

INTERIM REPORT

The Office on Missing Persons Bill and Issues Concerning the Missing, the Disappeared and the Surrendered

This interim report is based on all written submissions received as at 17th July 2016 and consultations conducted until 8th August 2016.

Consultation Task Force on Reconciliation Mechanisms

August 2016

Note from the Chairperson

Enforced disappearances of persons has been a common-place reality island wide; a monstrous weapon always ready at hand to quell dissent, never totally eliminated though its manifestation may vary in intensity from time to time.

This commonality of experience of all of us lends a very special significance to the imminent establishment of a permanent Office on Missing Persons, with enabling legislation due to be presented to Parliament shortly.

This Interim Report- seeks to distil the experience of a wide range of persons affected by disappearances, including those who experienced a war in their very midst in the North and East, families of servicemen missing in action, disappearances from the hill country Tamil Community, Sinhala fishermen who disappeared in waters in the North and East of Sri Lanka, disappearances attributed to the LTTE and other armed militant groups, or occurring in the context of the political violence of 1987-91 period. In its consideration of submissions received, this Report follows the pattern of the sectional sub headings of the Draft Bill.

Our legislators will have access to this Report online at www.scrm.gov.lk so that it could be of assistance to them at the Committee-stage in Parliament. The short summary will be available in English, Sinhala and Tamil for easy access.

The Consultation Task Force warmly appreciates the professionalism of its Senior Researchers Ms. Chulani Kodikara and Dr. Maleeka Salih and CTF members Dr. Farzana Haniffa and Mr. Mirak Raheem who worked closely with them, for their skilled analysis of an intricate and often conflicting plethora of material. My personal thanks also, for sympathy to the plight of the affected people they bring to their task.



Manouri Muttetuwegama

Colombo
8th August 2016

Consultation Task Force on Reconciliation Mechanisms

Manouri Muttetuwegama – Chairperson

Dr. Paikiasothy Saravanamuttu – Secretary

Shantha Abimanasingham P.C.

Visaka Dharmadasa

Dr. Farzana Haniffa

K.W. Janaranjana

Prof. Sitralega Maunaguru

Mirak Raheem

Prof. Gameela Samarasinghe

Prof. Daya Somasundaram

Gamini Viyangoda

Table of Contents

Executive Summary	viii
1. Introduction	1
2. Methodology	4
3. Summary of Submissions:	6
4. Current Context and Consultations Process	7
4.1 On-going violations and the current context	7
4.2 Consultation Process on the OMP Bill	9
4.3 Lack of a public awareness campaign on transitional Justice	11
4.4 Lack of trust and confidence	11
5. Response of Family Members	13
6. The Missing, the Disappeared, the Surrendered and the OMP Bill	17
6.1 Name of the Proposed Office	17
6.2 Mandate	19
6.3 Aims and Powers	20
6.4 Structure	40
6.5 Members	42
6.6 Staff	45
6.7 Women and the OMP	46
6.8 Language and Communication	47
6.9 International involvement	48
6.10 Relationship with other transitional justice mechanisms	49
7. Before and Beyond the OMP	50
8. Concluding Observations of the CTF	55
9. Summary of Recommendations	60
Annexures	78

Annexures

1. Summary of Submissions received on the disappeared and the Office on Missing Persons, Memorandum shared with Minister of Foreign Affairs and Working Group, 9th May.
2. Profile of individual written submission considered
3. List of Written Submissions considered
4. List of Organizations at Sectoral Consultations held by CTF in June & July 2016
5. Key suggestions regarding the OMP by individuals

List of Acronyms and Abbreviations

AG	–	Attorney General
BPC	–	Batticaloa Peace Committee
CFP	–	College of Forensic Pathologists
CHRD	–	Centre for Human Rights and Development
CID	–	Committee to Investigate Disappearances
CID	–	Criminal Investigation Department
COIs	–	Commissions of Inquiry
CPA	–	Child Protection Authority
CSO	–	Chief Security Officers
CTF	–	Consultation Task Force on Reconciliation Mechanisms
EPAF	–	Peruvian Team of Forensic Anthropology
FAFG	–	Guatemalan Team of Forensic Anthropology
FGDs	–	Focus Group Discussions
FOD	–	Families of the Disappeared
GOSL	–	Government of Sri Lanka
HHR	–	Home for Human Rights
HR	–	Human Rights
HRC	–	Human Rights Commission
ICRC	–	International Committee of the Red Cross
ITJP	–	International Truth and Justice Project
JM	–	Judicial Mechanisms
JMOs	–	Judicial Medical Officers
LLRC	–	Lessons Learnt and Reconciliation Commission
LTTE	–	Liberation Tigers of Tamil Eelam
MFA	–	Minister of Foreign Affairs
MIA	–	Missing In Action
MOs	–	Medical Officers
NECC	–	North Eastern Coordinating Committee
NGOs	–	Non Governmental Organisations
OMP	–	Office on Missing Persons
PCICMP	–	Presidential Commission to Investigate into Complaints regarding Missing Persons
PD	–	Presidential Directives
PTA	–	Prevention of Terrorism Act
RGD	–	Registrar General's Department
RSA	–	Ranaviru Seva Authority
SACLS	–	South Asia Centre for Legal Studies
SCRM	–	Secretariat for Coordinating Reconciliation Mechanisms
SPCI	–	Special Presidential Commissions of Inquiry
STF	–	Special Task Forces
TID	–	Terrorism Investigation Department
TJ	–	Transitional Justice
TMVP	–	Tamil Makkal Viduthalai Pulikal
UNHCHR	–	United Nations High Commissioner for Human Rights
UNHRC	–	United Nations Human Rights Council
WAN	–	Women's Action Network
WG	–	Working Group
WGEID	–	United Nations Working Group on Enforced and Involuntary Disappearances
ZTFs	–	Zonal Task Forces

Executive Summary

The Consultation Task Force on Reconciliation Mechanisms (CTF) was appointed by the Prime Minister in January 2016 to conduct public consultations on the design of the four mechanisms that would advance truth, justice and reconciliation in Sri Lanka. These four mechanisms are: an Office on Missing Persons, an Office for Reparations, a Judicial Mechanism with a Special Counsel, and a Truth, Justice, Reconciliation and Non-Recurrence Commission. Apart from this, the CTF also welcomed submissions on alternative suggestions related to the four pillars of transitional justice (TJ). Zonal Task Forces (ZTFs) were established island-wide to conduct consultations in 15 zones. A Panel of Experts and a Panel of National Representatives were also appointed to contribute in an advisory capacity to the CTF.

This preliminary report provides a summary of submissions relating to the missing, the disappeared and surrendees. It is prepared as a matter of priority in response to the Draft Bill to provide for the establishment of the Office on Missing Persons (OMP), which was gazetted on May 27th 2016. Its aim is to inform the Government of Sri Lanka and the public about the consultations pertaining to the OMP and the issues of the missing and the disappeared made in the submissions received by the CTF.

This report is based on the findings of 291 written submissions received as of 17th July 2016; a sectoral consultations with 11 CSOs and groups representing families of the missing and disappeared, and 11 focus group discussions (FGDs) held by the ZTFs in the Northern, Eastern, Southern and Uva provinces.

The number, range and detail of submissions on this issue confirm the significance of the OMP Bill for the families of the missing and disappeared. They also confirm that addressing the issue substantively is crucial to maintaining the credibility of the transitional justice process initiated by the Government.

This report presents the oral and written submissions received by the CTF. The CTF has refrained from making its own recommendations. In the few instances where the CTF has clarified an issue or makes an observation, it is clearly stated as such.

The CTF will continue to receive written submissions, and zonal-level FGDs and public meetings will elicit further submissions. *The CTF, therefore, stresses that this interim report should not be viewed as a final document on the issue of disappearances and the OMP but as a summary of the findings to date.*

SUMMARY OF SUBMISSIONS

The CTF analysed the submissions under four broad themes: the context and process of consultations, response from the families of the disappeared, disappearances and the OMP Bill, and measures to be taken before and beyond the OMP.

THE CONTEXT AND PROCESS OF CONSULTATIONS

Ongoing Violations and the Current Context

Grave concerns were expressed in the submissions about on-going human rights violations in the North and East, including allegations of abductions and incidents of intimidation of victims and human rights defenders. The continuation of these incidents

is a matter of serious concern, having a detrimental impact on the credibility of the TJ process. The submissions call on the Government to demonstrate its commitment to the stated goals of reconciliation, truth, accountability, justice and non-recurrence. It is strongly and repeatedly stated in the submissions that the Government must repeal the Prevention of Terrorism Act (PTA) and must introduce legislation, to give effect to the UN Convention on Enforced and Involuntary Disappearances, including criminalization of enforced disappearances, in addition to ensuring arrest and detention take place in accordance with the Presidential Directives issued in June 2016. The CTF for its part has raised concerns about the impact of harassment and intimidation, and from the outset provided written instructions to the military and police to ensure that no such incidents relating to the consultations would take place and adversely impact these consultations. Fear continues to be a factor impacting consultations, including when family members are asked questions on justice options at public meeting as they believe that their missing family members are being held in custody and so are at risk if the family speaks out.

Consultation Process on the OMP Bill

It is noted in the submissions that the hurried briefings organised by the Ministry of Foreign Affairs (MFA) prior to gazetting the Bill and external to the broader consultations go contrary to the spirit of the commitment given by the Government to consult victims and affected communities as a preliminary step to drafting the OMP Bill. A large number of submissions expressed disappointment and concern about the lack of transparency and consultation in the drafting of the OMP Bill and noted the resultant rise in scepticism and fear. Submissions also note that the lack of consultation impoverishes the design of the OMP, particularly in terms of meeting the needs of those who will be using the Office.

Lack of a Public Awareness-raising Campaign

Submissions raise concerns about the lack of public awareness of the Government's intentions and objectives with regard to TJ process and the OMP, and the lack of official information available on the consultations, which also impairs public participation. The lack of awareness on the OMP Bill among MIA families for instance contributes to their feeling of isolation and marginalisation by the State. Some submissions recognise the need for a public awareness campaign in the South to address the lack of awareness and to counter racist rhetoric.

Lack of Trust and Confidence in Consultations and the Government's Commitment to the TJ Process

Submissions strongly suggest that the combination of factors noted above is leading to the loss of trust and confidence in the consultation process as well as the anticipated TJ process. In this context, safeguarding and restoring public confidence and trust in the consultation process and in the Government's commitment to TJ is paramount.

RESPONSE FROM FAMILIES OF THE DISAPPEARED

Submissions from across the country highlight common experiences suffered by all families of the disappeared irrespective of ethnicity and geographical location. The response of the families of the disappeared to the OMP were mixed. Some welcomed it as an important initiative that would prove useful in their efforts to seek redress, whilst others expressed scepticism and apprehension as they saw it as yet another initiative by the State which would serve as a cover for not addressing hard issues of investigating and justice. Many groups and individuals, however commented on substantive issues. One submission from the North calls for the OMP to be "victim-centred and designed to ensure empathy, accessibility, gender-sensitivity, transparency, and independence".

The CTF notes that this echoes and encapsulates the feelings of many victim-survivors of disappearances across the country.

The written and oral submissions were always prefaced by stories of past efforts and experiences of families to find their loved ones or even to obtain death certificates. It is difficult to describe the desperation and exhaustion that family members from the South, North and East conveyed in their efforts to seek redress. They speak of the failure on the part of various state agencies to respond to or even acknowledge and record complaints relating to the missing, the disappeared and surrendeers. These accounts detail how in every instance the families had not been provided with satisfactory responses. Participants at the FGDs spoke of marginalisation from their community, past experiences of living under scrutiny and fear, years of living in hope of their loved one's return, social and economic hardships, the failure of past Commissions of Inquiry to bring closure and relief to their situation, disparity of compensations among families of the disappeared, missing and surrendeers and the inability to respond to bureaucratic demands for death certificates.

Individuals and family members of the disappeared express that they are "tired and weary of searching" and that the Government needs to take responsibility and be accountable to the families. Many submissions also point to a lack of faith in any of the mechanisms the Government proposes because of past experiences with various commissions.

DISAPPEARANCES AND THE OMP

The CTF acknowledges that several provisions of the Bill reflect the views, ideas, demands and recommendations expressed in submissions made to the CTF. While some submissions are appreciative of the Draft Bill, others raise concerns and identify gaps as well as limitations.

Disappearances and the OMP emerge as the most critical concern in the submissions received particularly from the North and East by the CTF to date. The CTF analyses these recommendations under nine themes.

1. The Name of the Proposed Office

Submissions emphasise the need to explicitly acknowledge the 'disappeared' in the title of the Office. Among the submissions made, one view calls for the replacement of 'Missing Persons' with 'involuntary or enforced disappearances' while another calls for the addition of 'disappeared' or 'involuntary disappearances'. However, for family members of those who surrendered to the army during the final phase of the war, neither 'missing' nor 'disappeared' captures their experience; therefore, they call for the inclusion of 'surrendeers' as well.

The CTF notes that the emphasis on the matter suggests that the naming of the Office will be an important step to giving the issue of disappearances explicit and public acknowledgement; focus the mandate of the OMP and increase public confidence that their views are being heard by the Government.

2. Mandate

The OMP's broad mandate reflects the majority of the submissions received, which anticipated the need for a broad temporal and geographical mandate covering all communities and ranging from the 1971 insurrection to the post-war period.

There is a call for the bill to make reference to non-state actors as possible perpetrators of enforced disappearances. It is also suggested that the definition used in the OMP Bill must be in line with the definition used in international convention on enforced disappearances. A couple of submissions state that the inclusion of service personnel who are missing in action (MIA) in the mandate of the OMP would dilute the issue of enforced disappearances and instead suggest the establishment of another mechanism to deal with the investigation of MIA, while MIA groups expressed concern that they will be ignored by the OMP.

3. Aims and Powers

Establishment of a Database: The OMP has the mandate to collate data related to missing persons (obtained by processes presently or previously carried out) and centralise all data in a database. This is concurrent with submissions made prior to the release of the OMP Bill. Submissions also recommend that the centralised database should include information from other national and international bodies and that the OMP must be authorised to access court records in relation to *habeas corpus* cases and to map mass graves. Submissions further recommend that statistical information should be entered into a digital database that can be easily analysed and checked for duplication. Submissions also call for the strengthening of provisions to centralise data in a number of ways, which are detailed in the report.

Investigations: Submissions recognise that the OMP Bill gives broad powers to the Office to conduct its investigations. The submissions also make the following points about investigations:

- **Initiating Investigations:** Submissions recommended that the OMP's ability to initiate an inquiry and/or investigation should not be limited to complaints it receives from families and information from previous Commissions of Inquiry, but include the complaints made to any national or international.
- **The Manner of Conducting Investigations and Truth Seeking:** Submissions suggest that investigations by the OMP must be informed by the context within which the disappearances took place; the time lapse between the incident and investigation, and the extent of evidence relating to disappearances already available but which may not be recorded in official complaints. In the case of service personnel who are missing in action, it was submitted that it may be necessary to interview former LTTE cadres and certain politicians to find out the truth about missing soldiers. The need to investigate the violations committed against families of the missing and disappeared in their efforts to search for loved ones was also raised.
- **The Personnel Conducting Investigations:** Submissions assert that the criteria for the selection of investigators for the Tracing Unit should be clearer.
- **Prioritisation of Investigations:** With regard to the prioritisation of cases, the submissions made the following points: 1) to extend the criteria for prioritisation in order to include cases where there is evidence that a person may still be alive and 2) to include the public's view of which cases are of 'public importance'.
- **Excavations/exhumations:** A number of submissions articulate the Bill's lack of clarity on the OMP's role *vis-à-vis* mass graves and the inability of the OMP to deal with investigations of this nature. The submissions noted the challenges of excavating and exhuming mass graves and returning the identified remains to families to conduct funeral rites. It was also noted that there is a lack of specialised knowledge and support at the Magistrate's Courts. The submissions recommend introducing new law, amending existing law and amending the OMP

Bill in order to provide for and draw on forensic experts to support the Magistrate and all other relevant bodies.

- **Conclusion of investigations:** One submission expresses the view that the OMP Bill lacks clarity as to when an investigation under the OMP is deemed concluded. The submission also states that it is essential that the OMP is not seen to be pre-closing an investigation and forcing families to accept closure.
- **Confidentiality Regime of the OM:** Submissions express the view that these provisions in the Bill are wholly inadequate. They submit confidentiality ought to be a regime that is transparent and regulated by the governing statute and that there should be clear and identifiable criteria where confidentiality would be triggered.

There were multiple demands from family members to ensure their involvement in the operation of the office, particularly in searching of detention sites and excavations.

Reporting an Offence to the Relevant Law Enforcement or Prosecuting Authority:

Submissions relating to the power to refer to a prosecuting authority falls into two categories: (1) those that want this provision strengthened to impose a mandatory (and not merely a discretionary) duty on the OMP to refer all cases and (2) those that want the OMP to have a prosecutorial office within the OMP.

Victim and Witness Protection: Submissions raise concerns regarding the lack of trust in personnel responsible for implementing victim and witness protection, the lack of clarity in the link between the OMP and the Witness and Victim Protection Act, and the inadequate protection regime under the Victims of Crimes and Witness Protection Act. The submissions recommend to amend the Act in order to ensure that TJ mechanisms have the power to request assistance.

Issuance of Reports and Sharing of Information with Families and the Public:

Submissions note that the Bill does not stipulate the provision of information to family members as a mandatory duty nor does it detail how such information ought to be shared. The submissions recommend that the OMP formulates formal rules in this regard and also publicly reports on its activities, procedures and general findings.

According to the Bill, disclosure of information to family members, if the person is found to be alive, may occur only if the person consents. However, submissions state that the family's right to know whether a person is alive should be paramount in every case. While the Bill makes provision for a report to families upon the conclusion of an investigation, families of the disappeared in Killinochchi and Mullaitivu in particular insisted on a Certificate of Disappearance so that the State acknowledges this act done to an individual.

Submissions have also questioned the relevance of the Right to Information Act to the OMP and submit that RTI legislation should strengthen reportage around all four key mechanisms.

The Issuance of Certificates of Absence (CoA) and Certificates of Death:

Submissions raise concerns and questions relating to both these certificates. At the zonal-level consultations carried out so far, the response of the families of the missing and the disappeared to the CoA has been mixed as some consider it a positive development whilst others view it with apprehension and refuse to accept it.

It is asserted that the CoA and its provisions are unclear. Submissions recommend that those who have been forced to accept death certificates without proper investigations should be allowed to exchange these for CoA. In terms of terminology, some submissions contend that the CoA should be renamed as "Certificate of Disappearance". Submissions assert that in cases where the investigation into the fate of the missing/disappeared person is inconclusive, the family should be given a document relating to such a disappearance. The OMP must also inform individuals of any consequences in accepting a certificate of death or absence for their disappeared kin. The CoA itself should enable women to access compensation such as bank accounts, life insurance and pensions. As such, the private sector must be made to recognise the CoA too.

Submissions recommend a reasonable period of validity for CoA since periodic renewals may result in undue distress and bureaucratic hassle for families of the missing and the disappeared. It is also asserted that given the variety of challenges, including the loss of documents to prove relationships, it may be necessary to have a sensitisation and awareness process for state officials and the families of the disappeared. Some submissions also recommend that the link between the administrative apparatus of the CoA and that of the OMP should be clearly explained so that families understand how the two systems will operate, including the OMP's role in facilitating the provision of CoA.

Status of Directives to Registrar General: It is recommended that interim reports and reports issued for the issuance of CoA and Death Certificates should be in the form of binding directives and the OMP Bill should be amended to reflect this.

Making Recommendations Relating to Reparations: The CTF received a large number of submissions that addressed the reparations function of the OMP. Submissions recommend that either the reparations authority should be part of the OMP in order to facilitate the reparations process or that – in addition to the dedicated Office of Reparations – the OMP should be enabled to provide both interim and final reparations to families of the missing and the disappeared.

4. Structure

Submissions recommend that the location of the Head and Regional Offices be established in relatively well-known areas that can be easily accessed through public transport. Recognising the importance of Regional Offices, submissions call for the mandatory establishment of Regional Offices; this is seen as particularly necessary for the North and East. Some submissions call for district-level offices in the North and East and provincial offices in the rest of the country. Additional units proposed in the submissions include:

- **Forensic Unit:** The Bill must be amended to create a Forensics Unit with a mandate to identify victims and return remains to families, and should work closely with the families of the disappeared in developing a database of *ante-mortem* data. It should collaborate and coordinate with the other branches of the OMP to consider issues of compensation, death certificates and psychosocial support
- **Reparations Unit and Reparations Fund:** The OMP should have an Interim and Final Reparations Unit that carries out tasks related to reparations. The reparations fund within the OMP should be created within four months of the Office's establishment and resourced from the National Budget whilst reserving the right to raise independent funds.
- **Advisory or Monitoring Body:** The lack of faith in government mechanisms has

been consistently expressed by families of the missing and disappeared. Submissions refer to the need for a body or bodies to perform an oversight function, particularly at the district level. It is expected that this body would regularly review the work of the OMP and make its findings public, suggest improvements to the structure and processes of the OMP and be partly composed of rotating family members of the missing/disappeared from different ethnic backgrounds, geographical areas and time periods when incidents occurred, and include local and international experts, experts on gender and representatives from local women's groups and organisations working on disappearances. There should be continuous consultation with victims and organisations working on disappearances in order to avoid mistakes and help build trust.

- **Complaints Mechanism:** There should be a mechanism to make complaints against OMP staff members who behave insensitively or inappropriately towards families of the missing and disappeared, especially where victims or survivors are women. The OMP should take immediate corrective action.
- **Outreach Unit:** This unit will be responsible for regular communication with families and also raise awareness of the OMP.
- **Psychosocial Unit:** This unit will be responsible for ensuring that victims and families have access to appropriate psychosocial support, including group support and clinical psychological services.

5. Members of the OMP

Process of Appointments of Members and Chair: There needs to be greater clarity, transparency and public involvement in the process of appointing members. This includes the Constitutional Council making a public call for nominations with sufficient time and opportunity given for families and the public to nominate suitable persons. Those nominated should be publicly vetted and then considered by the Council, and this list of successful candidates should be sent to the President for consideration. The Bill must explicitly provide for the President to approve membership only on the basis of this list and also to appoint one of the names from this list for the position of Chair.

Submissions also recommend that the Constitutional Council and the UNWGED and/or the OHCHR should jointly make appointments to the OMP, with the Constitutional Council responsible for local appointments and the UNWGED/OHCHR for international appointments.

Composition of Members: Additional criteria to be taken into account when selecting members to the OMP include a) more than 50% to be women b) ethnicity to reflect the caseload of the OMP c) members to have professional experience of working with families of the missing/disappeared d) possession of psychosocial support experience e) representation from families of the missing/disappeared and family members of servicemen/soldiers who are missing f) members from the regions where most cases arise and speak the language of the region and g) forensic anthropology expertise.

Submissions recommend that foreign individuals known for their integrity, independence and professionalism, and appointed by the UNWGED or OHCHR, should comprise half of the membership of the OMP. The submissions make clear that without international involvement it will be "extremely difficult for victims to place faith in the OMP and that it is difficult to conceive how the OMP made exclusively of Sri Lankans...will have the moral and practical courage to enter camps and prisons and properly investigate alleged acts of disappearance".

It is also recommended that Clause 4(2) should contain a separate explicit provision setting out persons who would not be eligible to be a Member of the OMP. These could include those implicated in the event or covering up the crime or denying the issue of disappearances, i.e. former and current members of the security forces or armed groups, and those who have held or are currently holding political office.

Chair: Submissions recommend that the Chair be rotated regularly and also, as an alternative, for the structure to be headed by a team of 3 individuals. Some submissions recommend that a number of members should be deputy chairs or hold other relevant executive capacities. These submissions were made with a view to minimising prejudiced decision-making.

Role, Function and Status of Members: There was dissatisfaction with the level of clarity regarding the role, function and status of members. Submissions call for clarifications regarding the nature of interaction between Members and complainants and families, the 'governance' and 'executive' role of Members, and whether members work on a part-time or full-time basis. It was recommended that at least four members work on a full-time basis and that all members commit to at least 15 working days every month. Availability to commit to the working days of the OMP should be part of the eligibility criteria for selection.

Security of Tenure: Language that ensures adherence to international standards with respect to the matter of grounds for removal from office must be included in the text of the Bill. This is to ensure that they can perform their responsibilities without hindrance or political interference.

6. Staff of the OMP

Criteria for Recruiting Personnel: It is recommended that all staff should have the requisite professional qualifications and experience; family members of the missing and disappeared should be represented within staff; 50% of OMP staff should be women, and they should be competent enough to respond to and interact with victims and families without having to resort to translations on a regular basis. There should also be international experts to undertake specific tasks such as investigations or forensic work.

The following competencies within the staff are also recommended: gender-sensitivity; sensitivity to the issues, the context and grievances of those engaging with the Office; commitment to the cause of truth for families of the missing and disappeared; caring and trustworthy locals who understand the geography, language and history of the area; experience in working on enforced disappearances, and commitment to maintaining privacy and confidentiality of all communications, testimony and data.

Staff should neither have any prior record of harassment, intimidation or violence nor implication of having any involvement in any instance of a missing or disappeared person or involvement in any other serious crime. Staff should be thoroughly vetted during recruitment, especially current or former law enforcement and military personnel.

7. Women and the OMP

It is anticipated that those who seek truth and justice on behalf of the men who have been disappeared will mostly be women, as was the case with the Paranagama Commission. It is recommended that the OMP should be given a mandatory duty to put in place gender-sensitive policies, rules and guidelines.

Staff of the OMP need to be given gender training. In addition, it is recommended that

the OMP prioritises gender concerns within the Office, ensures a safe environment for women to provide their statements and make queries, ensures reimbursement for costs associated with travelling to the OMP, ensures provision of child-care facilities, and ensures that the OMP's reports dedicate a chapter to the experiences of women who have accessed the services.

