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Office on Missing Persons (OMP) in Sri Lanka: Evolution, Challenges, Lessons Learnt, and the Way Forward

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Abstract: *This policy brief examines the conceptual evolution of the missing and the disappeared persons in Sri Lanka and the challenges persisting in the operational framework of the Office on Missing Persons (OMP) in Sri Lanka. Established under the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016, the OMP seeks to clarify the fate of missing persons, provides reparations, and consequently contributes to national reconciliation. Even though the OMP has made notable progress in terms of developing a centralized database, issuing Certificates of Absence and Certificates of Death, and providing reparations, the OMP still faces challenges related to resource constraints, public trust, lack of experts and advanced technology for forensic undertakings. This policy brief draws insights from comparable jurisdictions highlighting the necessity of integrating technological innovations, drawing collaborations with Civil Society Organizations, and enhancing forensic capabilities. The recommendations outlined in this brief emphasize the need for improved institutional frameworks, collaborations with other state institutions, expansion of the current mandate of the OMP, and strengthening the capacity of the OMP to fulfill its humanitarian and transitional justice mandate effectively, consequently contributing to peace and reconciliation in Sri Lanka.*

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List of Acronyms and Abbreviations

Abbreviations/Acronyms	Definitions
CID	Criminal Investigation Department
CoA	Certificate of Absence
CoD	Certificate of Death
CoI	Commission of Inquiry
CSO	Civil Society Organization
CTF	Consultation Task Force on Reconciliation Mechanisms
DPPED	Declaration on the Protection of All Persons from Enforced Disappearance
GoSL	Government of Sri Lanka
HRC	Human Rights Council
ICC	International Criminal Court
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICRC	International Committee of the Red Cross
IIGEP	Independent Group of Eminent Persons
LLRC	Lessons Learnt and Reconciliation Commission
MIA	Missing in Action
OHCHR	Office of the High Commissioner for Human Rights
OMP	Office on Missing Persons
OR	Office for Reparations
SCOPP	The Secretariat for Coordinating the Peace Process
TRC	Truth and Reconciliation Commission
UNWGEID	Working Group on Enforced or Involuntary Disappearances

1.0. Introduction

The rights of the missing and disappeared persons, along with those of their families, have long been overlooked. Their concerns later gained significant recognition through robust international and national commitments. The devastation wrought by world wars and internal armed conflicts has catalyzed the evolution of modern concepts for human rights, fostering broader interpretations for the rights and obligations owed to the missing and disappeared persons and their families.

The first part of this policy brief intends to discuss the evolution of the concept of missing persons and what actions Sri Lanka has taken to protect their rights. As Sri Lanka has seen youth uprisings since the 1970's and an internal armed conflict between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE) from the 1980's to its conclusion in 2009, the issue of missing persons and disappeared persons has emerged as a core concept which needed to be resolved (Pinto-Jayawardena, 2010).

This brief will examine how Sri Lanka, through various Presidential Commissions of Inquiry (CoIs) and other mechanisms, has taken measures to strengthen the rights of the missing and disappeared persons and the indirect victims. While the issue of missing and disappeared persons has been dealt with through ad hoc mechanisms previously, following Sri Lanka's pledge to the Human Rights Council Resolution 30/1 in 2015, the Bill to establish the Office on Missing Persons (OMP) was presented to the Parliament of Sri Lanka on 22 June 2016, the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016 (OMP Act) was passed in Parliament on 11 August 2016, as one of the mechanisms for transitional justice. Thereafter, on 28 February 2018, then President Maithripala Sirisena operationalized the OMP by appointing seven commissioners, based on the recommendations made by the Constitutional Council which can be seen as a crucial and important step the GoSL has taken so far (OMP, n.d.).

On that account, the second part of this policy brief intends to analyze the functions and operations of the OMP of Sri Lanka. With examples taken from comparable jurisdictions, the brief will also address the current challenges and possible solutions that can be recommended as policy recommendations for the improvement of the operations at the OMP.

2.0. Conceptual Evolution of ‘Missing Persons’ and ‘Disappeared Persons’

Early history shows that societies were destined to live in uncertainty, anticipating the return of their loved ones who went missing. According to Matthew Wolfe (2022), the increase of global migration and increased mobility from the mid-19th century created a rise of ambiguous absences, establishing missing persons as a distinct social category. The First and the Second World Wars further highlighted this issue, prompting the International Committee of the Red Cross (ICRC) to establish institutions such as the International Prisoners of War Agency (1914-1923), the Central Prisoner of War Agency (1939-1960), and the present Central Tracing Agency (1960-Present) to address the concerns of missing and the disappeared persons (Mohr, 2020).

The Geneva Conventions of 1949 function as an international commitment on the issue of the missing and the disappeared, limited to war and conflict scenarios. *Geneva Convention IV, relative to the Protection of Civilian Persons in Time of War* (1949), Article 26 highlights reuniting dispersed families with the object of renewing their contacts, if possible (Geneva Convention IV, 1949), while Part II, Section III of the *Additional Protocol I (AP I), to the Geneva Conventions* (1977), addresses the issue of missing and dead Persons.

As an early attempt from the United Nations concerning the issue of disappeared persons, the Third Committee of the General Assembly, at the 33rd session in 1978, adopted *Resolution 33/173*. By *Resolution 20 (XXXVI) of 29 February 1980*, the Commission on Human Rights established a Working Group on Enforced or Involuntary Disappearances (UNWGEID) to examine questions regarding enforced or involuntary disappearances (OHCHR, 2009). In 1992, the *Declaration on the Protection of All Persons from Enforced Disappearance* (DPPED) was proclaimed by the General Assembly through resolution 47/133 of 18 December 1992. Later, the *International Convention for the Protection of All Persons from Enforced Disappearance* (ICPPED) was preceded by DPPED, which became the first legally binding instrument concerning the enforced disappearances. The ICCPED was eventually adopted in 2006 and entered into force in 2010 (OHCHR, n.d.). Sri Lanka ratified the ICCPED in 2016. (OHCHR, n.d.).

The International Commission on Missing Persons (ICMP) was created in 1996 at the G7 Summit held in Lyon, France. By 2001, the ICMP had established a missing persons DNA identification system and an Integrated Data Management System (IDMS) to enable the

comprehensive processing of missing persons data globally. (ICMP Website, n.d.). In 1998, the *Rome Statute* (1998) of the International Criminal Court (ICC) gave recognition to the crime of enforced disappearance as a crime against humanity under Article 7(1)(i).

As discussed above, it could be seen that the concepts of the missing and the disappeared have evolved from being a rudimentary or non-existent concept to an international concept.

3.0. Application of the Concepts of Missing and Disappeared Persons in Sri Lanka

3.1. Post-independence (1948) to the conclusion of Internal Armed Conflict (2009)

As a foremost step, post-independent Sri Lanka enacted *the Commissions of Inquiry Act, No. 17 of 1948*, to enable the appointment of Commissions of Inquiry (CoI). This provided the President with a mechanism to inquire into alleged misconducts by a member of public service, especially the allegations of bribery. In 1978, the *Special Presidential Commissions of Inquiry Law, No. 07 of 1978*, enabled special CoIs “to subject a person found guilty to civic disability”, as other presidential CoIs primarily serve only as fact-finding commissions (Fonseka & Perera, 2024, pp. 26).

Sri Lanka has employed numerous CoIs for truth and reconciliation. President J.R. Jayawardene appointed the ‘*Sansoni Commission*’ on 9 November 1977 to inquire into the causes and events of the ethnic violence in August-September 1977 (Amnesty International, 2009, p. 9). The report was published as a Sessional Paper in July 1980. On 18 June 1991, President Ranasinghe Premadasa set up a CoI to inquire into the ‘*Kokkadicholai Incident*’ (Fonseka & Perera, 2024, pp. 28). From 1994 to 1997, President Chandrika Bandaranaike Kumaratunga appointed CoIs to probe into disappearances after 1 January 1988 (Pinto-Jayawardena, 2010, p. 79). In August 2006, President Mahinda Rajapaksa established the ‘*Mahanama Thilakarathne Commission*’ to examine the circumstances that lead to incidents of abductions, disappearances, unidentified dead bodies, and unexplained killings as were reported throughout Sri Lanka since 13 September 2006. The Commission was to identify any armed groups or persons who may be responsible for these incidents, and to identify causes and motives for such incidents (Center for Policy Alternatives, 2012, p. 2). Additionally, the ‘*Udalagama Commission*’ was established in September 2006, which was mandated to probe into alleged serious violations of human rights arising since 1 August 2005. The Commission was to “examine the adequacy and propriety of investigations that were conducted pertaining to such incidents amounting to serious violations of human rights” (Center for Policy Alternatives, 2012, p.2). In parallel,

President Mahinda Rajapakse invited an ‘Independent Group of Eminent Persons (IIGEP)’ comprising of 11 international personalities (SCOPP, 2007) to act as observers of the *Udalagama Commission* which was viewed to be an innovative part of this process (Pinto-Jayawardena, 2010, p. 30).

3.2. End of the Internal Armed Conflict to the Present

After the conclusion of the armed conflict, the GoSL established the eight-member Lessons Learnt and Reconciliation Commission (LLRC) on 15 May 2010 which published its report in November 2011 (LLRC, 2011). In parallel, the Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, later known as the ‘*Darusman Report*’ commenced its work on 16 September 2010, publishing its report on 31 March 2011 (Darusman Report, 2011). The LLRC Commission was mandated to investigate the facts and circumstances which led to the failure of the Ceasefire Agreement which was operationalized on 21 February 2002 and the sequence of events that followed thereafter up to 19 May 2009 (LLRC, 2011, pp.5), and the lessons that should be learnt from those events and the institutional, administrative and legislative measures which need to be taken in order to prevent any recurrence of such concerns in the future and to promote further national unity and reconciliation among all communities (Center for Policy Alternatives, 2012, p. 34).

The ‘*Paranagama Commission*’ is another key Presidential CoI that was appointed in 2013 by President Rajapakse to investigate and inquire into cases of disappearances during the period 10 June 1990 to 19 May 2009 (Center for Policy Alternatives, 2012, pp. 36). This was at a time, the Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL Report) was mandated by the HRC in March 2014 to undertake investigations into the allegations of serious violations of human rights by both parties to the conflict. The OISL report undertook the timeframe covered by the LLRC (from 21 February 2002 to 15 November 2011) and any other relevant information that may fall outside this timeframe for their investigation. The report was published on 16 September 2015, making recommendations for the promotion of reconciliation, accountability and human rights in Sri Lanka (OHCHR, 2015). Later in January 2021, the Presidential Commission of Inquiry to investigate and inquire into, take necessary action and report on the findings and recommendations of preceding Commissions of Inquiry and Committees headed by Justice A.H.M.D. Nawaz was appointed by President Gotabaya Rajapaksa. The final report of this CoI, which was handed over to President Ranil

Wickremasinghe in January 2024 is yet to be made public (“Unreleased Nawaz Commission Report”, 2024).

A summary of the key findings and recommendations made by the above post-conflict GoSL and non-GoSL mandates (LLRC, Darusman, and Paranagama Commission, and OISL) and their implementation in furthering clarity with respect to the situation of the missing and the disappeared persons in Sri Lanka, is provided below for ease of reference.

