in which persons went missing and their fate; make recommendations to relevant authorities to ensure non-recurrence; protect the rights and interests of missing and disappeared persons and their relatives; identify avenues of redress for missing and disappeared persons; and collate data related to missing and disappeared persons 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 of missing and disappeared persons to enable the Department of the Registrar General to issue Certificates of Absence (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 of the causes, incidence and effects of missing and disappeared persons, 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 acknowledgement 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 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).

- 1.5. In order to conduct its investigations, the OMP has the authority to receive complaints, initiate inquiries and investigate into the whereabouts of a missing or disappeared person; take all necessary steps to investigate cases which include summoning any person to be present before the OMP or produce any document or other thing; accept confidential information or information in camera; accept information on the condition of confidentiality; apply to a Magistrate's Court for an order to carry out an excavation or an exhumation and to act as an observer; request any necessary assistance from any state actor; search without warrant any place of detention; and report offences that have been committed to a relevant law enforcement or prosecuting authority.⁶
- 1.6. 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 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 work of the OMP.⁷
- 1.7. The OMP has operationalised its mandate in a manner that recognises the centrality of the rights and interests of the missing and disappeared and their families and the rule of law, while facilitating the implementation and enforcement of existing laws and policies. The OMP has also been guided by the views of the families of the missing and disappeared that were shared directly with the OMP, including during public meetings held by the OMP in 2018 and 2019 to elicit views of families on operationalizing the OMP, as well as the recommendations of the Consultation Task Force on Reconciliation Mechanisms (CTF).⁸

2. Legal and Policy interventions

- 2.1. The OMP has a mandate to protect the rights of the missing and disappeared and those of their relatives and to facilitate access for families of the missing and disappeared to economic, psycho-social, legal and administrative support.⁹ Further the OMP has the authority to make recommendations to state authorities to ensure the non-recurrence of disappearances, handling of human remains, and to improve the social and economic conditions of missing and disappeared persons and their relatives.¹⁰
- 2.2. In discharging the above mandate, the OMP made legal and policy recommendations regarding CoAs; issuing of Interim Reports to families of the missing and disappeared to enable them to obtain CoAs; implementation of Interim Relief announced in the 2019 Budget; the exercise of Magisterial powers in inquiries in to human remains; COVID relief for families of the missing and disappeared and responded to requests for legal and administrative assistance in individual cases.

⁶ OMP Act, Section 12.

⁷ OMP Act, Section 24.

⁸ Interim Report of the Consultation Task Force on Reconciliation Mechanisms Consultation (August 2016); Final Report of the Consultation Task Force on Reconciliation Mechanisms Vol. 1 and II (17 November 2016)

⁹ OMP Act, Section 2(b), 10(c), 13 (e), (f).

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

Certificates of Absence

- 2.3. The Registration of Deaths (Temporary Provision) (Amendment) Act No.16 of 2016 provides for the issuance of a CoA to families of the missing 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 (CoD). A CoA can be issued in respect of persons who are missing or disappeared as a result of the conflict 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 (MIA).
- 2.4. Many families of the missing and disappeared continue to face difficulties in obtaining a CoA, largely due to the lack of awareness among officials and the misconception that a COA can be automatically converted to a CoD.
- 2.5. The Registration of Deaths Act¹¹ provides for general procedures for obtaining a CoA; (i) through a process of inquiry held by the District Registrars or (ii) a special procedure through which a CoA is issued based on an Interim Report issued by the OMP¹² or a report of a previous Commission of Inquiry (CoI). Lack of awareness among state officials and confusion regarding the two procedures have posed challenges to families when attempting to obtain CoAs.
- 2.6. At an institutional level, the OMP continued to engage with the Department of the Registrar General to facilitate and expedite the issuance of CoAs to families. Following the signing of a letter of collaboration between the OMP and the Department of the Registrar General in May 2019, the OMP liaised with the designated officials of the Department and District Registrars to clarify the provisions of the law, citing the Circulars drafted by the OMP for the Department of the Registrar General which provides detailed procedures to be followed by District and Assistant Registrars on the process of issuing a CoA under both the general and special procedures.¹³
- 2.7. As the OMP is mandated to issue Interim Reports¹⁴ to families of the missing or disappeared to enable them to obtain CoAs, the OMP periodically informed the Office of the Registrar General of Interim Reports issued, in order to expedite the issuing of CoAs to families.
- 2.8. In September 2020, the OMP issued a follow up notification to the Registrar General and all Zonal Registrars regarding the validity of Interim Reports issued by the OMP, following complaints received by families.

¹¹ The Registration of Deaths (Temporary Provision) (Amendment) Act No.16 of 2016, Section 8A – 8E.

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

¹³ The Registration of Deaths (Temporary Provision) (Amendment) Act No.16 of 2016, Section 8A-8E and 8G.

¹⁴ Office on Missing Persons Act No 14 of 2016, Section 13 (1)(a)(i).

- 2.9. The OMP intervened with District Registrars, Divisional Secretariats and *Grama Niladhari* officers regarding queries and requests for intervention received from families of the missing and disappeared regarding obtaining a CoA or a CoD, on a case by case basis.

Interim Reports

- 2.10. The OMP is tasked with issuing Interim Reports to relatives of missing and disappeared persons, if, pending an investigation, the OMP has sufficient material to conclude that the person to whom a complaint relates is a missing person.¹⁵ The sole purpose of an Interim Report is to facilitate the issuing of a CoA to the relative of such missing person by the Registrar General.¹⁶
- 2.11. The process for issuing Interim Reports as prescribed by the OMP Act¹⁷ and the Registration of Deaths Act¹⁸ was formulated by the OMP in 2019 including policies, procedures, rules and guidelines. The OMP initiated a pilot inquiry process in January 2020 and the first Interim Report was issued to a relative of a missing person by the OMP on 28 January 2020 in Colombo.
- 2.12. Although the OMP was granted Cabinet approval to recruit the required staff to implement the process of issuing Interim Reports and conducting inquiries at district-levels, the recruitment of staff remained unfulfilled. The OMP was compelled to abandon the planned district-level inquiry process which was to cover the entire island with mobile inquiry units staffed by trained inquiring officers.
- 2.13. In order to meet the requests for Interim Reports received from families, the OMP established a process by designating 4 persons from the existing staff cadre to act as part-time inquiring officers traveling to the OMP's Regional Offices to conduct inquiries and issue Interim Reports. This process was further delayed by the COVID-19 pandemic and the first lockdown and subsequent travel restrictions imposed due to the pandemic.
- 2.14. In spite of these obstacles, the OMP received and processed applications requesting Interim Reports. Preliminary Evaluations were completed in respect of these missing persons to evaluate fulfilment of documentation and basic legal requirements applicable under the OMP Act¹⁹ and OMP's policy on issuing Interim Reports. Of this number, the OMP conducted formal inquiries for those who fulfilled the minimum legal requirement and a total of 68 Interim Reports were issued to families of missing and disappeared persons during 2020.

¹⁵ OMP Act No 14 of 2016, Section 13 (1)(a)(i).

¹⁶ Registration of Deaths (Temporary Provisions) (Amendment) Act, No. 16 of 2016 or other such law which permits the issuance of CoAs by the Registrar General.

¹⁷ OMP Act No 14 of 2016, Section 13 (1)(a)(i).

¹⁸ Registration of Deaths (Temporary Provisions) (Amendment) Act, No. 16 of 2016.

¹⁹ OMP Act No 14 of 2016, Section 13 (1)(a)(i).

2.15. A summary of the above activities for the year 2020 are provided below:

Number of requests received for Interim Reports	234
Number of Preliminary Evaluations completed to verify documentation and basic legal requirements	235
Number of qualifying requests for which Inquiries were conducted	148
Number recommended to be issued Interim Reports after inquiries were conducted	120
Number of Interim Reports issued	68

2.16. Further to the second lockdown in select provinces in October 2020 and travel restrictions, the OMP initiated online inquiries, which were conducted by Commissioners and members of the OMP's Legal Unit. The applicants were invited to the Regional Offices, where an inquiring officer conducted the inquiry. Select officers based in Colombo joined the inquiries virtually. After a successful pilot conducted in November 2020, the OMP conducted online inquiries, with inquiring officers based in Colombo and the applicant present at one of OMP's regional offices in Jaffna, Matara and Mannar.

2.17. Further to the OMP developing policies and procedures for the issuance of Interim Reports, including inquiry procedures in 2019, an update of the inquiry procedures was formulated in 2020, taking into consideration the limitations imposed by the lack of staff and challenges imposed by the COVID-19 pandemic. In particular, family support officers were made available at the Regional Offices to support applicants and families during the on-line inquiry procedures.