8. International Involvement in the OMP

Submissions stressed the need for international involvement in the OMP, especially in the Membership of the OMP, staff of the OMP responsible for tasks such as investigations and forensics, especially in and to fulfil an oversight function. It was also stressed that the United Nations must be a partner to the transitional justice process in Sri Lanka. Such involvement was expressed as critical to the legitimacy, credibility and practical efficacy of the OMP. This suggestions was made repeatedly by family members of the disappeared in consultations in the North, but also by individual families in the South who saw the critical importance of international expertise.

9. Relationship with other TJ mechanisms

The OMP is primarily conceived of as a truth-seeking mechanism dealing with missing and disappearance. Nonetheless, it will have implications for and can make recommendations on the other transitional justice mechanisms proposed by the Government. Given the multiple dimensions of the missing and disappeared issue, including justice and reparations, the need for the Government to clarify the relationship of the OMP with other proposed mechanisms and more generally with the four pillars of transitional justice needs to be made clearer. There is strong demand for the OMP not to limit itself to truth seeking but also to deal with issues of justice and reparations.

BEFORE AND BEYOND THE OMP

Short-term Measures to Build Confidence

Given the considerable time lag between the enactment and operationalisation of the OMP, it is recommended that the Government take measures to build trust and confidence in the short term. From the perspective of the OMP, the search for the missing can take place immediately. Some of the immediate steps demanded include carrying out a search of all official and secret detention centres. In addition, they proposed that all the evidence currently provided is used to conduct investigations.

The CTF received a variety of other immediate steps to be taken including repealing the PTA and enacting enabling legislation to give effect to the UN Convention on Disappearances including criminalization of enforced disappearances, enacting a new law dealing specifically with mass grave sites, amending sections 269-273 of the Criminal Procedure Code to include *post-mortem* examination of dead in large-scale disasters and atrocities, publishing a list of the surrendees, freeing all political prisoners, releasing a list of all detention centres, completing all *habeas corpus* cases within six months, implementing an interim financial allowance for families of the disappeared, appointing a special officer at District and Divisional Secretariats to support victims, and giving preference/priority to families of the disappeared when providing government facilities (e.g. housing and land).

An overwhelming number of submissions received by the CTF articulate the need to punish perpetrators and to hold them accountable. They submit that this is the only way to ensure non-recurrence of these incidents. This was seen as particularly important for the State, as it is answerable to its citizens. It is also recommended that non-state actors responsible for disappearances are held accountable; for example, former LTTE leaders who are still alive.

Some submissions also recognise that the question of justice and accountability for disappearances is not directly addressed by the OMP. It is vested with the power to refer cases, where it suspects an offence has been committed, to a prosecuting or law enforcement authority. Given the absence of legislation giving effect to Sri Lanka's obligation under the International Convention on Disappearances, the lack of information about the mandate of the Special Court and the lack of trust in the Police and Attorney-General, it is seen as imperative that adequate administrative arrangements and checks are instituted to ensure independence from those actors and agencies who are implicated in enforced disappearances (e.g. TID and CID) and to foster confidence in the eyes of the families of the missing and disappeared. The nature of such administrative arrangements should be clarified before the OMP Bill is passed into law.

The CTF notes that the four Presidential Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons, which were appointed in the 1990s, recommended the following: persons responsible for disappearances must be prosecuted no matter who the perpetrators are; prosecutions should not be limited to junior officers; special courts to hear disappearance cases and an Office of an Independent Human Rights Prosecutor; the right of an aggrieved person to file a private plaint is recognised; and the establishment of a Legal Advisory Service Bureau to provide legal assistance to members of families of disappeared.

While punishment and accountability were the primary drivers of justice seeking in the submissions, some point to the need for restorative justice, where perpetrators are (including army and security officers deemed responsible) are rehabilitated. It is noted in the submissions that victims and perpetrators of disappearances live side by side, that the immensity of suffering related to disappearances must be recognised and that relationships between different communities must be rebuilt. Hence, the Government must also explore mechanisms that have a restorative justice process in mind.

Memorialisation

Several submissions to the CTF refer to the importance of memory initiatives and the ways in which memory relates to transitional justice processes and practices. While memorialization falls within the realm of reparations, it is a concept that cuts across three pillars of transitional justice i.e. the right to know, the right to justice and the guarantee of non-recurrence. It is noted that, "a sensible, sensitive, nuanced approach to memorialisation can act as a tool for reconciliation and healing".

However, state practice of memorialisation has been selective, and more likely to erase and deny the past, propagating a lack of understanding or acknowledgment of the abhorrent nature of the crime of disappearances and its devastating effects on families, the lack of understanding that it is a crime that transcends ethnicity and is not limited to the war or a crime that came into being during the war. Furthermore, it is recommended that state practice of memory must be conducted in a strategic, sensitive and balanced manner keeping in mind that government involvement in memory initiatives can exacerbate already existing divisions between communities.

It is suggested that the State adopt a national policy on memorialization, establish a museum dedicated to remembering the war and its impact, including disappearances, and declare a national day to remember disappearances. Submissions also recommended that the Government amend the national educational curricular, protect and reinstate monuments to remember disappearances, lift prohibition on remembering the missing and the dead in the North and the East, recognise the human suffering

caused by war to all families affected in Sri Lanka, recognise the right of victim-survivors to memorialisation initiatives, and ensure the provision of state support for and facilitation of these initiatives.

1. Introduction

“If there is an office we can fight for our children” (a mother in Karachchi)

“We need a place to talk about the issue [of disappearance] and take forward solutions” (a mother in Thunukai)

“It will be an excuse for [more] people to be disappeared” (a mother in Thunnukai)

This Interim Report presents a summary of submissions concerning the missing, the disappeared and surrendees as it relates to the Draft Bill on the Office on Missing Persons (OMP) gazetted on 27th May 2016. The report takes into account all written submissions received by the Consultation Task Force on Reconciliation Mechanisms (CTF) as at 17th July 2016 and consultations carried out by the Zonal Task Forces (ZTFs) and the CTF until 8th August 2016. It is intended to inform the Government and the public at large, particularly the debates on the current Bill of the OMP. The Report does this by:

- making public the response to the Bill, both positive and negative, as per the submissions;
- highlighting the limitations and gaps in the Draft Bill as observed in the submissions up to this date, including concerns about the process of drafting the legislation;
- listing out the submitted recommendations for the process of designing and establishing the OMP in the context of consultations being carried out by the CTF; and
- specifically speaking to improvements to the text of the Bill, to the principles and working methods of the OMP, and to other measures that the Government should take in order to ensure an effective and responsive OMP and related transitional justice (TJ) mechanisms.

As the consultations continue, the CTF anticipates many more submissions regarding the functions of the OMP, other measures relating to the missing and disappeared, and the linkages between these mechanisms. Nonetheless, this report is prepared as a matter of priority in response to the OMP Bill and the concerns raised in the submissions and consultations relating to this matter.

This report presents the oral and written submissions received by the CTF. The CTF has refrained from making its own recommendations. In the few instances where the CTF has clarified an issue or makes an observation, it is clearly stated as such.

The number and range of submissions received by the CTF on this issue, both before and after the OMP Bill was made public, confirm the significance of the Bill for the families of the missing and disappeared in Sri Lanka. Disappearances and the OMP emerge as the most critical concern in the written submissions received by the CTF to date. These issues also formed a central part of the consultations carried out by the Zonal Task Forces, including in the public meetings and in Focus Group Discussions carried out with family members of the disappeared and missing. Addressing the issue appropriately and sensitively (both in terms of truth and justice for survivors as well as measures to ensure timely reparations and non-recurrence) appears crucial to maintaining the credibility of the TJ process Sri Lanka has embarked upon.

The number one priority for many war survivors is a mechanism to determine the truth about the fate of . . . thousands of missing persons. (Sri Lanka War Survivors and Human Rights Defenders in Collaboration with Sri Lanka Campaign for Peace and Justice)

The issue of missing persons is the first truth that needs to be revealed. (International Crimes Evidence Project)

1.1 Background to the CTF and the Process of Legislation of OMP

The Consultation Task Force on Reconciliation Mechanisms (CTF) was appointed by the Prime Minister on the 26th of January 2016 with a mandate “to carry out a wide process of consultations on behalf of the Government of Sri Lanka” to ascertain the views of the public “regarding the steps they would like government to take, including mechanisms to be established to ensure a durable peace, promote and protect human rights of all, strengthen the rule of law, administration of justice, good governance, reconciliation and non-recurrence including measures for reparations in line with the ideas for mechanisms that the government proposes to establish, which were articulated at the human rights council.”¹ These four mechanisms are: an Office of Missing Persons, an Office for Reparations, a Judicial Mechanism with a Special Counsel, and a Truth Justice, Reconciliation and Non-Recurrence Commission. In order to carry out effective consultations, the CTF also welcomed submissions on alternative suggestions relating to but also going beyond these four mechanisms.

The CTF’s brief—formulated on the basis of consultations on consultations carried out by the Government with civil society groups in late 2015—called for the establishment of Zonal Task Forces (ZTFs) island-wide to conduct the public consultations. The CTF proceeded accordingly with the establishment of ZTFs in 15 zones,² and with the development of the methodology for the consultations. The selection of individuals for each ZTF was made from a rich pool of nominees from each zone so as to ensure representation from the major ethnic and religious communities, different occupations (e.g. fishing, farming, business, academia, etc.), diverse age cohorts and persons with long-standing experience of working with victims.³ Where possible, it was sought to ensure that each ZTF comprises a minimum of three women (approximately half of the membership of a ZTF). At the outset, the CTF also appointed two advisory panels as per the brief—an Expert Committee and a Representative Committee.

As planning work was on-going, the CTF was informed in early May by the Minister of Foreign Affairs that the Government of Sri Lanka (GoSL) had decided to expedite the establishment of an Office on Missing Persons and on the 6th of May, at a meeting chaired by the Minister of Foreign Affairs, the Government appointed Working Group (WG) to draft legislation relating to the TJ mechanisms presented a concept note on the OMP to the CTF outlining its broad contours including its structure, mandate, powers

¹ Letter of appointment from the Prime Minister to the members of the Consultation Task Force on Reconciliation Mechanisms, January 2016

² The 15 zones comprise 8 districts of the North and East and 7 provinces in the rest of the country.

³ Further criteria for selection was based on integrity, sensitivity skills and respect within the community, their availability, capacity and commitment, current residency in the relevant zones, and an absence of involvement in violence, crime or corruption as well as an absence of involvement in any political party.

and composition. The CTF verbally shared with the Minister of Foreign Affairs and the WG members present that day a summary of the submissions received, relating to disappearances and the OMP. Upon a request subsequently received from the Foreign Minister's Bureau, a written summary of submissions was sent to the MFA and WG on the 10th of May 2016 (see Annex 1). The MFA held a briefing session with select civil society organizations (CSOs) on 9th May, which was followed by a further briefing meeting with families of the disappeared on the 20th of May 2016, on the request of the select CSOs.

Cabinet approval for legislation was received on the 26th of May. The Bill to establish an Office on Missing Persons was presented in Parliament by the Prime Minister on 22nd June 2016 and was gazetted on the 27th of May 2016.

2. Methodology

The CTF was in receipt of a total of 291 written submissions as at 17th July 2016. This preliminary report is based on approximately 150 of the 291 written submissions (received as of 17th July 2016) relating to the OMP Bill; a sectoral consultation with 11 CSOs and groups representing families of the missing and disappeared, organized on the 5th of July 2016; and 11 focus group discussions specific to disappearances held by the ZTFs in Badulla, Kilinochchi, Mullaitivu, Moneragala, Hambantota, Jaffna, Matara Ampara, and Trincomalee. Where possible the report took into consideration representations related to this issue made by participants at 9 FGDs and 32 public meetings held between 17th of July-8th August (see Annexure). These FGDs were conducted with family members of a) missing/ disappeared persons due to the war (covering the period 1983-2009), including soldiers missing in action (MIA), Sinhalese fishermen suspected to have been disappeared in the North, hill country Tamils and those who surrendered to the army during the final phase of the war; and b) missing /disappeared persons during the period of political violence of 1987-91. The Report also considers submissions concerning the OMP and disappearances made at other CTF sectoral consultations. Notes from the briefing sessions held by MFA on the 9th and 20th of May have also been taken into account. Given the plethora of Commissions of Inquiry that have addressed the issue of the missing and disappeared, and more importantly the many thousands of people who have come before these Commissions, the CTF also took note of recommendations made by these past Commissions to address this problem in Sri Lanka. In particular, the CTF took note of the reports by the four Presidential Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons carried out in the 1990s.⁴

The CTF will continue to receive written submissions in relation to this issue until 10th of August 2016. At the zonal level, a few more FGDs specific to disappearances will take place. Public consultations at the zonal level will also elicit oral (and even written) submissions on the matter of disappearances. **The CTF, therefore, stresses that this Interim Report should not be viewed as representing a final document on the issue of disappearances and the OMP but rather as a summary of the findings to date.** The final report will address key issues that will prove relevant during the establishment of the OMP, the design of other mechanisms, particularly linkages between mechanisms, and other measures to address the issue of the missing and disappeared, including in terms of the current context.

The 291 written submissions were predominantly received *via* post, with a proportionately smaller number received *via* email and through the online submission form found on the website of the Secretariat for Coordinating Reconciliation Mechanisms (SCRM). More than 50% of the submissions addressed, in one form or another, questions related to the Office on the Missing Persons and provided suggestions in this regard.

⁴ President Kumaranatunga appointed three Commission of Inquiry in November 1994 with jurisdiction over three separate geographical areas: i) the Central, North Western, North Central and Uva Provinces; ii) the Northern and the Eastern Provinces; iii) and the Western, Southern, and Sabaragamuwa Provinces. After the mandate of the three commissions expired, the Government appointed a fourth commission known as the All Island Presidential Commission on Disappearances which functioned from 1998-2000 and inquired into some 6000 remaining complaints.

The CTF wishes to acknowledge that of the written submissions received relating to disappearances, 115 were handwritten letters from the districts of Batticaloa, Ampara, Vavuniya, Puttalam, Jaffna Mullaitivu, and Mannar. These letters recounted a personal experience of the disappearance of a son, husband, brother, daughter or mother, and the many years spent going from one institution to another, searching for their loved ones. 91 of these were from Tamils and 24 from Muslims. 101 of these were made by women.

3. Summary of Submissions

The CTF acknowledges that several provisions of the Bill reflect the views, ideas, demands and recommendations expressed in submissions made to the CTF and as observed at the two MFA briefings on the design of the OMP. Indeed a number of submissions received, after the Bill was released, expressed positive sentiments about it:

The bill is fundamentally sound. . This represents a significant improvement on prior Commissions to investigate missing persons, which served effectively at the pleasure of the President, who was at liberty to terminate or extend their respective mandates at will.
[Anketell]

(t)he Bill contains many positive elements, including: a broad definition of missing persons; broad powers of the Office to conduct its investigations with the cooperation of national authorities; the establishment of a Victims and Witnesses Protection Division; powers to issue certificates of absence to families; detailed provisions on keeping victims and families informed of investigations; the establishment of offences of contempt against the authority of the Office; and a mandate to recommend reparation, including guarantees of non- recurrence for victims.
[Amnesty International]

Other submissions received by the CTF relating to the OMP (both before and after the Bill was released) raise concerns, and identify gaps and limitations regarding the content of the Bill and the process by which it was formulated as well as the disturbing recurrence of abductions in the recent past. Some Submissions received after the release of the OMP Bill showed keen study of the Bill and its provisions, and provided specific suggestions to strengthen and improve it. The regional and zonal consultations in the North and East, however, revealed a lack of knowledge although the people engaged with the OMP in a robust manner. There was even less awareness of the OMP in the South, where participants also had many questions about its relevance to their own experience of disappearances which had occurred many years ago. They were nevertheless eager to share their stories of loss and suffering in the consultations. In the sections that follow, the CTF presents these submissions under four broad themes:

- The context and process of consultations;
- Response from the families of the disappeared;
- Disappearances and OMP Bill; and
- Measures to be taken before and beyond the OMP.

4. The Current Context and Process of Consultations

4.1. ONGOING VIOLATIONS & CURRENT CONTEXT

Under this government, people who are abducted come back after three or four days. This is important, but, if the CTF is going all over the country consulting people, they should have the trust towards the government that they would not be abducted after giving testimonies to the CTF. Earlier, victims didn't come and talk openly. But now police, army and everyone knows who are the victims, and who is giving testimonies. Abductions are a huge obstacle to the consultation process. [FoD]

In the written and oral submissions received by the CTF and the zonal consultations, grave concerns were expressed about on-going human rights violations in the North and East. These include abductions,⁵ torture, harassment, surveillance, intimidation and questioning of members of the Tamil population—in particular former LTTE cadres who have gone through rehabilitation as well as human rights defenders and family members of the disappeared—by the intelligence services, Police and security forces. Submissions also assert that some of the abductions turn out to be arrests without following due process.

International Truth and Justice Project, Sri Lanka (ITJP) refers to the fact that the Special Rapporteur, Juan Mendez, who visited Sri Lanka in May 2016, corroborated the continued practice of abductions and torture under the new government.

Submissions and zonal consultations also raise the issue of secret detention camps. One organisation reported that the Government ignored a complaint relating to the existence of a secret detention camp in Trincomalee in 2013 where 600 people were allegedly detained. They also expressed that the complainants were harassed. Submissions note that secret detention camps continue to exist, but that the present government is taking no action on this matter, and that complainants continue to be harassed. Participants at a FGD held in Kilinochchi referred to the existence of secret detention camps in Kadirgamam, Pulmottai, Trincomalee and Verugal and demanded the right to see the detainees.

While submissions noted that violations are no longer occurring in an overt, widespread

⁵ Submissions make references to following incidents:

ITJP states that they have evidence of 23 abductions during 2015 and 2016, which resulted in the victims being tortured and/or sexually violated.

Arulingam et al (5th July) refers to 10 abductions reported, of mainly Tamil men from in the Northern Province between 30 March – 30 June 2016. These include:

- Renukaruban, a Tamil with a British passport who was visiting Sri Lanka, was assaulted and abducted from his home in Jaffna in front of his mother and sister, by unidentified men. He was later found in remand custody.
- Jeyanthan, a former Liberation Tigers of Tamil Eelam (LTTE) cadre, was abducted in April 2016 from his home in Jaffna by unidentified men claiming to be from the Police, and later found to be in TID custody.
- Nakulan and Ram, two other former LTTE leaders, who were reported as abducted in two separate incidents in April 2016, in Jaffna and Ampara respectively, who were also subsequently found to be in TID custody.
- Santhiogu Anton from Mannar who was abducted on 30th June 2016 around 11.30 pm and later found dumped on the roadside, badly beaten up and burnt.

or systematic manner, the continuation of these incidents under the present government is a matter of serious concern.

There were several expressions of deep disappointment at the unwillingness of the Government to condemn or even acknowledge all on-going violations, including abductions, or take action against the perpetrators. Further, submissions contend that if such violations are being carried out by state forces without Government authorisation, it is an even more alarming state of affairs, as it implies that the Government is not in control of the security forces and surveillance structures. Moreover, and highly relevant to the on-going consultations, many of the victims of these violations appear to be those who are working on the issue of truth and justice for the disappeared as well as family members who are still seeking their loved ones. Some persons who came before the CTF spoke of personal experiences of harassment and intimidation due to their work related to disappearances.

It is further pointed out in the submissions that in the context of on-going violations, Tamil victims in particular may not be able to speak freely to a national consultation process.

The family members of some interviewees had been disappeared and the interviewees had themselves suffered multiple violations after the war, including abduction, torture and sexual violence. Although interviewees were not asked directly to provide the reasons they believed were responsible for their abduction and torture, they frequently made the connection between activities related to raising awareness of the fate of the disappeared and their subsequent abduction, detention and torture. Thirty eight percent of those who were tortured also had a family member who was missing or had disappeared. [ITJP]

Within the submissions, similarities were made with the situation of those who went before recent Commissions of Inquiry such as the Lessons Learnt and Reconciliation Commission (LLRC) or the Presidential Commission to Investigate into Complaints regarding Missing Persons (PCICMP/Paranagama Commission). It was repeatedly stressed that there should not be a repetition of that situation in relation to consultations on transitional justice mechanisms.

There should also be no threats or intimidation to those who come forward to complain or talk about these issues or the witnesses. The intelligence units were all sitting in the meeting. They watched proceedings and then followed the people and gave them death threats and intimidation. . .e.g. on 2013 Human Rights day, the police arrested me. In the police station also I got death threats. I went to the Human Rights Commission and the police Headquarters but nothing is being done about it being done still. There are so many questions about how they will initiate the investigations. [CID]

Several submissions and expressions from the consultations are of the opinion that repealing the Prevention of Terrorism Act (PTA) is required if the OMP is to have any impact. While noting that the Government has now ratified the U.N. International Convention for the Protection of All Persons from Enforced Disappearance, submissions also recommend that it must introduce enabling legislation including criminalization of enforced disappearance.

The submissions reveal the detrimental impact of the on-going violations on the credibility of the transitional justice process and of the Government's commitment to the goals of reconciliation, truth, accountability, justice and non-recurrence. The submissions to the CTF call for the Government to demonstrate its commitment to the stated goals, through acknowledging the on-going violations in the North and East and taking steps to stop it.

For its part, the CTF has since its establishment in January 2016 insisted that if the consultation process is to be successful, the Government must ensure that the security forces, Police and the intelligence services refrain from harassment and intimidation of persons involved in the consultations. The CTF met with the military and Police several times at various points and has written a number of letters to them, including to provide instructions to avoid harassment and intimidation, and on following Presidential Directives on arrest, given a number of complaints relating to abductions. Despite these instructions, several grave incidents were reported.

4.2. CONSULTATION PROCESS ON THE OMP BILL

A large number of the submissions expressed disappointment and concern about the lack of transparency and consultation in the drafting of the OMP Bill. They state that the process (or the lack of one) impacts the credibility of the transitional justice process and calls into question the Government's commitment to its goals.

To summarise the process followed; prior to gazetting the OMP Bill on the 27th of May 2016, the MFA presented a "concept note" relating to the OMP to the CTF on 6th May 2016 and a deadline of two weeks to hold consultations on the OMP and present suggestions and recommendations relating to the design of the OMP to the Working Group. It was, however, not possible for the CTF to conduct 'speedy public consultations' on the issue of disappearances given the methodology adopted and commitment to conducting consultations across the country. In this context, the MFA held briefing sessions with civil society organisations and family members of the missing and disappeared in Colombo over the space of two weeks. These more specific and time-limited briefing meetings took place on the 09th and 20th of May, and were external to the broader consultations being organised by the CTF in line with the process that had been envisaged and agreed upon following the consultation on consultations conducted by the Government in late 2015. Indeed, the truncated process of consultations raised several concerns amongst those affected by and working on the issue of the missing and the disappeared. It is variously noted in the submissions that this process goes against the commitment given by the Government to consult victims and affected communities as a preliminary step to drafting the OMP Bill in the United Nations Human Rights Council (UNHRC) Resolution on 'Promoting Reconciliation, Accountability and Human Rights in Sri Lanka' and the Foreign Minister's speech delivered at the UNHRC on 14th September 2015.

The following quotes demonstrate how deeply those who are affected by the issue of disappearances and those who are working on their behalf feel about the matter, and the way in which it calls into question the sincere commitment of the Government to accountability and non-recurrence.

The people of Batticaloa were given the impression that the formation of the Office on Missing Persons and its functions were going to be carried out fully in consultation with the affected communities. We are therefore extremely disappointed to note that the GoSL had already drafted the Bill. We would also like to note that

we are commenting on this Bill, not because we have been requested to do so by the Task Force, but rather from a sense of responsibility we feel to the affected families as they have no choice but to access this Office. Their concerns have been voiced over the last decades and the Batticaloa Peace Committee in its role as a 'facilitator watchdog' feel it is imperative that these concerns of the people are raised by us. [BPC]

The OMP Bill was developed without any transparency or real consultation by a Working Group appointed for the purpose and whose membership and mandate remains unclear to the public. [Arulingam et al 5th July]

The present so-called 'good governance'. . .claims that it would implement transitional justice. Yet it is not prepared to make the victims stakeholders in its initiatives. Therefore, victims who are suffering for decades have become frustrated and lost faith in this government as well. In an atmosphere where it is widely hoped that mechanisms for transitional justice should be promoted only through national dialogue, GoSL defiantly and unilaterally makes mechanisms and acts well before any dialogue take place. This only asserts the bitter fact that the present government like all its predecessors is concerned only about its political survival. . .We also plead your attention towards the observation of the UN High Commissioner for Human Rights that the national dialogue appears as the preliminary step in the initiation of the transitional justice. The High Commissioner during more than one occasion has asserted that the mechanisms of transitional justice should be based mainly on the suggestions of the victims. [NECC]

Concern is raised in the submissions that the manner in which the Government introduced the very first of the four reconciliation mechanisms, i.e. the OMP, has resulted in scepticism and fear as to whether the rest of the transitional justice mechanisms too will similarly be designed without due input from affected people. It is stated that the credibility of these institutions will be called into question in the eyes of the victims, if the due process of establishing them are compromised or circumvented. It is submitted that in the absence of consultation, victims are likely to view the mechanisms as being no different to the various Commissions of Inquiry appointed by previous governments.

A further point made in the submissions is that the lack of consultation impoverishes the design of the OMP in servicing the needs of those who will be using it. Submissions point out that if 'victim centeredness' is to be at the heart of transitional justice mechanisms and especially the OMP, consultations with victim-survivors in particular are critical to shape its structure and processes to meet their needs and interests.

Submissions also call for an on-going consultation process that does not come to an end with the enactment of the OMP law and also stress the need for periodic consultations with those who will be accessing the Office with reference to its operating principles, rules and procedures.

These concerns notwithstanding, the CTF appreciates that the Draft Bill incorporates some of the suggestions and recommendations made at the briefing meetings, and calls

on the Government to incorporate the recommendations and suggestions made in this and the final report in the establishment of the OMP and the other mechanisms.

