

## IV. OFFICE ON MISSING PERSONS

### 1. Introduction

*“There will be over 100,000 complaints to the Office on Missing Persons.”*

(Organisation of families of the disappeared)

*“There should be no more inquiries, just tell us if our children are alive or not.”*

(Tamil mother from Mannar, Northern Province)

*“My brother was taken by the LTTE in 1986... My parents tried a lot to find him. They must have gone to all the devales (shrines) this country.”*

(Sinhalese man in Kanthale, Eastern Province)

*“Since 88/89, we have been waiting for 27 years. There are others like me. Regardless of ethnicity or religion, it is only those who faced disappearances who understand its pain.”*

(Sinhalese Participant at FGD on Disappearances, Western Province)

1. Disappearances constituted the most recurrent and pressing issue brought before the CTF. In their submissions, participants raised concerns about the fate of the missing, urgently seeking to establish if they are alive. The depth of their pain and their resolute determination to locate their loved ones came through in hearings across the country. As affected families filled the halls of public meetings and focus group discussions (FGDs) and told their stories, they opened files with documents, photographs, letters to agencies, newspaper clippings, shards of evidence they had pieced together over months and years, sometimes even decades. Many recounted their exhausting and unsuccessful search for the missing, in some cases, at great cost to themselves, risking intimidation, detention, and interrogation. Some were fearful that their testimonies would compromise their safety, and more poignantly, the safety of the disappeared person if still alive. Others openly named abductors. Many described the devastating effects of enforced disappearances—how it had impacted families and restructured social relations, depleted household economies and spread suspicion and division within communities. An overwhelming number of participants were women, revealing that women from all parts of the island affected by the war and the Southern Insurrections have disproportionately borne the burden of searching for the disappeared. Significantly, while participants differed in their responses to the Office on Missing Persons (OMP), the CTF heard an unequivocal call across the country to end the practice of disappearances, to investigate and provide answers to the thousands of cases of the disappeared. Several explicitly stated they wanted no one to suffer what they had endured.

2. Such sentiments underscore a critical finding from the consultations: disappearances were reported from all zones where hearings were held, revealing how they have been carried out across time and geographic regions, by both State and non-State actors, subjecting families and entire communities to terror and trauma. Testimonies demonstrate that families throughout the island have shared experiences of disappearances that cut across ethnic, religious and class differences. The statements below uncover the common experiences of pain and collective suffering expressed by Tamil, Sinhala, Malaiyaha Tamil, and Muslim participants.

*“In 1987–88, there was a preoccupation with representing a “Sinhala nation,” yet all these [Sinhalese] people went missing.”*

(Sinhalese man, Public Meeting, Kandy, Central Province)

*“36 Tamil journalists have been killed, disappeared or suffered various forms of violence. But there has been no solution. The Ekneligoda and Lasantha cases are being investigated. Suharishan, Nadesan, Sriramanan, Nimalarajan Atputhan, KS Raja--what is the solution for them?”*

(Journalist at Kalmunai, Ampara)

*“Many Muslims too went missing, arrested/abducted or made to disappear in the years prior to 1990, in 1990, and afterwards. Perpetrators range from Government forces and other security apparatus, LTTE, EPRLF, PLOTE, EPDP, TELO, EROS, politicians and IPKF.”*

(Organisation representing Northern Muslims, Written submission)

*“People think that these things happen only in the North and East. They don’t know that there are Tamils living in Moneragala. They don’t know people from here have also disappeared.”*

(Malaiyaha Tamil participant, FGD on Disappearances Buttala, Uva Province)

3. These submissions, and others, underscore the grave and pervasive nature of enforced disappearances in Sri Lanka. They show how the police, the armed forces, and multiple armed groups, including the LTTE, have used disappearances as an extrajudicial procedure during each period of significant unrest on the island, beginning with the two Southern insurrections, throughout the Civil War, and well into the post-war years. Even as consultations were underway and the Government took steps to pass the Bill on Office on Missing Persons (OMP), the CTF was alerted of incidents of abductions that were taking place in parallel.

4. Strikingly, a higher number of persons affected by disappearances came before the CTF than persons affected by other violations. Several ZTF members additionally observed that even participants who had suffered other violations chose to foreground their experiences of disappearances. Amongst other factors, the timing may have played a crucial role, given the interest, expectation and concern about the Government’s decision to proceed with a bill to set

up the OMP in parallel to the consultations. The CTF took submissions on the OMP Bill, and disappearances more broadly, and published its interim report titled: ‘The Office on Missing Persons Bill and Issues Concerning the Missing, Disappeared, and the Surrendered’ on August 11<sup>th</sup> 2016.

5. The passage of the OMP Bill into law on August 12<sup>th</sup> 2016 marks a historic achievement. It provides affected families with a permanent mechanism to seek the fate of thousands of disappeared persons. Once operationalised, the OMP will serve a unique and marginalised constituency in Sri Lanka--the disappeared and their families--the former, whose voices cannot be heard, and the latter, who are vocal advocates seeking to establish what happened to them, bringing distinctive needs for the OMP to address.

6. While the CTF welcomed the passage of the Act, in its subsequent press release, it also highlighted that the recommendations from public submissions, as outlined in the Interim Report, had not been incorporated. The CTF wishes to reiterate the fact that **none of the amendments to the Bill adopted in the Act were reflective of recommendations from public consultations**. Thus, in this chapter, the CTF presents submissions that it included in the Interim Report as well as others subsequently received that address the operationalising of the OMP. In addition, the CTF highlights other measures participants have asked the State to adopt that extend beyond the OMP to fully address the issue of disappearances and to ensure its non-recurrence. Both these sections are preceded by an analysis of testimonies from consultations that not only provide an understanding of the experiences of disappearances, but also form the basis of key recommendations by participants on the mechanism.