Table 1: Recommendations made on Missing and Disappeared Persons by the LLRC, Darusman, and Paranagama Commission, and the OISL and their implementation

Name of the Report	Key Findings and Recommendations	Implementation
Report of the Commission of Inquiry on Lessons Learnt and Reconciliation — November 2011 (LLRC Report)	<ul style="list-style-type: none"> Emphasized the ‘<i>right to truth</i>’ urging authorities to enable families of the missing persons to learn the whereabouts or the fate of their loved ones (LLRC, 2011, paras. 5.117, 9.91, and 9.49). 	
	<ul style="list-style-type: none"> Recommended to appoint a Special Commissioner of Investigation “to investigate alleged disappearances and provide material to the Attorney General to initiate criminal proceedings as appropriate” (LLRC, 2011, paras. 5.48 and 9.51). 	
	<ul style="list-style-type: none"> Recommended to “device a centralized system of data collection at the national level, integrating information with regard to missing persons currently being maintained by different agencies” (LLRC, 2011, para. 5.48) 	<ul style="list-style-type: none"> This recommendation is resolved through the OMP website, as it maintains a comprehensive database on the missing persons, classified by districts they went missing from (OMP, n.d.).
	<ul style="list-style-type: none"> Issuance of death certificates for those missing, as this may be an impediment for them to obtain compensation or other rehabilitation facilities without the certificates (LLRC, 2011, paras 8.61 and 9.52). 	<ul style="list-style-type: none"> This recommendation is attended to by the GoSL by enacting the Registration of Death (Temporary Provision) (Amendment) Act, No. 16 of 2016, to issue Certificate of Absence to families of the Missing and the Disappeared. (Center for

		Policy Alternatives, 2024, pp. 14).
	<ul style="list-style-type: none"> Proposed establishing an independent institution to address “the grievances of all citizens arising from state action” and to improve the public petitions procedure (LLRC, 2011, para. 8.201). 	<ul style="list-style-type: none"> The OMP functions as an institution that addresses the grievances of the citizens whose loved ones went missing or disappeared.
	<ul style="list-style-type: none"> Recommended establishing “Units of the Attorney General’s Department in the provinces to guide and advice the police regarding investigations and prosecutions” (LLRC, 2011, para 8.191). 	<ul style="list-style-type: none"> This recommendation is also dealt with by the OMP, as the OMP collaborates with the police regarding the issues of missing persons and the OMP has branches in Batticaloa, Mannar, Jaffna, Kilinochchi, and Matara.
	<ul style="list-style-type: none"> Emphasized investigating allegations, prosecuting and punishing wrongdoers regardless of their political links (LLRC, 2011, paras. 8.191-2). 	
Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka — March 2011 (Darusman Report)	<ul style="list-style-type: none"> Recognized the right to truth and the establishment of Truth Commissions (Darusman Report, 2011, para. 274). 	<ul style="list-style-type: none"> Although not modeled after the South African Model, this recommendation is being dealt with as the Parliament tabled a Bill on ‘<i>Commission For Truth, Unity, and Reconciliation in Sri Lanka</i>’ and has been read and debated for the first time on 3 September 2024 (Hansard, 3 September 2024). The future of this Bill is yet to be determined following the change of government.
	<ul style="list-style-type: none"> The Report suggested the South African model of the Truth Commission as a suitable mechanism for Sri Lanka to integrate criminal prosecutions to go along with the investigation processes of the Truth Commissions (Darusman Report, 2011, para. 284). 	
	<ul style="list-style-type: none"> Emphasized the importance of a victim-centered approach in the hearings held for the victims (Darusman Report, 2011, para. 328). 	<ul style="list-style-type: none"> The OMP is victim-centered in its operations.

	<ul style="list-style-type: none"> • Advocated for issuing the death certificates to the families of the missing in an expeditious manner, ensuring that it “should not be used to distort or obscure truth of the circumstances surrounding a death” (Darusman Report, 2011, paras. 395). 	<ul style="list-style-type: none"> • As mentioned above, enactment of Registration of Death (Temporary Provision) (Amendment) Act, No. 16 of 2016, fulfills this recommendation. This is subject to further recommendations as discussed below.
	<ul style="list-style-type: none"> • The report recommends that “Sri Lanka should seek to guarantee the rights of victims to truth, justice, and reparations, all of which are based on international standards and should form an essential part of a Transitional Justice approach” (Darusman Report, 2011, para. 272). 	<ul style="list-style-type: none"> • The continued functioning of the OMP and the Office for Reparations guarantee this recommendation.
<p>The Presidential Commission of Inquiry Into Complaints of Abductions And Disappearances—August 2015 (<i>Paranagama Commission Report</i>)</p>	<ul style="list-style-type: none"> • Highlighted that “pursuing criminal prosecutions as an absolute requirement to accountability and transitional justice can carry the risk of compromising peace and destabilizing a State which has just emerged from a conflict.” (Paranagama Commission Report, 2015, para. 579). 	
	<ul style="list-style-type: none"> • It proposed the creation of a Truth and Reconciliation Commission (TRC) and a War Crimes Division of the High Court where a judge-led investigation be held for the violations of the laws of war and the facts and circumstances that may indicate individual criminal responsibility in relation to such an offence or offences (Paranagama Commission Report, 2015, para. 625). • Where such evidence amounts to a <i>prima facie</i> case, such an individual will be summoned before the TRC, where the failure to answer the summons will render such 	<ul style="list-style-type: none"> • Although not modelled after the South African Model, the recommendation for the establishment of a TRC is attempted as the Parliament (9th Parliament of the D.S.R. Sri Lanka) tabled a Bill named <i>Commission for Truth, Unity, and Reconciliation in Sri Lanka</i> and has been read and debated for the first time on 3 September 2024 (Hansard, 2024). It was made clear that the proposed Commission will not have prosecutorial powers and will solely be

	<p>individual to face penalties. Such an individual will have the choice to either appear before a TRC and give evidence or be tried before the War Crimes Division of High Court. if convicted, such an individual will have the right to appeal to the Court of Appeal. If the individual makes full admission before the TRC, such an individual can apply for amnesty and if the TRC is satisfied with the admission, TRC has the discretion to grant amnesty to that individual. Such a grant of amnesty would thereafter act as a bar to any further criminal investigations (Paranagama Commission Report, 2015, para. 625).</p>	<p>mandated to investigate matters pertaining to alleged violations during the conflict (Samaraweera, 2024)</p> <ul style="list-style-type: none"> • The future of this Bill is yet to be determined following the election of 10th Parliament of the D.S.R. Sri Lanka.
	<ul style="list-style-type: none"> • The Commission was of the view that any one of the following mechanisms, individually or in combination, will be feasible for Sri Lanka: <ol style="list-style-type: none"> 1. “Reparations to represent an acknowledgement on behalf of the state that human rights are violated 2. As mentioned above, a Truth and Reconciliation Commission (TRC) with amnesties as in the South African model 3. A TRC without amnesties 4. The prosecution within the domestic court system of all those alleged to have committed war crimes and/or crimes against humanity 5. Prosecution within the domestic court system of those alleged to have committed war crimes or crimes against humanity but confined to those who bear the greatest responsibility 6. A combination of prosecution within the domestic court system of those at (5) above coupled with a TRC—as in 	<ul style="list-style-type: none"> • Although not modelled after the South African Model, the recommendation for the establishment of a TRC is attempted as the Parliament (9th Parliament of the D.S.R. Sri Lanka) tabled a Bill named <i>Commission for Truth, Unity, and Reconciliation in Sri Lanka</i> and has been read and debated for the first time on 3 September 2024 (Hansard, 2024). The future of this Bill is yet to be determined following the election of 10th Parliament of the D.S.R. Sri Lanka.

	<p>Sierra Leone.” (Paranagama Commission Report, 2015, para. 624).</p>	
	<ul style="list-style-type: none"> • The Commission is of the view that a credible TRC would be an essential component in addressing accountability, and the Commission impinges the fact that “the duty to prosecute in all circumstances has not yet crystallized into an international norm or customary international law” (Paranagama Commission Report, 2015, para. 620). 	
<p>Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL Report) – 16 September 2015</p>	<ul style="list-style-type: none"> • OISL report recommended “the enactment of legislation clearly indicating that the acceptance of a death certificate where a person continues to be disappeared is not a bar to seeking justice” (OHCHR, 2015, para. 464). 	<ul style="list-style-type: none"> • The issuance of the Certificate of Absence (CoA) by the OMP ensures the continuance of investigations without having to acknowledge a missing person as dead. Added to that, the families of the missing persons are able to use the CoA as a valid legal certificate for the legal requirements.
	<ul style="list-style-type: none"> • OISL report highlights that any mechanism, truth-seeking or an institution that deals with disappearances, “must be through a process of genuine, informed and participatory consultation, especially with victims and their families.” The report contended that an environment must be created where victims and other witnesses can provide testimony without the fear of persecution (OHCHR, 2015, para. 1275) 	<ul style="list-style-type: none"> • The establishment of the OMP could be perceived as an institution with a process that is genuine including participatory consultation with victims and their families. Furthermore, the <i>Assistance to and Protection of Victims of Crime and Witnesses Act, No.10 of 2023</i>, safeguards the victims and witnesses without having to be feared about persecution.
	<ul style="list-style-type: none"> • The OISL report emphasized that an area of major need is psychosocial support to the victims. Referring to the Special Rapporteur on the promotion of truth, justice, reparation and 	<ul style="list-style-type: none"> • Having provided their services in all three languages, the OMP acts as an institution that acknowledges the pain and suffering of the victims and

	<p>guarantees of non-recurrence, Pablo de Greiff following his first visit to Sri Lanka in April 2015, the report noted that “one of the most immediate needs was psychosocial support to victims in Sri Lanka” (OHCHR, 2015, para. 1259).</p>	<p>their families, providing them with psychosocial support as well.</p>
	<ul style="list-style-type: none"> ● OISL recommended to “initiate genuine consultations on transitional justice, in particular on truth-seeking, reparations and memorialization, with the public, victims and witness groups, civil society and other stakeholders” (OHCHR, 2015, p. 247). 	<ul style="list-style-type: none"> ● The Consultation Task Force (CTF) was appointed in late January 2016, comprising 11 members drawn from civil society to seek the views and comments of the general public on the proposed mechanism for transitional justice and reconciliation (CTF Final Report, 2016).
	<ul style="list-style-type: none"> ● OISL recommended to “ratify the International Convention on the Protection of All Persons from Enforced Disappearances, the Additional Protocols to the Geneva Conventions and the Rome Statute of the International Criminal Court” (OHCHR, 2015, p. 249). 	<ul style="list-style-type: none"> ● The GoSL became a signatory to the International Convention for the Protection of All Persons from Enforced Disappearances on 10 December 2015 (Ministry of Foreign Affairs, 2015) and enacted the Enforced Disappearances Act, No. 5 of 2018, giving effect to the treaty (OMP Website, n.d.).
	<ul style="list-style-type: none"> ● OISL emphasized the need for “reconciliation and addressing root causes of systematic human rights abuses and entrenched impunity are critical to securing the new Government’s vision for Sri Lanka. Accountability must be part of that vision, including processes of truth-telling, justice and reparations” (OHCHR, 2015, para. 1273). 	

Source: Adopted by the author based on the above-cited reports and sources.