4.3. LACK OF A PUBLIC AWARENESS-RAISING CAMPAIGN ABOUT TRANSITIONAL JUSTICE

The sectoral and written submissions and information from the consultations raise concerns about the lack of public awareness on the Government's intentions to establish transitional justice mechanisms and their objectives. This need for greater awareness was not just a point made by those working in the North and East. Specific submissions refer to the need for a public awareness campaign in the south of the country to address the lack of awareness about the Government's intentions as well as to counter the racist rhetoric being used in an attempt to mobilize nationalist forces against transitional justice. The Sinhala proverb *ugurata hora beheth kanawa* was invoked to describe the current government's efforts in relation to transitional justice.⁶

The OMP has not come into being yet but the racists are already creating problems. They are saying that this is to appease international community and to punish the security forces. [CID]

The lack of official information on the consultations available through the media, and the absence of a strong government spokesperson who can communicate to the public on the process and challenge the negative discourse about transitional justice is referred to in a number of submissions. The feeling of alienation amongst victims from the creation of the OMP was reiterated by a number of groups. A representative from the Association of Families of Servicemen Missing in Action at the CTF Sectoral Consultation stated that families of the servicemen who are missing in action are also not aware of the OMP or the other proposed mechanisms or the process, and that they believed the process was meant for civilians and not for families of service personnel. The representative from the Ranaviru Seva Authority also expressed this perception. Both groups noted that this lack of information and involvement in the process of MIA families adds another layer of disenchantment to the existing perception amongst these families that the State has no real interest in providing answers on the issue of the MIA.

4.4. LACK OF TRUST AND CONFIDENCE IN CONSULTATIONS AND THE GOVERNMENT'S COMMITMENT TO THE TJ PROCESS

Submissions implicitly and explicitly recognise that the establishment of the Consultation Task Force and the drafting of the OMP are the result of the struggles of people for truth and justice. Yet from their perspective, these structures are "very distant" and the "government's political intentions" are still not clearly visible to the people. It is submitted that there is a feeling of not enough is being done for the missing and the disappeared and that there is a need to convey to the grassroots that the Government cares. Many in the consultations expressed complete lack of faith in state mechanisms and intentions. They did not expect any positive outcome from the actions of State. The submissions strongly suggest that the combination of factors discussed above is leading to a breakdown in trust and confidence in the consultation process as well as the anticipated transitional justice process.

⁶ "Trying to swallow medicine without the throat knowing it"

We strongly felt during our close and continuous interactions and mutual dialogue with war affected people and grass root level civic organizations in the North and East regions that people have lost faith in the government's promises and that they believe that the intervention of the international community is the only viable option left for them. [NECC]

The disturbing number of abductions over the last three months, and the Government's inaction in this regard, has led to scepticism and lack of confidence in initiatives of the Government to ensure truth, justice and reparations for previous incidents and guarantee non re-occurrence. [Arulingam et al, 5th July]

We have heard about abductions and disappearances happening everywhere. Follow up on at least one of these cases as an example. If you solve one case, then we will trust you [Mother of a missing person from Vavuniya, Meeting with SCRM, 20th May]

In this context, safeguarding and restoring public confidence and trust in the consultation process and in the Government's commitment to ensuring reconciliation, truth, accountability and non-recurrence is paramount.

5. Response from Families of the Missing, the Disappeared and the Surrendered

Submissions and consultations from across the country highlight common experiences of pain and trauma suffered by all families of the disappeared irrespective of ethnicity and geographical location. It is difficult to fully capture the sense of desperation, exhaustion and urgency with which families came to the consultations across the country, in the hope, however limited, of gaining assistance for their search or plight.

I am dying bit by bit. Sometimes when I set off on the road, I wish that a vehicle would hit me. But she (pointing to the other lady next to her) says don't die, we will see them again... we will. [Mother at Kandavalai public meeting].

People call us mad. Sometime they laugh at us saying don't you know *peyaikatturanga* [they are just taking you for a ride]. Now when we go somewhere in this regard, we don't tell people, because they laugh at us... We are always on the road trying to find our children. How can we give up? That would be a betrayal to them. [Mother at Kandavalai public meeting].

Families also highlight commonalities of experiences in dealing with government bureaucracies. The experience over time, sometimes two decades, of not securing any answers has had an impact on what families expect and demand. The response of the families of the disappeared to the OMP—whether in the North or South—were mixed. Some welcomed it as an important initiative. Others expressed scepticism as if it was yet another Commission of Inquiry. Yet whether in writing, at FGDs, or at public hearings they engaged with the idea of the OMP and have shared their suggestions about how they imagine such an office and how it should work.

A submission from the North states that “the OMP should start from an understanding of what it means to have a family member disappeared” and the way in which, in the past, they have been “made to re-live their trauma again and again as they retell their stories without avail” (WAN). They call for the OMP to be “victim-centred and designed to ensure *empathy, accessibility, gender-sensitivity, transparency, and independence*”.

The CTF is of the view that this echoes and encapsulates the feelings of victim-survivors of disappearances across the country—whether expressed in writing, at sectoral meetings or at the FGDs.

We have filled enough forms in our life. What relief can we get? (Wife of a disappeared, FGD held in Hambantota)

We don't want compensation for life. We gave them in front of our own eyes. How can we register in this way? When you see us you see as people who are going about life but we are living with extreme pain in our hearts unable to cry in front of our children. We cry when we walk on the street. Those who took them in a CTB Bus said that they are going to release them by giving amnesty but it is now 7 years and we have had no information. (Wife of a surrendee, FGD held in Kilinochchi)

As already mentioned, the CTF received a large number of letters from family members of the missing, disappeared and surrendeers. The FGDs held with family members in

several different locations across the country further supplemented these submissions. These written and oral submissions were always prefaced by stories of past efforts and experiences of families to find the whereabouts of their loved ones or to obtain death certificates and compensation. They provide details of the failure on the part of various state agencies to respond to or even acknowledge and record complaints relating to the missing, the disappeared and surrendees. The submissions from individuals point to having contacted several state and international agencies, including the Police, the Army, the Human Rights Commission of Sri Lanka (HRCSL), the National Child Protection Authority (NCPA), International Committee of the Red Cross (ICRC), and non-governmental organisations (NGOs) as well as various Presidential Commissions. Complaints and pleas for the return of family members had also been made to members of the Armed Forces and paramilitary groups, as well as political parties and political representatives. Hence, there is exhaustion with having approached multiple mechanisms but having received no answers. The consultations on reconciliation mechanisms were thus viewed as yet another such structure: "Please don't ask us for another meeting. You have enough information. Please start work and find a solution soon" (Mother in Karachchi)

These accounts detail how in every instance the families had not been provided with satisfactory responses. Various excuses had been provided such as "we cannot search in 'un-cleared' areas" or that there was not sufficient evidence of a disappearance. It was noted in several of the submissions that the complaint had not been taken down in Tamil or in some cases not taken down at all, or that their statement had been misrepresented. In other instances, cases had not been taken up for investigation despite family members and other witnesses providing considerable evidence, including the identity of the individuals who had abducted or arrested the family member. It was reported that women have been asked for bribes (including sexual favours) for information about their disappeared relatives. Some of the submissions noted how physical threats of violence and death had been made following their complaint. In other instances, unknown individuals had called and demanded ransom money for the return of the individual. Some had lost large sums of money—some of it collected through loans, pawning of family jewellery, sale of land or borrowing—on false promises to release the disappeared person.

In the North, most did not want any compensation. They merely wanted information about the disappeared person or his or her return. Many also expressed a strong resistance to receiving death certificates, strongly believing their loved ones were still alive. They were suspicious of processes that could lead to the state avoiding its duty to reveal the whereabouts or fate of the disappeared.

The following is an excerpt from a personal account, which demonstrates the indefatigable efforts and commitment to searching for loved ones from the families of the disappeared. Since her son's disappearance, his mother has contacted 20 institutions over the past 9 years. Not one of these has responded to her queries in any form.

On 27.05.2008 my son was abducted by unknown people at 10.15 a.m. down Court Road in a white van. After this my daughter in law had made complaints at the police and the TMVP office in Trincomalee.

Complaints were also made at:

27.05.2008 – Ports Police Station, Trincomalee
30.06.2008 – Red Cross, Batticaloa
18.09.2009 – Kachcheri, Trincomalee Fort – Full inquiry, oath given
07.07.2010 – Complaint to the Human Rights Commission (Batticaloa, by mail)
09.10.2010 – Batticaloa Kachcheri - complaint to the Colombo (HR) Commission
24.11.2010 – Letter sent to Colombo (HR) Commission
27.12.2010 – Letter sent to Colombo Commission (At the Trincomalee Kachcheri)
03.12.2011 – Letter to Colombo Commission at Muthur
28.01.2011 – Gave letter to T. Nizar in person at the Trincomalee Kachcheri
29.05.2011 – All documents including letter given to the Boosa, Galle
08.06.2011 – Went directly to see – Vavuniya camp
09.07.2011 – Vavuniya rehabilitation – by letter
05.02.2012 – Vavuniya rehabilitation – by letter
18.03.2012 – At the Trincomalee police station (Gave address)
26.04.2012 – Colombo Embassy and main police station- sent through letter
06.04.2013 – In person handed over letter in Vavuniya and verbal complaint recorded from me
12.10.2013 – Request to Presidential Commission through letter
02.01.2014 – Colombo Commission through letter
16.02.2015 – Batticaloa fast (protest)
02.18.2015 – Letter to Colombo Commission at Valachchenai

KG, Aarayampathi, Batticaloa

Individuals express that they are “tired and weary of searching” and that the Government needs to take responsibility and be accountable to the families. Some submissions call for the Government to accept that various state agencies have carried out enforced disappearances. They also insist that all cases be brought to court. Nevertheless, many submissions also point to a lack of faith in any of the mechanisms the Government proposes because past experience with various commissions had not brought about any favourable results. The past experiences, including that of being ignored, harassed or intimidated, coupled with the violations taking place in the current context, intensify this lack of confidence and trust.

It is difficult to capture the desperation and exhaustion conveyed by family members of the disappeared, be they MIA or Tamils from the North, who came forward. One woman in Thunnkai noted “It would have been better off if they told [us that] everyone had died. We would have been better off.” Another woman in Killinochchi speaking about other families of the disappeared and herself stated:

“So my people are on the road searching for their loved ones. I travel on the cycle tears streaming down, sometimes I don’t know where I am going.”

Family members of the disappeared from the hill country Tamil community who participated in focus group discussions held in Passara and Buttala expressed similar feelings of fatigue and hopelessness. They talked about how during the war they were suspected of having connections with the LTTE, labelled as living in “LTTE villages” and therefore under constant surveillance. They talked about men from the community

disappearing. They also stated that men from the area had a habit of going to the East in search of employment but some never came back; they disappeared. One participant stated that even the bus conductor was suspicious and would check their bags when they got into a bus to go to work. He talked of the men being afraid to step out of the village for fear of being arrested or disappeared and that in his case it was his mother who supported him with money earned from selling firewood. Another stated that people were unaware that these things happened to members of the hill country Tamil community.

People think that these things happen only in the North and East...
They don't know that there are Tamils living in Moneragala, and they
don't know that people from here have also disappeared.
(Participant, FGD organised by the Zonal Task Force for Uva Province
in Buttala)

Hill country Tamil participants at FGDs also stated that they were afraid to search or even to talk about these incidents because of their fear of being marginalised within the community. One participant stated that he had not spoken about the disappearance of his brother to anybody prior to the FGD even though the disappearance happened in 1990. Except for one or two, many have not obtained death certificates or compensation. In fact, many were unaware that it is possible to claim compensation for a disappearance.

Family members of Sinhalese fishermen who had disappeared in the 1990s, who participated in FGDs held in Trincomalee and in Matara, spoke of years of living in hope that their husbands were being held by the LTTE. They spoke of going to the Vanni to meet the LTTE to find out whether the missing men were alive, but coming back with no information. They stated that now the war is over and they have made up their minds that these men are no longer alive, but that the Sri Lankan state is still accountable to them to make reparations for their loss.

Similarly, wives of those who had disappeared during the 1987-1989 period spoke of the social and economic hardships that they went through following the disappearance of their husbands, particularly the struggle to make a living and bring up children. Many of them had been part of the Mother's Front in the South and had gone before the Presidential Commission of Inquiry into the Involuntary Removal or Disappearance of Persons appointed by former President Chandrika Bandaranaike Kumaratunga. They stated that it didn't bring them closure, and that only some had received compensation. Beyond that they said that successive governments had done nothing for them. One participant at the FGD in Hambantota stated that they were 'made widows' and that even after she struggled to bring up her children, they had abandoned her. Participants spoke of the need for fair financial reparation, including a fair lump sum and a monthly payment such as a pension for all families of the disappeared.

Some participants at FGDs in Trincomalee, Matara and Hambantota who reported of disappearances, whether attributed to the LTTE or the political violence of the 1987-91 period, stated that they are yet to receive death certificates and compensation close to 30 years after these incidents because of a failure to fulfil bureaucratic demands to produce documentation. They reported going from one government office to another to get death certificates.

6. The Missing, the Disappeared, the Surrendered and the OMP Bill

Disappearances and the OMP emerge as the most critical concern in the submissions received from the North and East by the CTF to date. Submissions received after the OMP Bill was released also critically engage with its provisions, identifying gaps and limitations and providing specific recommendations to improve the Bill particularly from the standpoint of victim-survivors, i.e. the family members of those who are missing and disappeared. Considered collectively, the submissions provide very specific, rich and detailed recommendations with reference to the design and operation of the OMP. The CTF analyses these recommendations under the following themes:

1. The name of the proposed office
2. Mandate
3. Aims and Powers
4. Structure
5. Members
6. Staff
7. Women and the OMP
8. International involvement
9. Relationship with other transitional justice mechanisms

Many of the recommendations under these themes speak directly to the provisions of the Bill. It should, however, be noted that the CTF has also included other recommendations on the working methods and operational rules and procedures related to the OMP, which are not directly related to the provisions of Bill, but which will come into play once the OMP is established.

6.1. THE NAME OF THE PROPOSED OFFICE

“My child didn’t suddenly grow wings or fall out of someone’s pocket to go missing, they were taken” - Mother at Kandavalai public meeting

We want the word ‘enforced disappearance’; we resent the word missing. If a person has been forcibly disappeared, the document needs to state this expressly. Not simply a statement of absence. We steadfastly reject the terminology ‘missing persons’ as no one disappeared in his or her own volition. Therefore, we insist that the correct term ‘Office of the Enforced Disappearances’ be employed henceforward. [NECC]

Many women objected to the name of the OMP, stating their loved ones were *disappeared* and not merely missing. [WAN]

When I hear the word disappearances, I get unconsciously very angry. I went and surrendered them with their innocent children to the army with my own hands . . . (wife of a surrendee at FGD held in Killinochchi)

The Bill is currently titled the Office on Missing Persons. Submissions put forward express two different views on this title; however, both emphasize the need to explicitly acknowledge the disappeared in the title of the Office. One view calls for the

replacement of the word 'Missing Persons' with 'Involuntary or Enforced Disappearances' whilst the other calls for the addition of the words 'Disappeared' or 'Involuntary Disappearances'. In the latter view, it is explained that the word 'missing' is retained to ensure that persons whose fate and whereabouts are unknown for reasons other than due to enforced disappearances are not excluded from the OMP's mandate and to acknowledge the commonality of suffering associated with not knowing the status and whereabouts of a loved one, as well as the impact of losing, in many cases, the main breadwinner of the family.

Indeed, the submissions contain references to different types and modes of disappearances, including 'white van' abductions, disappearances following arrest by the security forces, disappearances following 'village round-ups' carried out by the military, disappearances of former LTTE cadres who had been surrendered to the Army, and the disappearances of those who had joined the LTTE but not returned. The term 'Missing Persons' was more often used in the consultations with and submissions by the security forces and the representatives of the families of former security forces and those officially designated Missing or Killed in Action. This latter point perhaps further highlights the importance given by the families of the disappeared and the organisations working with them to the explicit, and even sole, use of the term 'disappearances' in the title of the Office.

One of the submissions explains in great detail that given the history of denials and trivialization of disappearances as an issue, it is important to recognize the fact that many persons were deliberately disappeared. It goes on to state that while the description in the OMP Bill does contain the term 'enforced disappearances' as one of the categories, inclusion of the word in the long form and short form of the title would add value and inspire the confidence of the families. Many of the family members of the disappeared who spoke at the second briefing at the Foreign Ministry on 20th May 2016, as well as media personnel who attended a sectoral consultation with the CTF, also expressed strong sentiments about the title of the OMP and the need for the title to include the word 'disappearances' or 'disappeared'. At an FGDs and public hearings held in the North, participants overwhelmingly used the Tamil word "*Kanamalakkapattor*" (those who were made to disappear/disappeared).

The CTF notes that the emphasis on the matter in the submissions and consultations suggests that the naming of the office will be a means by which the issue of disappearances is given explicit and public acknowledgement. It will also be a means by which to fix and focus the mandate of the Office.

In addition, the word 'disappearance' was rejected by some family members of those who surrendered to the Army during the final phase of the war. In their view, neither the word 'missing' nor 'disappeared' captures their experience of handing over loved ones to the Army "with their own hands" and "in front of their own eyes". They insist those people should always be referred to as surrendeers and the name of the Office should also reflect this group of people.

The CTF notes that this discussion is not unique to Sri Lanka. The question of terminology and nomenclature has been raised in other contexts as well, with drafters often settling for terminology preferred by victims.⁷ The CTF also notes that the UN

⁷ The following is a list of commission names from other countries:

Nepal - National Commission of Investigation on Enforced Disappeared Persons, Argentina - National Commission on the Disappearance of Persons, Bolivia - National Commission for Investigation for Forced Disappearances, Uganda - Commission of Inquiry into the

Convention on this issue is called the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

6.2. MANDATE

According to the Preamble to the Bill, the OMP has a broad mandate covering not just the internal armed conflict between the GOSL and the LTTE but those missing/disappeared in relation to armed conflicts, political unrest and civil disturbances. This is reiterated in the definition of a 'Missing Person' in Section 27 of the Bill.

“missing persons” means a person who is reasonably believed to be unaccounted for and missing:

- (i) in the course of, consequent to, or in connection with the conflict . . . or its aftermath, or is a member of the armed forces or polices 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 for the Protection of All Persons from Enforced Disappearances.

Those who made submissions to the CTF, even before the OMP Bill was released to the public, anticipated the need for a broad temporal and geographical mandate for the OMP which includes persons from all communities and covers the 1971 insurrection, 1987-91 period as well as the post war period. The preamble and Section 27 resonate with and address these demands. The mandate also appears to be wide enough to cover anybody who is missing/disappeared, whether a civilian, an Armed Forces personnel, an LTTE cadre or a member of a paramilitary group.

It is submitted that Section 27(iii) should make explicit reference to non-state actors as possible perpetrators of enforced disappearances. Furthermore, the definition used in the OMP Bill must be in line with the definition used in the ICPPED. This amended version of the definition of missing persons must then be made to apply consistently to all sections of the Bill and at the point of implementation.

However, submissions point out that in some cases ascertaining whether the disappearance relates to the armed conflict, political unrest or civil disturbance may only be possible after an investigation. Often, a complaint would have been made without sufficient proof that the case falls within the OMP mandate. Submissions therefore recommend that an amendment should be introduced to prohibit the OMP from rejecting or refusing to investigate a complaint on the basis that it does not fall within its mandate, unless the OMP has investigated the case and provides justifiable reasons to support a belief that the case falls outside its mandate.

Some submissions appear to view the mandate of the OMP as explicitly bringing to light the role and responsibility of the State in disappearing its citizens and holding the State to account. Some of those making submissions state that if the issue of service personnel

Disappearances of People, Uruguay - Commission for the Investigation of the Situation of the Disappeared, Algeria -

Ad Hoc Inquiry Commission in Charge of the Question of Disappearances, Guatemala - Historical Clarification Commission (CEH), Pakistan - Commission of Inquiry on Enforced Disappearances.

missing in action (MIA) is also addressed through the OMP, this would dilute the issue of enforced disappearances.

While sympathetic to the plight of family members of service personnel missing in action, one submission points out that the State has already made a distinction between MIA and others by providing better compensation for family members of the former. A few submissions suggest the establishment of another mechanism for investigating cases of MIA.

There were other instances where it was suggested that the interest of specific categories of missing and disappeared would be better addressed through a separate institution. Some speaking on the issue of surrendees in the Wanni also made a case for a special unit within the office. A person speaking on behalf of families associated with the EPDP noted that it would be difficult for such families to come before an institution that was “weighted” towards specific groups. The CTF notes that there are a number of steps that need to be taken to secure the confidence of such groups of victims, which are discussed in the latter sections of the report.

The CTF, however, notes that the question of responsibility for disappearances is not one that can be easily attributed or resolved and will itself depend on the conclusion of an investigation. An activist making an oral submission before the CTF noted that the GoSL refused to accept the bodies of 4000 soldiers who died in battle in Mullaitivu during the late 1990s because it could cause unrest in the South. He went on to state that the LTTE Peace Secretariat then buried the bodies and informed the family members as there were telephone numbers and other details that they were able to retrieve from the bodies. If the LTTE had not informed the families, these soldiers would have been categorised as MIA. Similarly, it is possible that individuals not linked to the State took advantage of the context of conflict, civil unrest, etc., to disappear persons for personal reasons or revenge.

6.3 AIMS and POWERS

6.3.1 Establishment of a Database

The volume of existing evidence and information on the missing and disappeared, including from state investigative mechanisms, is vast. [Arulingam et al, 5th July]

To prevent further re-traumatization, the OMP should start from data that has already been collected by previous commissions. [WAN]

Section 10(e) of the Bill provides that the OMP shall have the mandate to collate data related to missing persons obtained by processes presently being carried out or which were previously carried out by other institutions, organisations, government departments, commissions of inquiry and Special Presidential Commissions of Inquiry, and centralise all available data within a database established under the Act, Section 13(1)(h).

A number of submissions received by the CTF prior to the release of the OMP Bill already anticipated and recognised the need to establish a database comprising all available information relating to the missing and the disappeared. These submissions refer to the fact that official government mechanisms, despite considerable failings, are in possession of a significant volume of documentary information and evidence relating

to the missing and disappeared, which has not been formally assessed in its totality. They call for the OMP to collect this information and evidence as a first step rather than asking families to provide details yet again, particularly in light of the trauma suffered by families in having to re-tell their stories before multiple commissions.

One of the submissions specifically refers to the fact that in the last 22 years (1991-2013) there have been at least 11 Presidential Commissions of Inquiry, two investigative mechanisms specifically mandated to inquire into large-scale disappearances, two Presidential Commissions of Inquiry mandated to inquire into other matters, including disappearances, and two departmental units created to address disappearances. Submissions also state that the centralised database to be established under Sections 10(1)(e) and 13(1)(h) should include information from other national and international bodies, including the Police, HRCSL, the UN Human Rights Committee, the Committee Against Torture, the UN Working Group on Enforced and Involuntary Disappearance (WGEID), and the International Committee of the Red Cross which have received complaints relating to the missing and the disappeared.

Submissions also recommend that the OMP Bill should contain an explicit provision authorising it to obtain and access all court records in relation to *habeas corpus* cases and to map mass graves.

The submissions further recommended that statistical information such as the number of persons in detention, detention locations, the number of detainees released and the number disappeared should be entered into an electronic system that can be easily analysed and checked for duplication. This data must be made publicly available, with appropriate safeguards to protect identities.

Submissions take the view that the pre-existence of, at the very least, a combined list of missing and disappeared persons as found by previous State investigative mechanisms will enable the OMP to determine whether an instance of a missing or disappeared person is new or not. If it is new, then the OMP can require a full and detailed complaint to be made by the family. If it is *not* new, the OMP should not require the family to make another full and detailed complaint and the existing information should be assessed prior to seeking any further information from the family.

Submissions call for the strengthening of Section 13 to make explicit provision for:

- The rationalisation and collation of the volume of information and evidence currently in possession and received through various different governments, Commissions of Inquiry and other mechanisms as a mandatory preliminary task of the OMP.
- The creation of individual victim files to ensure that the OMP begins its work utilising all available data, subject to verification by existing family members. The submissions emphasise families must be called to corroborate information in possession of the OMP as police records of complaints at the time of disappearance may not always tally with what actually took place. For example, police officers have, in some cases, refused to record that X person was taken in a roundup by the Special Task Force (STF), and often times the official records merely note that the person was taken by unidentified persons. For these reasons it was submitted that family members check and corroborate the information available on file.
- Communication in writing to families whose cases are being considered by the OMP (see also sec. 6.3.5).
- The creation of an archive of material collected during the course of the tracing and investigation and which, subject to confidentiality conditions, can be shared

with any other mechanism and law enforcement/prosecutorial agencies. One submission recommends that the OMP must engage the National Archives in this regard.

6.3.2 Investigations

Section 12 of the OMP Bill spells out the investigative powers of the OMP, including the power to:

- Receive complaints from a relative of a missing person or an organisation, irrespective of the time-period when the person became a missing person.
- Receive written or oral statements and to examine witnesses through means including video-conferencing facilities.
- Investigate complaints made to the OMP or to previous commissions, whilst prioritizing cases that are most recent, where substantial evidence is already available and which the OMP deems to be of public importance.
- Admit any evidence (that is in line with the Evidence Ordinance), even those inadmissible in a civil or criminal proceeding.
- Summon any person present in Sri Lanka.
- Admit confidential information, ensuring the safety for victims and witnesses and on the condition of confidentiality.
- Apply to the Magistrate's Courts for an order to carry out excavation or exhumation of suspected gravesites and act as an observer during the proceedings.
- Request assistance from any official of a public authority.
- Enter any place of detention, police station or prison or any place in which any person is suspected to be detained or was previously detained, without warrant, at any time and to seize any object deemed necessary to assist investigations.

The submissions recognise that the OMP Bill gives broad powers to the Office to conduct its investigations with the cooperation of national authorities. However, the submissions make several points about investigations that relate to the manner in which investigations are conducted, the persons responsible for investigations and the prioritizing of investigations as well as the time taken for investigations.