## 2. Disappearances in Sri Lanka

*“The OMP should start from an understanding of what it means to have a family member disappeared”*

(Women’s collective, Written submission)

7. The call made in the above submission highlights the demand from families and organisations working on the disappeared that there needs to be an effort by the OMP to come to a deeper understanding of the scale and impact of disappearances. In recognition of this, the following sections will present submissions made by participants on three areas: (1) the nature of disappearances in Sri Lanka, including shared patterns and differences in the manner, period, and region where disappearances were carried out; (2) the barriers that families have faced when searching for the missing, which they want addressed by the OMP (3) the social, economic, and psychosocial effects on families and communities that they seek to support and redress by the OMP.

8. The CTF wishes to draw attention to the significance of these three components of the submissions for the mechanism. To begin with, by outlining the range of ways in which disappearances took place, the participant accounts below underscore that the OMP will need to be prepared to flexibly address diverse cases. They also elucidate why measures outlined in subsequent sections are important for families of the disappeared. Many families framed their recommendations on the OMP in relation to their previous experiences with State agencies, which they did not want repeated. For instance, the call for the OMP to have substantial numbers of female staff came from women who had faced sexual harassment at State offices that they had appealed to. The experiences presented below point to issues that are both general and distinct to particular cases, in order to give the reader a sense of the magnitude, breadth, depth, and complexity of cases that the OMP will need to address. In essence, they lay out the scope of the OMP as envisioned by those whom it seeks to serve.

### 2.1. Types and Patterns of Disappearances

*"On 19.6.2007 my son was abducted when he was returning home after duty...Another son was abducted by the LTTE. No news about him too. Both my sons must be found."*

(Tamil mother from Trincomalee, Eastern Province)

*"In 1989 January, they came and took him in a jeep to the Hambantota camp. They tied his face with a cloth and took him away. When I went there, they said: 'the bastard ran away.'"*

(Sinhalese wife of abductee at FGD in Galle, Southern Province)

*"My son was abducted by a man called [X] in Puttalam. People saw him do it. I know him. He is from the village. He was a CID and he took my son. He is outside while my son is missing."*

(Muslim mother at FGD in Mullaithivu, Northern Province)

*"Student-activists from the University of Jaffna like Chelvi Thiagarajah and George Manoharan and several others who openly critiqued the LTTE on its anti-democratic politics were abducted and incarcerated by the movement."*

(Tamil Academics, Written Submission)

*"Our children did not disappear in the war zone. They disappeared in Colombo – a security area. When [the former president's] children are arrested, even for a day, they are getting flustered. So do they only have children? Don't we have children?"*

(Tamil mother of 21-year old university student, abducted in Colombo, Western Province)

9. The statements above constitute a cross section of accounts from consultations. The range of cases brought before the CTF provides a sobering catalogue of the many different ways in which

persons across the country were made to disappear. While the breadth of cases preclude easy categorisation of the means of disappearance, the CTF received a significant volume of submissions on disappearances listed below.<sup>16</sup>

1. **Village Roundups** of Tamil and Muslim civilians (wartime and post-war) and Sinhalese civilians during the Southern insurrections by the police, army and intelligence services.
2. **White Van abductions** of Tamil, Muslim, and Sinhala civilians, including human-rights defenders, journalists, aid workers, university students, and others.
3. **Surrenders and subsequent disappearances** of Tamil combatants to the armed forces and police, particularly during the last stages of the war.
4. **Families of surrendered LTTE cadres**, including very young children who disappeared.
5. **Injured Persons who disappeared** during the war, particularly in its last stages, who were left behind in hospitals in LTTE-controlled areas or handed over to the military and seen taken away in military vehicles.
6. **LTTE and TMVP abductions** of Tamil children and youth for recruitment whose current location is unknown.
7. **LTTE or other militant group abductions** of Sinhalese and Muslim civilians.
8. **IPKF abductions of Tamil and Muslim civilians**
9. **JVP abductions of Sinhalese civilians who**
10. **Disappearances of fishermen**, Tamil, Sinhalese, and Muslim, by the LTTE and Navy.
11. **Abductions of Tamil civilians by other Tamil militant groups.**
12. **Disappearances during rehabilitation** of ex-or suspected LTTE combatants.
13. **Disappearances inside IDP camps**, mostly of Tamil and Muslim civilians and combatants.
14. **Combatant and police disappearances**, including members of the armed forces who went missing in action, police personnel, and LTTE combatants.
15. **Disappearances** that took place across the island in a context of pervasive abductions.

10. The CTF also received submissions from persons who had been abducted and subsequently released, and from organisations that had interviewed such persons and provided reports with testimonies. Additionally, the CTF received several submissions from families of abductees who found their relatives dying, or located remains of the disappeared, who had been decapitated, hacked, or burned alive, both during the insurrections and the war. Related to this, a written submission listed ongoing abductions in the North, including a case of a fisherman from Mannar who had been arrested multiple times, and abducted and killed as recently as June 2016.