4.0. Establishment of the Office on Missing Persons

4.1. United Nations Human Rights Resolution 30/1 (2015)

Stemming from the United Nations Human Rights Council Resolution 30/1 in October 2015 entitled Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka (Human Rights Council, 2015), Sri Lanka pledged to set up four special mechanisms: (1) a Special Court and a Special Prosecutor’s Office; (2) a Truth, Justice, Reconciliation, and Non-Recurrence Commission; (3) an Office for Reparations; and (4) an Office on Missing Persons (OMP). These institutions aimed to address the human rights and humanitarian violations that took place in the past. Except for the Office on Missing Persons (OMP) being established in 2018 under legislation entitled *Office on Missing Persons (Establishment, Administration, and Discharge of Functions) Act, No. 14 of 2016* (as amended in 2017) and the Office for Reparations established in terms of the *Office for Reparations Act, No. 34 of 2018*, the remaining two mechanisms (the Truth, Justice, Reconciliation, and Non-Recurrence Commission and a Special Court and a Special Prosecutor’s Office) that were pledged to be established are still to be operationalized.

Later, HRC Resolutions 34/1, 40/1, 46/1, and 51/1, urged the obligatory compliance of the GoSL to address the concerns regarding truth, reconciliation, and missing persons in Sri Lanka. The draft Resolution on promoting reconciliation, accountability and human rights in Sri Lanka (A/HRC/57/L.1) which sought to extend the mandate of Resolution 51/1 was adopted without a vote during the 57th HRC Session. Sri Lanka while re-iterating the forward movement made by the OMP with respect to missing persons, continued to further oppose the external evidence gathering mechanism that has been in operation since Resolution 46/1 – referred to as the ‘OHCHR Sri Lanka Accountability Project (2021)’ (Human Rights Council, 2024). Sri Lanka’s Permanent Representative to the United Nations Ambassador Himalee Arunatilaka contended that; “as we have repeatedly reminded this Council, setting up of this external evidence gathering mechanism within the OHCHR is an unprecedented and ad hoc expansion of the Council’s mandate, and contradicts its founding principles of impartiality, objectivity and non-selectivity” (“Sri Lanka rejects UNHRC Resolution 51/1”, 2024).

4.2. Mandate of the OMP

The gaps resulting from the previous partial and limited mandates of Presidential Commissions of Inquiry and Ad-hoc Mechanisms on the issue of missing and the disappeared persons were

expected to be overcome through the establishment of the OMP. While making critical contributions in the way of recommendations, these previous mechanisms were unable to provide answers to the many thousands of families searching for their loved ones (OMP Website, n.d.). Section 10 of the OMP Act lays out the mandate of the OMP and the powers of the OMP are detailed in Section 11 of the Act.

Concerning its mandate, Section 10 (a) to (f) of the OMP Act is instrumental. The OMP can search for and trace missing persons and identify appropriate mechanisms to clarify the circumstances in which such persons went missing. The OMP can make recommendations to the relevant authorities towards addressing the incidence of missing persons, to protect the rights and interests of missing persons and their relatives, to identify the avenues of redress to which missing persons and their relatives are entitled to and inform the missing persons or relatives of such missing persons of same, to collect data related to missing persons obtained by processes presently being carried out by other institutions, governmental organizations, special presidential CoIs and centralize all the data within the database established (OMP Act, 2016).

The OMP continues to function as an independent and permanent institution clarifying the fate and whereabouts of persons who went missing or disappeared in connection with the conflict, political unrest, or civil disturbances, or as a result of enforced disappearances (OMP Website, n.d.). The OMP has eight functioning units, each mandated with unique tasks that work in sequence. There is a *Tracing and Investigation Unit* to trace and investigate the cases after they are lodged as a complaint to the OMP. The unit also undertakes the task of observing the exhumations and excavations. The *Legal, Policy, and Research Unit* assists the OMP with policy and legal directions and cooperates with law enforcement agencies and the courts. The *Victim and Family Support Unit* ensures a duly recording of the data of missing and disappeared persons and ensures the wellbeing of the family members. The Unit undertakes an important function which is to provide psychosocial care for the victims. The *Victim Protection Unit* ensures the protection of victims and witnesses against threats or intimidation. The *Data Management Unit* undertakes consolidating data related to missing and the disappeared persons in a database. The OMP has a *Communications and Outreach Unit* to create greater public awareness of the mandate and the work of the OMP. There is also a *Human Resources and Administration Unit* and a *Finance and Procurement Unit* to ensure the smooth functioning of

the OMP (OMP Website, n.d.). Additionally, the OMP functions in all three languages and the officers are actively assisting the victims in a language that they are comfortable with.

Further, according to Section 10(2) of the OMP Act, the mandate of the OMP extends to missing persons notwithstanding the time period in which such person became a missing person (OMP Act, 2016). However, during an interview conducted by the Author, personnel from the OMP noted that their mandate is limited to the people identified as missing due to the internal armed conflict, people who went missing due to the civil disturbances in the 1980's and the enforced disappearances, and the forces who are declared Missing in Action (MIA) during the conflict. The mandate of the OMP to collate data into a database that is available on the OMP website for the public to access is another notable addition, as it would provide a general consensus for the number of current missing persons and also serve as a vital database inclusive of their respective provinces and the approximate dates of being identified as missing (OMP Website, n.d.).

4.2.1. CTF's Critique on the OMP

Pursuant to the *United Nations Human Rights Council Resolution 30/1 (2015)* on Sri Lanka, the Consultation Task Force on Reconciliation Mechanisms (CTF), chaired by Manouri Muttetuwegama, was appointed in January 2016, comprising 11 members drawn from civil society to seek the views and comments of the general public on the proposed mechanism for transitional justice and reconciliation. They released their Final Report on 17 November 2016 (CTF Final Report, 2016). The mandate of the CTF was to carry out a wide process of consultations on behalf of Government of Sri Lanka (GoSL) "involving all stakeholders including victims of conflict, to ascertain their views regarding the steps that they would like the 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 of mechanisms that the Government proposes to establish, which were articulated in the Human Rights Council". The legislation entitled *Office on Missing Persons (Establishment, Administration, and Discharge of Functions) Act, No. 14 of 2016* was passed in Parliament of Sri Lanka on 11 August 2016, three months prior to the publication of the CTF's final report in November 2016. However, CTF has issued an Interim Report on the OMP including the consultations conducted until 8 August 2016. CTF made important recommendations regarding the OMP. These included establishing regional offices of the OMP, recruiting skilled staff, advancements that should be made in the excavation and exhumation

processes, detangling the obstacles in the issuance of Certificates of Absence (CTF Final Report, 2016, pp. 438-439), among other comprehensive recommendations that are discussed later in this brief.

4.2.2. OHCHR Critique on the OMP

A recent report released by the OHCHR on 17 May 2024 entitled “*Sri Lanka: Accountability needed for enforced disappearances*”, re-iterates its call to the GoSL to take meaningful action to determine and disclose the fate and whereabouts of people who have been subjected to enforced disappearance and hold those responsible to account. This report issued “pursuant to both the United Nations High Commissioner for Human Rights’ general mandate under General Assembly resolution 48/141 and OHCHR’s more specific mandate under Human Rights Council Resolution 46/1 and 51/1 which requested the Office to strengthen its capacity to advance accountability for the gross violations of human rights and serious violations of international humanitarian law and related crimes committed in Sri Lanka (OHCHR, 2024a, para. 3). It also called on the OMP to ensure that the OMP “plays an active role in combating intimidation and harassment of families of those forcibly disappeared and their representatives...”, “takes further steps to improve relationships with victims’ communities”, “ensure that all future appointments to the OMP give proper regard to the need for the independence, impartiality, and integrity of all Commissioners”, prioritize the “investigations to clarify the fate and whereabouts of disappeared persons, and reinforcing its capacity in relation to the identification of mass grave sites, exhumations of mass graves, and DNA testing”, “updates national database of persons who have been disappeared and ensure full access by relatives of the disappeared and their representatives”, and to “publicly announce the results of its investigations, and make results accessible to the public, especially victim families, in a manner that respects the security and privacy of victims” (OHCHR, 2024a, para 133(h)).

A subsequent report of the OHCHR to the 57th Session of the Human Rights Council in September 2024, (OHCHR, 2024b),¹ “provides a comprehensive analysis of the human rights situation in Sri Lanka, highlighting some concerning trends with potentially far-reaching impact on the enjoyment of fundamental rights and freedoms in the country” (OHCHR, 2024b). It contends that the OMP “has focused primarily on assessing victim families’ entitlement to financial assistance, reducing ‘duplicate entries’ in their database and closure of files (through

¹ A/HRC/57/19 Situation of human rights in Sri Lanka: Comprehensive Report of the United Nations High Commissioner for Human Rights

‘panels of preliminary inquiries’). It notes that the OHCHR is concerned that this approach “puts the burden on families to provide additional information or evidence, which is often retraumatizing for victims”. It also notes that the OMP informed OHCHR that they were able to establish the fate of 16 missing persons, from the period 2002 to 2007.

5.0. Assessment of Functions of the OMP

Since the establishment of the OMP, it has engaged in conducting inquiries on specific cases, cooperating in the excavation and exhumation of mass graves in Mannar (where the Radiocarbon Dating Laboratory results revealed that the skeletal remains can be dated between 1499–1719 AD) (Rubatheesan, 2019), preparing a consolidated document of missing persons categorized by district and preparing a list of missing persons from the Sri Lanka Armed Forces, and making such reports available to the general public through their website, issuing death certificates to the missing persons’ immediate families (OMP Website, n.d.) “and preparing clarifications and recommendations on legal issues affecting victims and families” (Wijenayake, 2017, pp. 646). As per a request made to the author, a compilation of statistics on missing persons (district-wise) provided by the OMP as of 30th October 2024, is at Table 2:

Table 2: Number of Complaints Related to Missing Persons by Districts (October 2024)

District	Before 1990	Between 1991-1999	After 2000	Total complaints
Batticaloa	1223	1720	1214	4157
Kandy	519	36	27	582
Trincomalee	489	289	571	1349
Matara	447	81	27	555
Hambantota	353	29	11	393
Ampara	306	152	108	566
Kurunegala	271	69	47	387
Matale	230	37	25	292
Gampaha	207	22	32	261
Galle	194	63	40	297
Anuradhapura	164	84	25	273
Jaffna	158	460	1488	2106
Rathnapura	149	36	36	221
Kalutara	126	40	24	190
Polonnaruwa	90	186	67	343

Colombo	89	8	33	130
Mannar	78	49	361	488
Vavuniya	74	93	401	568
Kegalle	72	22	15	109
Monaragala	43	9	24	76
Puttalam	39	18	28	85
Mullaitivu	24	42	462	528
Kilinochchi	11	51	948	1010
Nuwara Eliya	8	1	7	16
Badulla	2	0	4	6
Total	5366	3597	6025	14988

Source: Above data was obtained by the author as a result of personal communication made to the Office on Missing Persons on 12 November 2024.

According to the progress made by the OMP by October 2024, they have received 21,374 physical complaints ranging from years before 1990 to after 2000. Out of the 21,374 physical complaints, the OMP categorized 3,742 as Missing in Action (MIA) from tri-forces, which the OMP stated that the GoSL and the tri-forces primarily follows up on its own, and have also excluded 2,644 complaints as ‘No Mandate’ cases and cases that have been duplicated during the process. Therefore, having excluded the MIA cases, the ‘No Mandate’ cases, and the duplicated cases, the OMP is currently focusing on 14,988 active complaints that have been received thus far, as depicted in Table 2 (Personal Communication with the OMP Resource Persons, Office on Missing Persons, 12 November 2024).