It should be noted that families of the disappeared from the North and East who made submissions before the CTF and ZTFs stressed their need to know what happened to their loved ones as a matter of urgency. It must also be noted that many believe that their loved ones are still alive. As one family member of a surrendee stated "there is no reason for them to be dead. They must be alive." The urgency of the need for investigations therefore cannot be overstated.

i. Initiating Investigations

Submissions recommend that the OMP's ability to initiate an inquiry and/or investigation under Section 12(b) should not be limited to complaints it receives and information from previous Commissions of Inquiry but include the complaints made to any national or international body as mentioned above. Submissions also recommend this power to explicitly include the power to initiate an inquiry/investigation in relation to *habeas corpus* cases.

ii. The Manner of Conducting Investigations and Truth Seeking

I have given the names of the officers who took my son away. But nothing has happened. [Mother at SCRM Meeting, 20th May]

The submissions suggest that investigations by the OMP must be informed by the context within which the disappearances took place; the time lapse between the incident and investigation; and the extent of evidence relating to disappearances already available—within communities, families and organisations working on this issue—but which may not be recorded in official complaints. One submission stated that there is a wealth of information known or held by individuals and institutions and the Government should conduct a targeted public campaign to enable the flow of information. It is suggested that both state and non-state media should be used and a dedicated phone number, email address and postal address created for the OMP to receive such information. In its submission, the Batticaloa Peace Committee states that the search for truth relating to disappearances cannot only depend on traditional methods of information gathering but should go beyond these methods to engage in a “deep creative listening process” to link the individual stories of disappearances back to their community and historical context. Such a process is critical and should become the cornerstone of this OMP office. They provide the following example:

In a village in Batticaloa in 2008 when a Sinhala speaking doctor was killed there was a trail of abductions and disappearances immediately afterwards. Similarly in 2009, when a small child was abducted and killed, subsequently 4 youth disappeared. Links and patterns of one incident of enforced disappearance to another have to be noted often within a community and between connected events of enforced disappearances. [BPC]

The submissions also make reference to the local knowledge within communities about responsibility for acts and patterns of disappearances. They stress the need to facilitate testimonies from those who know and those who are eye witnesses to acts of abduction or surrender. The BPC states that:

In the context of identifying appropriate mechanisms, we would suggest that active members of the community make presentations to the OMP from given areas where abductions and disappearances took place. These community members could be those who are well versed in the history of the area, they could be from the elders of the community in a given area. Active older members of the different religious bodies of given areas also played a vital role during the decades of conflict. They, too, could be included in these presentations. The families of the disappeared themselves could provide input into this process of the formation of appropriate mechanisms.

At a FGD held in Kilinochchi with families of persons who surrendered to the Army during the final phase of the war, participants insisted that those who disappeared after surrendering must be addressed through a separate mechanism.

One submission referred to certain similarities relating to the way in which disappearances happened during the period of 1987-1991 and during the war, and the fact that secret detention centres were a common feature in both. However, at the MFA/SCRM briefing with families of the disappeared, a family member of a person who disappeared during the late 1980s in the South raised the question of loss of evidence and lack of witnesses due to the time lapse between the incident and a future investigation by the OMP. It was suggested that the OMP must also have a strategy to investigate cases where the evidence is minimal.

In the case of servicemen missing in action, it was submitted that it may be necessary to interview LTTE cadres who are in custody, or who have been rehabilitated, as well as certain politicians, in the effort to find the truth relating to the fate of these servicemen. It was submitted that a lot of family members of servicemen still believe that they are alive and are living in camps in India, and they require closure through truth.

A few submissions state that the OMP has a responsibility to go beyond the investigation of individual cases to understand patterns and the larger context within which these incidents took place. For instance: who are the actors involved, what are the motivations, etc. The need to offer an amnesty as an incentive to obtain information also came from the Association of Families of Servicemen Missing in Action.

While the focus of investigations should be on the cases of missing and disappeared, one submission posed the question of who would investigate the harassment, intimidation and other violations committed against families of the missing and disappeared in their efforts to search for loved ones, including extortion of money and requesting of sexual favours.

iii. The Personnel Conducting Investigations

Section 17(2) of the Bill provides that the Tracing Unit of the OMP will include investigators with “relevant technical and forensic expertise.” Submissions assert that the criteria for the selection of investigators should be clearer. One submission recognises that as a matter of functional necessity, if investigative personnel are drawn from current or past Police officers or military investigators, it should be following a thorough vetting process. Another submission states that at no point should the TID or Military personnel, particularly Military intelligence, be involved. At consultations in the North, people expressed strong views about the composition and investigations of the OMP. Overwhelmingly, they wanted international presence in both the OMP itself and in its investigatory teams.

iv. Prioritisation of Investigations

Why do we need such a big process? Why can't you directly initiate inquiries with the police and military in the areas where there were high number of disappearances to find out what they did with people whom they take under custody? This will enable everyone to understand what has happened in those time periods. [Mother from Ampara, Meeting with SCRM, 20th May]

The Bill gives the OMP the power to prioritise investigations on the basis of incidents:

- that have occurred most recently;
- where there is substantial evidence already available; or
- that are, in the opinion of the OMP, of public importance (Section 12(b)(i)).

There are two different points in the submissions made with regard to the matter of prioritising cases; firstly, to extend the criteria for prioritisation to include cases where there are indications (as reported by the affected family or any other institution, organisation or person) that a person may still be alive or have been sighted after having gone missing or being disappeared. Secondly, submissions recommend that the criteria for the prioritisation of cases should include the public's view of what is of public importance and not be solely based on the OMP's view (their emphasis).

A further point made in the submissions is that the extent of available evidence may vary depending on whether the case relates to a missing person, an enforced disappearance, surrendee, etc., and the need for the OMP to be mindful of these distinctions when deciding on the prioritisation of cases.

v. Time Taken for Investigations

As indicated above, families stressed the need to know, as a matter of urgency. Many felt that they have waited long enough. Families say that they need answers within 3 months to one year.

vi. Excavations/Exhumations

In terms of Section 12(d), the investigative powers of the OMP include the power “to apply to the appropriate Magistrate court having territorial jurisdiction, for an order of court to carry out an excavation and/or exhumation of suspected grave sites and to act as an observer at such excavation or exhumation, and at other proceedings pursuant to same.”

Mr Sivasubramaniam, the President of the College of Forensic Pathologists, noted in his submission to the CTF that a sound scientific approach is desirable in cases of mass grave excavations. This ensures the successful completion of investigations with a view to deliver justice to the victims by respecting the right of a person to be correctly identified after death, returning the remains to families for dignified burial, and finding answers to relevant medico-legal and legal issues in any subsequent prosecution of the culprits. He noted that the current legal framework, which is intended to cover instances of routine “domestic murder, is inadequate to address the problem of mass graves and has contributed to the mishandling of these sites right from the outset.”

In the years after the war, mass graves have been discovered in different areas, affecting different communities. The Matale grave contained 154 bodies, and the Mannar grave contained 83 bodies. In both cases, skeletons showed signs of serious torture, but current processes for investigating these atrocities have been inadequate. Given the numbers of disappeared in Sri Lanka, additional mass graves may be discovered as the OMP begins its work. The Mannar and Matale cases, as well as past experience in the Chemmani and Sooriyakanda cases, reveal the need for a centralized, coordinated approach that applies international best practices to investigate all mass graves. [WAN]

A number of submissions on this issue articulate two key points:

- that the Bill lacks clarity as to whether and how the OMP can assist Magistrates’ inquiries, especially beyond observing mass graves [Section 5(d)]; and
- more importantly, unless the existing legal and judicial system is adequately resourced and reformed, the OMP law as it is currently envisaged will not be able to deal with investigations of this nature.

It is noted in the submissions that in a post-war transitional justice context, excavation and exhumation of mass graves with skeletal remains demonstrating signs of torture poses several challenges because of the need to preserve the remains for purposes of identification and investigation and to return identified remains to families or relatives for cremation, burial or other rites.

It is stressed that Magistrates do not at present have the specialised knowledge, necessary support, or recourse to expert advice that is required to supervise or conduct exhumations and excavations of mass graves. This can have, and in the past has had, a detrimental effect on investigating exhumations and excavations. It was noted that data collection—even in the case of normal gravesites—has been inconsistent and inadequate. One submission on this point notes that excavations and exhumations of mass graves are conducted in an arbitrary manner according to the personal preferences of the Magistrate. It states that individual Magistrates treated mass graves in Mannar and Matale very differently, to the extent that—in the case of Matale—two different Magistrates approached the same mass grave differently.⁸ It states that these failings were also seen in past cases such as Chemmani and Sooriyakanda.⁹

One submission refers to the fact that at present, Magistrates have recourse to advice only from the local police and the local Judicial Medical Officer (JMO) regarding the excavation—neither of whom may have adequate investigative competencies in this area. Currently, when the police receive a complaint or information relating to a mass grave, they commence an investigation. This may involve digging of the site to verify reliability of information received and to find ‘evidence’. It is submitted by the JMO that this could result in the contamination of the site and even the destruction of evidence. If there is sufficient evidence, a report of the investigation is sent to the Magistrate to commence the excavation or exhumation of the site. Such exhumation or excavation is generally conducted by the JMO in the area on the request of the Magistrate in terms of Section 369 - 373 of the Criminal Procedure Code.

The President of the College of Forensic Pathologists also made the point that matching skeletal remains or the dead body of a person to a specific complaint or complainant depends on the detail that has been recorded by the police or other authorities. There is a need to ensure that all relevant details are in fact recorded. Mr. Sivasubramanian stated that they are planning a mechanism to ensure that a trained person collects data appropriately, preferably with the assistance of a JMO and this data is then stored in a central database.

⁸ The first one—who was transferred mid case—accepted affidavits of families while the next one dismissed all affidavits, including the ones that had been previously accepted.

⁹ The submission by Ermiza Tegal, Deanne Uyangoda et al state that in the Matale case, on the advice of the JMO of the area, the Magistrate invited Prof. Raj Somadeva, a forensic archaeologist to conduct the excavation and exhumation of the 155 skeletal remains found at the grave site. A detailed report submitted by him, observes signs of torture, probable cause of death and approximate time period within which the gravesite was created. However after a change in Magistrate, another report was commissioned by an external processes (a Presidential Commission of Inquiry) and the case is now laid by. The external report returned a different time period within which the gravesite was likely created. The contradiction in the two reports has not been resolved and the disclosure of a ‘crime scene’ continues to be unrecognized. In the Mannar case, the excavation of the main gravesite and exhumation of 83 bodies was conducted by the Archaeological Department with the involvement of the local JMO. There is a very sparse report on the actual gravesite (no photographs, no determination on cause of death or whether investigations were conducted to determine if there were signs of trauma on the skeletal remains, and no inventory of physical specimens). There was an unverifiable and unsupported attempt to identify the site as an official burial site, which is not supported by local land records. No steps were taken to investigate the surrounding areas to understand the full extent of the site. There was no forensic archaeological or specialized expertise available in this case. Most significantly, there has been no attempt to date the gravesite to a particular time period, which should have been the very first step in analyzing the grave (written submission by Ermiza Tegal, Deanne Uyangoda et al).

The submission from the College of Forensic Pathologists framed the problem in terms of a shortage of staff cadres and a lack of proper resources to conduct exhumations and excavations rather than one of expertise. There are currently approximately only 30 consultant JMOs within the Ministry of Health and at several local hospitals regular Medical Officers (MOs) are appointed to the post as necessary. JMOs also do not have access to logistical support to carry out these excavations and/or exhumations. There is also no proper coordination between the different actors involved, especially between the police, the Magistrate and the JMOs. In his view the only gap in expertise was in the area of forensic anthropology which they were trying to address through a year-long training programme organized by ICRC.

Nevertheless Mr. Sivasubramaniam submitted that the College has done everything in its capacity to be of assistance. He referred to a Protocol for “Management of the Dead in Disasters and Catastrophes”—the status of which is crucial but not yet clarified—as well as a standard operating procedure (SOP) for mass grave excavations that has been developed by the College of Forensic Pathologists and which can be implemented in these situations. He was of the view that the JMOs “have all the expertise necessary to handle any type of medico-legal cases including mass grave excavations although foreign expertise may be required to monitor and assist where necessary.”

These submissions point out that if, as the OMP Bill foresees, the OMP requests the local Magistrate to investigate and carry out an exhumation on coming into possession of information regarding a gravesite, the present flaws in the exhumation process and an arbitrary approach towards such exhumations will continue to take place.

The submissions recommend that:

- A new law dealing specifically with mass gravesites is enacted to address the lacunae in the existing law.
- Sections 269-273 of the Criminal Procedure Code is amended to include the *post-mortem* examination of the dead in large-scale disasters and atrocities.
- Section 4(2) (b) of the Bill relating to the constitution of the OMP be amended to include forensic expertise to the list of expertise from which the OMP will draw its members. This will ensure that the Office is guided by forensic expertise in the investigation of not only mass graves but other human rights violations that require this specialised knowledge. Section 17(2) requires the Tracing Unit to include investigators with “relevant technical and forensic expertise.” Amending Section 4(2)(b) to specifically require members with forensic anthropology expertise would greatly strengthen the Bill.
- Section 5(d) of the OMP Bill be supplemented with the specific power to recommend, assist or advise the Magistrate on experts in the fields of forensic anthropology, forensic archaeology, forensic pathology, forensic medicine and other similar expertise to conduct and/or to supervise the excavations and/or exhumations.
- The OMP be given the specific power where possible and when appropriate to initiate judicial proceedings to direct appropriate authorities and supervise the return of human remains or any items associated with such remains, which have been identified as belonging to relatives of missing persons.
- A separate Forensic Unit within the OMP is established (see further Sec. 6.4.2 below).
- The right to draw on internationally-recognised best practices and experiences from similar work in Latin America and the Balkans—in investigating identified mass grave sites (Matale, Mannar, and Kalavanchikudy) as well as those that may be discovered in time to come—is ensured.

- An addition be made to the preamble of the OMP Bill embodying the commitment to reconciliation and what this means particularly to the handling of information regarding fatalities and human remains. The following addition or a similar paragraph is suggested:

And WHEREAS information in respect of fatalities and discovery of human remains shall be treated with dignity and in consideration of Sri Lanka's commitment to reconciliation, and remains where possible shall be returned after due process:

vii. Conclusion of Investigations

One of the submissions expresses the view that the OMP Bill lacks clarity as to when an investigation under the OMP is deemed concluded, and that the Bill contemplates the “conclusion of an investigation” even in cases where the whereabouts of a person remains unknown. The submission states that in these cases, it is essential that the OMP is not seen to be closing an investigation and forcing families to accept closure, when in fact questions that the OMP is mandated to answer remain unanswered.

This submission recommends that the OMP Bill should expressly provide that no investigation into a missing person shall be considered closed until the fate of the person and circumstances in which the person went missing are clarified, and in cases where the missing person is deceased, their remains are returned to the family.

The CTF notes that it may not always be possible to return remains to the families. An OMP investigation may reveal that a missing/disappeared person is dead without necessarily finding the remains, particularly if the body has been destroyed.

viii. Confidentiality Regime of the OMP

In terms of Section 12(c)(v) of the Bill, in investigating cases of missing and/or disappeared persons, the OMP may establish a process to accept confidential information or information *in camera*, if required. Section 15 states that every member, officer, servant and consultant of the OMP shall preserve and aid in maintaining confidentiality with regard to matters communicated to them in confidence. The provisions of the Right to Information Act will not apply with regard to such information.

Submissions express the view that these provisions are wholly inadequate given the significant implications of the confidentiality regime on the criminal accountability process, or any legal processes outside of the OMP. They submit confidentiality is to be used by the OMP as a means of accepting and withholding information, it ought to be a regime that is transparent and regulated by the governing statute. There should be clear and identifiable criteria where confidentiality would be triggered. It should not be a discretionary system to be established by the OMP.

In particular submissions express concerns that Section 11(a) empowers the Office to enter into agreements with any person or organisation in respect of confidentiality of information. Submissions recommend that Section 12(c)(v) and the OMP Bill should be amended to include the confidentiality regime envisaged, including the criteria when confidentiality would apply and the criteria where confidentiality would result in the OMP withholding information from any other mechanism/institution/body. Submissions also recommend that the scope of confidentiality be clarified with respect to information given to the families of the missing and disappeared. In terms of Section 13(1)(d), submissions recommend that only information regarding the identity of the

person providing the information be withheld from the family if confidentiality is explicitly requested, and not the information itself.

6.3.3 Reporting an Offence to the Relevant Law Enforcement or Prosecuting Authority

If a person is disappeared and the OMP finds out who did it, where do the people then go for justice? The perpetrators need to be identified and prosecuted; otherwise it will continue to happen. . . . There is no point in taking so much risk and engaging yet again. . . . The “forgive and forget” sentiment is something coming from outside. The affected people say that they need punishment/prosecution as per the law to ensure non-recurrence. If amnesty is given it may undermine ensuring of non-recurrence. So in order to ensure non-recurrence there needs to be punishment. [NECC]

By investigating enforced disappearances and ascertaining the fate and whereabouts of victims, the OMP could potentially build a very powerful public case for prosecutions. [Anketell]

But based on earlier experience, and also the official statement that no action will be taken against the military, how can we believe that anything will come out of the proceedings. How is this justice? They need to tell us about what sort of justice or punishment will be given. Even Paranagama said that the military has been directly involved in disappearance but nothing has been done thereafter. [CID]

“The past is the past. If they give our children back that’s more than enough.”
[a mother in Karachchi]

Section 12(i) of the OMP provides that where it appears to the OMP that an offence has been committed and that such offence warrants investigation, it may “after consultation with the relatives of the missing person as it deems fit, in due consideration of the best interests of the victims, relatives and society”, report the same to the relevant law enforcement or prosecuting authority.

The submissions relating to the power to refer to a prosecuting authority falls into two categories:

- those that want this provision strengthened to impose a mandatory (and not merely a discretionary) duty on the OMP to refer all cases; and
- those that want the OMP to have a prosecutorial office within the OMP.

i. Strengthening of the Provision on Power to Refer to a Prosecuting Authority

Several submissions assert that the current provision gives discretion to the OMP to refer a case to law enforcement or prosecuting authority and that there ought to be no such discretion on the question of sharing information. It is submitted that Section 12(i) should remove all discretionary references and provide a mandatory function of transferring information where offences are involved. One submission emphasises that

in order to meet the Office's objectives in Section 2(c) and (d) to 'protect the rights and interests of missing persons and their relatives' and 'identify proper avenues of redress to which such missing persons or their relatives may have recourse', such information must be shared.

The submissions state that law enforcement and prosecutorial authorities should have the benefit of all information that the OMP has where there appears to be an offence (i.e. a file about a missing person containing substantial information and evidence that led the OMP to come to the conclusion that there appears to be an offence, not merely civil status information relating to the date and location where the person went missing). Otherwise, it is stated that law enforcement and prosecutorial authorities will, in effect, have to start from scratch and it would be disingenuous to claim that the OMP will not hinder 'justice' processes. It is further submitted that it should be law enforcement or prosecutorial authorities that consult with victim families about pursuing a prosecution.

Submissions state that the process envisioned through this Section completely fails to address the issue of minimising the requirement for witnesses to give evidence multiple times. Protecting witnesses, both with regard to re-traumatisation and their credibility, must be a paramount concern in these processes. One submission notes that there is a grave danger, firstly to victims and witnesses, and then in relation to broader criminal accountability for wrongdoing, if this process remains unchanged.

Submissions also point to the lack of trust and confidence in the ordinary law enforcement authorities (which is an issue that is addressed in greater depth in Section 6 of this report). They express the view that when the OMP is in possession of information indicating individual criminal responsibility for crimes under international law, such information should be forwarded confidentially to the Special Counsel of the proposed justice mechanisms for further criminal investigation. One submission is of the view that the special court should deal with both emblematic and ordinary cases and have a different unit to deal with enforced disappearances.

iii. Prosecutor within the OMP

A number of submissions emphasise the need for the OMP itself to have the authority to proceed with prosecutions. In some of these, however, the threat of prosecutions is to be used to give incentives to perpetrator witnesses to share information. It is suggested that the current OMP approach, which does not provide any incentive for witnesses to come forward, should be rethought.

6.3.4 Victim and Witness Protection

The OMP is empowered to develop and enforce a system for victim and witness protection in terms of Section 13(1)(g). The Bill also provides that this will not affect the rights of parties or the OMP to seek appropriate orders in terms of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015.

On the issue of victim and witness protection, submissions raise the following concerns:

- The lack of trust in personnel responsible for implementing victim and witness protection. People expressed fear and suspicion about giving testimony. They did not trust state intelligence services or police no matter the reassurances. Given that the police/military are noted to have been complicit in some cases of disappearances, it is said that they should not be given responsibility for implementing victim and witness protection.
- The lack of clarity in relation to the link between the OMP and the Witness and Victim Protection Act No. 4 of 2015 as well as the relationship between the Victim and Witness Protection Division of the OMP and the Victim and Witness

Protection Authority and Division established under the Assistance to and Protection of Victims of Crime and Witnesses Act. Submissions stated that the Act was drafted with a view to aid the domestic criminal justice process, but does not take into account the specific challenges of victim and witness protection in the context of transitional justice mechanisms, including the OMP.

- The inadequate protection regime under the Assistance to and Protection of Victims of Crimes and Witness Protection Act. Submissions were of the view that the Act falls short on a number of counts including the following:
 - The two bodies created to implement the Act—i.e. the National Authority or the Protection of Victims and Witnesses (the Authority) and the Victims of Crime and Witness Assistance and Protection Division (the Division)—are not sufficiently independent. The Authority consists primarily of senior public servants who will hold office *ex officio*. The Division is established by the Inspector General of Police (IGP).
 - The lack of criteria limiting the discretion afforded to the Division when considering a request for protection.
 - The limited scope for receiving evidence *via* audio-visual linkages from outside of Sri Lanka (an amendment to the original act is proposing to facilitate victims and witnesses to give evidence from outside the country but only *via* Sri Lankan diplomatic missions abroad).
 - The lack of provision for temporary or permanent *international* relocation of witnesses as a specific protection measure.
 - The exclusion of justice collaborators (informants, human rights defenders, etc.) from the definition of victim.
 - The interpretation clause in Act No. 4 of 2015 which limits the definition of witnesses to those who go before a court or a Commission of Inquiry, thus excluding the OMP. The suggestion is the omission should be rectified by directly amending the Victim and Witness Protection Act No. 4 of 2015 or by making provision in the OMP Bill so that—for the purposes of the Act—the OMP would be deemed a Commission of Inquiry.

The submissions recommend to amend the Act to ensure that transitional justice mechanisms have the power to request assistance from the Authority and the Division and to establish a common victim and witness protection programme.

6.3.5 Issuance of Reports and Sharing of Information with Families and the Public

OMP should communicate with survivors in their own language (WAN).

As per Section 13(1)(a)(i-v) and Section 13(b and c), the OMP shall provide both interim reports and reports to family members primarily to facilitate the issuance of Certificates of Absence and Certificates of Death. The OMP can also provide information about on-going investigations to the relatives of missing persons, provided it will not hinder such investigations in the OMP's view or that it does not work against the best interests of the missing person [Section 13(1)(c)].

It is noted in the submissions that the Bill does not stipulate the provision of information to family members as a mandatory duty nor does it give the frequency with and the extent and manner in which such information ought to be shared. It is

recommended that the OMP should formulate formal rules in this regard in terms of Sections 11(b) and (c). It is also recommended that the OMP must publicly report its activities, procedures and general findings. In their submissions, people recommend that it is mandatory for families to be provided with updates relating to an on-going investigation:

- periodically (at least twice a year);
- whenever there is a significant development; and
- when a case has been sent to a law enforcement or prosecuting authority on evidence that an offence under the law has been committed,

It is also suggested that the OMP must engage with families of the disappeared and those working on their behalf in their preferred language.

i. Providing a Report to Families on the conclusion of an investigation and the Request for a Certificate of Disappearance

The OMP makes provision for a report to be issued to family members on the conclusion of an investigation. In multiple consultations, families of the disappeared in Killinochi and Mullaitivu requested for a “receipt” or “certificate”. In particular, there is a request for a Certificate of the Disappeared., as a document from the State that an individual has been disappeared. The way it was expressed was that an acknowledgement by the State was required for family members.

ii. Disclosure of Information to Family Members if the Person is Found to be Alive

According to Sections 13(1)(b) and 13(1)(d)(ii) of the OMP, if a person who was missing or disappeared is found to be alive, information is only provided to the family members if the person consents. The submissions contend that the family’s right to know whether a person is alive should be paramount in every case, even if the details of whereabouts are not disclosed. Furthermore, it is recommended that the whereabouts of a person should not be withheld from the relatives where the person found to be alive was at any point previously subject to an enforced disappearance, where the person is not capable of expressing consent, or if the person is subject to reasonable apprehension of fear or threat in expressing his or her views to the OMP.

Submissions also recommend that the OMP Bill must contain an explicit provision requiring that information provided to families is in the language of the particular family’s preference and that the OMP request this information from the families. Submissions insist that it is imperative that the families receive information in the language that they can read and understand directly, without the need for translation. Specifically, information provided to families under Sections 13 (1)(a)(i-iii); 13 (1)(b and c); and 13(1)(d)(i-ii) must be in the language of a family’s preference as it is the crux of what will enable families to know the ‘truth’ of what happened to their family member(s).

It is further recommended that information sharing must be done in a clear, transparent and sensitive manner, particularly if the message is of a very distressing nature.

iii. Relationship with the Right to Information Act

Submissions to the CTF have raised the question of the relevance of the Right to Information (RTI) Act for the OMP. One submission states that it would be informative to know the scope of the RTI in relation to information given to affected persons on incidents of enforced disappearance under the OMP. It is also submitted that the Right to Information legislation should strengthen reportage around all four key mechanisms in

terms of their constitution, mandate, financing, logistics and planning, as well as decisions around policy making, to the extent possible under the law

6.3.6 Facilitating the Issuance of Certificates of Absence (CoA) and Certificates of Death (CoD)

The OMP has the power to issue interim reports (pending investigations) and reports (on reaching a conclusion that a person is missing or dead) to family members of the to enable them to obtain Certificates of Absence (CoA) or Certificates of Death (CoD), as the case may be, from the Registrar-General's Department [Section 13 (1) (a) (i) &(ii)].