11. In addition to providing a record of the numerous ways in which disappearances have been carried out, participant accounts demonstrate both shared and divergent patterns of disappearances

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<sup>16</sup>It should be noted that while the list is varied, it does not capture all categories of disappearances that have taken place in Sri Lanka, in terms of victims, perpetrators or mode of abduction/disappearance.

across time, region, and ethnic groups subjected to the crime. Submissions from the **Northern and Eastern Provinces** underscore the compounded effects of disappearance, mass displacement, property loss, and death. Many also spoke of disappearances within wider contexts of intimidation, torture, and sexual abuse by the armed forces and other militants. Submissions from both provinces revealed a high volume of village roundups in the early years of the war, and a rise of white van abductions in the latter stages and in the post-war years. Some pointed to a wave of LTTE abductions in the Vanni, largely for recruitment, and some abductees subsequently disappeared. Several had children forcibly conscripted to the LTTE who are now missing. The Northern Province, particularly Mullaithivu and Kilinochchi also had a high volume of disappearances of LTTE combatants and civilians who surrendered at the end of the war.

12. In the **Eastern Province**, many described disappearances that took place in the 1980s and 1990s, some of which happened alongside massacres by both the State and the LTTE. Arrests and enforced disappearances of large groups also took place in camps in the East, including at Eastern University and Sittandy in 1990. Submissions from the East attributed disappearances to a range of armed groups, including the security forces, the Navy, the LTTE, TMVP, and IPKF. The LTTE was also said to have disappeared large numbers of Muslims. A written submission alleged that the LTTE and the TMVP recruited hundreds of children Trincomalee, Ampara, and Batticaloa, some of whom were abducted with the complicity of the Sri Lankan Army after the latter broke away from the former; a number of these child recruits remain missing. The East also had many disappeared fishermen, both Sinhala and Tamil. In the Northern, Eastern, and North Central provinces, submissions mentioned LTTE abductions of Tamil, Muslim, and Sinhalese persons. Families from the **Northern, Eastern and North Western Provinces** also spoke of disappearances by other militant groups, although only some were able to identify the groups that carried them out. Northern Muslims who were displaced to the North Western Province discussed disappearances in the context of mass displacement and abuse from the LTTE, other militant groups, the IPKF and the army. They also spoke of disappearances after displacement.

13. In the **Southern, Central, Sabaragamuwa, North Western, Western and Uva Provinces**, Sinhalese participants described in great detail, enforced disappearances that took place during the two Southern insurrections. Many attributed responsibility to the police and army, particularly in cases of village roundups. Some also spoke of JVP abductions. In both contexts, stories of disappearances were narrated alongside accounts of killings, torture, rape, and everyday experiences of terror within villages. In the **Southern Province**, families of disappeared fishermen spoke of losing their kin at sea (many of them in the East), describing how multiple boats carrying dozens of fishermen had disappeared at once. Families of MIA servicemen from multiple provinces expressed their desire to know the fate of their missing son or husband and stated their distress about the State's lack of interest in providing them with answers or redress.

14. Malaiyaha Tamil participants, particularly in the **Central and Uva Provinces** and also in Kilinochchi, spoke of disappearances they had faced, and how these losses were exacerbated by their long-standing marginalisation, discrimination, and neglect by the State. They stated that disappearances had intensified their suffering as, Sinhalese neighbours labelled them as LTTE members following white van abductions. At least two submissions highlighted that Malaiyaha Tamils were the first to experience disappearances, having been subjected to them for 180 years, starting from British rule where indentured workers were frequently disappeared.

15. In the **Western Province**, participants highlighted disappearances in the region from the insurrection periods, during the war, and the post-war years. The Western Province, particularly Colombo, had one of the highest citations of white van abductions in the consultations, with a majority of the Tamil language submissions stating it as a reason for their loss of kin. A number of families from the North also stated that their children had disappeared *en route* to, or in the capital city when they had gone there seeking medical checkups, education, and administrative services.

## 2.2. Experiences of Disappearances: Testimonies of Loss, Terror, and Trauma

*“My husband was taken in the night from home by the army... They came and tapped, then one of them whistled and they pulled him into a van and drove away. When I cried out, they put the gun to my ear and told me not to shout. Three of them surrounded me. They were wearing army uniform with a black cloth covering their faces. It happened in 1994.”*

(Tamil woman, Public Meeting, Polonnaruwa, North Central Province)

16. Such testimonies came from zones across the island. Regardless of who carried them out, enforced disappearances have not only traumatised families but also crippled entire communities. Accounts of village roundups--both of Tamils during the war and Sinhalese during the insurrections--show the terror, helplessness, and desperation of families who saw their loved ones, including young children, forcibly removed from home and taken away. Tamil women from the North and North Central Provinces spoke of how the army regularly conducted roundups at night, which made them both fearful to go out and vulnerable within their own homes. Sinhalese persons affected by insurrection-related disappearances remembered being caught between the JVP, which asked them to follow orders with ultimatums of death, and the army and the police, which swept through villages taking anyone they suspected with JVP ties. Women from all ethnic groups described how they were threatened, intimidated, or tied up while men were forcibly removed. A Tamil mother from Polonnaruwa whose husband and daughter were taken together, asked with great consternation, “why did they take the girls, and what did they do to them?”

17. Alongside the disappearances of individuals, participants described group abductions and arrests. Tamil women who attended the Polonnaruwa Public Meeting, testified that five of them lost their husbands at a wedding. In Kandy, a Sinhalese man described how two men were taken

at a funeral in 1991—one of whom was the son of the deceased man. He decried it as an inhumane act. Many described how the normalcy of life was shattered as life events were transformed into moments of collective terror and loss.