This data is also corroborated with the data presented by the Ministry of Justice and National Integration, as of 30 November 2023 (Ministry of Justice and National Integration, 2023). As of 30 November 2023, it is observed that out of 6,025 complaints reported missing after 2000 (as shown in Table 2), the OMP had completed 4,795 preliminary inquiries between 2020 and 2023 (Ministry of Justice and National Integration, 2023).

Table 3 below depicts the number of inquiries conducted by the OMP (province-wise) as of 30 November 2023.

Table 3: Number of Inquiries Conducted as of 30 November 2023

Province	No. of Complaints (reported as missing after 2000)	No of cases Inquired – of those reported complaints reported as missing after 2000)
Northern	3,656	2,879
Eastern	1,897	1,623
North Central	92	35
Western	89	95
Southern	78	105
Northwestern	75	23
Central	59	5
Sabaragamuwa	51	30
Uva	28	0
Total	6,025	4,795

Source: Ministry of Justice and National Integration, 2023

Moreover, in August 2024, as a response from the GoSL to the Report of the OHCHR in pursuant to the 57th Session of the Human Rights Council (September–October 2024), GoSL contended that OMP has gained significant public trust with 5,791 out of 6,025 complainants appearing before the panel of inquiry. By 31 May 2024, the OMP traced 17 missing persons, confirming that 12 alive, four no longer missing, and one is outside their mandate (OHCHR, 2024c, para. 67).

5.1. Tracing and Investigations

Section 12 of the OMP Act gives the powers of investigation to the OMP. The Office has powers of investigation to receive, from any relative of a missing person, or any other person or organization, complaints relating to missing persons, irrespective of when such person may have become a missing person; and to initiate an inquiry and/or investigation into the whereabouts and/or circumstances of disappearance of a missing person pursuant to a complaint made to the OMP or on the basis of information received from previously established Commissions of Inquiry, Commissions on missing persons or Commissions which have inquired into allegations relating to disappearances or missing persons (OMP Act, 2016).

Pursuant to a complaint made to the OMP, the OMP is empowered to take all the necessary steps to investigate cases of missing persons, to apply to the appropriate Magistrate’s Court having territorial jurisdiction, for an order of court to carry out an excavation and/or exhumation

of suspected gravesites, to act as an observer at such excavation or exhumation, authorize in writing a specified officer of the OMP to enter without warrant, at any time any place of detention, and to make an application to the magistrate having territorial jurisdiction, for the issuance of a search warrant (OMP Act, 2016). Therefore, it could be said that the OMP Act is “drafted in a manner that does not proactively hinder criminal prosecutions, but which facilitates such judicial investigations and prosecutions while also maintaining independence from them” (Wijenayake, 2017, pp. 658). As it stands, Section 12(i) of OMP provides that ‘where it appears to the OMP that an offence within the meaning of the Penal Code or any other law has been committed that warrants investigation, the OMP may, after consultation with such relatives of the missing person as it deems fit, in due consideration of the best interests of the survivors/victims, relatives and society, report the same to the relevant law enforcement or prosecuting authority.’

A Resource Person from the Tracing and Investigations Unit of the OMP stated that there is a *Police Unit* dedicated to the OMP that cooperates with the OMP and conducts the tracing and investigations functions. However, as per the response from the officer to a question posed by the researcher, if they happen to find the perpetrator of a certain case, they have the provisions from the Act itself to engage in the legal proceedings as well, though they still haven’t come through such an instance. The Resource Persons from the OMP also stated that such criminal investigations will happen with the consent of the family members of the victim. However, OMP further stated that when a crime like that prevails as a result of the investigations, according to the general criminal law of the country, such crimes should be investigated, as this is a crime against humanity (Personal Interview with the OMP Resource Persons, Office on Missing Persons, 12 November 2024). This is prevalent in Section 12(i) of the Act; where it appears to the OMP that an offence within the meaning of the Penal Code or any other law has been committed that warrants investigation, the OMP may, after consultation with such 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 (OMP Act, 2016). As per the Resource Person, the OMP would hand over the investigation after consulting the board of the OMP to the Criminal Investigation Department (CID). The police and the Attorney General will also be associated with the process. Afterwards, the case will be investigated and proceeded in accordance with the general criminal law of the country (Personal Interview with the OMP Resource Persons, Office on Missing Persons, 12 November 2024).

However, Section 13(2) of the Act appears to be contrary to Section 12(i), as it stipulates that ‘the findings of the OMP shall not give rise to any criminal or civil liability...’ (OMP Act, 2016). According to Wijenayake; “while these two provisions may seem contradictory at first glance, a closer examination reveals that they indicate that the OMP is neither a purely and exclusively *humanitarian body* nor an *accountability mechanism*; rather, it is a mechanism with a primarily humanitarian mandate which facilitates links to prosecutorial mechanisms so as not to hinder the families' ability to exercise their right to a judicial remedy through criminal prosecutions.” She further states that; “Section 13(2) of the OMP Act must be examined while also considering section 12(c)(iii), which states that the OMP has the power to admit any statement or material, whether written or oral, which might be inadmissible in civil or criminal proceedings. This provides an explanation of the fact that the findings of the OMP would not give rise to criminal or civil liability” (Wijenayake, 2017, pp. 657).

Under Section 17 of the Act, the OMP is mandated for tracing and searching for missing persons and for assisting and clarifying the circumstances of such disappearance. According to the Resource Person from the Tracing and Investigations Unit, the tracing could go two ways. Whenever a complaint is lodged, such complaints will go through a panel inquiry and the panel members will be deciding whether to proceed with the investigations or not. The Panel will decide to issue a Certificate of Death (CoD) or a Certificate of Absence (CoA), or to combine that with compensation, family revival payment (පුනර්ජීවන දීමනා), or with an investigation. If the investigations indeed prove that the person is found to be dead, the Panel will decide to issue a CoD and will be granting family revival payment. Though if the panelists decide that there is an actual case of concern and there needs to be an investigation, the OMP will be conducting further investigations into the matter (Personal Interview with the OMP Resource Persons, Office on Missing Persons, 12 November 2024).

As per the Resource Persons from the OMP, the OMP collaborates with organizations that are investigative offices in Sri Lanka, Ministry of Justice and other law enforcement agencies to match up their data with the aim of finding any matching profiles of the missing persons. The exhumations and the forensics come as part of these investigations conducted by the OMP. There is also a special hub established within the OMP to initiate the above functions related to tracing and investigations (Personal Interview with the OMP Resource Persons, Office on Missing Persons, 12 November 2024).

The OMP also receives technical support from the ICRC in various forms such as forensic expertise, legal expertise, data protection, and data management. The ICRC also worked with relevant authorities in introducing the Certificate of Absence and initiated a program in collaboration with local organizations to help the families of the missing persons (ICRC, 2021). The OMP has established a “technical working group for data management, and a steering committee at the Presidential Secretariat to handle missing files, further investigations, determine the best durable solutions, and to take preventive measures.” Further, the OMP also “ensures the accessibility of investigation results to the public, particularly victims' families, while maintaining security and privacy. It has developed a protection strategy, code of conduct, and internal complaint mechanism, and plans to establish communication channels for inquiries and information provision” (OHCHR, 2024c, para 69).

5.2. Exhumations

With regards to the exhumation processes conducted by an order of the appropriate Magistrate’s Court, Section 12(d) empowers the OMP to be present at the exhumation sites as an observer. The officers at the OMP state that they have been present at 17 mass grave exhumations (approx.) so far. The evidence handling and sampling are exclusively handled by the Police according to the existing criminal procedure in the country. The OMP will be there to observe whether the process is carried out smoothly and correctly. Even before the establishment of the OMP, Sri Lanka conducted several mass grave excavations during the period of 1995 to 1998. One of them was the excavation of mass graves in the Chemmani area in the Northern Peninsula in September 1999. Along these excavations 1 to 6 bodies in each were excavated and identified in accordance with the modified archaeological methods (Ruwanpura et. al., 2006).

An obligation is vested on law enforcement authorities through Section 14(4) of the International Convention for the Protection of All Persons from Enforced Disappearances Act, No. 5 of 2018, to take all appropriate measures in the event of death to locate, respect, and return the remains of such person. Although the Act only allows the OMP to act as an observer during excavations and exhumations, the Final Report of the Consultation Task Force on Reconciliation Mechanisms (2016) has contended that the OMP, where possible, must make it a standard operating procedure to engage special services to preserve the remains so as to enable the families to identify their loved ones and direct and supervise appropriate authorities for the safe return of human remains or any items. The submissions made to the CTF had further noted that the OMP may “build a working relationship to assist or advice magistrates with experts in

the fields of forensic anthropology, forensic archeology, forensic pathology, forensic medicine, and other similar expertise to conduct and/or supervise the excavations and/or exhumations, with a view of enabling criminal prosecutions” (CTF Final Report, 2016, pp. 221).

5.2.1. DNA Profiling and Carbon Dating Analysis

DNA profiling and the carbon dating analysis of the human remains found in these mass graves act as key components in identifying the missing/disappeared persons. When inquired about the process, Resource Persons from the OMP stated that this is usually a prolonged process which is prone to be delayed. Though they have tested this procedure by sending such samples to the laboratories in Sri Lanka, so far, they haven’t matched up with any of the missing persons that were on their database. They also contended that, they have sent some samples to other countries as they were sometimes told that the procedure followed in Sri Lanka is not up to the expected standards or Sri Lanka did not have the capacity to conduct such complex examinations. A Resource Person from OMP contended that, even though Sri Lanka may have the technology, there are large number of cases that need to be handled at the same time, which could be a burden on the few laboratory facilities available in Sri Lanka (Personal Interview with the OMP Resource Persons, Office on Missing Persons, 12 November 2024).

To exemplify the importance of conducting accurate DNA analytics, from the mass grave discovered in 2012 in Matale, the remains from the grave site were sent to the United States for carbon dating and based on their report, the remains dated from before 1950, although the remains showed evidence of torture and murder (Amnesty International, 2015). On 20 May 2018, another discovery of skeletal remains was made in Mannar. The OMP facilitated the excavation process allocating Rs. 1.1 million for the month-long excavations. By 31 December 2018, the OMP has spent Rs. 1.8 million on the laboratory reports and transport provided to Florida, United States, where the testing was conducted (Rubatheesan, 2019). The test results revealed that the remains date back to 1499–1719 AD. This finding was referred to in a statement made by Hon. Tilak Marapana, P.C. Minister of Foreign Affairs of Sri Lanka during the 40th Session of Human Rights Council (HRC) in March 2019. He stated that the absence of the above scientific evidence could have implicated the GoSL as there have been pre-conceived notions that the skeletal remains may have a link to the armed conflict that persisted in Sri Lanka. Marapana faulted the OHCHR report in 2019 (A/HRC/40/23) on Sri Lanka for omitting this crucial detail despite the conclusive dating of the remains had already been made at the

time of the release of the OHCHR Report. Marapana deemed this omission an unacceptable assumption made in an official public report (Ministry of Foreign Affairs, 2019).

5.3. Reparations

Pablo De Greiff, the United Nations Special Rapporteur on promotion of Truth, Justice, Reparations, and Guarantees of Non-recurrence, has emphasized that the establishment of a reparations program is one of the four key elements of transitional justice (The Lakshman Kadirgamar Institute, 2017). He remarks that reparations should not be seen as a tool to sideline truth and justice efforts, and the reparations need to be accompanied by an acknowledgement of responsibility (OHCHR, 2017). De Greiff further purports that the viability of the transitional justice programs, such as reparations, depends more on the political will and tenacity of a country's government than the overall strength of its economy (The Lakshman Kadirgamar Institute, 2017).