2.18. Several other internal procedures were formulated in 2020, including internal procedures for Regional Offices when hosting Interim Report inquiries, procedures for record keeping, procedures and guidelines for inquiring officers, guidelines for conducting virtual interviews and online inquiries for Interim Reports and COVID-19 guidelines for inquiring officers and Regional Office staff when conducting inquiries.

2.19. The OMP observes that despite the challenges posed by the pandemic and the process of participating in an online inquiry, families continued to request Interim Reports, as it is the only official document that recognizes their loved one as a missing person and enables them to obtain a CoA and exercise their rights.

Interim Relief

2.20. In its Interim Report of August 2018, the OMP observed that some families of the missing and disappeared have suffered the emotional, social and economic consequences of disappearances for over thirty years with either limited or no state assistance.²⁰ In many cases, it was the primary bread winner – a father, a husband or a son - who was disappeared leaving behind wives, elderly

²⁰ OMP Interim Report (2018), para 35.

parents and young children. These families in addition to having no income, are not always able to access welfare benefits, wages and social assistance to which the disappeared person is entitled.

- 2.21. In acknowledgement of the situation of extreme poverty faced by some families, in its Interim Report of August 2018, at paragraphs 45(a)-(f) the OMP recommended a range of interim relief measures for the most vulnerable among families of the missing and disappeared pending the award of a reparations package. In response to one of the interim relief measures recommended by the OMP, the Government proposed to allocate Rs. 500 million in the 2019 Budget, to provide Rs. 6000 monthly relief to families of missing and disappeared persons, including members of the armed forces and police identified as missing in action on the condition of them of possessing a Certificate of Absence.
- 2.22. The Government prescribed the eligibility criteria to receive Interim Relief conditional on the possession of a CoA, issued under the authority of the Registrar General, according to the provisions in the Registration of Deaths Act.²¹
- 2.23. The OMP made representations to the Government on the need to widen the eligibility criteria to receive Interim Relief to include the large numbers of persons who went missing prior to the enactment of legislation granting CoAs in 2016 and were automatically disqualified from securing Interim Relief as they did not possess a CoA. This is particularly prevalent in the South and the East where CoDs have been issued citing disappearances as the cause of death.
- 2.24. In October 2019, the Cabinet approved a proposal drafted by the OMP and presented as a joint Cabinet Memorandum by the Minister of Finance and the MNIR, which allows families that have obtained CoDs for a missing or disappeared loved one to be eligible to receive Interim Relief. It effectively made Interim Relief accessible to a larger number of families of missing and disappeared persons.
- 2.25. The MNIR began making payments in the last quarter of 2019 to those possessing a valid CoA. The OMP and the Department of the Registrar General assisted the process by verifying information provided by applicants. The MNIR made direct payments to 153 families totaling Rs.7 million, by November 2019²² after which the payment of Interim Relief was halted by the Ministry.
- 2.26. Following the Presidential Election of November 2019 the subject was transferred to the Ministry of Justice. The OMP called upon state authorities to continue the payment of Interim Relief to families of the missing and disappeared.

COVID-19 Relief

- 2.27. In recognition of the severe strain imposed by the pandemic on vulnerable sections of Sri Lankan society, especially the families of the missing and disappeared in April 2020, the OMP wrote to

²¹ The Registration of Deaths (Temporary Provision) (Amendment) Act No.16 of 2016, Section 8A - 8G.

²² According to a letter sent by the MNIR to the OMP, dated 11th November 2019.

His Excellency the President Gotabaya Rajapaksa, recommending that when developing COVID relief measures the circumstances of the families of the missing and disappeared be considered.

- 2.28. The OMP observed that Gazette No 2168/8, dated 6 March 2020 which established the Presidential Task Force, at paragraph 11, provided the Task Force with a specific mandate to “take steps to focus special attention on women, low-income families and persons directly at risk when undertaking above measures.”²³
- 2.29. The OMP observes that the most vulnerable among families of the missing and disappeared are elderly and female headed households that survive on the daily wages of one family member. The prevailing situation in the country has had dire consequences on these families, as they are no longer able to carry out livelihoods and they have limited or no assets.
- 2.30. The OMP recommended that families of the missing and disappeared be included in any proposed relief measures, including the provision of food and financial assistance in response to the current crisis.
- 2.31. In particular, as a short-term measure the OMP recommended that dry rations be provided to families of the missing and disappeared through Grama Niladharis. Grama Niladharis have already collected information regarding the missing and disappeared in their local area, and such lists could be used to avoid duplication in instances where such families are also beneficiaries under other state assistance schemes for vulnerable persons.

Legal Advice and Assistance

- 2.32. The OMP continued to receive requests for assistance from civilian and military families of the missing and disappeared on varied subjects including accessing state services, financial services, compensation, obtaining CoDs and pensions, obtaining CoAs, ongoing legal cases, disputes regarding assets, ownership and succession. The OMP responded by taking up such matters with the relevant state institutions including the Office for Reparations, Department of the Registrar General, local Government institutions and the armed forces. The OMP also assisted families with legal advice, practical guidance and referrals where possible.

The OMP also assisted families in individual cases to obtain CoAs or CoDs through interventions with relevant District Registrars, Divisional Secretariats and *Grama Niladhari* officers, pursuant to queries received from families of the missing and disappeared.

²³ The Gazette of the Democratic Socialist Republic of Sri Lanka, Extraordinary, No. 2168/8, (26 March 2020).

Exercise of Magisterial Powers into inquiries into human remains

- 2.33. Under section 12(d) of the OMP Act, the OMP has the authority to apply to a Magistrate's Court for an order of the Court to carry out an excavation and or exhumation of suspected gravesites, and to act as an observer at such excavation or exhumation, and at other proceedings, pursuant to the same. In the course of exercising its powers as an observer at five inquiries into suspected gravesites,²⁴ the OMP observed that the powers available to conduct inquiries into human remains under the Code of Criminal Procedure Act No. 15 of 1979 (Code of Criminal Procedure) are not exercised in a consistent manner. As a result, Magisterial inquiries into human remains are not being conducted according to a uniform standard that enables their successful conclusion. The OMP noted its concerns and submitted recommendations for the consideration of the Judicial Services Commission.²⁵
- 2.34. Investigations into suspected gravesites pose unique challenges and require investigative approaches that are distinct from those employed in ordinary criminal and forensic investigations. In ordinary criminal investigations, when human remains are discovered the soft tissue of the deceased person and identifying markers such as personal effects (for example clothes and jewellery) are often intact. The presence of such soft tissue and other archaeological evidence on the body makes establishing the cause of death and identification of the body a less complicated process.
- 2.35. In the context of suspected gravesites, remains can be found in varying states of decomposition; commingled and as either complete or partial skeletons and with signs of trauma that may have been inflicted before, during or after death. Further, unlike in ordinary criminal investigations, the volume of human remains can be much higher as is the case in Case No. B 232/18 regarding the suspected gravesite at the Mannar Sathosa building, Mannar Town where more than 150 skeletons have been excavated.
- 2.36. Successful investigation of a suspected gravesite requires establishing the cause of death and identification of the remains. Challenges relating to identification of the remains distinguish investigations into suspected gravesites from ordinary criminal investigations. The process of investigating a suspected gravesite, can require both scientific and non-scientific methods. Non-scientific methods can include establishing a history of the local area and identifying local burial practices. Scientific methods can include a multidisciplinary analysis of findings based on forensic pathology, forensic archaeology, forensic anthropology and forensic odontology.
- 2.37. In order to ensure that the remains excavated at a site are identified, all human remains and associated finds (the finds) generated from a gravesite must be reconciled with information provided by the families. In particular, information provided by the families regarding the

²⁴ The OMP is an observer in the following cases: Case No. B232/18 and Case No. B768/13 before the Mannar Magistrate's Court; Case No. AR/808/19 and Case No. AR/503/20 before the Magistrate's Court of Mullaitivu; and Case No. B/542/20 before the Magistrate's Court of Kilinochchi. See paragraph 3.5 below for further details.

²⁵ Letter from Mr. Saliya Pieris, P.C., Chairperson to Honorable Chief Justice, Chairman, Judicial Services Commission (29 September 2020).

circumstance of a disappearance and personal, physical, medical and dental information (antemortem data) regarding the disappeared person must be reconciled with the finds excavated from the site.