18. In the East, participants highlighted grave events of mass disappearances:

*"I have come here to speak for the people of my village. In 1990.08.2016, 135 persons were taken away from the Campus. They have issued death certificates but their bodies were never given. We only know that the Army came and took them away. We don't know what happened to these 135."*

(Tamil Participant speaking of abducted refugees, Public Meeting, Batticaloa)

*"When the Sathrukondan massacre took place, there was a meeting by an army leader called [X], we asked him directly where our people were. And he said, 'go and ask your Prabhakaran.' Then there was intimidation that we also would be killed if we tried to be too smart. But we have a list of people who went missing from Sathrukondan."*

(Participants at Vavunathivu, Eastern Province)

*"Suddenly the LTTE abducted more than a 100 police officers. We don't know what happened to my brother, but I believe he is dead... My parents became psychologically ill after this."*

(Sinhalese man, brother of disappeared police officer, at meeting in Ampara, Eastern Province)

The above cases, and others, show that both the armed forces and the LTTE targeted entire communities through mass disappearances. Others discussed the collective effects of enforced disappearances by highlighting how they spread divisiveness within villages. Sinhalese participants discussed how the security forces conducting roundups during the insurrections used informants within the village to identify affected persons through the use of the notorious "billa," a person whose face was covered with a sack. The woman below describes the trauma of such an experience:

*"My husband was taken during the Bheeshanaya. Suddenly, they came with weapons and surrounded the house. We thought they were the police, but we heard the word STF frequently. They brought a "billa" with a sack over his head. I could only see his eyes. Some of them went in and dragged my husband out. My mother ran out crying. I came out carrying the baby. They shoved their guns into our chests and ordered us to be quiet. They started questioning him. My husband saw us screaming and couldn't answer. He kept looking at us in fear. They took him up to the billa, who shook his head. They also took the billa. Later, we learnt they had killed the billa... He was a worker from the estate my husband managed. Poor man. They must have forced him to come to identify my husband."*

(Sinhalese woman, FGD on Disappearances, Kandy, Central Province)



19. This participant's story of terror and helplessness is echoed by mothers, fathers, and wives across the country who were held at gunpoint while their loved ones were forcibly removed. Many described the inordinate efforts they took to protect their children from disappearances. Some sent their children away. Others hid them. Yet others went to LTTE camps, pleaded for their release, and brought them back. A written submission stated: "The heroic efforts of some members of the [Tamil] community who helped them hide when the abductors came, or stood up to the abductors, negotiated with them for release etc. when the State mechanisms that were set up to protect them was turning a blind eye or being complicit in the process needs to be recognised. Sometimes, protecting one's children involved great emotional costs. A Sinhalese woman whose brother was arrested and killed by the army in 1989, and who was later taken in for questioning remembered how, upon receiving her brother's death certificate, her father burned it, along with all his belongings and photographs, in fear that the army would use it as a reason to arrest her. Some families actively resisted their loved ones being taken away. A Sinhalese mother remembered how she argued with the police when they came for her 14-year old son, asking them what statement they could possibly want from a child. As they covered his face with his shirt and took him away, she tried, unsuccessfully, to run after the van.

20. The accounts above provide a glimpse of the conditions of fear and the scale at which the State, the LTTE and other armed groups carried out disappearances. They underscore that the OMP must be prepared to address a range of cases, from individual abductions to mass disappearances, which will require the collection of different kinds of evidence. Accounts from consultations across the country show that the different ways in which people were disappeared left different kinds of traces shaping the availability by information with families, both on the disappeared and the abductors. The sections below will therefore briefly address the kinds of knowledge, relationships to perpetrators, gaps in information that families of the disappeared said they possessed.

*"The army took my husband on 26.02.2009. I don't know why. After four months when I saw these four army persons and asked, they said that they didn't catch him and said to go to the police. They also frighten me, telling me to go home; if not, they will make me disappear also... I can still identify who caught my husband, they are here."*

(Tamil woman at Vavuniya Meeting, Northern Province)

21. Like the woman above, a significant number of participants from all ethnic groups stated that they could identify those who arrested their relatives during the war and the insurrections. Several said could identify whether they were from the CID, military, police or intelligence groups. Many participants also knew the detention camps abductees had been taken to, and named the military and police officials in charge. As the Vavuniya ZTF report points out, many families who witnessed abductions "confirmed that the abductors were from the armed forces, stating for

example that the vehicles that the abductors used would enter military camps.” Similar statements were made about Navy camps in Trincomalee and centres of detention and torture in Southern and Central provinces during the insurrections. Abductions were also often carried out in high security zones and during curfew where only the military could move about with ease.

22. Regarding LTTE abductions of Tamil civilians, several participants said they knew the LTTE camps abductees were taken to and visited them, pleading their release. Sometimes the same person was abducted multiple times. A woman from Mannar said that her 15-year-old son was “taken by the movement” and injured. He subsequently went missing from the hospital and she concluded the ‘movement’ must have taken him again. Muslim participants too spoke of their helplessness in the face of LTTE abductions. A participant from the Eravur Public Meeting stated “Those who returned from Hajj were abducted at Kurukkalmadam by the LTTE and killed. There should be an independent investigation on this and the truth revealed.” A Tamil woman from Trincomalee said she went to an LTTE camp and secured the release of her abducted husband, but three years later, he was abducted again, this time in a white van that was seen going into a Navy camp.