The Office for Reparations (OR) has the power to receive recommendations with regard to reparations to be made to aggrieved persons from the OMP, but the OR may verify the authenticity of applications made by aggrieved persons or representatives of such aggrieved persons and may assess the eligibility for reparations. Under Section 11 of the *Office for Reparations Act* (2018), the office may recommend to the Cabinet of Ministers policies on Reparations and guidelines with regard to the grant of individual and collective reparations. On the other hand, OMP may recommend the relevant authorities to grant reparations to missing persons and/or relatives of missing persons, including compensation and recommend the provision of other administrative and welfare services including psycho-social services. These services are empowered by Section 13 (1)(f) and Sections 13 (1)(k)(i) of the OMP Act.

As a Resource Person from the OMP also contended, the OMP will be giving recommendations for reparations during the inquiry process. The Panel of the OMP would recommend a suitable grant for the respective cases. The Panel also recommends the revival grant, termed *Punarjewanana Deemana*' (පුනර්ජීවන දීමනා), and then the *Victim and Family Support Unit* of the OMP would be cooperating with the OR to grant it to the closest member of such victim(s). The reparations will be granted notwithstanding the ongoing investigations or even amidst an ongoing court case, as this grant is expected to provide some type of relief for the families. It should be noted that the amount of the grant is to be decided under the mandate of the OR which comes as a Cabinet decision. OMP only makes the relevant recommendations and provides OR

with documents, if needed. By 30 November 2023, according to the Ministry of Justice and National Integration, 2,914 families have been assisted by the OMP through the OR for revival payment, 13 families have been assisted for banking and asset management, and 666 families were referred to for household economic support by the OMP (Ministry of Justice and National Integration, 2023). According to the *Comments of the Government of Sri Lanka on the comprehensive report of the High Commissioner for Human Rights (A/HRC/57/G/1)*, as of August 2024, a number of 4,032 families were referred to for Family Revival Payment, with 1,522 having already received it from the Office on Reparation (OHCHR, 2024c, para. 67).² Besides providing the family support grants, the OMP in practice assists the victims to restructure their ongoing debts, making recommendations for grants taking into account factors such as how many children are currently receiving education and would inquire whether there is a family business that is ongoing. The OMP would sometimes provide them with an interim award until the investigations are concluded and if the missing person that they were looking for turns out to be dead, they will pay the full amount of compensation. But in a case where the missing person is found and alive, the final compensation will be a reduction of the interim award. The Resource Persons from the OMP mentioned a challenge they face as the process to obtain reparations is prone to manipulation by some of the persons who claim to be victims. Fraudsters could distort the process of monetary gains under the guise of being victims, while actual victims that need financial assistance might get left out (Personal Interview with the OMP Resource Persons, Office on Missing Persons, 12 November 2024).

5.4. Victim Protection

The Victim and Family Support Unit is mandated under Section 18 of the OMP Act. This Unit takes all appropriate measures to protect the victims and also provides administrative and welfare services to the victims, witnesses, as well as for the relatives of the missing persons. This protection is critical as the witnesses may be intimidated or may not even come forward even if they had the relevant or important information about a missing or a disappeared person. Keeping their identities concealed with their consent and providing safety to their person and property are some of the entitlements that should be afforded to witnesses and victims. On 7 March 2015, Sri Lanka enacted the *Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015*. In 2023, the GoSL enacted the *Assistance to and Protection of Victims of Crime and Witnesses Act, No.10 of 2023*. Section 28 of the said Act provides the

² A/HRC/57/G/1, Comments of the Government of Sri Lanka on the comprehensive report of the High Commissioner for Human Rights (A/HRC/57/19).

witnesses and victims with their right to keep the identity concealed, not being a part of a video proceeding, protection and security provided for the person and/or their property, permanent or temporary relocation with their consent and other means of protection. Though the resource constraints and the lack of logistical support could be a challenge for Sri Lanka in implementing these entitlements.

5.5. Collaborations with Civil Society Organizations

Sri Lanka is home to many Civil Society Organizations (CSOs), such as *The Mothers' Front*, initiated by Dr. Manorani Saravanamuttu, formed in 1990 with the disappearance of her son, Journalist Richard De Zoysa, in 1990. *The Mothers' Front* though less active after Dr. Saravanamuttu's death, continues the struggle under the name *Families of the Disappeared*, led by Britto Fernando, which has about 2,500 members (Groundviews, 2020). Added to that, the wife of journalist Prageeth Ekneligoda, Mrs. Sandhya Ekneligoda, is continuing to seek justice for the disappearance of her husband, who disappeared in January 2010 (Fernando, 2020). The *Association of War Affected Women* is chaired by Visaka Dharmadasa, another mother whose son was reported as MIA on 27 September 1998 when the LTTE attacked the military base in Kilinochchi. The *Association of War Affected Women* has been instrumental in making it compulsory for all soldiers to be given dog tags so that they could be identified and traced easily (Hannan, 2019).

Resource Persons from the OMP stated that they work collaboratively with 17 Civil Society Organizations (CSO). CSOs are very important in informing the citizens about the mechanism at the OMP and making recommendations to the OMP regarding families in need of financial assistance. They work in collaboration with CSOs, which receive updates about the current living situations of the families, disseminating information about the undertakings of the OMP through various means (social media, posters, banners, protests, rallies, etc.) (Personal Interview with the OMP Resource Persons, Office on Missing Persons, 12 November 2024). In corroboration with this statement, the comments made by the GoSL on the comprehensive report of the High Commissioner for Human Rights stated that in January 2024 the OMP reactivated its 'CSO Forum' and established a technical working group for data management (OHCHR, 2024c, para. 69). This collaboration is important as the CSOs are closer to the victims and could be even within their inner circles, and thus maybe more likely to open up to, than with the agents from elsewhere. CSOs can help these people to get through the complex bureaucratic procedures, which some of them may be incapable of doing.

6.0. Experiences from Comparable Jurisdictions

This section aims to briefly discuss how several other jurisdictions have been dealing with the issue of missing persons and conducting tracing and criminal investigations, which could be comparable experiences that Sri Lanka can utilize in strengthening the OMP.

6.1. Contending Dynamics of Investigations

Peru's transitional justice process is shifting from a mechanism which searches for the missing that is framed in investigations and criminal proceedings, aimed at determining the responsibilities for the crimes, to a process which prioritizes the humanitarian search for missing persons and the clarification of the circumstances in which a person went missing. This process may put the families of the victims in the center of its operations (Wijenayake, 2017, pp. 660). Cyprus established a 'Committee on Missing Persons' in 1981 (ICMP, n.d.) which is a state-led initiative that was under a purely humanitarian approach where its mandate was limited to locate and identify persons who went missing in the 1960s and 1970s (Lassee, 2017, pp. 630).

On the other hand, even though the humanitarian initiatives of truth, reconciliation, and accountability do not involve criminal or judicial approaches, the same cannot be said about some of the other jurisdictions. They don't necessarily have purely humanitarian initiatives in their mandates (Lassee, 2017, pp. 630). For instance, Iraq enacted the *Law on Protection of Mass Graves* enabled the Ministry of Human Rights to assume the leading role and document the graves and supervise exhumation processes, while the commission may start the investigation to ascertain the fate of missing persons, identify perpetrators, and assist in the collection of evidence to prove their criminal responsibility (Lassee, 2017, pp. 630).

The missing persons' fate in Guatemala is investigated by the judiciary. Such investigations will "both assist the tracing of missing persons and collect evidence for criminal prosecutions" (Lassee, 2017, pp. 630). In contrast, there are specialized institutions such as the Missing Persons Institute which was established in 2005 in Bosnia and Herzegovina for the search and identification of missing persons. Such investigations are carried out under the purview of courts and therefore are necessarily linked to criminal prosecutions (Lassee, 2017, pp. 631). Similarly, in Kosovo (ICMP, n.d.) the Governmental Commission on Missing Persons is "mandated to coordinate the search for missing persons and to centralize data on missing persons", has a similar role to the Missing Persons Institute in Bosnia and Herzegovina (Lassee, 2017, pp. 631).

In Colombia (ICMP, n.d.), a National Commission for the Search of Disappeared Persons was created in 2007. “The role of the Commission was to promote, support and assist the search for disappeared persons undertaken by other institutions, including by designing and evaluating search plans. The Prosecutor's Office was in charge of the investigation, together with other institutions referenced in the national search plan developed by the Commission” (Lasee, 2017, p. 631-2). Furthermore, jurisdictions like Peru and El Salvador pursue a similar approach like the above-mentioned jurisdictions amalgamating the tracing and criminal investigations without artificially separating the two mandates. (ICMP, n.d.)

However, when taking experiences and examples from comparable jurisdictions, it is important to keep in mind some of the experiences will not be directly comparable or applicable to Sri Lanka. With the above examples, some jurisdictions separated their mandates from criminal investigations prioritizing the truth, while other jurisdictions have amalgamated the two processes in their mandates. Sri Lanka has a victim-centered mechanism that at first prioritizes finding the missing person, and if only if it is evident that foul play is present, the investigation will be handed over to the police or the CID. Besides that, the reparations processes for prejudiced families and immediate victims are in action.

6.2. Effective use of Civil Society Organizations and Artificial Intelligence

Argentina has established a national mechanism which amalgamated human rights organizations and activists to find the missing persons, which led to the establishment of the National Commission on the Disappearance of Persons (CONADEP). Their ‘*Project Disappeared*’ brings together diverse human rights organizations and activists engaged in keeping the memory of the disappeared alive and searching for justice. Also, the ‘*Mothers of the Plaza de Mayo*’ was formed by a group of women trying to discover the fate of their children. According to the International Commission on Missing Persons (ICMP), “by the end of 2022, 131 children, stolen during the dictatorship had been identified”. The Argentine Forensic Anthropology Team (EAAF) was established in 1984 to investigate disappearances that persisted under military rule (ICMP, n.d.). Argentina is presently trying to adopt artificial intelligence as an AI project which imagines the adult faces of children who disappeared during Argentina’s military dictatorship (Calatrava, 2023).

As I have discussed above, although the OMP is working closely with CSOs, the above example from Argentina is a good lesson whereas working closely in alliance with CSOs has helped Argentina in discovering the fate of the missing and the disappeared. The OMP can establish a

stronger relationship with CSOs, as these organizations are established with the sole intention of finding the truth about the missing and disappeared persons.

6.3. Persistent Investigations of the Clandestine Graves

Since 1996, Croatia has cooperated with the ICMP, which assisted Croatia's identification efforts with donations, expertise, support to victims' groups, monitoring of exhumations and excavations of clandestine graves, and the recovery of mortal remains in Croatia (ICMP, n.d.). Croatia's collaboration with the ICMP has supported the work of the associations of families of missing persons, by, among other things, facilitating contacts with similar groups elsewhere in the region.