- 2.38. The above types of archaeological and anthropological information must be individually analysed, interpreted and reconciled against one another in order to reach a conclusion regarding the age of the gravesite and the cause of death of the deceased.
- 2.39. Therefore, in the context of investigations into human remains, it is critical that the finds are collected, handled, transported, stored and analysed with utmost care. Improper handling of the finds at any stage of the proceedings can result in their inaccurate interpretation and prevent establishing the cause of death and the identification of remains. Further, if the investigation reveals that an offence has occurred, improperly handled finds may not be able to be used in subsequent criminal proceedings, potentially undermining the effective administration of justice.
- 2.40. Magistrates have a range of powers under the Code of Criminal Procedure to conduct inquiries into human remains. Under Chapter XXX of the Code of Criminal Procedure, a Magistrate has the power to conduct an inquest and inquire into human remains and establish the cause of death. In the course of doing so, a Magistrate can compel the attendance of any witness as per section 370(5) and call upon the Government Medical Officer to examine the dead body and produce a report as per section 373(1).
- 2.41. Additionally, under section 9 of the Code of Criminal Procedure, a Magistrate has the power to inquire into human remains. A Magistrate may make appropriate orders under section 124 of the Code of Criminal Procedure to provide assistance and advance an investigation. Further, under section 116(3) a Magistrate can issue an order to obtain expert opinions from the Government Analyst Department, Government Examiner of Questioned Documents, Registrar of Fingerprints or a Government Medical Officer.
- 2.42. A Magistrate has specific powers to ensure the appropriate handling and storing of evidence. As per Chapter XXX, section 372(1) of the Code of Criminal Procedure, the Magistrate is required to record the evidence generated during an inquest and the Magistrate's findings. As per section 115 of the Code of Criminal Procedure, if any weapon, document or sample has been taken into custody during an investigation, it must be produced before a Magistrate. Further, as per sections 60 and 165 of the Evidence Ordinance No. 3 of 1961 when oral evidence refers to the existence or condition of any material thing, a court may require the production of such material for its inspection.
- 2.43. In each of the proceedings, the OMP is currently observing, the OMP has observed that the investigative powers accorded to the Magistrate under the Code of Criminal Procedure to conduct inquiries have not been exercised in a consistent manner.
- 2.44. The inconsistent approaches to the investigation have resulted in challenges to ensuring the chain of custody of evidence, especially the process of collecting, documenting, storing and accessing

the finds collected from the site. Further, the OMP has observed that a multidisciplinary approach to the investigation of human remains is not routinely adopted, and as a result, competing hypothesis regarding the finds are not considered when advancing an investigation, preventing their successful conclusion.

2.45. The OMP has observed the following challenges regarding ensuring the chain of custody:

- a. *Recovery from the site:* all finds, including human remains, archaeological and anthropological finds require to be documented in situ; excavated using an appropriate method; cleaned, packed and labelled; itemised as part of a comprehensive inventory and marked as productions.
 - i. *Documentation in situ:* Prior to excavation, all finds are required to be documented in situ, through written and visual documentation, including photographs capturing the appearance and location of the finds at the site in order to ensure their accurate interpretation.
 - ii. *Method of collection:* An appropriate method of excavation is required to be used. At times heavy machinery is used to collect the human remains, which can damage, alter or result in a loss of the finds.
 - iii. *Cleaning, packing and labelling:* Appropriate methods are required to be used to clean and pack the finds prior to their transportation, so that they do not damage or otherwise alter the finds. All such finds is required to be labelled in a consistent manner.
 - iv. *Comprehensive inventory:* Each individual find collected is required to be itemised as part of a comprehensive inventory.
 - v. *Marked as productions:* The finds, including soil, clothing, and weapons are required to be marked as productions, regardless of the authority that is responsible for their physical custody.
- b. *Storage:* The OMP has observed inconsistent approaches to storing the finds. The finds are stored in the custody of multiple authorities including the courthouse, with the Judicial Medical Officer and or the Police. The different authorities responsible for storing the finds apply different processes and standards for ensuring the chain of custody. Over the long-term, if the case is laid by, there is no process in place to ensure that all finds collected from a suspected gravesite is stored in a manner that would enable the finds to be re-visited if the case is re-opened.
- c. *Access:* In order to ensure that all finds generated during the course of the investigation is analysed, interpreted and reconciled against each other, it is imperative that the Judicial Medical Officer or an Archaeologist ordered to submit a report on the investigation have timely access to the finds. However, as evidence is held in the custody of multiple authorities, the OMP has observed lengthy delays in ensuring access to the finds, hindering their analysis and interpretation and the successful conclusion of the investigation.

- d. *Ensuring continuity in chain of custody practices among Magistrates and court staff:* As Magistrates and court staff rotate among different jurisdictions, there have been challenges in ensuring that successive Magistrates accept and follow the chain of custody practices of a previous Magistrate. This has resulted in situations where a Magistrate that presided over the inquiry later in time, without citing any reasons, decline to accept responsibility for the manner in which the finds were handled at the outset of the investigation.
- 2.46. As outlined above, the investigation of skeletonised human remains require the application of non-scientific methods as well as multiple scientific methods. Therefore, it is important that in addition to a Judicial Medical Officer, analysis from experts from multiple disciplines including forensic archaeology, forensic odontology, Police and Police Scene of the Crime Officers inform the interpretation of the evidence.
- 2.47. Therefore, prior to making an order interpreting the finds or determining the outcome of the investigation, a Magistrate is required to receive and consider reports from multiple experts, ensuring that all hypothesis regarding the finds are considered and reconciled.
- 2.48. In order to ensure that the views of multiple stakeholders inform how investigations are conducted, the OMP has from time to time recommended and participated in investigation team meetings among all stakeholders, convened by the Magistrate.
- 2.49. For the reasons cited above, the OMP humbly requested that the Judicial Services Commission to consider issuing guidance to Magistrate's Courts that powers relevant to the conduct of investigations into human remains are exercised in a uniform and consistent manner to ensure that the chain of custody is preserved and multidisciplinary approaches to investigations are adopted.
- 2.50. The OMP humbly requests that a relevant Circular consider:
1. the process of documenting the finds at the site;
 2. the method of collecting finds from the site;
 3. the method of cleaning, packing and labelling finds once collected;
 4. the method of developing a comprehensive inventory of all finds collected; and
 5. the method of marking all finds collected as productions.
- 2.51. The OMP humbly requested that such a Circular consider the role of various authorities in handling the finds including the Police Scene of the Crime, Police, Judicial Medical Officers, Archaeologists and Government Analyst Department.
- 2.52. The OMP humbly requested that such a Circular include measures to ensure uniform standards and processes among multiple authorities responsible for storing the finds; and that the process of ensuring chain of custody ensures timely access to relevant experts to analyse the finds and submit their reports to the court.

- 2.53. The OMP further humbly requested that such a Circular provide guidance to all Magistrates and Court staff to ensure that a uniform approach to chain of custody is adopted among successive Magistrates.
- 2.54. The OMP further humbly requested that such a Circular provide guidance to all Magistrates, where necessary, to analyse the finds using both non-scientific and scientific methods, including multiple disciplines of forensic science.

3. Investigations

- 3.1. The OMP has a mandate to provide a mechanism for searching and tracing missing and disappeared persons and to clarify the circumstances in which such persons went missing.²⁶ The OMP's powers of investigation includes the authority to receive information regarding missing and disappeared persons and the authority to apply to a Magistrate's Court to observe the process of excavating and exhuming human remains. The OMP also has the authority to make recommendations regarding the handling of human remains. The OMP continued to advance individual investigations and observe Magisterial inquiries into human remains and suspected gravesites.
- 3.2. The OMP continued to receive information and complaints regarding missing and disappeared persons from multiple sources, including families of the missing and disappeared and governmental and non-governmental organizations. The OMP continued the process of analyzing patterns and contexts of disappearances, especially with respect to incidents that have been substantively documented and are of public importance as per sections 12(b)(ii) and (iii) of the OMP Act.
- 3.3. Further based on requests received from families, the OMP followed up on and observed court proceedings pertaining to missing and disappeared persons.

Discovery of unidentified human remains

- 3.4. 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 excavation and other proceedings pursuant to the same.²⁷ It has specific authority to make recommendations to state authorities concerning the handling of human remains, and to protect the rights and interests of missing and disappeared persons and their relatives.²⁸
- 3.5. The OMP acted as an observer in the following five on-going judicial proceedings investigating human remains: Case No. B232/18 and Case No. B768/13 before the Mannar Magistrate's Court; Case No. AR/808/19 and Case No. AR/503/20 before the Magistrate's Court of Mullaitivu; and

²⁶ OMP Act, Section 2(a), 10(1)(a).