23. There was also a large number of participants who did not know the abductors, yet had contact with military or intelligence officials about their relatives after they were disappeared. For instance, although the perpetrators of white van abductions were hard to identify, several families stated that the CID or TID had contacted them demanding information or ransom, leading them to conclude that the State had a hand in the abductions and had information about their kin. A woman whose brother disappeared in Puthumathalan in 2009 said CID visited her house 8 times asking about him. She stated: “how are they visiting me without having any information about him?” In another case, where the means of abduction were unknown, a Tamil mother whose son disappeared in Colombo *en route* to the kovil in 2008 stated that four years later, an army soldier came to her house in Trincomalee with her son’s wallet, saying it was found in the office of a high-ranking Navy official. Expressing her outrage, the mother asked: “Was the Navy [leader] given a uniform and gun to abduct the public?” Accounts such as this reveals that information about the disappeared can emerge years after the event, and the OMP should make provisions to solicit evidence from those who have information (See section 6.8).

*“My brother disappeared in 1990. 4 other boys disappeared with him. When he was going to school at the age of 13, this happened.”*

(Participant at Eravur Public Meeting, Eastern Province)

24. Yet, a large number of participants did not have a clear sense of who disappeared their children or whom to approach to seek recourse. These included families of fishermen who disappeared at sea, some suspected to have been taken by LTTE along with their boats and others who may have died in crossfire between the Navy and the LTTE. Similarly, Sinhalese families

whose relatives were disappeared by the LTTE had no way to appeal for their release. In addition, a number of Tamil, Sinhala and Muslim families lost their relatives when they were travelling, some moving from the North to the South, others en route to work, school or some other venue.

25. The disappearance of LTTE combatants who surrendered to the military, some with their families, in the last stages of the war was a focal point of discussions in the North, particularly in Jaffna, Kilinochchi and Mullaitivu. Families of surrendees stated with great emotion that they had handed their loved ones over to the military, under the guarantee of State protection, never to see them again. Many had done so following army announcements asking those with ties to the LTTE to surrender. Many said surrenders had occurred in large groups. The CTF received a number of submissions on a group surrender at the end of the war, where families handed their relatives to the army, along with a priest, Father Francis. They were taken away in a bus and never seen again:

*“My daughter and her entire family surrendered. Whole families surrendered. They surrendered with Father Francis. How did they have the heart to do this to them? To children?”*

(Tamil mother at Public Meeting, Kandavalai, Northern Province)

26. Significantly, a written submission on child soldiers pointed out that amongst surrendees there were LTTE child conscripts. They had been taken into State custody, sent to rehabilitation camps, and subsequently disappeared. Even more tragically, amongst these child conscripts were some whom the LTTE themselves had abducted to fight on their behalf. In addition to child soldiers, Northern families also spoke of surrenders at the Omanthai checkpoint during the last stages of the war, and immediately afterwards, where civilians and combatants crossing over to army-controlled areas were stopped, taken in, and never re-emerged. A mother of one such surrendee stated: “Those who surrendered to the army alive at Omanthai, the Government has to give them back to us. How can they say they don’t know where they are? The Government officially took them.” Like her, many relatives of surrendees refused to believe that their loved ones could not be found. Amongst those who strongly believed that their children are alive, was a Tamil woman who during the 2015 election, saw a notice with a photograph of her daughter with the current President of Sri Lanka. Despite submitting this evidence to various authorities, she has heard no response. Other participants produced letters and notes from their loved ones smuggled out of prisons or mentioned reports by former prisoners that they had seen the disappeared person in prison. Yet other parents of surrendees stressed that the State must possess records on them, as the CID and TID has since contacted them for information.

27. The CTF wishes to note that families of surrendees categorically refused to accept the designation of their kin as “missing,” insisting that both the OMP and the State recognise them as surrendees in official documents, given that they were placed in the charge of the State, which failed in its obligation to return them to safety. The direct handing over to State custody is

pointed out as the reason for treating surrendees, as well as their families who went with them, as a distinct category to other cases of disappearances.

### 3. The Search: Barriers to Finding the Missing

*“My child must be found. There is no place where I have not searched.”*  
(Tamil participant, Public Meeting Trincomalee, Eastern Province)

*“We have spent whole afternoons in front of their gates, carrying our babies. The police won’t search for them. They won’t record a police entry. All because of Bheeshanaya.”*  
(Sinhalese woman whose husband was arrested in ’89, Kandy, Central Province)

*“We are always on the road trying to find our children. How can we give up? That would be a betrayal to them.”*  
(Tamil mother, Public Meeting, Mullaitivu, Northern Province)

*“The army took my younger brother from home on 14 Sep 2008 for inquiry... His son who is eight is asking for his father. What can I say? We don’t want anything. Even if his legs and arms are broken, give him to me, we can look after him.”*  
(Tamil participant, Public Meeting, Vavuniya, Northern Province)

28. These statements capture the sense of desperation and urgency with which families came to the consultations, in the hope, however limited, of gaining assistance for their search. Repeatedly, participants described how they had put their lives on hold, gathered information, travelled to police stations, and camps and appeared before numerous Presidential Commissions, only to face one failed attempt after another in finding their loved ones. In addition to these State-based bodies, families had also appealed to the Human Rights Commission, the National Child Protection Authority, the ICRC, and NGOs. Amongst these families were parents whose young children had been abducted by the TMVP or LTTE for recruitment. Many families had also pleaded with members of the armed forces, paramilitary groups as well as political parties and political representatives. A number of women described the inordinate lengths they had gone to, to find their kin, some putting their own lives at risk and others facing great indignities.