These reports issued by the OMP may be amended where further investigations reveal they were issued erroneously, with notice given to the relatives and the Registrar-General.

Submissions received raise a number of concerns and questions relating to both certificates of absence and death, even though families need these certificates to "... revealing differing positions on this issue and on whether such measures, as currently presented, are acceptable to families. Some families for instance, pointed out that they see the advantages but cannot accept either a CoA or CoD. As they fear it may negatively impact the search for their loved ones.

Purpose, Definition, Validity and Offences under CoA

The GoSL proposed an amendment to the Registration of Deaths (Temporary Provisions) Act, No.19 of 2010 to issue CoAs instead of CoDs for families of the disappeared. The CoA will give legal status to the missing and address the practical needs of the families (to access bank accounts, exercise ownership over land and other assets, etc.) without families having to obtain a death certificate in cases where they believe the person is still alive. As pointed out in one submission, the proposal is "a positive move towards recognising the legal status of a missing person and the rights of victims and their families" and adopts "a more victim-friendly approach to the practical difficulties faced by families of the disappeared including, accessing certain welfare benefits, dealing with the property of the disappeared person, facilitating guardianship of children."

This submission nevertheless raises a number of concerns regarding the proposed amendment and the manner in which the amendment is to be enforced, as well as the lack of confidence in this initiative. Consultations carried out at the zonal level thus far with families of the missing and the disappeared reiterated similar concerns. The response of family members to the CoA is mixed. Some consider it a positive development whilst others view it with apprehension.

Discussion on the CoA at the zonal level often referenced experiences relating to State officials' efforts (both during the previous Government and even in the current) to insist that family members of the disappeared accept death certificates, including in recent months. Those submitting spoke to the trauma and distress this caused, including the lack of information on why this was being done and its implications.

The need for a public explanation of the CoA was articulated in some of the consultations whilst the lack of awareness on the purpose and implications of the CoA was noted in many consultations throughout the country, especially with families of the missing and disappeared. The CTF notes that it is important for the Government to ensure that the process through which the CoA is implemented addresses public

confusion and fears. In particular, there is a need to address the fear that the CoA will stall efforts to search for the missing, seek justice for crimes and secure compensation for losses. One submission calls for the CoA to expressly state that it will not prevent future prosecutions.

Submissions also raise the following concerns:

The Need for CoA: While some groups and families of the disappeared welcomed the CoA some expressed clear opposition. In part this is due to the title of the Certificate (discussed below) but it goes to the very purpose of the CoA and the context in which this is being implemented where families were told to obtain death certificate for disappearances without investigations. Hence, the CoA is viewed with apprehension as families fear this may lead to the State not carrying out investigations. Multiple family members

“I can’t bear to take any kind of certification; death or whatever certificate. I don’t want to accept any of that because they will turn around and tell us that is the end of the matter.” - Mother speaking at FGD in Mullaitivu

This fear of how the CoA could be misused by State officials to deny justice and the right to truth was voiced by many family members. One such members requested that “There should be a clause saying it can’t be converted into a death certificate.”

As one parent in Thunnukai stated “Instead of giving such certificates can’t they just tell us whether they are alive or dead.” Some family members who were willing to accept CoA—for the purpose of accessing services and for other practical reasons—found it distressing to do so as it may be tantamount to accepting the indefinite loss of a loved one. There were family members who saw it as a better option than accepting death certificate.

Terminology: As in the case of the OMP, there is a demand for the title of the certificate to be altered and the term ‘disappeared’ or ‘enforced disappeared’ to be used instead of ‘absence’. This issue was raised repeatedly in the FGDs and public meetings held in the North. A number of submissions called for the Certificate of Absence to be renamed as ‘Certificate of Disappearance’. The official Tamil term for the certificate of absence is *Illamai Sandrithal* (i.e. Certificate of Disappearance; however, ‘Illamai’ is also a colloquial term meaning death and as such is also a cause of distress to families).

Some families suggested differing options, indicating specific circumstances of disappearance. Some families insist that in Tamil it should be “*Kanamal Aakapattamaikana Sandrithal*” (i.e. persons who were made to disappear). Other family members of persons who surrendered to the Army during the final phase of war stated that they will accept neither certificates of absence nor death certificates as these are not “appropriate for them”. Families of those who surrendered want the certificate to be called *Saranadainthamaikana Sandrithal* (i.e. Certificate of Surrendering). They insisted that the Government must return those people who surrendered or tell them what happened to the surrendees.

In Sinhala, the Certificate of Absence is *deke ganimata nomathi bawa sanatha kirime sahathikaya*, which roughly translates as the document that certifies that the person cannot be found/seen. One submission recommended that the Government should call in language experts to address this issue.

The CTF notes that establishing a person as missing/absent may be easier than establishing that they were subjected to an enforced disappearance which will require an investigation. But families need to be reassured that the CoA is different to the CoD.

In addition to the public information campaign referred to above, there is also a need to address the fundamental need of families, who have had a member subjected to an enforced disappearance/surrender, to receive some official document that states that their family member has been disappeared or surrendered. This call was repeatedly made at FGDs and public meetings, where families of the disappeared came forward. As expressed, it relates to a desire to secure State acknowledgement of the crime of disappearance and the resulting suffering experienced by the families and others.

Status of Issued Death Certificates: In some submissions and consultations individuals and groups asked whether those who had previously obtained a CoD without proper investigations could now have this revoked for the issuance of a CoA.

For example, one submission notes, “there were many people who obtained Death Certificates in the past as it was very much linked to reparation processes. But the act of disappearance had not been actively investigated and it was with great trepidation that family members actually made the decision to obtain a Death Certificate”. Another submission notes that in the past, families had been forced or actively persuaded to accept death certificates in order to claim compensation. Submissions, therefore, recommend that those who have been forced to accept death certificates should be allowed to exchange these for CoA, which is covered under amendment.

While this demand was articulated by Tamil family members from the North and East, families of servicemen missing in action also raised the possibility that families of the MIA who have secured a CoD may wish to secure a CoA until the status of the missing person is verified. The submissions also call for an explicit provision stating that a CoA cannot be converted into a CoD.

The validity of a CoA: The duration of validity of the CoA (2 years) was raised in one of the submissions and at several FGDs. It is submitted that coupled with this short validity period a requirement for periodic renewal of the CoA may result in undue distress and bureaucratic hassle for families of the disappeared, and as a result is “unrealistic and unreasonable,” particularly given the large volume of cases. This same submission points to the ICRC Model Law which calls for a “reasonable time” to allow for investigations. The submission recommends that 13(1)(a) is amended for two categories: (i) those whom the OMP has declared as missing after an investigation and where the CoA will have no expiry date, and (ii) those whom the OMP is still investigating and where the CoA’s period of validity can be extended to 10 years.

Furthermore, it is submitted that section 8K(2) is problematic. This section empowers the Registrar General to either extend the CoA, to cancel it, or to cancel the CoA and instead issue a CoD after inquiring from the relative the status of the missing person. Firstly, it is submitted that the burden should not be on family members to provide information to the Registrar-General and secondly, it is said that the action that the RG takes to extend the CoA or not is couched in discretionary rather than mandatory language. Therefore, it is submitted that the wording in Section 8K 2 should be amended to impose a mandatory duty on the Registrar-General.

Submissions also note that the need for a longer period needs to be balanced against concerns of an indefinite period of validity. Some families who would consider accepting a CoA for the practical reasons of accessing services and assistance state that they would want the Certificate to be expressly temporary in nature. In addition, a long duration in or the lack of a validity period may in itself be distressing as this was seen as a risk of the indefiniteness of this status. An additional issue raised in one submission is that the

validity of the CoA is hinged on that of the parent Act, hence this too needs to be reviewed.

Practical challenges in obtaining a CoA: A submission by a group of individuals details a number of practical challenges that people may face in the effort to obtain a CoA, and the need for the COA bill to address certain ground realities such as:

- lack of documentation (particularly in the North and East) to prove relationships
- lack of access to official documents including CoI reports
- lack of cooperation from Grama Niladharis to assist families and
- the requirement to submit an application for a CoA to the Registrar-General or the District Registrar of the District in the area in which the missing/disappeared person was permanently resided, as opposed to where family members currently reside (particularly given the contexts of displacement).

Furthermore, the submission states that “The current wording of the Bill places the burden on the family to provide information on the status of the disappeared/missing person” whereas the onus should be on the State and the soon to be established OMP. The submission also calls for amendments to the CoA Bill and a sensitisation and awareness process amongst State officials and families.

Offences under the CoA: The above mentioned submission also draws attention to the problems relating to offences listed under Section 13 of the CoA Bill. The submission points out that the relevant sections are borrowed from the death certificate but cannot be transposed as the circumstances are significantly different, particularly as the state of absence denotes a situation of confusion and lack of clarity. It calls for a revision of the language as follows:

- i. Any person who, knowingly, makes a false statement in an application made by him under this Act, or furnishes false information under this Act (this is section 15(a) of the principal Act).
- ii. An applicant who is aware of the fate and whereabouts of a person registered as missing and fails to furnish such information to the Registrar-General in pursuance of an application made with respect to that person.
- iii. Any person who dishonestly or fraudulently uses a CoA issued under this Act, while knowing the fate and whereabouts of a person registered as missing.

It is also suggested that the COA bill needs to be amended to:

- Ensure that the definition of missing persons and conflict is consistent with the OMP Bill.
- Broaden the definition of the term ‘relative’ to include minors (through a guardian) and relatives living abroad.

ii. OMP and CoA

With reference to the OMP and CoA, submissions state that the OMP must inform individuals of any consequences in accepting a death certificate, certificate of absence, or certificate of disappearance for their disappeared kin. Furthermore, it is important to issue certificates of absence/disappearance as soon as possible—otherwise, as noted in

the submissions, they may be of no use to the families. Certificates of Absence/Disappearance should be declared as presumptively valid to enable spouses and other family members to access the disappeared person's bank accounts, pensions, properties, subsidies, gratuity/EPF/ETF, welfare payments and life insurance. Submissions noted that the OMP should also facilitate private sector recognition of these certificates, which was also voiced by family members. The concern highlighted by family members is whether all State agencies and private sector actors will accept the validity of the CoA.

iii. Family Card System and Vulnerability Criteria

When information of children who are forcibly disappeared is left out these families are in a way punished. [Vavuniya Citizen's Committee]

A further issue raised in the submissions relates to the family card system that determines points, which is the basis for deciding the degree of relief for families affected by the war. The card contains details such as a serial number, full name, principal inhabitant, NIC number, date of birth, and special remarks, but not whether a family member is missing or has been disappeared. This has implications for accessing relief. While this family card which was provided for relief is still in use for verifying family details and to choose family eligibility may no longer be in operation, it highlights the challenge faced by families of the disappeared when they have to address the State or other actors to seek relief and assistance for their situation but there is no recognised status for their disappeared family member. Therefore, the request is that with the family card should be amended to include information about disappeared family members and criteria for selecting beneficiaries should include missing and disappeared family members.

iv. Role of Registrar General

One submission drew attention to the link between the administrative apparatus of the CoA (Registrar-General and the District Registrar) and that of the OMP. The submission recommends that the link should be clearly set out so that families are able to understand the linkages between the two systems and how they will operate, in addition to facilitating the work of providing CoAs.

There is a need to tighten the language of the amendment so as to ensure clarity. One submission recommends that the interim reports and reports issued to the Registrar-General should be in the form of binding directives- 'shall' rather than 'may'. Specifically, Section 13(1)(v) should be amended to state that interim reports and reports issued by the OMP shall be binding on the Registrar-General.

6.3.7 Making Recommendations Relating to Reparations

There can't be compensation for life.
[a mother in Karachchi]

There was little consensus among participants on the role of reparations. Many of the survivors we spoke to were adamant that they cannot be bought and remain deeply suspicious of the concept of reparations being used, as an alternative to investigations and

justice. But (we) note the acute need for financial assistance amongst families where the primary wage earner is missing or dead. [Sri Lanka War Survivors and Human Rights Defenders in Collaboration with Sri Lanka Campaign for Peace and Justice]

It is crucial (to) understand and acknowledge the full scale of the impact of the disappearance on that individual family's life (i.e. emotionally, financially, spiritually, physically, psychologically, etc.) [BPC]

In Section 13(1)(k), the OMP is empowered to make recommendations to relevant authorities on the following: prevention of future disappearances, ways of commemorating and acknowledging those missing, publishing information relevant to missing persons, development of relevant laws and regulations, reparations, and the handling of unidentifiable and identifiable remains. Of these areas, the CTF received a large number of submissions relating to reparations.

Submissions working with family members of the disappeared stress that the reparation process should not entail the family member being subjected to retelling the tragic details of their story yet again. Rather it is suggested that either:

- persons from the relevant reparations authority be part of the OMP from the outset in order to facilitate the reparations process; or
- in addition to the dedicated Office of Reparations envisaged by the Government, the OMP should be mandated and structured to provide reparations, as a mechanism specialising on missing and disappeared persons with the power to provide both interim and final reparations.

In making the case for interim reparations, one submission points out that poverty is a very real and pressing concern for most of the war affected in the North and East. The submission also states that women who have been forced to become the primary breadwinner within their families, following the disappearance of their husband, carry the added burden of economically supporting their families, while continuing to search for their loved ones. One man from a lower income category who is searching for his brother noted "I have stopped looking for him. I can't handle it with my work."

Submissions also note the lack of preference given to families of the disappeared when accessing services or social service benefits and that they do not score added points in relation to developmental assistance. One woman notes that she had not received any form of compensation and made a request to "please provide [her family with] a house". Others noted that compensation should be provided not as a one-time payment but through jobs for children and pension schemes for spouses (as detailed above).

Submissions relating to reparations recommend that the OMP should provide for or facilitate the following interim reparations:

- Monthly monetary amount commensurate to the income of the missing person until the fate and whereabouts of the person has been determined.
- Scholarships for children.
- Preferential school admissions.
- Special allowance for vulnerable groups including disabled persons and senior citizens.
- Facilitating job placements, including in the private sector.

- Assisting in reducing debt obligations for affected women who are carrying the debts of their missing husbands, fathers and sons.
- Recovery of monies paid to the CID, TID, politicians and paramilitary groups in the search for missing and disappeared family members.
- Psychosocial support that is available throughout the process—from the initial engagement, to learning a disappeared person's whereabouts, to identifying remains and performing death rituals if the person was killed.
- A special pension scheme for families of the missing and disappeared.
- A percentage of employment opportunities for families of the victims of enforced disappearances and political prisoners.

Women whose family members were disappeared in the late 1980s and early 1990s mentioned that while the Government took measures after 1995 to offer death certificates and provide the Rs.50,000.00 compensation (in most cases), there was no other long-term support forthcoming. Some women who had struggled to raise children on their own were now aging and unable to support growing children or even themselves any longer. They looked to the state to offer some respite. They recommend:

- a pension for women who are over a certain age and can no longer benefit from livelihood assistance; and
- that the state institute an official accessible at the local level who can provide support to women in the pursuit of livelihood related or other everyday activities where women may need to deal with authority figures.

In the implementation of reparations, one submission notes that while the OMP should facilitate reparations, it should also not be delinked from the Office of Reparations, and should do what is in line with a broader government policy on reparations, which does not create a hierarchy of victims.

Submissions also recommend that final reparations should be in the form of a lump sum, after the fate and whereabouts have been determined, to compensate for the loss of the person. To ensure maximum equity in determining final reparations, the OMP must take into consideration the duration of time a family has received monthly allowances and other considerations.

In order to carry out these tasks, the OMP must have an Interim Reparations and Final Reparations Unit distinct from the other units of the OMP and a reparations fund (See also Sec. 6.4.2 below). It is recommended that family members should have the opportunity to question reparation decisions.

At most this is the minimal level of respect that can be given to the people. [BPC]

It should however also be noted that despite the precarious economic situation of family members, they were reluctant to discuss reparations or compensation at zonal-level public consultations and FGDs, insisting that they only wanted to know the whereabouts of the disappeared person. Others state that they do not want compensation that is conditional on a death certificate. There were also concerns expressed about the consequences of accepting compensation, as they fear the State will give up searching. One father in Karachchi stated “Some support until my child comes...no we don't need anything but our children.”

6.4 STRUCTURE

The OMP is to be established as a permanent body with a head office in Colombo and with provision for regional offices as necessary. It will consist of:

- a Secretariat responsible for administration affairs;
- a Tracing Unit responsible for tracing and searching for missing persons; and
- a Victim and Witness Protection Division within the OMP responsible for protecting the rights, and addressing the needs and concerns of victims, witnesses and relatives of missing persons.

Additional units have been suggested in the submissions and these are detailed below. Given the specialised nature of the work that will be undertaken, it is recommended that the different units of the OMP receive specialised training.

6.4.1. Location of Offices

Section 3(3) of the OMP Bill provides that the head office of the OMP is to be in Colombo, with provision for the establishment of regional offices 'from time to time'.

Submissions and consultations call for the head office of the OMP and its regional offices to be established in a relatively well-known area in the region that can be easily accessed through public transport. In Mannar representations were made for the head office to be in either Killinochchi or Mullaitivu.

The call to establish regional offices was in fact made very early in submissions received by the CTF, before the Draft Bill was received, and was reiterated at the briefing sessions with families of the missing/disappeared held on 20th May. Following the release of the Bill, some submissions recommend the establishment of regional offices as a mandatory duty of the OMP, particularly in the North and East. Other submissions recommend that the Office should establish a number of regional offices, at least in its early stages, to reach out to all communities and facilitate victims and their families to engage in the process. Yet another submission makes the suggestion that offices should be established at the district level in the North and East and at the provincial level in the South. In the public meetings in Mullaitivu and Killinochchi districts the request was for an office in the Wanni, with Killinochchi mentioned as a possible location. In the Marathankerni meeting, Killinochchi and Jaffna were suggested as possible locations.

6.4.2. Additional Units of the OMP

Several of the submissions recommend the establishment of the following units under the OMP in addition to those mentioned in the Bill.

i. A Forensic Unit

It is recommended that the Bill be amended to create a dedicated forensics unit, with a mandate to identify victims and return remains to the families. The forensics unit should put families of the disappeared at the centre of the process, including in the exhumation of graves. It should work in coordination with other branches of the OMP from the outset to facilitate the granting of death certificates, compensation and psychosocial support for the affected.

One submission suggests that this unit of the OMP can be modelled after the Office of Missing Persons and Forensics in Kosovo and learn from the victim-centred approaches of the Peruvian Team of Forensic Anthropology and the Guatemalan Team of Forensic Anthropology. It is submitted that a proper forensic anthropologic process does not begin with DNA sampling of skeletal remains; instead, it begins with and is led by families themselves. That is, it should work with affected families and victim's groups to

develop a database of *ante-mortem* data (which will include who, when, how, identifying and corroborating details, etc.)—to inform hypotheses as to whom the skeletal remains may belong to. The data will also inform the OMP’s broader work to trace the missing.

ii. A Reparations Unit

The OMP should be linked to a reparations unit/office that can quickly process reparations; victims should not have to go to multiple different places as they rebuild their lives. [WAN]

The submissions call for the OMP to have an Interim Reparations and Final Reparations Unit distinct from the other units of the OMP, in order to carry out tasks in relation to reparations. More specifically, a reparations fund within the OMP should be created within four months of the establishment of the OMP, resourced from the national budget while reserving the right to raise independent funds.

iii. An Advisory or Monitoring Body

Given the lack of faith in government mechanisms consistently expressed by families of the missing and disappeared, a number of submissions refer to the need for a unit or units that will perform an oversight function particularly at the district level in relation to the OMP. It is expected that this body would:

- review the work of the OMP on a quarterly basis and make its findings public; and
- suggest improvements to the structure or processes of the OMP, both at the regional and national levels, if the initial structure proves to be unresponsive to complainants’ needs and issues.

Currently, the Bill envisages that the OMP can, as it deems appropriate, consult relatives and/or organisations representing missing persons with reference to making recommendations in relation to prevention, memorialisation, handling of remains, publication of information, and development of national laws, etc. [Section 13(k)]. The submissions received seem to express the need for a continuous consultation process with victims as well as organisations working on the issue of disappearances. One submission explains that if organisations working on disappearances and victims are consulted, mistakes can be avoided and it would help build trust. Another states that formalising the position of victims in the OMP’s Oversight Body will assist in providing a sense of inclusion and a voice within the OMP’s governing structure.

The suggestions relating to the composition of this unit are as follows:

- The Oversight Body should be comprised of 25% of families of the missing or disappeared—from diverse ethnic backgrounds, geographical areas, and time periods when incidents occurred
- A minimum of two family members in the oversight unit.
- Membership should be rotated every three years to enable different families to be represented.
- It should consist of independent local and international experts, including women experts who will monitor it for gender sensitivity.
- It should consist of representatives from local women’s groups and organisations working on disappearances.

iv. A Complaints Mechanism

Submissions also envisage that victims should have a mechanism to make complaints against OMP staff members who behave insensitively or inappropriately towards them, especially where victims or survivors are women. It is stated that the OMP should take immediate corrective action, including the removing of offending staff members.

v. An Outreach Unit

Some submissions also suggest an outreach unit which communicates regularly with families and which also raises awareness on the OMP.

vi. Psycho-Social Unit

One submission provides that psycho-social support to victims and families should be a core function of the OMP. In particular, it is suggested that there should be a group mechanism for families to grieve, share experiences, discuss or strategise campaigns. One affected family member stated that “there needs to be community efforts to create a space for grieving.” It is further submitted that families should be offered psychological assistance either *via* the above support mechanism or separate referrals to psychologists who would meet these families on a *pro bono* basis. Submissions also point that this is a mammoth task given the number of complainants and would require specialised psycho-social training. Many expressed psychological problems during the consultations, referring to years of waiting and searching for the disappeared with no information. Many broke down during their testimony. Some were offered and given counselling as well as follow up referrals.

6.5. MEMBERS OF THE OMP

Best practice suggests that appointments to the OMP should be made in close consultation with families of the disappeared who must be consulted and allowed to participate in the nomination, vetting and screening, shortlisting and interview process prior to appointments.
[IT]P]

The OMP Bill states that OMP shall be a body corporate having perpetual succession consisting of seven members. However, the CTF received a number of submissions to the effect that there is insufficient detail in the Bill relating to the process of appointments, the composition of members, as well as their status, roles and functions.

i. Process of Appointments

The OMP Bill provides that the President on the recommendation of the Constitutional Council will appoint Members of the OMP [Sec 4(1) (a)]. One set of submissions received by the CTF implicitly endorses this procedure while calling for more clarity, transparency and public involvement in this process. In sum, these submissions suggest the following steps to be followed in making appointments:

- The Constitutional Council to make a public call for nominations specifying the criteria and qualifications for membership in the OMP with sufficient time and opportunity given for families and the public to nominate suitable persons. The call should be made with a minimum period of two weeks for nomination.
- Once nominations are received, a short list of nominees, comprising approximately 15-20 persons, should be made public to enable families and the public to comment as part of a vetting process.

- The list to be reduced to the number of positions in the OMP on the basis of comments and views received from the public and on the judgment of the Constitutional Council, which is forwarded to the President and also made public.
- The President is to be bound to make appointments from the recommendations made by the Constitutional Council. A number of submissions express the view that Sections 4(1)(a and b) and 4(2) are ambiguous on this question and that there should be a specific provision to the effect that the President shall not make an appointment as Chairperson or Member of the OMP outside of the recommendations of the Constitutional Council.

Another set of submissions (signed by 12 organisations and 26 individuals) expressed the view that appointments to the OMP should be made by the Constitutional Council and the UNWGED and/or the OHCHR with the Constitutional Council making local appointments and the UNWGED /OHCHR making international appointments to the OMP (see further below).

ii. Composition of OMP Members:

At least one family member must serve as a commissioner. They need to be commissioners. They are emotional, but it is part of their life. (WAN)

Currently the OMP Bill states that in making recommendations for the appointment of members to the OMP, the Constitutional Council should have due regard to ensuring:

- the composition reflects the pluralistic nature of the Sri Lankan society; and
- the members of the OMP shall be persons with previous experience in fact finding or investigation, human rights law, international humanitarian law, and humanitarian response, or possess other qualification relevant to the carrying out of the functions of the OMP [Section 4(2)].

Submissions received by the CTF suggest additional criteria, which should be taken into account in selecting members to the OMP. The following list of criteria emerge from submissions and consultations as a whole:

- Gender: more than 50% of the OMP members should be women and highly qualified women should be encouraged to apply.
- Ethnicity: members must reflect the caseload of the OMP.
- Members should have professional experience of working with the families of the missing and disappeared.
- They should possess psychosocial support experience.
- Family members of the missing/disappeared (on account of their experience in searching for family members) and family members of servicemen/soldiers missing/disappeared must be represented.
- Integrity and respect of the community.
- From the region (in the context of this submission, region has to be understood as North and East) and having competency in the language of the region.
- Forensic anthropology expertise.
- International members including representation from respected organizations like ICRC and Amnesty International.
- Religious priests or leaders from all faiths.
- Social leaders from all communities.

One submission (signed by 12 organisations and 26 individuals) is of the view that qualified foreign individuals known for their integrity, independence and professionalism [appointed by the UNWED or OHCHR (see above)] should form half of the membership of the OMP. It goes on to state without international involvement it will be “extremely difficult for victims to place faith in the OMP and that it is difficult to conceive how the OMP made exclusively of Sri Lankans. . .will have the moral and practical courage to enter camps and prisons and properly investigate alleged acts of disappearance”.

It is also recommended that Section 4(2) should contain a separate explicit provision setting out persons who would not be eligible to be a Member of the OMP i.e.

- Persons who have been or are implicated/held responsible for disappearances or being complicit by way of denying, justifying, or covering up the crime in the past in any local and international fora.
- Persons who are or have been members of the security forces or armed groups.
- Persons who hold or have held political office.

iii. Chairperson

The Bill provides that a **Chairman** will be appointed from the 7 members [Section 4(1)(a)]. An alternative recommendation states that a structure with a small group of 3 individuals heading the team is more suitable whilst another recommendation prefers there to be a rotating chair. These were suggested for the purposes of ensuring unbiased decision-making.