²⁷ OMP Act, Section 12(d).

²⁸ OMP Act, Section 13(1)(k)(iii), 10(c).

Case No. B/542/20 before the Magistrate’s Court of Kilinochchi. The OMP has also made an intervention in Case No. B172/14 before the Magistrate’s Court of Kalawanchikudi.

- 3.6. In each of the cases the OMP recommended that a multi-disciplinary approach be adopted to the investigation, that includes an analysis of the human remains and other evidence based on forensic archeology and forensic anthropology. Further, that such efforts should be complemented with an investigation into the history of the local area which establishes events that may have affected the site. The OMP has further recommended that appropriate steps be adopted to secure the chain of custody of all evidence generated during the investigation, and that findings of all members of the investigation team including Police, Police Scene of the Crime Officers and the Judicial Medical Officer, be submitted to the Magistrate and be placed on record.
- 3.7. In Case No. B232/18, which concerns the investigation into the suspected gravesite at the Sathosa building in Mannar Town, Mannar, on 10 March 2020 pursuant to objections raised by the Learned Counsel for the Attorney General questioning the right of families to be represented by Attorneys-at-Law the Mannar Magistrate ruled that the petitioners who are family members of missing and disappeared persons do not have standing to appear in Case No. B232/18.
- 3.8. On 13 March 2020 the three family members who were being represented by their Attorneys-at-Law in Case No. B232/18, filed an application in revision before the Vavuniya High Court and named the OMP as a 2nd Respondent. The OMP submitted its Objections and in principle supported the rights of the families of the missing and disappeared to be participate and be represented by Attorneys-at-Law in magisterial inquiries into human remains. Oral arguments for the application in revision is set for 10 February 2021.

4. Database

- 4.1. The OMP has the authority to receive complaints, collate data and establish a database containing information regarding missing and disappeared persons.²⁹ The OMP continued to process, verify and enter information obtained from multiple sources into its database. Simultaneously the OMP communicated with families and acknowledged that it had received information regarding their missing or disappeared loved ones. Further, for the first time, the OMP publicly shared information it has collated regarding incidence of missing and disappeared persons by publishing a List of Complaints and Information it has received regarding Missing and Disappeared Persons.³⁰

Collating existing data related to missing and disappeared persons

- 4.2. The OMP has an explicit mandate to collate data related to missing and disappeared persons obtained through processes previously carried out by other state institutions, organizations, Government Departments, CoIs and Special Presidential Commission of Inquiry and to centralize all available data within a database in terms of Section 10(1)(e) of the OMP Act.

²⁹ OMP Act, Section 10(1)(e).

³⁰ Office on Missing Persons, “OMP Publications” < <http://www.ompsrilanka.org/omp-documents/omp-publications>> accessed 12 December 2020.

- 4.3. Since its establishment the OMP has collated information from the Tri-forces and the Police, other state institutions, non-state organisations and the United Nations Working Group on Involuntary and Enforced Disappearances (UNWGIED).
- 4.4. In 2017, pursuant to directions by His Excellency the then President Sirisena, the MNIR distributed Feedback Data Sheets among the families of the missing and disappeared. Completed Feedback Data Sheets were forwarded by the respective District Secretaries, with the assistance of Divisional Secretaries, to the MNIR. A total of 14,700³¹ Feedback Data Sheets covering all the Districts were handed over to the OMP on 15 March 2018. A significant source of records regarding missing and disappeared are past CoIs. There have been at least nine CoIs regarding missing and disappeared persons,³² several of which have produced public reports, whilst the final report of several others are yet to be made public.
- 4.5. Records of past CoIs pertaining to missing and disappeared persons, including information obtained directly from families are stored at the Department of National Archives (DNA) under Presidential Seal for a period of thirty years. As detailed in the OMP's 2019 Annual Report, the OMP obtained necessary approvals from successive Secretaries to the former President Maithripala Sirisena, to access the records of past COIs.³³ Further in letter dated 24 May 2019, the Ministry of Housing, Construction and Cultural Affairs under whose purview the DNA falls, further advised the DNA to proceed with the project.
- 4.6. In terms of these approvals, the OMP entered into a Memorandum of Understanding (MoU) with the DNA on 22 July 2019. However, the OMP was unable to proceed with the implementation of the MoU due to lack of clearance from the DNA.
- 4.7. In response to OMP's requests, the Tri-forces provided lists of the armed forces personnel who are considered Missing in Action. The OMP is yet to receive details of Missing in Action personnel

³¹ Paragraph 3.16 of the 2018 Annual Report provides that the OMP received 14,641 files from the MNIR. However, subsequent to a review of the contents and recalculation of the number of files, the figure increased to 14,700.

³² The nine Commissions of Inquiry include the following: The Presidential Commission to investigate Complaints Regarding Missing Persons established in 2013 (also known as the Paranagama Commission); The Commission of Inquiry into Lessons Learnt and Reconciliation (LLRC), established in 2011; Presidential Commission of Inquiry Regarding Incidents of Abductions, Disappearances and Attacks on Civilians Resulting in Deaths Throughout the Island, established in 2006 (also known as the Mahanama Thilekaratne Commission); Presidential Commission of Inquiry into Involuntary Removal and Disappearance of Persons, established in 1998 (also known as the All Island Commission); Presidential Commission of Inquiry into the Disappearance of Persons, the Unlawful Arrest of Persons and the Operation of a Detention House at the Batalanda Housing Scheme, established in 1995; Presidential Commission of Inquiry into the Involuntary Removal and Disappearances of Persons in the Central, North-Western, North-Central and Uva Provinces, established in 1994; Presidential Commission of Inquiry into the Involuntary Removal and Disappearances of Persons in the Western, Southern and Sabaragamuwa Provinces, established in 1994; Presidential Commission of Inquiry into Involuntary Removal of Persons, established in 1991, new warrants issued in 1992 and 1993. Select public reports can be accessed via the Office on Missing Persons, National Reports <<http://www.ompsrilanka.org/key-resources/national-reports>> accessed 29 January 2021.

³³ See Office on Missing Persons, Annual Report (2019), para 3.15-3.16. (**Annual Report 2019**).

from the Sri Lanka Police. However, the OMP did receive lists of information regarding missing and disappeared persons who has been reported to the Sri Lanka Police.

- 4.8. The WGIED had forwarded all reports it had received regarding missing and disappeared persons from Sri Lanka to the Ministry of Foreign Affairs. In 2019, the Ministry of Foreign Affairs forwarded a total of 12,664 reports regarding disappeared persons to the OMP, which includes 6,066 unclarified reports and 6,598 clarified reports.³⁴
- 4.9. Since its establishment until 31 December 2020, the OMP has received the following records relating to missing and disappeared persons.

Source	Number of reports
Complaints regarding missing and disappeared persons received directly by the OMP Head Office	1,377
Complaints regarding missing and disappeared persons received directly by the four Regional Offices of the OMP	1,354
Reports regarding missing and disappeared persons received from MNIR	14,702
Lists of personnel who went Missing in Action, forwarded by Sri Lanka Army	3257
Lists of personnel who went Missing in Action, forwarded by Sri Lanka Navy	452
Lists of personnel who went Missing in Action, forwarded by and Sri Lanka Air Force	34
Reports regarding missing and disappeared persons received Sri Lanka Police	5,307
Reports regarding missing and disappeared persons received from WGEID	12,664
Total	39, 417

Complaints

- 4.10. The OMP has the authority to receive from any relative of a missing or disappeared person, or any other person, or organisation, complaints relating to missing or disappeared persons.³⁵
- 4.11. Since its establishment, the OMP Head Office and Regional Offices have directly received 2,731 complaints regarding missing and disappeared persons from families as of 30 June 2020. This includes 622 letters received at OMP Headquarters from January 2020 to June 2020. Due to the restrictions on staffing due to the pandemic, there was a delays in processing complaints.

³⁴ According to the WGIED, cases are classified as “unclarified” when a government fails to provide information in response to a report regarding a disappeared person. Reports are classified as “clarified” when a government provides a response regarding the fate of a disappeared person.

³⁵ OMP Act, Section 12(a).