According to the ICMP, "The Croatian authorities have regulated the issue of missing persons through a set of laws and have established purpose-specific institutions, such as a Directorate on Detained and Missing Persons, within the Ministry of Croatian Veterans, and an Inter-departmental Commission on Missing Persons to coordinate the search for the missing. In recent years, they have re-invigorated the search for clandestine gravesites through the use of diverse technologies including aerial imagery, drones, and ground-penetrating radar, and they have significantly increased the financial and human resources available to the Directorate on Detained and Missing Persons." (ICMP, n.d.) The Croatian Parliament adopted the *Law on Missing Persons* in 2019. This law regulates the rights of families, identification, registration of missing persons, and the safekeeping and burial of human remains. It also regulates cooperation with other states, international organizations, and family associations (ICMP, n.d.).

Sri Lanka can draw on the examples of Croatia, as Croatia is persistent in their search for clandestine gravesites through the use of sophisticated technologies and the harmonious cooperation with international organizations like the ICMP has been a benign force in finding the missing and the disappeared in Croatia.

6.4. Cooperation with International Organizations and Creating a Centralized Database

Bosnia and Herzegovina has accounted for approximately 75 percent of the missing persons that were reported as missing as a consequence of the war. The ICMP's role in Bosnia and Herzegovina has been monumental as it helped to develop institutional capacity, crafting legislation, introducing new forensic methods, including the use of DNA, upholding rule-of-law-based processes that have ensured the provision of evidence to domestic courts and the

International Criminal Tribunal for the former Yugoslavia (ICTY), and facilitating the active engagement of the families of the missing (ICMP, n.d.).

Bosnia and Herzegovina developed a policy framework with international standards and established the Missing Persons Institute of Bosnia and Herzegovina. They also established the *Central Records*, adopted a *Law on Missing Persons*, and created inter-institutional cooperation mechanisms to address the issue of unidentified human remains in the country's mortuaries under the overall auspices of domestic courts and prosecutors (ICMP, n.d.). The ICMP's holistic involvement in assisting the process has been monumental for the successes achieved in Bosnia and Herzegovina.

Sri Lanka can draw examples from Bosnia and Herzegovina with regards to the creation of the central records where all the information with regards to unidentified human remains is recorded in one database, which makes it easier to handle large amounts of information.

6.5. Recognition of the 'Right to Truth' and a National Database of DNA Samples

In 1977, Spain enacted the *Amnesty Law* shielding officials and political prisoners from prosecution for the human rights violations they have committed during the civil war and the Franco-dictatorship. This law contradicted several of the international treaties, which Spain later ratified (Nezam, n.d.). This law was consequently followed by the '*Pact of Forgetting*' as one of main transitions to democracy. This flaw was challenged when the Socialist Government of the Spain enacted the *Historical Memory Act* through in 2007 (ICMP, n.d.). This law required the central government to facilitate finding the missing persons who were often buried in mass graves during the Francoist repression. This process consisted of providing financial resources to organizations and institutions to find the mass graves, publishing a map indicating all the mass graves that are found, and exhuming the human remains (ICMP, n.d.).

This law was replaced in 2022 by the *Law on Democratic Memory*, which is an extension of the obligations in the previous Act to address the atrocities that occurred during the Civil War and Franco-era. This law established the 'Right to Know' for the relatives, the creation of a national DNA database consisting of the victims of the war and dictatorship, and the 'Right to an effective investigation for violations of human rights' that occurred during the war and the dictatorship (ICMP, n.d.). The experiences from Spain that could be beneficial for Sri Lanka would be recognizing the Right to Truth, as also recommended by the LLRC Report and the Darusman Report and establishing a National Database consisting of the DNA samples of the remains found in the mass graves for the future use.

7.0. Challenges and Recommendations

7.1. Lack of Experts, Insufficient Funding, and Lack of Technology

The OHCHR report on Sri Lanka (September 2024) contends that, “despite the fact that several mass graves have been accidentally discovered and partially exhumed in Sri Lanka over past decades, to OHCHR’s knowledge, hardly any remains have been successfully identified and returned to the families for burial and/or dignified commemoration” (OHCHR, 2024b, para. 40). The GoSL has released LKR 5.7 million (USD 18,800) for the first phase of the excavation and exhumation of a mass grave found in Kokkuthoduvai, Mullaitivu, in June 2023, with an additional LKR 9.7 million (USD 32,000) to be allocated for the second phase and there, 45 human remains were recovered by the forensic archaeologist. However, OHCHR raises concerns that there are insufficient financial, human, and technical resources to conduct exhumations in line with international standards and encourages the GoSL to seek international support in this regard (OHCHR, 2024b, para. 40).

This concern corroborates with the statement made by the officers at the OMP. As they contended, the laboratory facility with which the OMP worked in collaboration had only one specialist who had to manage all matters singlehandedly. This is undoubtedly a heavy burden for one specialist to conduct. They mentioned that the lack of experts who have the required knowledge makes them mostly unwilling to get involved because of the menial pay. The lack of quality control that exists in exhumations is due to the lack of funds, lack of forensic experts, laboratories, equipment, and technology. This consequently causes prolonged delays in submitting reports, which would further delay this inherently slow process even more.

It also recommended that the Sri Lankan forensic experts be trained according to the prevailing international standards, as well as providing training to the officers of the OMP for their capacity of being observers at mass grave sites during exhumations or excavations. The All-Island Presidential Commission of Inquiry (1997) recommended that exhumations should not be conducted unless the capacity exists for the safekeeping of individual information and dignified reburial. The Bournemouth Protocol (Klinkner & Smith, 2020, pp. 11) also highlights that the state should not exhume if there is no capacity for storage of human remains, preserving the chain of custody and the conduct of appropriate forensic examinations (Klinkner & Smith, 2020).

Submissions made to CTF spoke of the need for a sound scientific approach regarding the mass grave excavations and stated that “OMP’s operations must formulate and set out procedural

guidelines and best practices around the subject to avoid mishandling of these sites.” Submissions further recommended that GoSL must give clear instructions to security forces and police to not interfere with the OMP’s work, as for example, it is viewed that the presence of security and police forces could be construed as a form of intimidation (CTF Final Report, 2016, pp. 221). The CTF also recommends that the OMP should ensure the families of the disappeared are given psychosocial support during and after forensic investigations, especially from the “insensitive reportage” (CTF Final Report, 2016, pp. 398).

Therefore, it is recommended that the OMP Act be amended to include these recommendations, especially to require members with forensic expertise, make provision for a separate Forensic Unit to be established within the OMP, and make provision for the OMP to draw on internationally recognized best practices developed as in Latin America and the Balkans in investigating mass grave sites (CTF Final , 2016, pp. 478), among other recommendations made above.

7.2. Absence of Advanced Digitized Databases

The OMP website maintains an up-to-date database which is easily accessible to anyone in Sinhala, Tamil, or English. This database consists of missing/disappeared persons specified by their districts, the timeline in which they disappeared, and a separate database for those Missing In Action (MIA). However, further recommendations are made to also include necessary logistics and storage for the preservation and safekeeping of the human remains discovered at grave sites. It must be made sure that during the transportation of the remains, the chain of custody must be maintained without gaps (ICRC, 2002). This could help the forensic experts draw parallels between various cases and will also be of service when distributing Certificates of Death or Certificates of Absence.

In 2018, Dr. A. Tennakoon, Chief Consultant Judicial Medical Officer (Colombo) and head of the Institute of Forensic Medicine and Toxicology, has posited that there have been nearly 300 unidentified bodies buried in Colombo’s public graveyards between 2013 to 2018 and dozens more around the country. The unidentified bodies that are not claimed by anyone will be buried by the Colombo Municipal Council. Dr. Tennakoon further posited that handling the bodies in this manner is not ethical compared to other countries. He points out that when a person goes missing, the relatives may typically lodge a complaint with the police. But neither the JMOs nor the police have access to an all-centralized database that could draw comparisons in identifying the missing persons that could tie with the unidentified bodies. He suggests that

when a body is brought, the data available in the hospital and the police should go to one central place, ideally the OMP, so that they can match these when there is a complaint. (Wijedasa, 2018)

Therefore as was recommended by the CTF, there is a need to consolidate information in a database to include relevant information from; “all Government mechanisms (CoI and units created to address disappearances), The Human Rights Commission of Sri Lanka, The National Child Protection Authority, Sri Lanka Police, Armed forces, Political parties and representatives, Non-governmental organizations and groups (including peace committees) with records and documentation of disappearances cases, International agencies such as the UNICEF (including information from the database of child abductions and recruitment), UNWGEID, UN Human Rights committee, Committee Against Torture, ICRC (including information on family reunification) and Peace Monitors, Court records of *habeas corpus* cases and mass graves, Hospital records, Internally Displaced Persons camp records, Rehabilitation center records, Detainees lists and Surrenders’ lists” (CTF Final Report, 2016, pp. 213).

This database could help with better handling of the vast amount of information and could be easier to trace information from different institutions. In consequence, the problems of the generation of duplicate cases and the family members of the missing having to repeat otherwise lengthy bureaucratic processes will be resolved.

7.3. Shortage of Appropriate Staff Members

The Annual Report of the OMP contends that the office is understaffed, which is a challenge for them as the people are expecting immediate relief for their concerns (Office on Missing Persons, 2023, pp. 12). The Parliament in November 2024 announced to fill the vacancies for the posts of members in the OMP (“Fixing the OMP”, 2024), which provides an opportunity to be in line with the recommendations made by the CTF. These include; advocating for a more diverse staff in the sense of being multi-ethnic, and for religious representation that reflects the pluralistic nature of Sri Lanka, incorporating “different perspectives of those such as retired judges, lawyers, doctorate holders, academics, ‘neutral’ religious leaders, other professionals, gender activists and civil activists that would allow for more nuanced and better-informed documentation, investigation and respond to the cases brought before the OMP” (CTF Final Report, 2016, pp. 206). Besides that, since the majority of those who are on the search for missing persons are women, the OMP should ensure that women consist of a significant part of the OMP. This is aimed at making the complaint process “less vulnerable to harassment and

exploitation” than their previous experiences with the state mechanisms (CTF Final Report, 2016, pp. 210).

7.4. ‘No Mandate Cases’ and Weak Communication

The OHCHR Report on Sri Lanka for the 57th session (September 2024) posited that, despite the mandate of the OMP to search and trace the missing persons, the OMP has primarily focused on assessing families’ entitlement to financial assistance, reducing ‘duplicate entries’ in their database and closure of files (through ‘panels of preliminary inquiries’). This could be problematic, as the families may want their missing persons found rather than being compensated.

The ‘*No Mandate*’ cases that do not fit into the statutory mandate of the OMP are redirected to the relevant local police stations. Most of those cases in all likelihood will end up being not being investigated or unattended to. The CTF recommended that the OMP, in “ascertaining whether the disappearance relates to the armed conflict, political unrest, or civil disturbance, as defined in the OMP's mandate, may only be possible after an investigation”. Submissions made to the OMP are therefore requested to “prohibit the OMP from 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” (CTF, 2016 Final Report, p. 200).

Wijenayake (2017), resorting to the Interim Report of the CTF, notes that families of the missing have conveyed their exhaustion by having had to approach multiple mechanisms but having received no answers (CTF Interim Report, 2016, p. 14). The OMP Act amalgamates its mandate with other governmental institutions as a consequence of Section 10(1), the consolidation of such various mandates would be much easier on the victims of the missing persons. Thereby, “consolidation of work would mean that the victims do not have to be subjected to filing complaints and going through the harrowing experience of providing evidence again and again, leading to the trauma of re-victimization” (Wijenayake, 2017, pp. 655).