Similarly, other submissions suggest that that at least three of the members of the OMP should function as deputy CEOs or in any other relevant executive capacity.

iv. Role, Function and Status of Members

A number of submissions point to the need for clarity on the roles, functions and status of the seven OMP members. One submission states that as it presently stands, the OMP Bill describes the functions of the OMP as an institution, without providing details about the role and function of the Members. Submissions call for clarifications regarding the:

- the nature of interaction between Members and complainants and families;
- the ‘governance’ and ‘executive’ role of Members; and
- whether members work on a part time or full time basis.

It was submitted that the absence of a specific provision for members to function as full-time officers, with commensurate remuneration, risks a weakened and dysfunctional OMP. Therefore, it is recommended that it would be useful if amendments are effected to provide for at least a few of the members (or more specifically four of the seven) to function on a full-time basis. They go on to state that the Bill should also stipulate the minimum number of days per month that other Members need to commit (i.e. at least 15 working days a month). Availability to commit to the working days of the OMP should be part of the eligibility criteria for selection.

A participant at a FGD held in Moneragala in fact questioned whether seven members were sufficient to deal with the caseload of the OMP which is likely to exceed 20,000 persons. He asked, “Shouldn’t there be at least 100 or 150 members?” This illustrates some of the public confusion relating to the role of Members but it does raise valid concerns as to the extent of the workload and the Members’ ability to cope with this.

v. Security of Tenure:

In terms of Section 6, every member of the OMP shall hold office for a period of three years, unless he or she vacates office prior to the expiration of such term and is eligible

for re-appointment for a further period of three years.

A couple of submissions refer to the need to ensure the security of tenure of OMP members in order that they can perform their responsibilities without hindrance or political interference. In particular, it is submitted that Section 7(3) of the Bill, which contains a number of grounds for removal from office, should be applied strictly in accordance with the requirement in international standards. Specifically, this means that persons should not be removed during their term of office, except on grounds of incapacity or behaviour rendering them unfit to discharge their duties and pursuant to procedures ensuring fair, impartial and independent determinations. Language that ensures adherence to such standards must be included in the text of the Bill.

6.6 STAFF OF THE OMP

Staff members also need to be from families. Otherwise it will be seen as a job opportunity for Colombo-based elite people. (WAN)

The families need to be partners e.g. as staff. If they don't have the necessary qualifications then we need to include civil society partners who have been working on these issues. (NECC).

Submissions received by the CTF recommend that the Bill should stipulate clear criteria for recruiting staff/personnel at all levels, as well those who will not be eligible for recruitment. The following recommendations relating to the staff of the OMP emerge from the submissions received:

- All staff should have the requisite professional qualifications and experience, relevant to their particular position/unit.
- Family members of the missing/disappeared should be represented within staff.
- 50% or more of OMP staff should be women.
- Competency to respond to and interact with victims and families without having to resort to translations on a regular basis. The OMP Bill must contain an explicit provision stating this language requirement relating to OMP personnel (relating to the Members, the Tracing Unit, the Victims and Witnesses Division, and all other intended units/divisions of the OMP). When such staff is not available, the OMP must always make female translators available.

The need for family members to be involved was made repeatedly in the FGDs and submissions at public meetings on disappearances, both in the North and the South. The reasoning for this was explained by a number of those making the suggestions including that only an affected person could be responsive and sensitive to their concerns. One father of the missing suggested that a father should be included as well.

A number of submissions also envisage that OMP staff will include internationals to undertake specific tasks such as investigations or forensic work (See further Sec. 6.8).

In addition to professional qualifications of staff, submissions emphasise that OMP staff should also be endowed with the following qualities:

- Gender-sensitivity
- Sensitivity to the issues, the context and grievances of those engaging with the office.
- A demeanour that reflects an aim to pursue and provide truth to families of the missing and disappeared.
- Caring and trustworthy locals who understand the geography, language, history

and context of the area, and have experience in working on enforced disappearances.

- Trustworthy and neutral persons who will protect the privacy and confidentiality of all communications, testimony and data.
- Persons who give victims adequate time and space to tell their stories. Victims should not be cut off or told merely to submit their information in writing.

Submissions recommend training, if these qualities are found to be lacking. It is also recommended that all staff/personnel should be thoroughly vetted to ensure that they are trustworthy and do not have any prior record of harassment, intimidation or violence. Individuals who are implicated of having any involvement in any instance of a missing or disappeared person or involvement in any other serious crime must be categorically excluded. In this regard, there should be an explicit provision containing this exclusion relating to the recruitment of current or former law enforcement and military personnel.

6.7. WOMEN AND THE OMP

OMP's capacity of functioning at the optimal level is dependent upon its sensitivity to lived realities of women [FOKUS].

The number of letters received from women brings home to the CTF that disappearance is a gendered crime. While the vast majority of those who are missing/disappeared are men, those who are seeking truth and justice on behalf of the men who have been disappeared are women. Submissions received also point to the fact that the vast majority of those who will come before the OMP once it is established will be women, as was the case with the Paranagama Commission.

Section 11 of the OMP Draft Bill states that the OMP shall have the general power of issuing rules and guidelines, which may include gender-sensitive policies (our emphasis). It is recognised in the submissions that this is inadequate, and indeed this lack of attention to gender renders the OMP "gender-blind". Submissions call for a more gender-sensitive approach within the OMP.

In particular, there is a strong demand for adequate representation of women within the OMP structure as both members and staff, and the need for gender training of staff (referred to above). In consultations held in the North and East as well as in the rest of the country, those widowed or compelled to become heads of households as a result of disappearances made strong statements regarding their personal security and vulnerability in the context of the loss of their spouse. At FGDs in the South, *api anaarakshithay* (we lack security) was a constant refrain. Submissions made it clear that this lack of security took the form of large amounts of unsolicited male attention, sometimes leading to sexual overtures. Much of this attention was from officials that the women were compelled to deal with as a result of their predicament.

Some examples:

From Kurunegala: When making a police complaint about a missing husband, the Police officer said, "Mahaththaya nathi unata api innawane." (Even if your husband is missing we are here.)

From Anuradhapura: When the wife of a Navy officer missing in action goes to the Grama Sevaka to collect a letter saying that she is still unmarried. "Mama havasata

gedarata genath dennam.” (I will bring it to your home in the evening.)

From the North: The wife of a missing person reported at the SCRM meeting held on 20th May 2016 that when she went to collect compensation, the police officer asked her to sleep with him. She said, “This is the suffering that we in the North and the East went through. (Wife of a missing person, SCRM Meeting, 20th May 2016).

Many of the women family members stated that their lack of security was also due to the fact that their experience depleted their support networks. The isolation they faced and the support that they anticipated was not available in their family networks that were also stretched due to poverty and stigma. One young man (at an FGD in Anuradhapura), whose father disappeared in the late 1980s, recounted how the Grama Sevaka of the area wrote him a character certificate stating that he lost his father due to anti-state (raja drohi) activity. Many family members present there said they had similar experiences. The families, especially the women, require greater institutional support.

The women who made representations repeatedly emphasised the difficulties caused by this particular problem in their everyday lives. They also emphasised that they require greater support in their everyday lives to deal with the issue. In particular, they call for:

- a larger female to male ratio in the staffing of the OMP, and
- a mechanism whereby the OMP offers them support for various livelihood and other activities through the participation of women field officers (See also Section 7 below).

There are several other recommendations that seek to make the OMP more gender-sensitive. They are as follows:

- Amend Section 11(c) so as to impose a mandatory duty on the OMP to issue gender-sensitive internal policies.
- Prioritise gender concerns when mobilising resources for the OMP.
- Ensure that a conducive environment is created so that women who access its services feel comfortable and at ease in providing their statements.
- Ensure that women who have no finances are reimbursed for cost associated with travelling to the OMP.
- Ensure provision of child-care facilities to accommodate children that will accompany adults to the OMP.
- Ensure that the reports that are prepared by the OMP dedicate a chapter to capture the experiences of women who have accessed the services and remedies that are provided by the OMP.

Given this reality, that the vast number of those who approach the OMP will be women, the CTF also recommends that the language of the bill should be gender neutral.

6.8. LANGUAGE AND COMMUNICATION

The demand for Tamil language competency of OMP staff emerged in many of the written submissions, FGDs and public consultations. A number of families of the missing and the disappeared pointed out how they had suffered further hardships because they were unable to communicate with officials in their own language.

Since we came to you today we are talking directly to you. We go to each group, to each meeting and they ask what? We say we are feeling sad and try to tell them our story but they don't understand us. We have to tell it to someone else and they say stop and translate. In this process we forget the rest of our story! They will

come from there, write down two stories while we would have told them something else. Like this different stories had been conveyed.
[Mother at FGD in Jaffna]

These families also recounted past experiences of receiving official correspondence in Sinhala or English and having to seek assistance to get translations. Furthermore, many families made complaints to officials that were recorded in Sinhala, which made it difficult for them to verify these statements. The submissions recommend that any written communications addressed to families should be in their own language. An overwhelming proportion of families of the disappeared, who attended the public meetings in the Wanni, stated that they want Tamil-speaking staff in the OMP. Whilst this has much to do with basic communication, it is also possibly related to the perception that Tamil speakers would have a better understanding of the issues these families are confronting. CTF notes that the matter of language competency is of paramount importance, and ensuring that there is sufficient staff to communicate with the families of the missing and the disappeared—whether in person or in writing—will demonstrate empathy and respect.

We went to the Commission to tell our story. They say stop! Just answer our question! Is this the way they treat us? Do they know how hurt and deeply pained we are? No! They didn't even wait for our answer and they wrote something down. They wouldn't put down what we said.
[Mother at FGD in Jaffna]

6.9. INTERNATIONAL INVOLVEMENT WITHIN THE OMP

We see the OMP not as a remedy for the issue of the families of the disappeared. Instead we see it as drama staged for the international community, and this is why we are requesting for international oversight.
(Mother from Vavuniya, Meeting with SCRM, 20th May)

From lessons learnt, there have been various commissions and bodies e.g. LLRC was not implemented. If the UN is not in some way involved, these bodies also will not be sustainable and neither will their recommendations be implemented. They (the UN) therefore need to be an active partner. . . . Whatever mechanism, it be there won't be sustainable when the government changes, or 10 years from now and then we will be having the same discussion. (NECC)

According to section 11 of the Act, the OMP has the power to enter into agreement with any person or organisation—domestic or foreign—to secure assistance to obtain information, technical support and training, etc.

The need for international involvement in the OMP was stressed by multiple submissions and consultations, prefaced by the failure of purely local mechanisms in the past. As one mother of the missing stated in Mullaitivu, “We can't believe local mechanisms.” The need for international involvement came up repeatedly in sessions with families of the disappeared in the public meetings and FGDs held in the North. UN involvement in particular was mentioned. Such involvement was expressed as critical to the legitimacy and credibility of the OMP and as a way in which some measure of trust and confidence in this mechanism can be fostered. This involvement was not always

spelt out in the submissions. However, in those that do so, internationals are seen as necessary in the membership of the OMP in order to provide technical/expert advice and to fulfil an oversight function. The need for international involvement in investigations, victim and witness protection and the forensic unit was also specifically mentioned, not just in terms of legitimacy but also expertise. Some submissions also mention that the United Nations must be a partner in the transitional justice process in Sri Lanka to ensure legitimacy, trust and confidence in the process.

6.10. THE RELATIONSHIP BETWEEN THE OMP AND OTHER TRANSITIONAL JUSTICE MECHANISMS

Introducing the transitional justice mechanisms in a piecemeal manner without giving an indication as to the mandate and powers of each of the four and how they will interact with and complement each other makes it difficult to assess if victims' right to truth and justice will be fulfilled. If the people were to repose confidence in a truth-seeking institution like the OMP, as a part of an over-all reconciliation mechanism, it is imperative they also are told in some detail about the justice delivery mechanisms – and how the Government proposes to ensure that justice is delivered. (Arulingam et al)

It is not fair to start only the OMP as all four mechanisms are interrelated and interdependent. (FOD)

What is the relationship with TRC? How will these bodies interact? (Sri Lanka War Survivors and Human Rights Defenders in Collaboration with Sri Lanka Campaign for Peace and Justice)

As the first quote above indicates, the OMP is primarily conceived of as a truth seeking mechanism. A number of submissions, however, raise questions about its relationship with other transitional justice mechanisms proposed by the Government and more generally with the four pillars of transitional justice. In particular, people want to know the way in which the Government intends to sequence the remaining three mechanisms. It is felt that the other mechanisms should also be established without delay to enable the work of the OMP to be co-ordinated, particularly the Office of Reparations and the Special Court.

However, as already noted above, there is also strong demand emerging from the submissions for the OMP to not limit itself to the question of truth, but to also deal with issues of justice and reparations. One submission points out that “they don’t want to go and stand in line in every mechanism”.

The submissions made to the CTF on the OMP Bill are clearly shaped and constrained by the (lack of) information in the public sphere about the other mechanisms. During consultations, many expressed a strong view that there will be no national reconciliation without finding answers to the problems of the disappeared.

7. Before and Beyond the OMP

The submissions made to the CTF on the question of disappearances go beyond representations relating to the design of the OMP to issues of justice, non-recurrence, memorialization and trauma. Given that there will be a considerable time lag between the enactment and operationalisation of the OMP, a number of recommendations were made suggesting that the Government implement trust and confidence-building measures in the short term. Many of the following recommendations have been repeatedly made before and the CTF notes that they encompass civil, political and economic rights:

- Publish a list of all surrendees.
- Take measures to free all political prisoners.
- Release a list of all detention centres.
- Expedite and complete within six months all *habeas corpus* cases.
- Implement a short term financial allowance for the families of the disappeared.
- Appoint a special officer at District and Divisional Secretariats to support the victims.
- Give preference/priority to families of the disappeared in providing government facilities (e.g. housing and land).

It needs to be emphasised that many submissions received by the CTF and ZTFs evince the need to repeal certain laws, reform other laws and enact new laws to strengthen the existing criminal justice system. This is seen as necessary to prevent abductions, arbitrary arrests, illegal detentions and disappearances in the future, and to ensure justice and accountability. Submissions call for the following legal changes:

- The repeal of the PTA: It is stated that laws like the PTA are one of the major causes of enforced disappearances, torture and custodial deaths of Tamils in the North and East, as they have allowed state security forces to abduct and arbitrarily detain persons without the requirement that they should be produced before a Magistrate within 24 hours. It is also submitted that despite promises of reform, the PTA remains in effect, and the CID and TID continue to subject persons in the North and East to widespread surveillance and harassment with impunity under the provisions of the Act, despite the existence of Presidential Directives relating to arrests and detention.
- Enactment of enabling legislation to give effect to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), including criminalization of enforced disappearance.
- Enactment of a new law dealing specifically with mass gravesites in order to address the lacunae in the law and reform existing laws, as follows:
 - Amendment of Sections 269-273 of the Criminal Procedure Code to include the *post-mortem* examination of dead in large-scale disasters and atrocities.
 - Amendment of Section 4(2)(b) of the Bill relating to include forensic expertise to the list of expertise from which the OMP will draw its members. This will ensure that the Office is guided by forensic expertise in the investigation of not only mass graves but also other related human rights violations that require this specialised knowledge. Section 17(2) requires the Tracing Unit to include investigators with “relevant technical and forensic expertise.” Amending Section 4(2)(b) to specifically require members with forensic anthropology expertise would greatly strengthen the Bill.

Justice

If there was justice done to the perpetrators at that time there wouldn't have been a situation like this for the Tamil sisters in the North and East today. We request the OMP to look into all these matters. [Mother from Moneragala, Meeting with SCRM, 20th May 2016]

The LTTE [former cadres] was rehabilitated before joining the communities to lead a normal life, the military who made our relatives disappear should also be rehabilitated before they are integrated into the society. This will enable them and their families to understand the sufferings and pain that we undergo and will stop the continuity of these kinds of violations. [Mother from Ampara, Meeting with SCRM, 20th May 2016]

My son was abducted by a man called XXX in Puttalam. People saw him do it. I know him, he is from the village, he was CID, he took my son and he is outside today, while my son is missing. [Muslim woman speaking at FGD in Mullaitivu]

An overwhelming number of submissions received by the CTF and ZTFs articulate the need to punish perpetrators and to hold the Sri Lankan state to account. They submit that this is the only way to ensure non-recurrence of these incidents. However many wanted the authorities and those giving orders to be held responsible, more than those carrying out the acts. In oral submissions before the CTF, it was clarified that while the LTTE is also responsible for disappearances, it is the State that is primarily answerable to its citizens, including the Tamil population. A view that was expressed predominantly by Tamil civil society organisations was that if the LTTE was functioning and its leader was still alive, then it would be necessary to find a way to hold the LTTE to account. Some groups did note that there are individuals, including former LTTE leaders (some of whom are accused of being involved in individual disappearances), who could be punished.

Yet as already mentioned above, the question of justice and accountability for disappearances is not directly addressed by the OMP. It is vested with the power to refer cases where it suspects an offence has been committed to a prosecuting or law enforcement authority. However, in the absence of legislation giving effect to Sri Lanka's obligation under the ICPPED, including criminalising disappearances and the lack of information about the mandate of the Special Court, several submissions raise the question of whether these cases will be referred to the Police and AG for prosecution. Submissions clearly articulate their lack of trust and confidence in the existing criminal justice system.

In the current context, submissions point out that law enforcement officers who are implicated in disappearances [including the Terrorism Investigation Department (TID) and the Criminal Investigation Department (CID)] may get involved in the investigations and prosecution of these complaints. Submissions urge as imperative that adequate administrative arrangements and checks are instituted to ensure independence and foster confidence in the eyes of the families of the missing and disappeared and that the nature of such administrative arrangements should be clarified before the OMP Bill is passed into law.

The four Presidential Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons, which were appointed in the 1990s, grappled with this very

question, whilst emphasising the need to prosecute those responsible for disappearances. The All Island Commission for instance stated that accountability for past acts is important for the good of society. The Commission for the Central, North Western, North Central and Uva provinces recommended that indictment and conviction in heinous cases would enhance the credibility of the administration of justice and restore trust in rule of law, particularly where it is difficult to establish liability in all cases. All four Commissions recommended that:

- where there is credible material evidence, persons responsible for disappearances must be prosecuted no matter who the perpetrators are; and
- prosecutions should not be limited to junior officers alone.

Taking into account the backlog of cases and the fact that several years have already elapsed, the Commission for the Central, North Western, North Central and Uva provinces recommended special courts to hear disappearance cases and the establishment of an Office of an Independent Human Rights Prosecutor, which could be considered by the present Government.

The commissions also make reference to the role of the Attorney General (AG) and the need for a special team of state counsel from the AG's Department to work with investigators on cases of disappearances. Where the Police/AG fail to initiate legal proceedings, the Commission for Western, Southern, and Sabaragamuwa Provinces and the All Island Commission recommend the right of an aggrieved person to file a private plaint. The former also recommends the establishment of a Legal Advisory Service Bureau to provide legal assistance to members of the families of disappeared.

More recently, the Lessons Learnt and Reconciliation Commission (LLRC) states that the GoSL is 'duty bound' to investigate all complaints relating to disappearances (Para. 5.35), whilst also stipulating the need to prosecute and punish military personnel who are found to have been involved in the disappearance of persons who surrendered to the Armed Forces (Paras. 4.242-58, 9.23).

While the overwhelming idea of justice that emerges from submissions is the idea of retributive justice, a few submission refer to the need for "rehabilitation" of perpetrators and reconciliation between victims and perpetrators. One submission points out that victims and perpetrators of disappearances are living side by side in some communities, and that therefore they would ask the Government to explore mechanisms that have a restorative justice process in mind. They would like the Government to commit, at a minimum, the same space for restorative justice processes as for legal processes. Another states that those persons who are found guilty of disappearances must go through the same kind of rehabilitation that the LTTE cadres were subject to following the end of war. Some expressed that those who opted to become state witnesses could be pardoned.

The Association for Families of Servicemen Missing In Action in their oral submission before the CTF spoke of the common suffering and trauma of the families of the missing/disappeared in the South and in the North and the need to reconcile with the loss and build a relationship between these two communities and also pointed out the need for amnesty in securing the truth relating to what happened.

At an FGD held in Kilinochchi, one mother whose son had surrendered to the Army during the final phase of the war stated that she simply wants her son back and she is not interested in seeing those responsible punished. She stated that she does not want another mother to go through the kind suffering that she is going through.

Memorialisation

Every national in this world has the right to grieve for children and loved ones lost due to natural disaster or war. This is recognized even by the UN. Likewise, the Tamils are ethnic nationals in Sri Lanka. So they have the right to grieve and worship their children and loved ones lost due to natural disaster or war. This right must be given to them. Most importantly you should take into note, that these people should be able to pick a date that is in line with their culture, religion and beliefs. In an independently chosen day they must be able to grieve or worship as a large congregation or a small group.

Secondly, as a way of representing this ethnic group's national loss and collective wounds they should have the right to set up a memorial to grieve or worship. Further, this day of enforced disappearances must be declared, by the government of Sri Lanka, as a national event of mourning. On this day as a way of lending strength to the families of the victims the rest of the country must undertake awareness programmes as a gesture that they stand by them in their grief. (Vavuniya Citizen's Committee)

Memorialisation can play a critical role in the government's transitional justice agenda, specifically in terms of complementary measures that can help reinforce these systems that may take many months to set up. Further, memory initiatives can address grievances that are not captured fully by the structures promised by the government, while bringing together communities who have suffered similar issues such as disappearances, which were common not only during the 30-year conflict, but also during the two Southern insurrections. (Ruwanpathirana)

Don't want artistic memorialization they want monuments. Can't put garlands on ID cards. They want some place to go and light a lamp, place some flowers (Viluthu)

Several submissions to the CTF and the ZTFs refer to the importance of memory initiatives and the ways in which memory relates to transitional justice processes and practices. While memorialisation falls within the realm of reparations, it is a concept that also cuts across the other three pillars of transitional justice i.e. the right to know, the right to justice and the guarantee of non-recurrence. It is noted that "a sensible, sensitive, nuanced approach to memorialisation can act as a tool for reconciliation and healing". It also goes beyond individual reparations to address the need of an entire community and therefore can be seen as part of collective reparations.

One submission also points out that "the State practice of memorialisation has been selective". Several submissions make the point that the violence that has marred Sri Lanka's post-independence history is barely reflected in national education curricular. In fact successive governments' approaches to dealing with the past has been to erase and deny the past.

It is no different in the case of disappearances. Submissions provide illustrations of the way in which this denial has worked in the context of disappearances and memory:

- The destruction of the only monument erected to remember disappearances (the 'Shrine of the Innocents'), which was commissioned by former President

Chandrika Bandaranaike Kumaratunga, to pave way for a Water Park, under former President Mahinda Rajapakse.

- The prohibition placed on remembering the missing and the dead in the North and East during the previous regime, while holding victory celebrations of the war.
- The promotion of war tourism from a triumphalist perspective without any recognition of the human suffering that was caused by the war.

It is also alleged that victim-survivors continued to be under surveillance at mourning events, even in 2015 under the present regime.

Submissions also refer to the implications of this erasure and amnesia; the lack of understanding or acknowledgment of the abhorrent nature of the crime of disappearances and its devastating effects on families by significant sections of Sri Lanka society; the lack of understanding that it is a crime that transcends ethnicity; and that it is not limited to the war or a crime that came into being during the war.

In this context, submissions make the following recommendations in relation to memory and memorialisation of disappearances:

- Recognition of the right of victim-survivors to memorialisation initiatives and provision of State support for and facilitation of these initiatives without obstruction.
- State acknowledgment of the harms suffered in the past and adoption of a strategic approach to memorialisation in a way that captures not just the families of the soldiers and the LTTE but also all victim-survivors of the war.

Submissions caution that the State practice of memory must be conducted in a strategic, sensitive and balanced manner keeping in mind that government involvement in memory initiatives can exacerbate already existing divisions between communities. The following suggestions are made in relation to the State:

- Adoption of a national policy on memorialisation.
- Reform of education curricula (particularly history) to recognise the war, its root causes and its devastating impact on all Sri Lankan citizens.
- The establishment of a museum dedicated to the war and its impact, including disappearances.
- (Re)establishment of a monument for disappearances.
- Declaration of a national day to remember disappearances.
- Support for civil society memory initiatives.

8. Concluding Observations of the CTF

As at 08th August 2016, the CTF had received 304 written submissions, a considerable number of which—either wholly or partly—address issues related to the missing and the disappeared, the OMP and/or the OMP Bill. These issues also formed a central part of the consultations conducted by the ZTFs, including in the public meetings and in the FGDs carried out with the families of the missing and the disappeared.

That the issue of disappearances was a recurring theme makes it clear that this is an issue on which the families of victims and the organisations working with them seek to actively engage with the State. Accordingly, consultations provided an unprecedented and invaluable opportunity for both families and organisations to do so from across the country and with sections of the community that have never been consulted on this issue before, such as Up-Country Tamils and families of service personnel missing in action. This report bears testimony to the large number of recommendations—some ambitious and far-reaching, others concrete and specific—that this process has elicited even before the conclusion of the consultation process. In order to facilitate serious consideration of these recommendations, this interim report has attempted to link all the relevant submissions to specific provisions of the OMP Bill and the proposed Bill on Certificates of Absence.

The CTF would like to make the following observations about the process so far and about the suggestions and recommendations that emerged with respect to TJ and the OMP:

Lack of Awareness of TJ Processes

The CTF notes a serious lack of awareness of the transitional justice process—and the mechanisms proposed by the Government—across the country, particularly amongst ordinary people, including victims. The level of awareness is alarmingly low in the South. This clearly has an impact on the extent to which the public can contribute to a discussion on the design of mechanisms, including the design of the OMP. In the North, East and South of the country, there is a need for more public awareness of this process and of the relevant mechanisms.