- 4.12. The procedure for processing complaints requires the OMP to provide written confirmation to families of missing and disappeared persons, acknowledging the receipt of information regarding their missing or disappeared persons. The OMP has been sending letters of acknowledgement with respect to complaints it has directly received as well as complaints that were forwarded it to by MNIR in March 2018. As part of the OMP's pilot Interim Report project, in November 2020, the OMP sent applications for requesting for Interim Reports along with acknowledgment letters to selected families from the Kandy and Gampaha District.
- 4.13. The OMP has sent 6,639 letters of acknowledgement of receipt of complaints to families as of 30 December 2020. A balance of 9,501 letters are yet to be sent to families. The lack of Tamil speaking staff has proved a serious hindrance in this regard. The details of the letters of acknowledgement can be seen below:

District	Number of complaints received	No. of complaints acknowledged	No. of complaints to be acknowledged
Ampara	519	102	417
Anuradhapura	279	279	0
Badulla	5	5	0
Batticaloa	5684	0	5684
Colombo	116	116	0
Galle	263	263	0
Gampaha	250	249	1
Hambantota	183	182	1
Jaffna	1974	1974	0
Kalutara	190	190	0
Kandy	623	623	0
Kegalle	108	108	0
Kilinochchi	1125	0	1125
Kurunegala	428	428	0
Mannar	356	353	3
Matale	302	302	0
Matara	346	346	0
Monaragala	45	44	1
Mullaitivu	531	400	131
Nuwara Eliya	15	14	1

Polonnaruwa	364	364	0
Puttalam	81	81	0
Ratnapura	216	216	0
Trincomalee	1517	0	1517
Vavuniya	620	0	620
Total	16140	6639	9501

4.14. The number of visits by families to the OMP Head Office, is presented below:

Month	Visits by families to the OMP Head Office
January	22
February	
March	
April	
May	
June	
July	
August	
September	7
October	5
November	0
December	1
Total	35

Missing Persons Data Form

- 4.15. The Missing Persons Data Form used by the OMP for gathering information on the missing and disappeared has undergone several phases. Initially, a form developed by the Presidential Secretariat and the MNIR was used by the OMP.
- 4.16. However, recognizing the limitations of this form, a new, detailed missing persons data form was designed taking into consideration standards adopted by similarly mandated institutions in other countries; the advice of a Data Management Consultant; feedback from staff at the field level; and the views of families. The reasoning for developing a tool to gather the maximum amount of information relevant to furthering the OMPs mandate was based on the fact that many of the family members of missing and disappeared persons and persons of interest are currently advanced in years with the possibility that the OMP may not have another opportunity to gather information in the future.
- 4.17. The form was piloted in 2018. Feedback received indicated the form was too detailed and was time consuming to complete, resulting in fields being left unanswered. The form was designed to

be ideally administered by an OMP official; however, this posed practical difficulties as the OMP lacks a nation-wide presence.

- 4.18. In order to overcome this challenge, the OMP re-strategized and developed a simplified form as a primary tool to gather information on the missing, which can be used in combination with other information gathering tools. It was developed based on internationally accepted standards on minimum required information to record a missing person's report as well as the unique context and needs of Sri Lanka. The simplified Missing Person Data Form was approved by the OMP Board, and made available in Sinhala, Tamil and English languages.
- 4.19. Based on feedback received in 2019, an updated version of the Missing Person Data Form with minor amendments was finalized in September 2020 and approved for use in Sinhala, Tamil and English languages.
- 4.20. During the verification of the Provisional List, the OMP was able to post a total of 149 Missing Persons Data Form to family members who requested new forms.³⁶

Database

- 4.21. Under the OMP Act, the OMP is authorized to create, manage and maintain a database which must include all particulars concerning missing and disappeared persons³⁷ and take all necessary steps, including technical safeguards to ensure the security of all its databases and data.³⁸
- 4.22. The OMP created a temporary database consisting of three registries relating to missing and disappeared persons, events and gravesites and has begun the process of consolidating data collected from complainants and families of the missing and disappeared. Further, the OMP is in the process of mapping out requirements for a comprehensive and permanent database. The OMP has examined databases developed by institutions in other jurisdictions, with similar mandates to the OMP. The OMP has also consulted with international experts on searching for missing and disappeared persons and local database experts to identify challenges and possible solutions to create a database that will assist investigations and serve as a tool for managing individual cases.
- 4.23. During the course of 2020, the Data Unit faced a number of human resources challenges including the resignation and the completion of contracts by several staff members. Further as majority of the data held by the OMP is in hard-copy form, the various lockdowns across the country, prevented and delayed the processing of data held by the OMP. In order to address these challenges, the Board adopted a decision to include staff from Regional Officers in processing data. Commissioners and staff from the Head Office travelled to Regional Offices and trained regional staff to process data.

³⁶ For details on the Provisional List see paragraph 4.34 below

³⁷ OMP Act, Section 13(1)(h).

³⁸ OMP Act, Section 15(3).

- 4.24. From 2018, the OMP engaged in a process of consolidating data received directly from the families and forwarded by other institutions. Upon receiving information regarding missing and disappeared persons the OMP engaged in a process of review, prior to entering the information into its database. The process includes reviewing the accuracy of the information provided and ensuring that the missing or disappeared person falls within the OMP's mandate; and checking for duplicates among other records.
- 4.25. The OMP determines if a missing or disappeared person falls within its mandate by examining the information recorded in the complaint and other contextual information, including for example the date and place of the disappearance. Where a person clearly falls outside the mandate of the OMP, the OMP informs the complainant and where applicable provides further information regarding another state institution that may be relevant to the complaint. In such instances, the complainant has the opportunity to provide further information that will establish that the missing or disappeared person falls within the OMP's mandate. Where there is insufficient information in the complaint to determine if the person falls within the OMP's mandate, the OMP requests further information from the families.
- 4.26. As detailed above, the OMP is focused was focused on processing 39,416 reports regarding missing and disappeared persons. As of 31 December 2020, the OMP has entered into its database 21,175 reports regarding missing and disappeared persons.
- 4.27. In January 2020, the OMP, continued to accelerate the process of entering data, and temporarily allocated staff from other units to process the data and required staff to work overtime to ensure that minimum details of complaints received are entered into the database.

List of Complaints and Information Regarding Missing and Disappeared Persons

- 4.28. The OMP has the authority to publish information on issues of missing and disappeared persons for public knowledge with due consideration of all relevant laws pertaining to confidentiality and protection of data.³⁹
- 4.29. In November 2020, the OMP published a "List of Complaints and Information it has received regarding Missing and Disappeared Persons" (List).⁴⁰ The List was developed from the Provisional List of Missing and Disappeared Persons (Provisional List) that was created in February 2020 for verification purposes, and was not distributed publicly.
- 4.30. Although several past CoIs compiled lists of missing and disappeared persons that fell within their mandates, only a few have been published.⁴¹ Moreover, each CoI's mandates has been limited by

³⁹ OMP Act, Section 13(1)(k)(v).

⁴⁰ Office on Missing Persons, Publications < <http://www.ompsrilanka.org/omp-documents/omp-publications>> accessed 29 January 2021.

⁴¹ See Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Province, Volume II, Sessional Paper, No. V (1997), "List of Names of the Disappeared".

time period, context and region. Further, the data collected by these CoIs and other state institutions has not been consolidated into one repository containing information of the missing and disappeared.

- 4.31. Unlike these past efforts, in accordance with the OMP's unique mandate, the OMP's efforts to consolidate data, including its List is not limited by time period, context and region.
- 4.32. Consolidating information relating to missing or disappeared persons in a list would enable the OMP to identify individual missing and disappeared persons and develop a comprehensive list of incidents within Sri Lanka, that falls within its mandate. Further the List will enable the OMP to provide or facilitate the provision of services, relief and reparations; identify patterns, the systemic nature of violations and disappearances relating to specific incidents and contexts; conduct inquiries and investigations; develop internal processes; and create profiles relating to specific sets of missing and disappeared persons, for the purpose of designing targeted interventions and making recommendations. Taking into consideration the efforts from other countries that have sought to consolidate records pertaining to the missing and disappeared, the OMP acknowledges that the process of creating a comprehensive official record takes several years. The List published by the OMP is an important step towards the creation of a comprehensive, official record of the missing and disappeared in Sri Lanka.
- 4.33. In February 2020 the OMP published the Provisional List and invited families to contact the OMP to review the information concerning their missing or disappeared loved ones and or to report incidence of missing or disappeared persons who were not included in the Provisional List.⁴² Copies of the Provisional List were made available at the Head Office and the Regional Offices. In order to ensure convenience and easy access, families were invited to visit the offices or connect via telephone to review the information and report any concerns to the OMP. Members of the general public who may have information on the fate of a missing or disappeared person included in the List were also encouraged to provide such information to the OMP in writing. This process of verification continued until Sri Lanka went into a complete lockdown in late March due to the COVID-19 pandemic.
- 4.34. Simultaneously, the OMP engaged in an internal process of verification involving several steps to corroborate information in the database against the physical files or lists; avoid duplication of records; and identify cases that fall within the OMP's mandate. The Data Management Unit identified a total of 809 cases of duplicates, in relation to 22 districts.
- 4.35. Cases relating to missing and disappeared persons are assessed based on the facts provided by the families and as of 31 December 2020, 115 cases relating to 22 districts have been excluded from the OMP's caseload as they do not fall within the OMP's mandate. Persons who went missing or were disappeared in connection with the conflict, political unrest or civil disturbances or as an enforced disappearance, and personnel of the armed forces or police who have been identified as