The interim report of the OMP in 2018 also submitted that ensuring a multidisciplinary coordination system between institutions responsible for search, recovery, and identification is of utmost importance (OMP, 2018, pp. 16). Hence the OMP is established with a fresh mandate and as a specialized institute to find the missing persons. Therefore, it is expected that the OMP is not making the same mistakes the other State institutions have made. This is clear from the comments made by the participants to the CTF meetings: “*if the OMP is to truly provide them*

with the solutions, it has to address the obstacles they have already faced from the State, and crucially, to ensure that it wouldn't [be] repeating errors of other State agencies." (CTF Final Report, 2016, pp. 188).

7.5. Legal Standing of the Certificates of Absence

A Certificate of Absence (CoA) can be issued to the persons who are missing or disappeared as a result of the civil war, political unrest, civil disturbances or enforced disappearances. The CoA can be issued for the persons who are Missing in Action whether they are members of the armed forces or police. The CoA brings a humane solution to the families of the missing and disappeared who are still clinging to the hope of their loved ones to return. The CTF made an important observation regarding the CoA during the CTF's zonal consultations, as many participants were not aware of a CoA's potential benefits (CTF Final Report, 2016, pp. 224). The CoA is an important document as it provides a legal status for a missing or disappeared person, which will eventually enable the families of missing and disappeared persons to access administrative and financial services and other benefits in the absence of a Certificate of Death (CoD) (The Government Official News Portal, 2019). According to the data provided by the Ministry of Justice and National Integration, as of 30 November 2023, the OMP has assisted 1,756 families to get the CoA, and 322 were referred to the Registrar General for the CoD as requested (Ministry of Justice and National Integration, 2023). By August 2024, the OMP referred 2,209 families to the Registrar General for Certificates of Absence and 389 families for Certificates of Death (OHCHR, 2024c, para. 67)

OMP does not possess the power to directly issue a CoA (CTF Final Report, 2016, pp. 222). However, Section 13(1)(a)(i) of the OMP Act states that, where the OMP has sufficient material to conclude that the person in the complaint is indeed a missing person, the OMP shall issue an interim report to the relative of such a missing person, which enables the Registrar General to issue a CoA. In September 2016, the *Registration of Deaths (Temporary Provisions) (Amendment) Act, No. 16 of 2016*, enabled the issuance of a CoA. However, during the consultations conducted by the CTF, the recommendations were made to re-title the CoA as *Certificate of (Enforced) Disappearance* or *Certificate of Surrender* to include the persons that were not merely gone missing or absent but were made to disappear or surrendered (CTF Final Report, 2016, pp. 223). The CTF further recommended that the validity period of the CoA being 2 years, to extend it by at least a few more years. The CTF remarked that the short period of two years "may result in undue distress and bureaucratic hassle for the families of the disappeared" (CTF Final Report, 2016, pp. 223). The feasibility of extending the validity period

for CoA to a maximum of five years was considered on 19 February 2024 under the guidance of the President's Secretary, where the OMP and the Registrar General Department have been engaged in conversations (OMP, 2024).

However, what is more concerning is that CoA is not recognized by institutions such as banks as a valid legal document. As a continuing issue to the present, the concern was made apparent during the consultations conducted by the CTF as participants raised concerns stating, *“I still have no way to get the money in the bank. They ask for his death certificate. How do I take the death certificate without knowing whether he’s alive or dead?”* (Participant, Focus Group Discussions, Kandy) (CTF Final Report, 2016, pp. 224).

The Resource Persons from the OMP highlighted the issues revolving around the legal acceptance of the CoA. Many commercial banks and institutions remain reluctant to recognize this document and rather hesitant to release funds to the family members of the victims, without a CoD. To exemplify the gravity of the situation, the Resource Persons from the OMP remarked on situations where families of the victims have been facing difficulties in obtaining loans, obtaining EPF/ETF of the missing persons, obstacles regarding insurance claims, and situations involving minors not being able to obtain travel passports without the signature of the missing person (Personal Interview with the OMP Resource Persons, Office on Missing Persons, 12 November 2024).

Therefore, the OMP is of the view that the CoA should be elevated to the level of acceptance given to CoD for the ease of the bureaucratic processes for these victims who are already grappling with the loss of a loved one as they may be struggling to meet ends, especially if the missing person was the sole breadwinner of the family. Therefore, it is recommended that the CoA be granted sufficient legal standing to convince financial institutions to release funds and carry out other processes that would otherwise require CoD. It will also be important to adopt a foolproof process in issuing the CoA, as this could be used for fraudulent purposes. Therefore, this will need to be done in a calculated yet in an immediate manner.

8.0. Conclusion

The establishment and operationalization of the OMP demonstrates the GoSL's commitment in addressing the issue of missing and disappeared persons, yet significant challenges and obstacles persist. The OMP's accomplishments in tracing missing persons, issuing Certificates of Death and Certificates of Absence, and providing reparations signifies the role of the institution in delivering justice and relief to the missing persons and their families. However, the shortcomings in resources, lack of experts and technology with regards to forensic examinations, gaps existing in inter-agency coordination, absence of comprehensive and advanced databases in relation to unidentified bodies and DNA samples, among others, exist and needs to be addressed and resolved.

This policy brief has drawn on examples from comparable jurisdictions underlining the value of integrating technological advancements, developing centralized databases, and fostering international and civil society partnerships to enhance efficiency and transparency of the OMP's operations. It recommends that OMP requires a multifaceted approach in strengthening forensic and investigative capacities, ensuring adequate funding, bolstering victim-centric policies, and most importantly, creating a centralized database which relevant state institutions have access to. Finally, it is suggested that the recommendations made by the CTF be re-visited with regards to the OMP, with a view to ensure the overall wellbeing of the direct and indirect victims.

The efforts and initiatives Sri Lanka has taken in the past and present should also be recognized by the international community, and drawn on where relevant, as it demonstrates continuous efforts in ensuring the rights of missing and disappeared persons and their relatives. By addressing the challenges and adopting global practices, Sri Lanka can also move closer to the goal of achieving comprehensive transitional justice, promotion of healing and reconciliation in a post-conflict society and ensure that the voices of the missing and the families are justifiably heard and honored.

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References

- Amnesty International. (2009). *Twenty Years of Make-Believe: Sri Lanka's Commissions Of Inquiry* <https://www.amnesty.org/en/documents/asa37/005/2009/en/>
- Amnesty International. (2015). *Visit of The Un Working Group On Enforced and Involuntary Disappearance to Sri Lanka* (ASA 37/2821/2015) <https://www.amnesty.org/fr/wp-content/uploads/2021/05/ASA3728212015ENGLISH.pdf>
- Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023 <https://www.parliament.lk/uploads/acts/gbills/english/6297.pdf>
- Calatrava, A. (2023, September 3). *AI project imagines adult faces of children who disappeared during Argentina's military dictatorship*. AP News. https://apnews.com/article/argentina-disappeared-children-military-dictatorship-artificial-intelligence_b847832cbaa940889d2448c0ff6d8a20
- Center for Policy Alternatives. (2012). *A List of Commissions of Inquiry and Committees Appointed by the GoSL (2006-2013)* <https://www.cpalanka.org/a-list-of-commissions-of-inquiry-and-committees-appointed-by-the-government-of-sri-lanka-2006-2012/>
- Center for Policy Alternatives. (2017). *Guide to the Recommendations from the Consultation Task Force (CTF) on Reconciliation Mechanisms*. <https://www.cpalanka.org/wp-content/uploads/2017/06/Guide-to-CTF-Report-.pdf>
- Commissions of Inquiry Act, No. 17 of 1948 <https://www.srilankalaw.lk/revised-statutes/volume-ii/229-commissions-of-inquiry-act.html>
- Consultation Task Force on Reconciliation Mechanisms (CTF). (August 2016). *Interim Report: The Office on Missing Persons Bill and Issues Concerning the Missing, the Disappeared and the Surrendered* <https://groundviews.org/wp-content/uploads/2016/08/CTF-Interim-Report.pdf>
- Consultation Task Force on Reconciliation Mechanisms (CTF). (November 2016) *Final Report, Vol. 1* <https://missingpersons.icrc.org/library/final-report-consultation-task-force-reconciliation-mechanisms-volume-i-sri-lanka>

- Fernando R. (2020 January 24). Ekneligoda disappearance – 10 years struggle for truth and justice. *Groundviews* <https://groundviews.org/2020/01/24/ekneligoda-disappearance-10-years-struggle-for-truth-and-justice/>
- Fixing the OMP. (2 December 2024). *Daily FT*. https://www.ft.lk/ft_view_editorial/Fixing-the-OMP/58-769955
- Fonseka, B., & Perera, N. (n.d.). *Does Sri Lanka Need a Truth and Reconciliation Commission? A Comment on the Latest Proposal & Ground Realities*. Center for Policy Alternatives. <https://www.cpalanka.org/does-sri-lanka-need-a-truth-and-reconciliation-commission-a-comment-on-the-latest-proposal-ground-realities>
- Geneva Conventions. (1949). <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949>
- Hannan S. (2019 October 13). Missing Without a Trace. *The Morning* <https://www.themorning.lk/articles/53015>
- Hansard. Parliament of Sri Lanka Vol. 314 – No. 06 (September 3, 2024) <https://www.parliament.lk/en/business-of-parliament/hansards>
- Human Rights Council. (2015). *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka* (A/HRC/RES/30/1). https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/1
- Human Rights Council. (2024). *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka* (A/HRC/57/L.1) <https://documents.un.org/doc/undoc/ltd/g24/181/47/pdf/g2418147.pdf>
- ICRC. (2021). ICRC in Sri Lanka. *ICRC*. https://www.icrc.org/sites/default/files/wysiwyg/Worldwide/asia/sri-lanka/210720_icrc_in_sl_brochure_final.pdf#:~:text=To%20this%20end%2C%20the%20ICRC%20has%20provided,advice%20on%20data%20protection%20and%20data%20management.
- International Commission on Missing Persons. (2017). *Republic of Croatia*. <https://icmp.int/the-missing/where-are-the-missing/republic-of-croatia/>

International Commission on Missing Persons. (2024, January 24). *Colombia*

<https://icmp.int/the-missing/where-are-the-missing/colombia/>

International Commission on Missing Persons. (2024, May 28). *Argentina*

<https://icmp.int/the-missing/where-are-the-missing/argentina/>

International Commission on Missing Persons. (n.d.). *Bosnia and Herzegovina*

<https://icmp.int/the-missing/where-are-the-missing/bosnia-and-herzegovina/>

International Commission on Missing Persons. (n.d.). *Cyprus* [https://icmp.int/the-](https://icmp.int/the-missing/where-are-the-missing/cyprus/)

[missing/where-are-the-missing/cyprus/](https://icmp.int/the-missing/where-are-the-missing/cyprus/)

International Commission on Missing Persons. (n.d.). *El Salvador* [https://icmp.int/the-](https://icmp.int/the-missing/where-are-the-missing/el-salvador/)

[missing/where-are-the-missing/el-salvador/](https://icmp.int/the-missing/where-are-the-missing/el-salvador/)

International Commission on Missing Persons. (n.d.). *Iraq*. [https://icmp.int/the-](https://icmp.int/the-missing/where-are-the-missing/iraq/)

[missing/where-are-the-missing/iraq/](https://icmp.int/the-missing/where-are-the-missing/iraq/)

International Commission on Missing Persons. (n.d.). *Kosovo*. [https://icmp.int/the-](https://icmp.int/the-missing/where-are-the-missing/kosovo/)