Climate of Fear

In the North and East, the CTF notes that people bravely engaged in the consultation process despite a climate of fear arising from continuing human rights violations and from the possible consequences of engaging in the consultations. The CTF along with ZTFs in the North and East received a number of complaints relating to incidents of intimidation, harassment and even torture that occurred during the consultation process. This is despite the fact that from the time of its appointment in January 2016, the CTF has been insisting that State cooperation is vital for the success of the consultation process, particularly in terms of ensuring that such incidents do not take place.

The continuation of violations has had a direct impact on the process both in terms of the number of people willing to engage and also in relation to the quality of engagement. Some had been warned by their families abroad not to testify or attend the consultations due to risks to those remaining. In other cases, family members of the disappeared did not want to discuss justice options as they felt this would have a direct impact on their family members whom they believe are being held by the State.

Lack of Faith and Trust in Consultations

Furthermore, it is worth noting that victims, organisations and the general public continue to engage in the consultation process despite a deep level of suspicion and distrust surrounding the Government's commitment to the transitional justice process. With regard to Sinhala and Tamil families both in the South and the North, there is little expectation of a state process being able to deliver truth or justice. Many said they lacked faith in anything the State would do. Many doubted that there would be any benefit from the consultations but they still came forward out of love for the disappeared or in hope. There were individuals from the North who opposed the establishment of the OMP as they believed it was a cover for the State to not commit itself to the task of searching for the forcibly disappeared. Others refused to suggest compensation options as they stated that the State would give what it wanted, irrespective of suggestions made at the consultations.

The experience of having to seek answers from multiple mechanisms with little or no success, especially with regard to tracing missing family members, has steadily eroded trust in the State. The OMP is thus viewed as the most recent in a series of processes and structures that they have engaged in and found nothing but false hope. Indeed, it is difficult to fully convey the determination, exhaustion and desperation expressed by family members who have attempted to seek redress from multiple actors, including successive commissions.

In addressing the issue of disappearances today, this long and tragic history needs to be taken into account. In particular, years of searching without an answer has given rise to the demand for urgent and immediate attention to their questions. Many victims laid out time frames for carrying out investigations ranging from 3 months to 1 year. In a number of cases, victims expressed a very simple and immediate sentiment—they just wanted their family members back or to know what happened to them. Hence, even whilst many victims welcome the OMP and see the vital importance of a permanent institution to address this issue, they are looking for immediate results, not necessarily new mechanisms. It is incumbent on the State and the OMP to focus on devising immediate measures to address the issue of the disappeared/missing within the OMP and outside. While submissions note the need to consolidate existing state records, the CTF notes the need to take steps to develop a comprehensive system to protect records and data.

This is not to say that there was no demand for truth from family members in the South. In the South too, family members expressed a need to know what happened to both soldiers missing in action as well those that disappeared during the political violence of the '87-'91 period.

The Commonality of Suffering across Different Communities

The submissions and consultations at the national and zonal level reveal the widespread nature of the problem as well as the enormous and diverse number of individuals who are affected by disappearances in the country. Despite the shared experience of enforced disappearances, it is also evident that there are specificities to each group and community, particularly with respect to the nature and scale of the disappearance and its impact, which require acknowledgement and further understanding. The CTF notes that the acknowledgement of such specificities and differences is important to the families.

Some activists working with families of the disappeared, mainly located in the North, claim that the OMP should be a mechanism that is limited to those who were disappeared by the State. The reason for such a distinction is mainly that the security

forces already have mechanisms through which they provide services for the families of missing service personnel. They also stated that by calling attention to the distinction, the State's culpability for disappearances will and should be recognised through the OMP. At the same time, families of the missing in action believe that they deserve greater consideration from the State given that their loved ones went missing "for their country." It is also noteworthy that families of surrendees expressed a similar sentiment as they felt their issue was different to other cases of the disappeared and the missing; they stressed that their family members had been taken into the custody of the State.

Furthermore, the insistence of the families of the missing and the disappeared that the title of the Office should be altered to include the term "involuntarily or forcibly disappeared" and "surrendered" arises from the need for acknowledgement of this specificity.

However, the CTF notes that it is the realisation that the diverse experiences of loss are shared across ethnic, regional, linguistic and institutional cleavages that will ultimately lead to both a credible transitional justice process and lasting reconciliation. Sri Lanka still has a long way to go before this is a possibility. However, the consultation process is one step towards an ultimate goal of understanding mutual suffering.

Impact of Disappearances on Family and Society and Need for Reparations

The consultation process also brought home to the CTF the enormity of suffering that disappearances have caused to family members. Many of the families of the disappeared reflected on what it was like to live with the fact of a disappeared family member for a long period of time, to see children grow up without one parent (about whom no information is available) and often in abject economic conditions, facing stigma from the community and marginalisation from state structures.

While investigation and clarification of the status of the disappeared must inform the setting up of the OMP, the lived experiences of the families whose members have been disappeared also speak to the reparations needs of the families. In the consultation process, a variety of suggestions for reparations were made, ranging from livelihood support, housing assistance to victim families and education for the children to the restoration of LTTE gravesites and construction of memorials for civilian victims of the conflicts. Many expressed a need for psychosocial services and in-community support. Yet, some victims refused to accept any compensation or reparation, but were willing to discuss victim assistance to help them in their efforts to trace family members.

Composition of the OMP

The CTF notes that the distrust of and disenchantment with the State may in part explain some of the suggestions and recommendations made in relation to the composition of the OMP. For example, there were repeated requests for international involvement in the OMP (and other transitional justice mechanisms) and repeated demands for the involvement of family members, not just from groups in the North and East, but also families from South and, North and East. In the North family members expressed to be involved in the actual activities of searching and even exhumations.

The inclusion of representatives of family members, from respected international organisations like the UN and ICRC, local people of good standing from all ethnic communities, religious bodies and other organisations in the membership were seen as vital to ensuring trust and confidence in the OMP. The submissions viewed international representatives as credible and effective members of investigatory teams searching for the disappeared as they may be better placed to undertake certain aspects of investigations that would require challenging law enforcement and security forces.

The demand for Tamil speakers in the Office, which was a recurrent theme from consultations in the North and East, has to be understood in the context of years of experience of families trying to communicate and deal with government officials with no knowledge of Tamil.

Institutional and Sectoral Reforms

The CTF also notes that recommendations need to be factored into the precise relationship between the OMP, other transitional justice mechanisms and the existing justice system. With regard to the latter, it is evident that currently there are serious problems in the dispensing of justice with respect to disappearance cases and mass graves. Hence, turning over these cases to the justice system without addressing the systemic and fundamental gaps and weaknesses within the system will only serve to undermine public trust in this current initiative.

Families of the disappeared had different positions on the issue of justice. Some insisted on prosecution and punishment and even ruled out the option of amnesty, whilst others did not see the purpose of a judicial process altogether. Moreover, some sought non-traditional forms of redress, including the perpetrator providing labour for a family's needs, in place of the disappeared. The lack of detail with regard to the larger transitional justice architecture has also complicated the discussion on the OMP, with fears of justice being denied. Written submissions and participants in consultations repeatedly made the point of prosecutions being a critical element to addressing the demands of victims. Therefore, in addition to carrying out investigations, there is a demand for the OMP to be directly involved in prosecutions.

If the OMP does not deal with justice and reparations, the State must establish the other mechanisms in swift succession.

Trust Building

While the CTF appreciates the Government's efforts so far, it urges the Government to take greater cognizance of the problem of disappearances and the manner in which the country's social fabric was destroyed. It is a damning indictment of successive governments that the problem of disappearances is one that they have tried and failed to address for over three decades.

Giving the victims an opportunity to participate in the design of a mechanism in order to substantively and meaningfully address the issue of disappearances is an unprecedented first step towards addressing the damage caused. Having provided a space for hearing their concerns and recommendations, the incorporation of these in the OMP Bill and in the design of other measures and mechanisms would help to reestablish trust in the State's commitment to redress.

It is necessary for the government to take on board all suggestions made by victims and groups working with them—if the OMP is to be victim-centred. In order for the OMP to gain trust and public legitimacy, the Government needs to ensure a sense of ownership of the OMP.

The CTF believes that an OMP, which takes into account the voices represented at public consultations and in written submissions, will go a long way towards addressing the distrust and polarisation that currently prevails and ensure greater public trust and legitimacy. Such an Office will also go a long way towards ensuring victims' rights as equal citizens of this country and helping families bear their loss with a greater measure

of dignity. However, as this report points out, the current Government must also devote its attention to the future non-recurrence of this most damaging of crimes.

9. Summary of Actions Recommended in the Submissions

OMP Bill Amendments	Actions recommended in the Submissions – including amendments to the Bill and suggestions for working methods and principles
Name of the Office	<p>Four different suggestions are expressed in the submissions with regards to the name of the Office (Section 3 (1)):</p> <ol style="list-style-type: none"> 1) Replace ‘Missing Persons’ with ‘Involuntary Disappearances’ or with ‘Enforced Disappearances in the current title, [i.e. Office of Enforced Disappearances] in order to accurately represent the enforced nature of disappearances and because the current term is more commonly used to refer to soldiers missing in action. 2) Add ‘Forcibly Disappeared’ to the current title [i.e. Office of Missing Persons and the Forcibly Disappeared OR Office of the Forcibly Disappeared and Missing Persons] in order to be inclusive, and also because investigations will confirm the nature of disappeared or missing. 3) Include ‘surrendees’ in the title [i.e. Office of the Missing, Forcibly Disappeared and Surrendered] to acknowledge the special nature of disappearance of those who surrendered to the army at the conclusion of the war.
Mandate of the OMP, Preamble and Definition of ‘Missing Person’	<p>While acknowledging the broad mandate currently provided for in the Bill, the following recommendations are made to the mandate of the OMP, its preamble and the definition of ‘missing person’:</p> <p>Amend the mandate of the OMP Bill in Section 10 to prohibit the OMP from rejecting or refusing to investigate a complaint on the basis that it does not fall within its mandate, unless the OMP has investigated the case and provides justifiable reasons to support a belief that the case falls outside its mandate.</p> <p>Add to the preamble of the OMP Bill a provision to embody the commitment to reconciliation and what this means particularly to handling of information regarding fatalities and human remains. The following addition or a similar paragraph is suggested:</p> <p><i>And WHEREAS information in respect of fatalities and discovery of human remains shall be treated with dignity and in consideration of Sri Lanka’s commitment to reconciliation, and remains where possible shall be returned after due process:</i></p> <p>Ensure that the definition of missing person in Section 27 is in line with that of the International Convention on Enforced Disappearances (i.e recognise the enforced nature of disappearances) and while recognising that non-state actors</p>

	<p>may also be perpetrators of enforced disappearances.</p> <p>Establish separate offices for the ‘disappeared’ and for ‘the missing’ so as not to conflate the issues, with relevant corresponding titles, so as not to dilute the issue of enforced disappearances and because the Government already has better investigation of and compensation for those families whose soldiers are MIA.</p>
Aims and Powers	<p><u>Database:</u></p> <p>Make provision in Section 10 (e) for the OMP to access all documentary information and evidence relating to the missing, disappeared and surrendered from national bodies, including past commissions of inquiry the Police, the Human Rights Commission of Sri Lanka, which have received complaints relating to the missing and disappeared.</p> <p>Make provision in Section 10 (e) for the OMP to access all documentary information and evidence relating to the missing, disappeared and surrendered from international bodies, including, the UN Human Rights Committee, the Committee Against Torture, the UN Working Group on Enforced and Involuntary Disappearance (WGEID), and the International Committee of the Red Cross which have received complaints.</p> <p>Make provision in Section 10 (e) for the OMP to obtain and access all court records in relation to <i>habeas corpus</i> cases and to map mass graves.</p> <p>Make explicit reference to the duty of the OMP to make available statistical information of cases being handled as well as the number of persons in detention, detention locations, the number of detainees released, with appropriate safeguards to protect identities.</p> <p>Make explicit reference in Section 13 (h) to the duty of the OMP to combine existing lists of missing and disappeared persons as found by previous state investigative mechanisms and determine if an instance of a missing or disappeared person has or has not been previously recorded.. If it is a new case, then the OMP can require a full and detailed complaint to be made by the family. If it is <i>not</i> new, the OMP should not require the family to make another full and detailed complaint and the existing information should be assessed prior to seeking any further information from the family.</p> <p>Make explicit reference in Section 13 (h) to the duty of the OMP to create individual victim files to ensure that it begins its work utilizing all available data, subject to verification by existing family members. Families must be called to corroborate information in possession of the OMP as police records of complaints at the time of disappearance may not always tally with what actually took place.</p>

	<p><u>Investigations:</u></p> <p>Make explicit reference in Section 12 to the duty of the OMP to conduct investigations in a community- & victim-centred manner. This should involve taking into account the context within which the disappearances took place; the time lapse between the incident and investigation; and the extent of evidence relating to disappearances already available—within communities, families and organizations working on this issue—but which may not be recorded in official complaints. Similarly, in operational terms the OMP may need to interview LTTE cadres who are in custody, those who have been rehabilitated, and certain politicians, in the effort to find the truth relating to the fate of missing servicemen.</p> <p>Make explicit reference to the duty of the OMP to conduct a targeted public campaign to enable the flow of information.</p> <p>Make provision for the OMP to have a strategy to investigate cases where the evidence is minimal given the lengthy passage of time in some of the cases.</p> <p>Make provision for the OMP to provide incentives for persons / perpetrators to share information</p> <p>Clarify in the OMP bill, the criteria for selection of investigators including</p> <ol style="list-style-type: none"> 1) Use of current or past police officers or military investigators; Some submission call for complete exclusion (as in officers from the TID for example) . Others call for a thorough vetting process. 2) Inclusion of Foreign investigators with the relevant experience. Some submissions recommend that foreign investigators should be included to strengthen both technical skills of, and public confidence in, the team. <p>Extend the criteria in Section 12 (b) for prioritising cases to include 1) those missing who are suspected to be still alive and 2) public's view of what is of public importance (not just the view of the OMP), and 3) recognition that the availability of evidence may differ in cases of missing persons, enforced disappearances, and surrendees.</p> <p>Make express provision in the OMP bill that no investigation into a missing person shall be considered closed until the fate of the person and circumstances in which the person went missing are clarified, and in cases where the missing person is deceased, their remains are returned to the family [if available].</p> <p>Excavations/ Exhumations</p> <p><u>Amend the OMP Bill</u> to include forensic expertise to the list of expertise from which the OMP will draw its members.</p>
--	---

	<p>Amend Section 4(2)(b) to specifically require members with forensic expertise.</p> <p>Make provision for a separate Forensic Unit to be established within the OMP.</p> <p>Make provision for the OMP to recommend, experts in the fields of forensic anthropology, forensic archaeology, forensic pathology, forensic medicine and other similar expertise to conduct and/or to supervise the excavations and/or exhumations and to assist or advise the Magistrate on excavations and exhumations.</p> <p>Make provision for the OMP where possible and when appropriate to initiate judicial proceedings to direct appropriate authorities and supervise the return of human remains or any items associated with such remains which have been identified as belonging to relatives of missing persons.</p> <p>Make explicit provision for the OMP to draw on internationally recognized best practices developed and experiences from similar work in Latin America and the Balkans, in investigating identified mass grave-sites.</p> <p>Make provision for the OMP to be able to provide staff and technical expertise to the Magistrate with regards to excavation and exhumation of sites.</p> <p><u>Confidentiality Regime of the OMP</u></p> <p>Strengthen the provisions in Section 15 regarding the accepting and withholding of confidential information, and clarify and make transparent when confidentiality is to be triggered and the scope of confidentiality with regards to information being shared with families of the missing and disappeared.. In addition, make provision to the effect that only the identity of the person providing the information should be withheld from the family, if confidentiality is explicitly requested, and not the information itself.</p> <p><u>Prosecution and sharing of information</u></p> <p><u>Two divergent views are expressed by submissions:</u></p> <p>Make mandatory provision requiring the OMP to share all information with prosecutorial authorities where offences are involved. The prosecutorial authorities must first and foremost include the Special Counsel of the proposed Transitional Justice mechanisms.</p> <p>Make provision for the OMP to proceed with prosecutions.</p> <p><u>Victim and Witness Protection</u></p> <p>Clarify the relationship between the OMP and the Assistance</p>
--	--

	<p>to and Protection of Witness and Victim Protection Act No. 4 of 2015 as well as the relationship between the Victim and Witness Protection Division of the OMP and the Victim and Witness Protection Authority and Division established under that Act.</p> <p><u>Issuance of Reports and sharing information with families of the disappeared.</u></p> <p>Make mandatory provision for sharing of information with family members;; Make provision with regard to frequency, extent and manner in which information is shared. For instance it should be mandatory for the families to be provided with updates relating to an on-going investigation in the language of their preference, periodically at least twice a year, whenever there is a significant development, and when a case has been sent to a law enforcement or prosecuting authority on evidence that an offence under the law has been committed.</p> <p>Make explicit reference to the duty of the OMP to share information in a clear, transparent and sensitive manner, particularly if the message is of a very distressing nature.</p> <p>Make explicit reference to the family's right to know whether a person is alive as a paramount right. If the person found to be alive was at any point previously subject to an enforced disappearance, where the person is not capable of expressing consent, or if the person is subject to reasonable apprehension of fear or threat in expressing his or her views to the OMP, the whereabouts of a person should not be withheld from the relatives.</p> <p>Make mandatory for the OMP to publicly report its activities, procedures, and general findings.</p> <p>Clarify the scope of the Right To Information Act in relation to information given to affected persons on incidents of enforced disappearance under the OMP.</p> <p><u>Certificates of Absence and Disappearance</u></p> <p>Recognise in the OMP Bill that it is possible for those who had previously obtained a Death Certificate without proper investigations for purposes of reparation (under force or active persuasion) could now have this revoked for the issuance of a Certificate of Absence.</p> <p>Make explicit reference to the duty of the OMP to inform individuals of any consequences in accepting a death certificate, certificate of absence, or certificate of disappearance/ surrender for their disappeared kin.</p> <p>Make explicit reference to the duty of the OMP to facilitate the issue as expeditiously as possible certificates of</p>
--	---

	<p>absence/disappearance, as is noted in the submissions that otherwise they may be of no use for the families.</p> <p>Make explicit provision that Certificates of Absence/Disappearance /surrender are presumptively valid to enable women to access their husbands' bank accounts, pensions, properties, subsidies, gratuity/EPF/ETF, welfare payments, and life insurance.</p> <p>Make explicit reference to the duty of the OMP to facilitate private sector recognition of these certificates.</p> <p>Make explicit provision that Interim reports and reports issued to the Registrar-General for the issuance of Certificates of Absence and Death Certificates are binding directives.</p> <p><u>Making Recommendations on Reparations</u></p> <p>In order to ensure that family members are not subjected to retelling the tragic details of their story yet again, make provision in Section 13 (f) to either:</p> <ul style="list-style-type: none"> • Allow persons from the relevant reparations authority be part of the OMP from the outset in order to facilitate the reparations process; or • in addition to the dedicated Office of Reparations envisaged by the Government, establish a separate reparations unit with the OMP mandated and structured to provide both interim and final reparations, as a mechanism specialising on missing and disappeared persons. <p>A number of suggestions were made regarding the kinds of reparations that should be provided by the OMP and potential structures</p> <p>Make provision in Section 13 (f) for an interim reparations unit to make recommendations relating to the following kinds of reparations:</p> <ul style="list-style-type: none"> • Monthly monetary amount commensurate to the income of the missing person until the fate and whereabouts of the person has been determined. • Scholarships for children. • Preferential school admissions. • Special allowance for vulnerable groups including disabled persons and senior citizens. • Facilitating job placements, including in the private sector. • Assisting in reducing debt obligations for affected women who are carrying the debts of their missing husbands, fathers, and sons. • Recovery of monies paid to the CID, TID, politicians, and paramilitary groups in the search for missing and disappeared family members. • Psychosocial support that is available throughout the
--	--

	<p>process from initial engagement, to learning a disappeared person's whereabouts, to identifying remains, and performing death rituals if the person was killed, as long as family members require such support.</p> <ul style="list-style-type: none"> • A special pension scheme for families of the missing and disappeared. • A percentage of employment opportunities for families of the victims of enforced disappearances and political prisoners. <p>Make provision in Section 13 (f) for the grant of final reparations in the form of a lump sum after the fate and whereabouts have been determined, to compensate for the loss of the person. Final reparations must be based on clear criteria which in the duration of time a family has received monthly allowances and other considerations.</p> <p>Make provision for a reparations fund within the OMP, created within four months of the establishment of the OMP, resourced from the national budget while maintaining the right to raise independent funds.</p> <p>Make provision to allow family members to question reparation decisions.</p> <p>Make explicit provision in Section 13 (f) that the reparations unit will be linked to the Office of Reparations and be part of a Reparations Policy adopted by the government which does not create hierarchies of victims.</p>
Structure	<p><u>Head Office and Regional Offices</u></p> <p>Make provision in Section 3 (3) for the Head Office of the OMP and its regional offices to be established in relatively well-known areas in the region that can be easily accessed through public transport.</p> <p>Make explicit reference to the duty of the OMP to establish regional offices as a mandatory duty of the OMP, particularly in the North and East. and particularly at the outset. It is suggested that offices are established at the district level in the North and East and at the provincial level in the South. Specific suggestions were made about potential locations for an office in the North, including Killinochchi or Jaffna.</p> <p><u>Forensics Unit</u></p> <p>Amend Section 16 of the OMP Bill to create a dedicated forensics unit, with a mandate to identify victims and return remains to the families. One suggested possibility is to model</p>

	<p>this unit after the Office of Missing Persons and Forensics in Kosovo and learn from the victim-centred approaches of the Peruvian Team of Forensic Anthropology and the Guatemalan Team of Forensic Anthropology.</p> <p>Make explicit reference to the duty of the OMP to work with affected families and victims' groups to develop a database of ante-mortem data.</p> <p><u>Oversight, Advisory or Monitoring Body</u> Make provision in Section 16 for an oversight body, with the power to :</p> <ul style="list-style-type: none"> • review the work of the OMP on a quarterly basis and make public its findings; and • suggest improvements to the structure or processes of the OMP, both at the regional and national levels, if the initial structure proves to be unresponsive to complainants' needs and issues. • ensure continuous consultations with victims and organisations working on the issues of disappearances, in order to avoid mistakes and to build trust. <p>Make provision relating to the composition of this Body which takes into account the following recommendations:</p> <ul style="list-style-type: none"> • The Oversight Body should be comprised of 25% of families of the missing or disappeared—from diverse ethnic backgrounds, geographical areas, and time periods when incidents occurred—or in the alternative two family members. • Membership should be rotated every three years, to enable different families to be represented. • It should consist of independent local and international experts, including women experts who will monitor it for gender sensitivity. • It should consist of representatives from local women's groups and organisations working on disappearances. <p><u>Reparations Unit</u> Make provision for the establishment of a Reparations Unit in Section 16 (see above for further details).</p> <p><u>Complaints Mechanism</u> Make provision in Section 16 for a Complaints Unit within the OMP where victims can make complaints against OMP staff members who behave insensitively or inappropriately toward them, and the power of the OMP to take corrective action.</p> <p><u>Outreach Unit</u> Make provision in Section 16 for an Outreach Unit with power to handle communications with the families of the missing/disappeared, and engage with the public.</p>
--	---

	<p><u>Psychosocial Unit</u></p> <p>Make provision in Section 16 for a Psychosocial Unit that will coordinate the provision of psychosocial support to those engaging with the transitional justice mechanisms and beyond, and ensure that the process is psychosocially sensitive.</p>
Members	<p><u>Appointment Process</u></p> <p>Clarify and make adequate provision in Section 4 (1a & 1b) for public involvement in the process of appointment of members taking into account the following suggestions which emerge from submissions:</p> <ul style="list-style-type: none"> • The Constitutional Council make a public call for nominations specifying the criteria and qualifications for membership in the OMP with sufficient time and opportunity given for families and the public to nominate suitable persons. The call should be made with minimum a period of two weeks for nomination. • Once nominations are received, a long list of the nominations must to be made public to enable families and the public to comment as part of a vetting process. • The long list to be reduced to the number of positions in the OMP on the basis of comments and views received from the public, which is forwarded to the President and also made public. • The President is to be expressly bound to make appointments from the recommendations made by the Constitutional Council. • Appointments to the OMP should be made by the Constitutional Council and the UNWGED and/or the OHCHR with the Constitutional Council making local appointments and the UNWGED /OHCHR making international appointments to the OMP. <p><u>Membership Criteria</u></p> <p>Add criteria in Section 4 (2a & 2b) for consideration in the composition of members for the OMP to include</p> <ul style="list-style-type: none"> • Gender: more than 50% of the OMP members should be women and highly qualified women should be encouraged to apply. • Ethnicity: members must reflect the caseload of the OMP. There were also suggestions for the membership to reflect the major ethnic communities of the country. • Professional experience of working with the families of the missing and disappeared. • Experience in provision of psychosocial support • Family members of the missing /disappeared (on account of their experience of searching for family members) and family members of servicemen /soldiers missing /disappeared must be represented. There was a specific suggestion to recognise the experience of searching for missing as an area of

	<p>expertise.</p> <ul style="list-style-type: none"> • Integrity and respect of the community; • From the region (in the context of this submission region has to be understood as North and East) and having competency in the language of the region; • Forensic anthropology expertise. • Qualified foreign individuals known for their integrity, independence and professionalism (appointed by the UNWED or OHCHR) should form half of the membership of the OMP. It is stated in the submissions that, without international involvement, victims would find it “extremely difficult to place faith in the OMP and that it is difficult to conceive how the OMP made exclusively of Sri Lankans . . . will have the moral and practical courage to enter camps and prisons and properly investigate alleged acts of disappearance.” • Availability to commit to the working days of the OMP should be part of the eligibility criteria for selection. <p><u>Exclusion of Eligibility for Membership</u> Make explicit provision in Section 4 of the Bill to exclude from eligibility for membership of the OMP</p> <ul style="list-style-type: none"> • Persons who have been or are implicated/held responsible for disappearances or being complicit by way of denying, justifying, or covering up the crime in the past in any local and international fora. • Persons who are or have been members of the security forces or armed groups. • Persons who hold or have held political office. <p><u>Chair</u> Consider the following recommendations relating to the Chairperson:</p> <ol style="list-style-type: none"> a) a small group of 3 individuals heading the team b) a rotating chair. <p>These were suggested for the purposes of ensuring unbiased decision- making.</p> <p>Make provision for three of the members of the OMP to function as deputy CEOs or in any other relevant executive capacity.</p> <p><u>Roles, Functions and Status of the Members</u> Clarify in the OMP Bill:</p> <ul style="list-style-type: none"> • the nature of interaction between Members and complainants and families; • the ‘governance’ and ‘executive’ role of Members; • whether members work on a part time or full time basis.; and • whether the role is commensurate to handling the caseload of the OMP, if as expected, it exceeds 20,000 cases of disappeared persons.
--	---