⁴² Office on Missing Persons, "Press Release – Office on Missing Persons: Verifying the interim List of Missing and Disappeared Persons" (9 February 2020) <<https://twitter.com/ompsrilanka/status/1226367749380767744/photo/1>> accessed on 9 November 2020

missing in action fall within the OMP's mandate as per Section 27 of the OMP Act. The List includes cases that are clearly within the OMP's mandate and cases that require further clarification in order to determine whether they fall within the OMP's mandate. It excludes cases that clearly fall outside the OMP's mandate, such as those concerning persons who went missing as a result of the tsunami or victims of extra-judicial killings in cases where there is no element of an abduction or involuntary removal.

- 4.36. The OMP has been informing families if their cases do not fall within the OMP's mandate and requesting families to provide any further information they may possess that would prove otherwise. Since some of the cases included in the List do not contain detailed information, the OMP is in the process of contacting families to secure additional information and the OMP will review these cases to determine whether they fall within the OMP's mandate.
- 4.37. The process of preparing the List was severely hampered by the COVID-19 pandemic as members of the staff were unable to access the physical files and their official workstations due to the lockdowns, regulations on travel and work from home advisories.
- 4.38. Despite these challenges, the List of Complaints and Information Regarding Missing and Disappeared Persons was published on 26 November 2020⁴³ with details pertaining to all Districts except the Batticaloa District and the data provided by the armed forces on personnel who are Missing in Action. The List contains the details of 19,013 incidents of disappearances that were recorded in the OMP's database. Complaints and information from the Batticaloa District, which contains the largest volume of information will be published in early 2021.
- 4.39. With a view to maintain consistency, the data received after 31 July 2020 by the OMP, was not included in the List, and will be incorporated when the List is next updated. The Data Management Unit will continue to update the database as and when new information is brought to the attention of the OMP.
- 4.40. When compiling this List, the OMP used the data obtained directly from the families; the tri-forces; and the MNIR. The Data Management Unit in collaboration with the Victim and Family Support Unit and the Regional Offices undertook the process of preparing the List.
- 4.41. The List contains the following information: i) a reference number assigned by the OMP; ii) the name of the missing or disappeared person in English and in Sinhala or Tamil; iii) the date that the person went missing or were disappeared; and iv) the district in which the missing or disappeared person last resided. When information relating to the date of disappearance and the district in which she/he went missing is unclear, it is reflected as "N/A"- Not Assigned. The List is categorized based on the district in which the complainant resided to facilitate easy reference, but the details of the complainant were excluded to guarantee confidentiality and safety.

⁴³ Office on Missing Persons, Press Release – Office on Missing Persons: List of Complaints and Information Received by the OMP Regarding Missing and Disappeared Persons (26 November 2020)
<<https://twitter.com/ompsrilanka/status/1331909597460713472/photo/1>> &
<<https://twitter.com/ompsrilanka/status/1331909597460713472/photo/2>> accessed on 2 December 2020.

- 4.42. The List dedicated to the personnel of armed forces who are declared Missing in Action contains the following information: i) the reference number assigned by the OMP; ii) the name of the missing person in English; iii) the date that the person went missing; iv) the service number assigned by the tri-forces to personnel; v) rank of the missing person; vi) the place where the person went missing and vii) in case of Army personnel, the regiment of the missing person.
- 4.43. Where the information or complaint was provided to the OMP in Sinhala and Tamil, spelling of the missing or disappeared person's name is spelt as it was reported to the OMP. In such cases, the English spelling of the missing or disappeared person is spelt using standardised spelling to ensure consistency and enable a search of the List. Where information or complaint was provided to the OMP in English, the name is spelt as it was reported to the OMP.
- 4.44. The publication of the List is part of an ongoing process of collating data relating to missing and disappeared persons and would enable the OMP to develop a comprehensive official record of missing and disappeared persons in Sri Lanka, as per its mandate. In November 2020, family members of the missing and disappeared and the public were invited to access hard copies of the List at the OMP Head Office in Colombo and its Regional Offices in Batticaloa, Jaffna, Mannar and Matara. The List was made available on the OMP website on 10 December 2020.⁴⁴

5. Victim and witness protection

- 5.1. The OMP is mandated to develop and enforce a system for victim and witness protection⁴⁵. The Protection Unit has a mandate to protect the rights and address the needs and concerns of victims, witnesses and families of missing and disappeared persons; those who engage with the OMP; OMP staff; and its premises.
- 5.2. The Protection Unit led efforts to protect the OMP's staff and premises in response to the COVID-19 pandemic. The Head of Protection was appointed the lead contact person to coordinate and oversee these efforts.
- 5.3. The Protection Unit developed Covid 19 Operational Planning Guidelines on Preparedness and Response, to enable the OMP to address health and safety concerns, in compliance with the Ministry of Health Guidelines and drawing on World Health Organization standards. A series of measures were introduced including regular temperature checks of staff, sanitization of the premises, co-ordination of staff regarding work from home arrangements, and following up on specific cases where staff members may have been potentially exposed to individuals that had tested positive for COVID-19. The OMP also liaised with Public Health Inspectors and Ministry of Health officials to ensure closer collaboration and to receive timely information regarding relevant developments.

⁴⁴ Office on Missing Persons, "OMP Publications" < <http://www.ompsrilanka.org/omp-documents/omp-publications>> accessed 12 December 2020.

⁴⁵ OMP Act, Section 13(1)(g).

- 5.4. A Protection Strategy for the Unit was approved by the OMP Board, which outlines the objectives of the Unit; scope of collaboration with external institutions; and measures to be adopted to operationalize the Unit.
- 5.5. The OMP received reports entailing protection concerns of attacks against families of the missing and disappeared, justice collaborators including Attorneys-at-Law and individuals and organizations that work directly with the OMP. These protection concerns related to physical and verbal attacks, attacks via social media, surveillance, and harassment.
- 5.6. In individual cases, the OMP made interventions to relevant authorities to ensure the safety and security of persons whose safety was an ongoing concern.

6. Institutional Development

- 6.1. The OMP devoted significant energy and resources to continue to fully operationalize its Head Office in Colombo, and its Regional Offices in Matara, Mannar, Jaffna and Batticaloa. The establishment of the Regional Offices has enabled ease of access to the OMP for families in affected districts. The OMP continues to work towards ensuring that families are treated with sensitivity, dignity and respect at all times.
- 6.2. The OMP faced significant challenges in retaining and recruiting staff in key positions and by various rules and regulations that limited its ability to fully utilize the funds allocated to it under the Budget. The OMP's institutional development was also constrained in 2020 due to the COVID-19 pandemic.
- 6.3. As the first Board, the Chairperson and the Commissioners have played a crucial role in the establishment and development of the OMP, engaging at multiple levels to carry out key tasks. The Board met regularly to discuss strategic developments of the OMP and held 26 meetings during the year. The Commissioners have continued to oversee individual units of the OMP and work with staff to carry out functions where unit heads have not been appointed or units have not yet been established. Furthermore, the Commissioners have participated in conducting inquiries; site visits; and outreach programmes with families, civil society, and other state officials.

Establishing physical premises

- 6.4. The former Speaker Honorable Karu Jayasuriya had assigned the "Shrawasthi Complex" at No. 32 Sir Marcus Fernando Mawatha, Colombo 7 to the OMP for a period of two years, which was set to expire in October 2020.
- 6.5. However, since 2019, the OMP had received a number of requests to shift its location to alternate premises. In November 2019, the OMP, received a request to vacate the Shrawasthi Complex and to take up residence in a number of alternative locations. Pursuant to an offer made by the Ministry of Justice, Human Rights and Legal Reforms the OMP relocated to No. 408, Level 03, Galle Road,

Colombo 03, on 15 June 2020. It shares the property with the Office for Reparations, and contributes monthly rent Rs. 1.8 million for the office premises and utility bills.