*Till the end we believed our husbands are alive. I even went to Kilinochchi alone to the LTTE camp and talked with them to give my husband back. We got so much courage to walk into LTTE camps because our husbands mean that much to us. The army officers asked me where I am going and laughed when I said I’m going to the LTTE camps. When I got to the camps, the LTTE girls surrounded me. There was one Sinhala speaking girl and I told her my details. If I went to the LTTE to get information, the Government also could have gone.”*  
(Sinhalese woman, wife of disappeared fisherman at Kanthale, Eastern Province)

29. At the heart of the frustration, anger, and exhaustion that affected families shared with the CTF, was a prevailing sense that the State, the police, and the State-institutions that they had sought help from had failed their obligations to provide them information and assist them with their search. These statements of disappointment came from a range of participants including Tamil, Sinhala and Muslim families, military families trying to trace the whereabouts of MIA servicemen, and families of disappeared fishermen, including those taken by the LTTE. While some, such as military families, expressed disappointment that the State had no interest in locating their relatives, others charged State institutions of intentionally withholding information, obstructing their search, and, even more gravely, of detaining, interrogating and torturing them when they sought help. While many participants felt that other actors they had appealed to, from politicians to NGOs had also let them down, a majority expressed that it was primarily the responsibility of the State to locate its disappeared citizens, regardless of who carried out the disappearances.

30. Despite the lack of trust in the State, the consultations revealed an overwhelming sentiment that the OMP was needed, and welcomed. Significantly, when the CTF elicited recommendations from affected families on the OMP, while a few made stand-alone suggestions, many framed their comments on what the OMP should do with detailed accounts of the administrative barriers they had faced and the physical, psychological and sexual violations they had experienced from State officials and non-State actors. Their accounts should be understood as constituting the content of a core set of administrative, legal, socio-economic and administrative issues and gaps that the OMP needs to address. Several participants stressed, *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 repeating errors of other State agencies*. Therefore, the following sections outline participants' accounts of these challenges.

### **3.1. Encounters with the State: Denial, Refusal to Document, Misinformation, Coercion**

*"I tried to meet [the former defence secretary] but I only got to see [the former president]. I was checked, and stripped, and asked to remove my clothes down to my underwear. Going to all these offices, I had to show my bare body, but I wanted to see my daughter so badly that I did it."*

(Tamil mother, FGD on Surrendees, Kilinochchi, Northern Province)

31. Affected families described a range of barriers they faced upon taking cases to the police, armed forces and administrative officials. These included the following: denial of arrest and detention; refusal to record statement or police entry; misreporting information; disposal of paperwork filed by families of the disappeared; delays in following up on cases; neglect of cases; requesting documentation they couldn't provide, and the use of coercion in making families accept

death certificates and compensation. A range of problems that families recounted about their encounters with the State are provided below, including the following account of a woman whose husband was abducted while he was at a State office.

*“When he was waiting at the DS Office, he was abducted. When we went to complain that he was abducted from the DS Office, they are asking for evidence. For evidence, where do we go?”*

(Tamil woman at Valachchenai, Batticaloa, Eastern Province)

*“I have been searching for my son since 2009. Due to the stress and trauma of losing my son I forgot to register that with the police. Now, when I asked them for a report of disappearance, they tell me to get it at the place I lost him. How can I get it from Mullivaikkal?”*

(Tamil mother, Public Meeting, Mannar, North Western Province)

*“Though I complained to the police that the army took him away, they wrote it down as he had gone missing. When I asked the officer not to do so, he said that if he hadn’t done so, he would be interdicted.”*

(Tamil participant, wife of disappeared man, Public Meeting, Trincomalee, Eastern Province)

32. A common experience of many family members was their mounting frustrations as they attempted to locate the disappeared, travelling to multiple military camps, police stations, prisons, Tamil militant camps or offices, Government offices, the ICRC and many others. Most often they were informed that there was no such person held there, even in instances where witnesses had seen security personnel take their relatives into those camps. Participants described how the State’s denial of enforced disappearances has forced them to face a chasm of uncertainty and fear, as they cannot find out if their relatives are alive or dead. This pain has been exacerbated by the insensitive treatment by the police. A mother whose sons were taken in the early 1990s describes the devastation she felt during such an encounter:

*“They took both my sons. The second one disappeared a week after he finished his O/Levels... I went to search in the Nawaganara police station the CID police officers there showed me the torture rooms. There was no one there, but after we saw the rooms, we were faintish. There was blood and pieces of cloth but no victims. There were others with me and we looked at all 3 rooms. There was blood on the walls. There were pipes on the floor. That is how we know this is the room where people are tortured. Why were we shown this? When we go to ask about our children why do they show this to us? I thought our children are gone, no longer alive.”*

(Tamil mother, Public Meeting, Polonnaruwa, North Central Province)

33. In addition to their denial of abductions, many Tamil families stated that even when the police did take down statements, they made errors in documentation due to their lack of

knowledge of Tamil and lack of interest in accurately writing down affected person's names and other details. Many also mentioned that letters from the State about their disappeared kin were written in Sinhala, which they could not read. Many Tamil participants made recommendations about corrective measures the OMP could make to address these linguistic problems, and these are outlined in section 6.1.