	<p>Amend the bill to provide for at least four of the seven to function on a full time basis. Also make provision stipulating a minimum number of days per month that other Members need to commit (i.e. at least 15 working days a month).</p> <p><u>Security of Tenure</u> Make provision for security of tenure of OMP members in order that they can perform their responsibilities without hindrance or political interference. In particular clarify that Section 7(3) of the Bill will be applied strictly in accordance with international standards.</p>
Staff	<p><u>Criteria for recruiting staff</u> Make provision in Section 16 (2) stipulating clear criteria for recruiting staff/personnel, at all levels as well those who will not be eligible for recruitment, taking into account the following recommendations:</p> <ul style="list-style-type: none"> • All staff should have the requisite professional qualifications and experience, relevant to their particular position/ unit. • Family members of the missing /disappeared should be represented within staff. • 50% of OMP staff should be women. • Competency to respond to and interact with victims and families without having to resort to translations on a regular basis. The OMP Bill must contain an explicit provision stating this language requirement relating to OMP personnel (relating to the Members, the Tracing Unit, the Victims and Witnesses Division, and all other intended units/divisions of the OMP). When such staff is not available, the OMP must always make female translators available. • Staff will include international personnel to undertake specific tasks with regard to forensics and investigation. <p>Also make provision for other qualities which staff should be endowed with as follows:</p> <ul style="list-style-type: none"> • Gender-sensitivity • Sensitivity to the issues, the context and grievances of those engaging with the office. • A demeanour that reflects an aim to pursue and provide truth to families of the missing and disappeared. • Caring and trustworthy locals who understand the geography, language, and history of the area and are experienced with working on enforced disappearances. • Trustworthy and neutral persons who will protect the privacy and confidentiality of all communications, testimony, and data. • Persons who give victims adequate time and space to

	<p>tell their stories.</p> <p><u>Exclusion for eligibility as staff</u> Make provision in Section 16 (2) to the effect that staff should not have any prior record of harassment, intimidation, or violence. Individuals who are implicated of having any involvement in any instance of a missing or disappeared person or involvement in any other serious crime must be categorically excluded. In this regard, there should be an explicit provision containing this exclusion relating to the recruitment of current or former law enforcement and military personnel.</p>
Women and OMP	<p>Amend the OMP Bill to make it more gender sensitive as follows:</p> <ul style="list-style-type: none"> • Amend Section 11(c) so as to impose a mandatory duty on the OMP to issue gender-sensitive internal policies. These guidelines to include the following: • Providing gender-sensitive training for all staff. • prioritizing gender concerns when mobilizing resources for the OMP. • Ensuring that a conducive environment is created so that women who access its services feel comfortable and at ease in providing their statements. • Ensuring that women who have no finances are reimbursed for cost associated with travelling to the OMP. • Ensuring provision of child-care facilities to accommodate children that will accompany adults to the OMP. • Ensuring that the reports that are prepared by the OMP dedicate a whole chapter to capture the experiences of women who have accessed the services and remedies that are provided by the OMP.
International Involvement	<p>Make provision for the involvement of international actors specifically in the following positions within the OMP</p> <ol style="list-style-type: none"> 1) in the membership of the OMP, 2) to serve as staff in specific functions including in forensic and investigations 3) to fulfil an oversight function. <p>Some submissions also mention that the United Nations must be a partner in the transitional justice process in Sri Lanka to ensure legitimacy, trust and confidence in the process.</p>
Relationship with other TJ mechanisms	<p>Clarify the relationship with other TJ mechanisms.</p> <p>The OMP must not limit itself to the question of truth vis-à-vis the disappearances, but must also deal with issues of justice and reparations.</p>

Before and Beyond the OMP	Actions recommended in the Submissions
Consultation Process on the OMP Bill	<p>Ensure that the OMP Bill is amended to include the recommendations received from the public in the formal consultations process.</p> <p>Ensure that the consultations process does not conclude with the enactment of the Bill; periodic consultations should be conducted with those accessing the OMP.</p> <p>Ensure that civil society groups and families of the disappeared are consulted on operational issues, including the development of forms.</p>
Confidence building measures	<p>Acknowledge, condemn and take preventive action to deal with the on-going violations especially in the North and East of the country, especially the abductions, and take action against perpetrators.</p> <p>Ensure that the security forces, police and the intelligence services under them avoid harassment and intimidation of persons involved in the consultations, in particular, former LTTE cadres who have gone through rehabilitation, human rights defenders and families of victims of disappearances.</p> <p>Ensure that all detention centres and detainee lists are made public. Conversely carry out searches in unofficial or hidden detention centres .</p> <p>Publish a list of all surrendees.</p> <p>Take measures to free all political prisoners.</p> <p>Expedite and complete within six months all habeas corpus cases.</p> <p>Implement a short-term financial allowance for the families of the disappeared.</p> <p>Appoint a special officer at District and Divisional Secretariats to support the victims.</p> <p>Give preference /priority to families of the disappeared in providing government facilities (e.g. housing and land).</p> <p>Ensure that arrest and detention are in accordance with best practices including the Presidential Directives of June 2016.</p> <p>Publicly accept that various arms of the State carried out</p>

	enforced disappearances, and these cases will be brought to court.
Public awareness on the government's intentions to establish transitional justice mechanism and their objectives across the country, and amongst different groups	<p>Make official information on the consultations available through the media</p> <p>Appoint a strong spokesperson who can talk about the process and who can challenge the negative discourse about transitional justice that is emerging in the south of the country.</p> <p>Strengthen reportage around all four key mechanisms in terms of their constitution, mandate, financing, logistics and planning, as well as decisions around policy making, to the extent possible under the Right to Information law.</p>
PTA	Repeal the Prevention of Terrorism Act (PTA).
Legislation to give effect to the UN Convention on Enforced Disappearances	Enact enabling legislation to give effect to the UN Convention on Disappearances including criminalization of enforced disappearance.
Witness and Victim protection	Address the several limitations noted in the current Witness and Victim Protection Act No. 4 of 2015. It is also to be amended to ensure that transitional justice mechanisms have the power to request assistance from the Authority and the Division and to establish a common victim and witness protection programme.
Excavation/exhumation of Mass graves	<p>The current legal framework, which is intended to cover instances of routine "domestic murder", is inadequate to address the problem of mass graves. Therefore:</p> <p>Amend sections 269-273 of the Criminal Procedure Code to include the post-mortem examination of the dead in large-scale disasters and atrocities.</p> <p>Address the deficiencies and inadequacies in the past and current investigations of mass graves. These include arbitrary procedures, lack of coordination between actors, lack of mandatory involvement of a consultant JMO (rather than the Magistrate) to oversee the process process of investigation from the outset, and lack of appropriate collection, recording and archiving of information related to</p>

	<p>missing persons and un-identified human remains by the police.</p> <p>Address the issues of shortage of staff cadres and lack of proper resources to conduct excavations and exhumations faced by the College of Forensic Pathologists.</p>
Certificates of Absence	<p>Implement a public awareness campaign about the purpose and implications of the COA to address concerns and fears of family members of the disappeared, and a sensitisation and awareness process among State officials</p> <p>Amend section 13(1)(a) of the COA Bill to include two categories as follows—(i) those whom the OMP has declared as missing after investigation where the COA will have no expiry date, and (ii) those whom the OMP is still investigating where the COA's period of validity can be extended to 10 years.</p> <p>Rename the Certificate of Absence as a Certificate of (Enforced) Disappearance or Certificate of Surrender to explicitly express that the person was made to disappear or surrendered, and is not merely absent or missing. The Tamil and Sinhala terms must also reflect this and be sensitive with regard to the colloquial meanings of the terms.</p> <p>Call in language experts to resolve questions relating to terminology in both Sinhala and Tamil drafts of the COA</p> <p>Address more explicitly practical challenges that people may face in efforts to obtain a COA, such as:</p> <ul style="list-style-type: none"> • lack of documentation to prove relationships • lack of access to official documents • lack of cooperation from Grama Niladharis to assist families and • the requirement to submit an application for a COA to the Registrar-General or the District Registrar of the District in the area in which the missing/disappeared person was permanently resided (particularly given contexts of displacement). <p>Amend the current wording of the Bill to shift the burden to provide information on the status of the disappeared/missing person from the family to the State, and the OMP.</p> <p>Revise Section 13 (1) (d) of the COA Bill as well as Section 15(1) (b) of the principal Act to remove catch all provision relating to offences and limit it only the person make an affidavit and application as follows:</p> <ul style="list-style-type: none"> • Any person who, knowingly, makes a false statement

	<p>in an application made by him under this Act, or furnishes false information under this Act (this is section 15(a) of the principal Act).</p> <ul style="list-style-type: none"> • An applicant who is aware of the fate and whereabouts of a person registered as missing and fails to furnish such information to the Registrar-General in pursuance of an application made with respect to that person. • Any person who dishonestly or fraudulently uses a CoA issued under this Act, while knowing the fate and whereabouts of a person registered as missing. <p>Amend the COA bill to ensure that the definition of missing persons and conflict is consistent with the OMP Bill.</p> <p>Broaden the definition of the term 'relative' to include minors (through a guardian) and relatives living abroad.</p>
Family card system	<p>Amend the points-based family card system that determines relief to include information about disappeared family members. Those affected by the war and who suffer hardships following the disappearance of their loved ones due to the additional burdens of caring for their families, providing financially for their families and continue to search for their loved ones, require additional points for developmental assistance and preference when accessing social service benefits.</p>
Justice	<p>Ensure non-recurrence, by making provision to punish perpetrators and to hold them to account for their actions of forcibly disappearing people.</p> <p>Ensure that non-state actors (including former LTTE leaders who are alive) are also held to account and punished for their role in forcible disappearances.</p> <p>Ensure that law enforcement officers who are implicated in disappearances [including the Terrorism Investigation Department (TID) and the Criminal Investigation Department (CID)] are prevented from getting involved in the investigations and prosecution of these complaints.</p> <p>Ensure adequate administrative arrangements and checks are instituted to ensure independence and foster confidence in the eyes of the families of the missing and disappeared and that the nature of such administrative arrangement should be clarified before the OMP Bill is passed into law.</p>

	<p>Take into consideration the recommendations made by the presidential Commissions of Inquiry into the Involuntary Removal of Persons appointed in the 1990s as they relate to the truth, justice and reparations relating to the missing, the disappeared and the surrendered including the following:</p> <p>Establish special courts to hear disappearance cases and the establishment of an Office of an Independent Human Rights Prosecutor, which could be considered by the present Government.</p> <ul style="list-style-type: none"> • Appoint a special team of state counsel from the AG's Department to work with investigators on cases of disappearances. • Recognise the right of an aggrieved person to file a private plaint. • establish a Legal Advisory Service Bureau to provide legal assistance to members of families of disappeared. <p>Explore mechanisms of restorative justice and provide space for restorative justice processes.</p> <p>Ensure that army personnel go through the same kind of rehabilitation that the LTTE cadres were subject to following the end of war.</p> <p>Make provision for amnesty in order to secure the truth relating to what happened.</p>
Coexistence and Memorialisation	<p>Explore way to assist families to reconcile with the loss and build a relationship between the different communities</p> <p>Acknowledge that the suffering and trauma of the families of the missing /disappeared in the South and in the North</p> <p>Ensure that State practice of memorialisation is inclusive and not selective.</p> <p>Recognize the right of victim-survivors to memorialization initiatives and provide State support and facilitation of these initiatives without obstruction.</p> <p>Acknowledge the harms suffered in the past and adopt a strategic approach to memorialization in a way that captures not just the families of the soldiers and the LTTE, but all victim-survivors of the war.</p> <p>Conduct memory practices in a strategic, sensitive and balanced manner to avoid further divisions among communities.</p> <p>Adopt a national policy on memorialization.</p>

	<p>Reform education curricula (particularly history) to recognize the war, its root causes as well as its devastating impact on all Sri Lankan citizens.</p> <p>Establish a museum dedicated to the war and its impact, including disappearances.</p> <p>(Re)-establish a monument for disappearances.</p> <p>Declare and commemorate a national day to remember disappearances. (October 27 is dedicated by some families and organisations as a day to remember disappearances)</p> <p>Ensure space for families and communities, particularly in the North and East to commemorate and mourn.</p> <p>Support civil society memory initiatives.</p>
Other TJ mechanisms	<p>It is felt that the other mechanisms should also be established without delay to enable the work of the OMP to be co-ordinated. In particular, the Office of Reparations and the Special Court.</p>

Annexures

CONSULTATION TASK FORCE ON RECONCILIATION MECHANISMS

Summary of Submissions Received on the Disappeared and the Office of Missing Persons 9th May 2016

Following the call for submissions in April 2016, the Consultation Task Force on Reconciliation Mechanisms (CTF) has received over 100 submissions; a number which speaks specifically to the issue of the missing and disappeared. The submissions also have a number of recommendations that address the proposed Office of Missing Persons (OMP). This report is a compilation of these recommendations structured according to the following themes:

1. Nomenclature
2. Process Leading to the Creation of the OMP
3. The Aims of the OMP
4. Mandate
5. Powers
6. Structure
7. Composition
8. Operational Principles.

Please note that this document should be considered as an initial **draft summary drawn from submissions received to date, which have been collated** by the Task Force.

1) Nomenclature

With regard to the name of this mechanism, many submissions requested that it should include the term 'involuntarily disappeared'.

2) Process Leading to the Creation of the OMP

A number of submissions referred to steps that need to be taken by the government prior to the setting up of the OMP, if there is to be public confidence in the OMP. These include:

- Addressing continuing violations, particularly abductions and arbitrary arrests;
- Providing sufficient time for consultations, particularly with families of the disappeared - if the bill is to be tabled in Parliament before the public consultations conducted by the CTF are complete, sufficient time has to be given to all parties to comment on the Bill before and after it is tabled in Parliament.
- Recognising disappearances as a fundamental rights violation and criminalising disappearances with retrospective effect and ratification of the Enforced Disappearances Convention.
- Disclosing the identity of and releasing all persons kept in detention.

3) The Aims of the OMP

The submissions envisaged multiple objectives for the OMP as follows:

3.1 Consolidation, categorization and analysis of all Information

It is suggested that that the OMP should consolidate and house all existing information/databases of other state agencies and prior commissions relating to cases of the missing and disappeared as a primary step. The Office should not require victims and witnesses to provide evidence from scratch, yet again. Such a database should serve the following functions:

- Creation of individual victim files per missing or disappeared person.
- Categorization and analysis of information and evidence according to the time period; war-related disappearances and those connected to the Southern Insurrection; the nature and magnitude of evidence available.
- Identification of patterns related to disappearances and drawing conclusions in relation to responsibility, including command responsibility.
- Analysis and rationalization for further investigations, to clarify both the fate and the whereabouts of those missing, as well as criminal investigations and other legal proceedings.

There were different views alluded to, on the confidentiality of the database. It was suggested that: 1. It should not be open to the public, and that it should only be the families of the victims who can request information held by the OMP; 2) It should be a “transparent” database, which must be accessible online and printed for public reference.

3.2 Clarifying the Fate and Whereabouts

A number of submissions refer to the role the OMP should play in clarifying the fate and whereabouts of missing persons. One view is that where there is substantial evidence relating to responsibility (based on categorization of cases above), these complaints should be dealt with as a matter of priority and should be completed within the course of one year.

3.3 Prosecutions

Several submissions refer to the need to prosecute perpetrators, to bring people to justice and address the culture of impunity with respect to politicians and military personnel. One submission stated that the office should not have built in barriers preventing those who were responsible for, or complicit in disappearances being held to account for their crimes. Evidence received or generated by the office **should not be withheld** from subsequent use for criminal accountability purposes. One submission made the explicit point that the OMP should not serve merely as a humanitarian agency, which will conduct investigations for purpose of tracing of the missing but should have a strong investigative role that facilitates prosecutions.

Regarding the role of the office with respect to prosecution, one submission states that the office should be vested with prosecutorial powers and the separation of the tracing and criminal investigations may be detrimental to criminal prosecutions. The other submission, while not envisaging a prosecutorial role within the OMP, states that the office should act in a manner that does not jeopardize current or future prosecutions. Furthermore, it states that the office should follow up on existing complaints before the HRCSL and the police, and on cases pending before courts; particularly, *habeas corpus* cases.

3.4 Issuance of certificates of absence and death certificates

Submissions recognise that the Government should issue Certificates of Absence as an interim measure, without presuming that the missing are dead, until an investigation reveals this to be true. The procedure should not be cumbersome. This should ideally be

done through a mobile unit. Issuance of these certificates should not **in effect forfeit** the right of families to truth and justice. Once investigations are complete, recommendations for registration of death could be made.

3.5 Reparations

In addition to a dedicated Office of Reparations, the OMP should be mandated and structured to provide interim and final reparations. Three types of interim reparations have been suggested:

- a) Monthly payment similar to Samurdhi
- b) Scholarships for children
- c) A special allowance for vulnerable groups (disabled and the elderly).

A Reparations Fund should be created from an allocation from the national budget with the right to access other sources of funding. In addition to interim reparations, there should be final reparations paid after a person's fate and whereabouts have been determined. This should be in the form of a lump sum, based on financial loss caused by the disappearance, number of family members affected and the length of time the person has been disappeared. It is also suggested that the OMP should have an emergency relief fund for families of missing persons who might be facing severe economic difficulties.

3.6 Ensuring non-recurrence

There were suggestions relating to responsibility to contribute towards non-recurrence of disappearances in the future as follows:

- Declaration of a National Day of the Disappeared and Mahaveer Day;
- Recognition of the right of any person/organisation to build a monument for the disappeared.
- The documentation of the war and disappearance. This should be included as part of history lessons in school curricula/universities.

With regard to general aims, a submission suggests that the OMP should address all four pillars of Transitional Justice. Another noted that the aims of the OMP "should operate on the basis of complementarity; an aim should not be pursued at the expense of another."

4) Mandate

It should be constituted as a permanent and independent office that deals with the 'missing', defined as any person, of any ethnic community, who is reported as missing due to the armed conflict, insurgency situation or as a result of criminal acts.

On the time period that the Office should cover, the suggestions from respondents varied. Certain submissions suggested that the office should not be limited to a particular time period and it should consider disappearances from 1948 onwards. Generally, many of the suggestions were not limited to the duration of the war. Submissions also put forward different time periods - from 1948 till the ceasefire; from 1972 onwards; from 1983 to 2009; and the last decade.

5) Powers

A submission stated that the office should be equally or more powerful than the Human Rights Commission of Sri Lanka. Powers prescribed include, the power to:

- Request and seize information from any source, i.e. Human Rights Commission, the Security Forces, past COIs as well as Police B Reports. However, families

should have the right to revise information given in these reports as there are allegations that some reports omitted information.

- Visit sites and locations without prior notice.
- Facilitate victim and witness protection.
- Conduct investigations.
- Exhume and recover the dead.
- Register new complaints not previously reported to any other institution or COI.
- Conduct public outreach.

*Refusal to comply with requests should be an offence punishable by law.

With reference to past investigations, many submissions suggest that investigations should be completed within 6 to 12 months. In terms of investigative powers, it was submitted that the aim is to ensure that the threat of investigation and prosecution would induce persons to come forward and confess. This would better ensure successful prosecutions and justice in the individual cases and more effectively addressing impunity. Hence, as these submissions suggest, the opposing idea of allowing persons to make anonymous tip offs should not be permissible.

6) Structure

- The Office should have a Chief Executive, a Deputy Chief Executive, and heads of various units.
- Appointments should be made through an independent process, such as the Constitutional Council.
- The office will have a Secretariat to handle administrative issues with exclusive authority over the appointment, promotion, transfer, disciplinary control and termination of its staff. Depending on the needs, the office may be authorized to hire foreigners.
- The following persons should be excluded from senior positions in the office: All serving and past military and law enforcement officers, all current and past members of armed groups, all current and past holders of political office.
- Investigative staff, who may have to be drawn from current or past police officers or military investigators should be recruited only after a thorough vetting process.
- The office should have its own personal staff.

It was also submitted that the OMP's head office should be located in Colombo with branch offices at the district level.

The need for an Oversight and Monitoring body was also noted in two submissions.

7) Composition of the Office and the Oversight Body

- The office shall be composed of separate units: e.g. an Investigation Unit; a Policy Unit; a Victim and Witness Protection Unit; a Reparations Unit.
- The office shall establish and manage its own fund, with contributions from domestic and international donors.
- The staff should include persons from the Tamil and Muslim community so that there are no language and communication barriers. There should be 50% representation of I at all levels of the office, particularly in the oversight body

and the staff dealing with families. It was also suggested that family members of the missing should be eligible for staff positions.

The need for credible individuals was noted in several submissions. Some pointed to important offices from which individuals could be drawn, while others emphasized that credibility would depend on having both local and international actors as well as representation of family members.

It was suggested that the Oversight and Monitoring body should comprise of the following:

- 25% of family members of the missing or disappeared.
- International actors given that survivors have a total lack of trust in the Government of Sri Lanka.
- Civil society representatives.

8) Operational Principles

8.1 Accountability:

The office will be completely accountable to the families of the disappeared and the public, conduct activities in a fair and transparent manner and ensure that all complaints are acknowledged and investigated.

8.2 Working Languages:

The office should operate in all three languages; families who wish to engage with the office should be able to communicate in their preferred language.

8.3 Sharing progress and information with families, the public and other government institutions

- Develop procedures that provide information to family members of the victims on the progress of investigations at regular intervals (e.g. every six months)
- Release progress reports every six months or annually

8.4 The OMP should provide psychosocial support through qualified experts.

List Of Written Submissions from Organisations¹⁰

1. Amnesty International, *Sri Lanka: Making the Rights Choices: Recommendations for the Establishment of Effective Mechanisms to Deliver Justice, Truth and Reparation*, 23rd June 2016.
2. Batticaloa Peace Committee, 1st July 2016.
3. Centre for Human Rights and Development, 5th July 2016.
4. Centre for the Promotion and Protection of Human Rights, 11th July 2016.
5. Citizens Committee of Vavuniya, 5th July 2015
6. De Silva, Marisa, Shenali De Silva, Ruki Fernando, Nilshan Fonseka, Balachandran GOWthaman, and Deanne Uyangoda, Memorandum to the Consultation Task Force Certificates of Absence and the Draft Bill to Amend the Registration of Deaths (Temporary Provisions) Act No. 19 of 2010.
7. De Silva, Marisa, Shenali De Silva, Ruki Fernando, Nilshan Fonseka, Balachandran GOWthaman, and Deanne Uyangoda, Memorandum to the Consultation Task Force Certificates of Absence and the Draft Bill to Amend the Registration of Deaths (Temporary Provisions) Act No. 19 of 2010.
8. Ecumenical Institute for Social Justice, 5th July 2016
9. Ermiza Tegal and Deanne Uyangoda with the Center for Human Rights and Development, Families of the Disappeared and Right to Life, 8th July 2015.
10. Facebook Tamils, 28th June 2016
11. Families of the Disappeared, 1st May 2016.
12. Families of the Disappeared, 8th July 2016.
13. Fokus Women, *Position Paper, Office on Missing Persons, Sri Lanka, Taking Gender into account*, 15th July 2015
14. Free Media Movement, 28th June 2016
15. Groundviews, 28th June 2016
16. International Centre for Ethnic Studies, 14th July 2016
17. International Crimes Evidence Project, 6th May 2016.
18. International Truth and Justice Project, *Forgotten: Sri Lanka's Exiled Victims*, June 2016.
19. Letter to Mangala Samaraweera, Minister of Foreign Affairs, Comments on the draft Proposal to establish an OMP, signed by 12 organisations and 26 Individuals, 19th May 2016.
20. Maatram, 28th June 2016
21. National Shoora Council, 9th June 2016
22. Niran Anketell, *Commentary on the Bill Titled Office On Missing Persons (Establishment, Administration and Discharge of Functions)*, South Asia Centre for Legal Studies, June 2016.
23. North East Coordinating Committee, 5th July 2016
24. Saiva Mangaiyar Kalaham, 22nd June 2016
25. South Asia Centre for Legal Studies.
26. South Asian Centre for Legal Studies, Victim and Witness Protection Law, The Need for Reform, 11th July 2016
27. South Asian Women in Media, 28th June 2016
28. Sri Lanka War Survivors and Human Rights Defenders in Collaboration with Sri Lanka Campaign For Peace and Justice, *The Path to Peace*, April 2016.

¹⁰ The CTF has withheld the names of individuals who made submissions in order to protect their identity.

29. Swasthika Arulingam, Marisa de Silva, Shenali De Silva, Ruki Fernando
Balachandran Gowthaman, M.C.M Iqbal, Gajen Mahendran, Deanne Uyangoda,
1st May 2016.
30. Swasthika Arulingam, Marisa de Silva, Shenali De Silva, Ruki Fernando
Balachandran Gowthaman, Deanne Uyangoda, 5th July 2016.
31. Tamil Civil Society Forum, 5th July 2015
32. Thyagi Ruwanpathirana, '*Memorialisation for Transitional Justice in Sri Lanka*',
Centre for Policy Alternatives, March 2016.
33. Vikalpa, 28th June 2016
34. Viluthu, Centre for Human Resource Development, 15th July 2016
35. Viluthu, Centre for Human Resource Development , 5th July 2016
36. Women and Media Collective, 28th June 2016
37. Women's Action Network, 5th July 2016