Staff recruitment

- 6.6. Since the OMP's establishment the OMP has spent significant time, energy and resources to recruit qualified staff, with requisite experience to fill key positions. Over the course of 2020 a number of key staff resigned from the OMP.
- 6.7. Following a lengthy process of negotiations with the Department of Management Services, the OMP obtained approval to recruit staff of 355. However, despite reviewing over 22,000 applications, the OMP has been unable to fill in 224 permanent vacancies⁴⁶ and has thus faced a serious challenge in its effective operationalisation, including lengthy delays in carrying out key functions related to its mandate. The OMP has been unable to establish some units, such as the Tracing Unit, Media and Outreach Units and ensure that those units that are functioning have the required persons with specialised knowledge and skills. This has seriously hampered the work of the OMP. The OMP continues to negotiate with relevant authorities to ensure that it can recruit experienced, skilled personnel to ensure that it effectively carries out the duties set out in its mandate.
- 6.8. The OMP's efforts to recruit staff was affected by factors related to the General Election, delays in receiving approval, the on-going COVID-19 pandemic, and restrictions imposed by the Government regarding the recruitment of new staff.
- 6.9. During the course of reviewing applications and interviewing candidates, the OMP determined that a number of positions needed to be re-designed in order to attract individuals that have the requisite skills and experience. The OMP revised the following positions: Head of HR & Administration (HM 1-1), Head of Finance & Procurement (HM 1-1), Secretary to the Board/ Senior Legal Officer (MM 1-1), Senior Legal Officer (MM 1-1), and sent for their approval for

⁴⁶ Vacancies include an Executive Director (currently filled by an acting appointment), Head of Finance & Procurement (currently filled by an acting appointment), Head of Human Resources and Administration (currently filled by an acting appointment), Head of Legal, Policy and Research, Head of Victim and Family Support, Head of Communication & Outreach, Head of Tracing Unit, Deputy/Assistant Head of Finance & Procurement, Deputy/Assistant Head of Administration, Secretary to the Board/Senior Legal Officer, Senior Legal Officer, Senior Research Officer, Senior Psychosocial Officer, Senior Data Analyst, Senior Forensic Officer, Senior Investigation Officers (8), Senior Protection Officer (3), Internal Auditor, Regional Coordinator (Main), Regional Coordinator (Sub) (3), External Affairs and Resource Mobilization Officer, Training Officer, Senior Translator (3), Staff Welfare /Grievance Officer, IT Officer (2), Complaint Officer (Against OMP/Staff, etc.), Research Officer (2), Legal Officer (7), Victim and Family Support Officer (20), Counsellor/ Community Service Officer (19), Outreach Officer, Web and Social Media Officer, Communication Officer (3), Senior IT Officer, Data Analyst (2), Excavation and Exhumation Officer (2), Genetic Officer, Archive Officer, Investigation Officer (22), Investigation Research Officer (2), Senior Excavation and Exhumation Officer (2), Senior Cartographer, Translator (7), Stenographer/ Typist/ Transcriber (13), Personal Assistant (2), Receptionist, Management Assistant (16), Data Entry Operator (16), Driver (22), KKS (Office Aide) (20).

the Schemes of Recruitment was sent to the Department of Management Services through the Ministry of Justice, Human Rights and Legal Reforms.

- 6.10. Following receiving approval for Schemes of Recruitment from the Department of Management Services, as salaries of OMP staff are released through its line ministry, the Ministry of Justice, the OMP is required to obtain approval from the latter ministry prior to recruiting selected individuals. As a result, the OMP requested approval from the Ministry of Justice to fill the following vacancies: Internal Auditor (MM 1-1), Regional Coordinator, Batticaloa (MM 1-1), Translator (MA 4), Management Assistants (MA 1-1), Data Entry Operators (MA 1-1), Driver (PL 3), KKS (PL 1).
- 6.11. In February 2020 the OMP was able to recruit one Driver⁴⁷ on a permanent basis following the interview process held in October 2019.
- 6.12. The OMP has been engaging in a lengthy process to offer permanent positions to 10 staff who had been employed on a contractual basis. The staff had been retained at the outset of the establishment of the OMP, on a contractual basis, as at the time the OMP had not yet secured approval from Department of Management Services to recruit any of its permanent staff. The staff had been serving as Data Entry Operators and KKS staff, and the OMP had expended significant resources in training and developing their capacity to carry out key tasks. However, once the Schemes of Recruitment had been approved by the Department of Management Services, the relevant staff members did not meet a number of technical criteria to be eligible for a permanent position. As the relevant staff members had been trained, developed significant experience in discharging their duties, and demonstrated their willingness and ability to efficiently carry out their work, the OMP continued to engage in negotiations to obtain exemptions for select, relevant staff in order to retain them on a permanent basis. However, the Ministry of Justice declined to extend their contracts beyond 30 November 2020. As a result, the OMP lost 10 staff members.
- 6.13. In addition, over the course of 2020, 19 staff members from its Regional Offices and Head Office of the OMP resigned from the OMP to pursue other offers of employment, out of which 14 staff members opted to join the Government's Graduate Scheme.
- 6.14. Mr. C. S. Poolokasingham who served as the Director Administration since the establishment of the OMP, and later took on the responsibilities of the Secretary of the OMP since 30 June 2019, completed his term on 16 April 2020.
- 6.15. On 30 September 2020, Mr. Saliya Pieris who was appointed as the first Chairperson of the OMP upon its establishment in 2018, resigned from his position.

⁴⁷ Duties of the Driver include driving the assigned vehicle/s while performing other duties such as maintenance of vehicle/s and keeping related records.

6.16. On 30 November 2020, Justice Upali Abeyratne was appointed as the Chairperson of the OMP.

Regional Offices

6.17. The OMP has the authority to establish its head office in Colombo and regional offices as necessary.⁴⁸ Following the recommendations of the CTF; the OMP's own public consultations with the families of the missing and disappeared; and given geographical patterns in the incidence of missing and disappeared persons; the OMP determined established for Regional Offices in Jaffna, Batticaloa, Mannar and Matara.

6.18. The Regional Offices of the OMP assisted the conducting of Interim Reports, received complaints and visits from families and held meetings with relevant state and non-state organizations.

6.19. Details of number of visits made by families to Regional Offices is presented below.

Regional Office	Number of visitors received in 2020
Matara	485
Mannar	654
Jaffna	852
Batticaloa	Not available
Total	1,991

6.20. Details of the number of Interim Report inquiries conducted in Regional Offices is presented below.

Regional Office	Number of Interim Reports issued	Number of Interim Reports pending Board Approval	Number of Interim Report inquires conducted
Matara	1	5	7
Mannar	42	21	68
Jaffna	24	15	59
Batticaloa	-	11	13
Total	67	52	147

Development of Procedures and Rules

6.21. The OMP has the authority to develop rules and procedures for its effective functioning.⁴⁹ Over the course of 2020, the OMP finalized rules, guidelines and procedures related to the issuance of Interim Reports; processing of data; COVID-19; and conduct of the Board.

6.22. In order to ensure the compliance with Ministry of Health Guidelines, and the health and safety of its members and staff, the OMP adopted various COVID-19 measures.

⁴⁸ OMP Act, Section 3(3).

⁴⁹ OMP Act, Section 11(b), 26.

- 6.23. Further to the OMP developing policies and procedures for the issuance of Interim Reports, including inquiry procedures in 2019, an update of the inquiry procedures was formulated in 2020, considering the limitations imposed on the process of issuing Interim Reports due to the lack of staff and the restrictions due to the COVID-19 pandemic. Further procedures were developed for Regional Offices regarding hosting Interim Report inquiries; for inquiring officers that conducted the inquiries; guidelines for conducting virtual interviews and inquiries for Interim Reports; specific COVID-19 guidelines for inquiring officers and Regional Office staff when conducting inquiries; and distribution of Interim Reports.
- 6.24. In order to ensure consistency and accuracy in the processing of data, the OMP developed guidelines for categorization of missing and disappeared persons within the OMPs mandate under Section 27 of the OMP Act, which included descriptions of such categories; documentation of the process of verification of the Provisional List; the maintenance of accurate minutes of action taken by the various Units of the OMP on missing and disappeared persons data files; and closing of data files.
- 6.25. Regarding the conduct of Commissioners, the OMP developed a Confidentiality Agreement for the Commissioners and a Code of Conduct for the Commissioners of the OMP.