34. While some accounts flag different ways in which the police and armed forces denied that enforced disappearances took place, other accounts reveal that security forces and intelligence services maintained contact with families following arrests, surrenders and abductions. At a Colombo FGD, a woman whose brother was abducted in a white van in 2008 described how the TID and Army repeatedly visited them afterwards, and returned in 2012 and 2015 first demanding information, and then later asking if she had received a death certificate. Many others also noted how, despite the initial denial and refusal to document arrests, the police gave them instructions to collect death certificates and compensation, often against their will. The following submissions show the harassment families have faced upon refusing to accept compensation.

*"I have hidden inside my house due to the CIDs bothering. The moment I know they are coming, I go and hide, because they force me to accept the money. They tried to get my signature several times.... They also threatened us that they will label us as LTTE if we don't accept the money. But we refuse because we want to see our children."*

(Tamil mother of Surrendee at Kilinochchi, Northern Province)

*"On 26.7.1990 my husband was taken away from home... They took him inside the Army camp. They had also personally threatened and tormented me. 3 years later the CID came and threatened me to collect the death certificate. Since the CID had threatened, fearing for the children's security I went and obtained the death certificate."*

(Tamil woman at meeting in Trincomalee, Eastern Province)

35. A number of families also stated that when they sought death certificates, they were forced to sign that the disappeared were members of the LTTE, and were denied the certificates when they refused to do so. The forcible provision of death certificates and compensation reveal why many families, particularly in the North, have suspicion about receiving Certificates of Absence and Certificates of Death, and why some refuse compensation, even when they are in financial distress. It is critical that the OMP takes this into account and respond sensitively to families when they coordinate the provision of documents and reparations to affected families (See sections 7 and 9.1).

### 3.2. Interrogation, Torture, and Sexual Abuse of Relatives of the Disappeared

*“Those people who looked for bodies also became bodies.”*  
(Tamil mother in Vavunaithivu, Batticaloa, Eastern Province)

*“As my husband is always taken away, I garlanded the photo of my missing son. That time they came by an auto to shoot us, and were checking. Neighbours informed me not to stay and to run away somewhere. We ran helter skelter. They asked the neighbours whether my son was dead, and when they said yes, only then they left.”*

(Tamil mother at meeting in Trincomalee, Eastern Province)

*“[Interviewees] frequently made the connection between activities related to raising awareness of the fate of the disappeared and their subsequent abduction, detention and torture...”*

(Written Submission from justice seeking collective)

36. The intimidation and harassment of families seeking help from the police and State agencies were a recurring theme in consultations. Many Tamil participants from the North stated that the army had contacted them to come and visit their loved ones, only to interrogate them. Other participants narrated accounts of how they were arrested and tortured by intelligence services when they went looking for their children. One such account is presented below:

*“My son was taken. The CID told me to accept a death certificate. I refused. I was taken to the 4<sup>th</sup> floor and beaten up, saying that my son is in the LTTE. I still have the marks from that... When a case was filed, a CID person called [X] said ‘we mistakenly beat you up,’ asked me to withdraw the case, and handed over a cheque for 10,000 rupees. I was in the Welikada prison for a year due to my son’s inquiry. There they beat my head on the wall and did other cruel stuff. I still have injuries on my legs.”*

(Tamil mother at a Public Meeting, Mannar, Northern Province)

37. Some cases brought before the CTF revealed how acts of abduction drew in multiple parties within and outside the State, and that parties other than the State, with links to the State, have carried out the intimidation of families. The following account from a Tamil mother searching for her son illustrates this:

*“[X] told me he got to know that my son is in Kanakasanthurai and asked me to go there. I called them and I could hear the officer there saying: ‘if we show him now, we will be in trouble.’ That is because they have tortured my son (she starts crying). Now I am living with my sister in Jaffna. One day when I was at home, a person got off from the auto and called me by my son’s name, and asked me if I was his mother. My sister told him, ‘I am his mother’ and got into the auto.”*



*They took her to an empty space. There were 4 people from the EPDP and they were ready to shoot her. One person told she is not [X]'s mother, drop her back"*

(Tamil Mother whose son was arrested and disappeared in 2005, Kilinochchi, Northern Province)

38. Submissions also show a high incidence of extortion, where abductors have contacted families demanding ransom, both baiting them with promises to release their kin and threatening them to kill their loved ones if they didn't send money. In their desperation to find their relatives, some had lost large sums of money—some of it collected through loans, pawning family jewellery, the sale of land or borrowing. A mother from Trincomalee who believes her sons were abducted by the Navy described how much ransom she paid. She said: "After abducting, they call at all times in the night and demand money to release them... They ordered us to put 10 lakhs into the Account of one Khan." Yet her son was not released. Similarly, a participant at the Buttala FGD described how she received a phone call after her husband was abducted, asking for 3 lakhs, telling her not to breathe a word to anyone, threatening to "cut him up" if she does. Such accounts were found in submissions across the country.