[missing/where-are-the-missing/kosovo/](https://icmp.int/the-missing/where-are-the-missing/kosovo/)

International Commission on Missing Persons. (n.d.). *Peru*. International Commission on

Missing Persons. <https://icmp.int/the-missing/where-are-the-missing/peru/>

International Commission on Missing Persons. (n.d.). *Republic of Croatia* [https://icmp.int/the-](https://icmp.int/the-missing/where-are-the-missing/republic-of-croatia/)

[missing/where-are-the-missing/republic-of-croatia/](https://icmp.int/the-missing/where-are-the-missing/republic-of-croatia/)

International Commission on Missing Persons. (n.d.). *Spain*. [https://icmp.int/the-](https://icmp.int/the-missing/where-are-the-missing/spain/)

[missing/where-are-the-missing/spain/](https://icmp.int/the-missing/where-are-the-missing/spain/)

International Committee of the Red Cross (ICRC). (2002). *The Missing: Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families* (ICRC)

https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_themissing_102002_en_3.pdf

International Convention For The Protection of All Persons From Enforced Disappearance

Act, No. 5 of 2018 https://www.srilankalaw.lk/gazette/2018_pdf/05-2018_E.pdf

Klinker, Melanie. (2017). Towards Mass Grave Protection Guidelines. *Human Remains and Violence*, Vol. 3, No. 1. <https://www.icmp.int/wp-content/uploads/2019/05/Towards-massgrave-protection-guidelines1-1.pdf>

Klinkner, M. and Smith, E. (2020) *The Bournemouth Protocol on Mass Grave Protection and Investigation*. Bournemouth University
<https://www.bournemouth.ac.uk/research/projects/mass-grave-protection-truth-justice#:~:text=The%20Protocol%20can%20be%20viewed,the%20protocol%20directly%20from%20issuu.>

Lasse, Isabelle. (2017). The Sri Lankan Office On Missing Persons: Truth And Justice In Tandem? *International Review of The Red Cross*, 99(905). https://international-review.icrc.org/sites/default/files/irrc_99_905_9.pdf

Law No. 04/L-023 on Missing Persons - Kosovo. (2024). Missing Persons Global Response. <https://missingpersons.icrc.org/library/law-no-041-023-missing-persons-kosovo>

LLRC. (2011). *The Report of the Commission of Inquiry on Lessons Learnt and Reconciliation*. <https://reliefweb.int/report/sri-lanka/report-commission-inquiry-lessons-learnt-and-reconciliation>

Ministry of Foreign Affairs – Sri Lanka. (2015). *Sri Lanka Signs International Convention for the Protection of All Persons from Enforced Disappearances*. Mfa.gov.lk.
<https://mfa.gov.lk/sri-lanka-signs-international-convention-for-the-protection-of-all-persons-from-enforced-disappearances/>

Ministry of Foreign Affairs, Sri Lanka. (2019, March 20). Statement by Hon. Tilak Marapana, P.C. Minister of Foreign Affairs of Sri Lanka at the Interactive Dialogue with the High Commissioner for Human Rights on Promoting Reconciliation, Accountability and Human Rights in Sri Lanka, 40th Session of the Human Rights Council, Geneva.
<https://mfa.gov.lk/en/statement-by-hon-tilak-marapana-p-c-minister-of-foreign-affairs-of-sri-lanka-and-leader-of-the-sri-lanka-delegation-to-the-40th-session-of-the-human-rights-council-on-agenda/>

Ministry of Foreign Affairs. (2015). *Sri Lanka Signs International Convention for the Protection of All Persons from Enforced Disappearances*. <https://mfa.gov.lk/en/sri->

[lanka-signs-international-convention-for-the-protection-of-all-persons-from-enforced-disappearances/](https://www.unhcr.org/refugees-and-asylum-seekers/lanka-signs-international-convention-for-the-protection-of-all-persons-from-enforced-disappearances/)

Ministry of Justice and National Integration. (2023). *Office on Missing Persons*.

https://www.moj.gov.lk/index.php?option=com_content&view=category&id=27&Itemid=245&lang=en

Mohr, Charlotte. (30 August 2020). *The Central Tracing Agency - Cross-Files*. ICRC

Archives, Audiovisual and Library https://blogs.icrc.org/cross-files/research-guide-agency/#_ftnref1

Nezam, R. M. (n.d.). *Background Information*. American Documentary. [Www.amdoc.org](http://www.amdoc.org).

<https://www.amdoc.org/engage/resources/silence-others-discussion-guide/background-information/#:~:text=The%20Spanish%201977%20Amnesty%20Law,War%20and%20in%20Francoist%20Spain.>

Office for Reparations Act, No. 34 of 2018.

<https://www.parliament.lk/uploads/acts/gbills/english/6107.pdf>

Office of the High Commissioner for Human Rights (OHCHR). (2015, September 16). *Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL Report)*.

(A/HRC/30/CRP.2) <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session30/documents/a-hrc-30-crp-2.pdf>

Office of the High Commissioner for Human Rights (OHCHR). (n.d.). *Background to the International Convention for the Protection of All Persons from Enforced*

Disappearance. OHCHR. <https://www.ohchr.org/en/treaty-bodies/ced/background-international-convention-protection-all-persons-enforced-disappearance>

Office of the High Commissioner for Human Rights (OHCHR). (n.d.). *Status of Ratification*

Interactive Dashboard. OHCHR <https://indicators.ohchr.org/>

Office of the High Commissioner for Human Rights (OHCHR). (October 2017). *Observations by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr. Pablo de Greiff, on the conclusion of his recent visit to Sri Lanka*. OHCHR

<https://www.ohchr.org/en/statements/2017/10/observations-special-rapporteur-promotion-truth-justice-reparation-and?LangID=E&NewsID=22274>

Office of the United Nations High Commissioner for Human Rights. (OHCHR) (2009).

Enforced or Involuntary Disappearances [Fact Sheet].

<https://www.ohchr.org/Documents/Publications/FactSheet6Rev3.pdf>

Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016. <http://www.omp.gov.lk/omp-documents/omp-act>

Office on Missing Persons. (2018). *The Office On Missing Persons, Interim Report*. Office on Missing Persons. <http://www.omp.gov.lk/omp-documents/omp-reports>

Office on Missing Persons. (2023). *Annual Report (Draft)* Office on Missing Persons.

<http://www.omp.gov.lk/omp-documents/omp-reports>

Paranagama Report, (2015 August). *Report on the Second Mandate of the Presidential Commission of Inquiry Into Complaints of Abductions and Disappearances*

<https://parliament.lk/uploads/documents/paperspresented/report-of-paranagama.pdf>

Pinto-Jayawardena, K. (2010). *Post-War Justice in Sri Lanka*. International Commission of Jurists. <http://www.humanrights.asia/wp-content/uploads/2018/07/Post-War-Justice-in-Sri-Lanka.pdf>

Registration of Death (Temporary Provision) (Amendment) Act, No. 16 of 2016

<https://missingpersons.icrc.org/library/registration-deaths-temporary-provisions-amendment-act-no-16-2016-sri-lanka>

Republic of Iraq, Law on Protection of Mass Graves, Law No. 5, 2006.

<https://missingpersons.icrc.org/library/law-protection-mass-graves-iraq-mass-graves-affairs-law-no-5-2006-amended>

Rubatheesan, S. (2019, March 17). Mannar mass grave: US report a small piece in complex puzzle. *The Sunday Times*. <https://www.sundaytimes.lk/190317/news/mannar-mass-grave-us-report-a-small-piece-in-complex-puzzle-341014.html>

Ruwanpura, P.R., Perera, U.C.P., Wijayaweera, H.T.K., and Chandrasiri, N. (2006).

Adaptation of Archaeological Techniques in Forensic Mass Grave Exhumation: The

Experience of 'Chemmani' Excavation in Northern Sri Lanka Ceylon Medical Journal
Vol. 51, No.3, September 2006 <https://cmj.sljol.info/articles/10.4038/cmj.v51i3.1251>

Samaraweera, B. (2024). Truth, Unity & Recon. Comm. has no prosecutorial powers. *The Morning*. <https://www.themorning.lk/articles/hhsqz0sHdZKiZq5CAuCF>

Secretary General's Panel of Experts (Darsuman Report). (2011 March). *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*
<https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20Rep%20on%20Account%20in%20Sri%20Lanka.pdf>

Sri Lanka rejects UNHRC Resolution 51/1. (2024, October 11). *The Island*.
<https://island.lk/sri-lanka-rejects-unhrc-resolution-51-1/>

The Lakshman Kadirgamar Institute. (2017, November 2). Takeaways – Pablo de Greiff on Transitional Justice. The Lakshman Kadirgamar Institute.
<https://lki.lk/publication/pablo-de-greiff-transitional-justice/>

The Secretariat for Coordinating the Peace Process (SCOPP). (2007). Presidential Commission of Inquiry (CoI) and the International Independent Group of Eminent Persons (IIGEP) commences sessions. *SCOPP Newsletter*.
http://www.peaceinsrilanka.org/userfiles/file/Newsletter_Feb-Mar2007.pdf

United Nations High Commissioner for Human Rights. (2019, February 8). *Promoting reconciliation, accountability and human rights in Sri Lanka: Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General*. (A/HRC/40/23).
<https://documents.un.org/doc/undoc/gen/g19/029/25/pdf/g1902925.pdf?OpenElement>

United Nations High Commissioner for Human Rights. (2024a). Accountability for Enforced Disappearances in Sri Lanka. <https://www.ohchr.org/en/press-releases/2024/05/sri-lanka-accountability-needed-enforced-disappearances>

United Nations High Commissioner for Human Rights. (2024b). *Comprehensive Report of the United Nations High Commissioner for Human Rights: Situation of Human Rights in Sri Lanka* (A/HRC/57/19) <https://www.ohchr.org/en/documents/reports/ahrc5719-situation-human-rights-sri-lanka-comprehensive-report-united-nations>

United Nations High Commissioner for Human Rights. (2024c). *Comments of the Government of Sri Lanka on the Comprehensive Report of the High Commissioner for Human Rights* (A/HRC/57/G/1). <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session57/list-reports>

Unreleased Nawaz Commission report may hold key to acceptable Truth and Reconciliation Commission. (2024, June 8). *DailyFT*. <https://www.ft.lk/news/Unreleased-Nawaz-Commission-report-may-hold-key-to-acceptable-Truth-and-Reconciliation-Commission/56-762779>

Wijedasa, N. (2018, September 9). Hundreds of unidentified bodies dumped in graves: Chief JMO laments violation of human dignity. *The Sunday Times Sri Lanka*. <https://www.sundaytimes.lk/180909/news/hundreds-of-unidentified-bodies-dumped-in-graves-chief-jmo-laments-violation-of-human-dignity-310838.html>

Wijenayake, Vishakha. (2017). The Office on Missing Persons in Sri Lanka: The Importance of Primarily Humanitarian Mandate. *International Review Of The Red Cross*, International Committee of the Red Cross. https://international-review.icrc.org/sites/default/files/irrc_99_905_10.pdf

Wolfe, M. (2022). Policing The Lost: The Emergence of Missing Persons and the Classification of Deviant Absence. *Theory and Society* 51(6). https://www.researchgate.net/publication/355650339_Policing_The_Lost_The_Emergence_of_Missing_Persons_and_the_Classification_of_Deviant_Absence

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