Ensuring psychosocial responsiveness and sensitivity towards families

- 6.26. The OMP continued to operationalize its mandate in a manner consistent with its psychosocial strategy, which was adopted by the Board in 2019. The first point of contact for families when visiting the OMP are Family Support Officers, based both at the Head Office and Regional Offices, who engage directly with family members and the public, note their complaints, provide information, liaise with other units and staff for follow up action.
- 6.27. The OMP held consultations with victims and family members during the year, but progress was severely hindered due to public health and safety concerns and restrictions imposed due to the ongoing COVID-19 pandemic. Further the changes in premises also impeded direct communication with families.

Capacity building and knowledge sharing

- 6.28. The OMP provided a limited number of training programs for its staff over the course of 2020. The OMP did not engage in any external trainings in 2020. The ability to conduct and participate in trainings was severely limited owing to the public health and safety concerns and the lockdowns imposed in response to COVID 19.
- 6.29. The following training programmes were provided to the OMP Staff over the course of 2020:

Date	Subject	No. of Participants
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4-5 March	A training programme for all Regional Coordinators was conducted in Jaffna on the following: (i) OMPs mandate and functions; (ii) confidentiality and OMPs legal obligations; (iii) process of issuing Interim Reports and CoAs; (iv) common legal issues raised by families including obtaining a CoD and tracing of missing persons.	4
2 – 3 June	Commissioner Raheem, Head of Protection and a Database Officer provided training on the OMP’s mandate, the temporary database and protection issues to Batticaloa Regional Office staff at the Batticaloa Office.	5
11 June	Commissioner Raheem, Commissioner Venthen, Head of Protection and a Database Officer provided training on the OMP’s mandate, the temporary database and protection issues to Jaffna and Mannar Regional Office staff at the Jaffna Office.	8
11 July	Senior Legal Consultant conducted a training for lawyers on the OMP staff designated to function as Inquiring Officers in the process of issuing Interim Reports.	3
12 – 13 September	Commissioner Raheem, a Senior Legal Consultant and a Forensic Specialist conducted a training on identification for OMP staff and Attorneys-at-Law appearing on behalf of the OMP.	5

Right to Information

6.30. Under the Right to Information Act No. 12 of 2016, the OMP, is required to ensure access to information held by the OMP. The table below summarises how the OMP processed right to information requests in 2019 and 2020.

No.	Subject	No. of Days
1	Number of information requests in 2019 and 2020	8
2	Number of requests for which information has been provided fully	8
3	Number of requests for which information has been provided partially	0
4	Number of information requests refused or denied in terms of Section 5 of the Act	0
5	Number of information requests denied, other than for reasons contained in Section 5 of the Act (e.g. non availability of information)	0
6	What is the average time (number of working days) taken to respond to an information request?	11 days
7	How many information requests were received by post?	8
8	How many information requests were received by e-mail?	0
9	How many information requests were received by any other means other than by post or e-mail	0

7. Communications and Outreach

- 7.1. The OMP is tasked with 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.⁵⁰ Since its establishment in 2018, the OMP has developed a communications and outreach strategy to raise awareness of the OMPs mandate and work; generate awareness regarding the consequences of disappearances; the responsibility of the State and society to protect the rights of the missing and disappeared and their families; and dispel misconceptions regarding the OMP. To this end, the OMP has ensured that families of the missing and disappeared, key stakeholders and the general public are able to learn about the OMP’s work through outreach materials, print media engagements and the OMP’s digital and communication platforms.⁵¹
- 7.2. The Communication and Outreach Unit monitors the media and develops communication material, which is overseen by the members of the Board. The OMP held interviews for the position of the Unit Head; however, was unable to identify a candidate with requisite skills and experience.

Public Events

- 7.3. Due to the prevailing COVID-19 pandemic, the OMP was unable to hold any public events considering the safety of all persons.

Engagement with the Media

- 7.4. The OMP engages with the media through media releases, press conferences, interviews, op-eds and by responding to requests for information from members of the media. The OMP seeks to inform the public of its work and dispel misconceptions regarding the same through its media engagements.
- 7.5. The OMP released the following Media Releases for the year 2020:

Date	Title
15 January	“Reviewing the OMP Act” ⁵²
2 February	“Verification of the Provisional List of Missing and Disappeared Persons” ⁵³
10 February	“OMP Commences Issuing Interim Reports” ⁵⁴

⁵⁰ OMP Act, Section 13 (j).

⁵¹ Email: ompsrilanka@gmail.com; Twitter: <https://twitter.com/ompsrilanka>; Facebook: <https://www.facebook.com/ompsrilanka>

⁵² Office on Missing Persons, “Media Release” (15 January 2020) < <https://twitter.com/ompsrilanka/status/1217345382071574528?s=20> > accessed 30 December 2020.

⁵³ Office on Missing Persons, “Verification of the Provisional List of Missing and Disappeared Persons” (2 September 2020) < <https://twitter.com/ompsrilanka/status/1226365980651196416?s=20> > accessed 30 December 2020.

⁵⁴ Office on Missing Persons, “OMP commences issuing interim reports” (10 February 2020) < <https://twitter.com/ompsrilanka/status/1226752435957436417?s=20> > accessed 30 December 2020.

03 March	“Second Anniversary of the Establishment of the Office on Missing Persons” ⁵⁵
07 April	“Letters to HE the President, Prime Minister and Chairman of the Presidential Task Force on COVID-19 Relief” ⁵⁶
26 November	“List of Complaints and Information Received by the OMP Regarding Missing and Disappeared Persons”

7.6. The Board and staff represented the OMP at the following events in 2020:

Date	Event
23 September	Commissioner Dr. Nimalka Fernando participated at an on-line workshop on the Search and Investigation of Enforced Disappearances held to mark the 40 th Year Anniversary of the Establishment of the WGEID and 10 th Year Anniversary of the entry into force of the UN International Convention for the Protection of All Persons from Enforced Disappearance.
16 December	Commissioner Mr. Mirak Raheem presented remarks titled, “Dilemmas associated with reparations” at an on-line seminar titled the “Catalytic Power of Reparations” organized by the Office of the High Commissioner for Human Rights.

Digital Presence

7.7. The OMP managed social media accounts on Twitter⁵⁷ and Facebook⁵⁸ to enable engagement with the public via digital platforms. As of 22 December 2020, the OMP has 5,149 followers in Facebook and 1,866 followers on Twitter.

7.8. The OMP was able to launch its official website⁵⁹ in English on 19 November 2020 to enable the public to access information on the OMP and its work. The website has had 50 visitors as of 22 December 2020. The website was also made available in Sinhala and Tamil in January 2021.

8. Commemoration and Memorialisation

8.1. The OMP has a mandate to create public support to fulfill the needs of relatives of missing and disappeared persons and to make recommendations concerning commemoration and

⁵⁵ Office on Missing Persons, “Second Anniversary of the Establishment of the OMP” (3 March 2020) <<https://twitter.com/ompsrilanka/status/1234754919489572870?s=20>> 30 December 2020.

⁵⁶ Office on Missing Persons,

⁵⁷ “Office on Missing Persons Twitter Account” (24 June 2018) <<https://twitter.com/ompsrilanka>> accessed on 22 December 2020.

⁵⁸ “Office on Missing Persons Facebook Account” (23 October 2018) <<https://www.facebook.com/ompsrilanka/>> accessed 22 December 2020.

⁵⁹ “Office on Missing Persons Website” (19 November 2020) <www.ompsrilanka.org> accessed on 22 December 2020.

acknowledgement.⁶⁰ The OMP seeks to support the rights of the families and the public to commemorate their loved ones, and ensure greater recognition and acknowledgement among the State and society of the rights of the missing and disappeared and their families.

- 8.2. For the third consecutive year, the OMP marked the International Day of the Victims Enforced Disappearances at its Head Office in Colombo with the participation of members of civil society organisations working on the issue of disappearances. Due to the ongoing COVID-19 pandemic, the OMP was unable to hold a larger gathering as the safety of the public had to be considered. Despite the restrictions, the OMP commemorated the day to acknowledge the rights and suffering of families and ensure greater awareness on disappearances.
- 8.3. The then Chairperson, Mr. Saliya Pieris addressed the gathering on the rights of the families of the missing and disappeared and the importance of acknowledging the prevalence of disappearances. Mr. Pieris also discussed the provision of Interim Relief and addressed the difficulties families have faced in accessing the relief. Commissioner Mr. Mirak Raheem made remarks regarding significance of the List of Complaints and Information developed by the OMP and how state and non-state institutions can utilize it to advance the rights and interests of missing and disappeared persons.

⁶⁰ OMP Act, Section 13(1)(j),(k)(ii).