39. Submissions also revealed a grave pattern of sexual harassment of women by the police and Government administrators when they went in search of the disappeared. In particular, women cited numerous incidents of being asked for sexual favours in exchange for information about the missing. Such harassment was raised in FGDs about the insurrections in the South as well as those from more recent years in the North and East, as the stories below show:

*"They threaten us saying: 'If you make a fuss, bad things can happen,' And a lot of bad things did happen in Manikhinna. Women got raped and abused. We realised the same fate would come to us if we persisted."*

(Sinhalese woman whose husband was disappeared in Kandy, Central Province)

*"Once again, if they say to me 'your husband is there, come without anyone knowing,' I will go. Because I have not seen my husband's dead body. Anybody will do the same".*

(Tamil wife of disappeared man, FGD on Disappearances Trincomalee, Eastern Province)

*"In the search for my husband, I have only my life and honour left intact. All the rest I have lost. They called me for questioning to the Joseph Camp, and I went with my sister-in-law. That was to a hotel. They questioned us individually inside closed rooms. They had taken away my phone too. Shaken and scared, I wrote 'good van' (nalle in Tamil) instead of 'white van' (wellai in Tamil) and came off. At the same speed we came, we paid for the lodge and returned by bus. They sold our phones, got drunk and danced on the road. We have no trust, Sir. We have no trust."*

(Tamil woman from FGD on disappearances, Trincomalee, Eastern Province)

40. A woman from Kurunegala remembered how when her mother went to the police station in search of her father whom they had arrested, the IGP told her: ‘even if your husband is not there, we are here.’ Similarly, the wife of a navy officer missing in action stated that when she went to the Grama Sevaka to collect a letter stating that she remained single, the Grama Sevaka said he will bring the letter to her house in the evening. The Vavuniya ZTF also noted that young wives or mothers of the disappeared were asked for sexual favours for the release of their abducted or arrested loved ones. These experiences have influenced the strong call by families of the disappeared and organisations for adequate female representation in the OMP (See section 6.4) and for a strong complaints mechanism (See section 6.7)

#### 4. The Aftermath of Disappearance: Social, Economic, and Psychological Impacts

*“My brother was disappeared in 89. My mother was distraught and died sick from worrying. He was the only one to get us out of poverty...They abducted one person. But my mother died of grief. My father died from grief. They destroyed our whole family. It amounted to killing us all.”*  
(Sinhalese woman at FGD on the Disappeared, Western Province)

*“The tears we cried, we added them to the great ocean and made up our minds.”*  
(Sinhalese wife of missing fisherman, at FGD in Kanthale, Eastern Province)

*“When you see us, you see people who are going about life, but we are living with extreme pain in our hearts unable to cry in front of our children. We cry when we walk on the street.”*  
(Tamil wife of surrendee, Mullaitivu, Northern Province)

*“In two years’ time, we won’t be alive. Parents like us can’t manage this.”*  
(Tamil father of disappeared woman, from Mullaitivu, Northern Province)

41. One after another, mothers, fathers, wives, and daughters of the disappeared described the devastating impact the loss of their kin had on their families and communities. Submissions underscore how abductions not only arrested the lives of the disappeared, but also reconfigured families, restructuring relations across generations. These impacts extended beyond families to larger collectives, paralysing whole neighbourhoods and villages. While the mandate of the OMP is primarily to investigate and provide answers to relatives of the disappeared, a critical component of its work will be to coordinate with other State offices, mechanisms and units to address families’ needs, to provide reparations, psychosocial care, legal support or livelihood support. Thus it will be required to account for these impacts on families and communities.

42. Submissions from participants about the multiple ways in which disappearances have restructured their lives underscore the vital point that the effects on families must be seen and

addressed in a holistic way, rather than separating out their social, economic, and psychosocial needs. This is critical, as families have experienced the cost of disappearances simultaneously on multiple fronts. For instance, a Tamil woman from Polonnaruwa whose husband and daughter were arrested together and disappeared told the CTF of the burdens she endured: She had four other children, and her abducted daughter had four children of her own. Following their disappearances, she had to raise 8 children by herself, eking out a living making string hoppers. Her story shows how disappearances have, at once, restructured generational responsibilities and had debilitating economic effects.

43. That enforced disappearances dismantled household economies and networks of care became clear in the accounts of women who spoke of how their expectations that brothers, fathers and sons would provide for them were shattered when they were disappeared. This forced numerous families into desperate circumstances where they couldn't provide the care they needed for their children and aging parents. For instance, a Sinhalese participant in Polonnaruwa who lived with her partner without being legally married when the LTTE abducted him spoke of how she had to send her children to a children's home while she worked in shops to earn money to raise them. Another poignant statement about such stark choices came from the brother of a disappeared man in Mullaitivu who said: "I have stopped looking for him. I can't handle it with my work." Revealing how the loss of income earners have deprived some families with the most basic necessities, multiple parents in Vavuniya stated that they didn't want reparations, only money for food until their children were found. A wife of an abducted man described how desperate her circumstances had become:

*"I used to rear poultry. Now I have cleaned out the hen cages, for me to live. If my husband had been there I would not have incurred so much trouble. When my husband was taken away I was 6 months pregnant with my son."*

(Wife of abductee, Valachchenai, Batticaloa, Eastern Province)

44. The submissions revealed that disappearances have had both immediate and long-term effects on families. Wives of recently disappeared men from the North described how it sent them spiralling into poverty. Mothers from the South spoke of the long shadow it cast on their lives, decades later, as they aged. A woman from Mannar articulated this point when she said, "The children who could have earned for us have been made to disappear." A similar statement came from the sister of two men who were disappeared in Trincomalee:

*"On 10.11.85 my younger brother was taken. Another younger brother was taken in 83...My brother was shot and killed and dumped at 10<sup>th</sup> Verugal. We don't know the plight of the other brother. I was the one who brought up both my brothers. I want my missing brother to be found. I don't have any income. If my brothers had been there, they would have cared for me."*

(Tamil Participant, Trincomalee, Eastern Province)

45. Like the participant above, the CTF met numerous families who had experienced the tragedy of disappearances not only once, but several times. Some said several relatives were taken together in village roundups or surrendered to the military at the end of the war. Others had loved ones disappeared at different periods of the conflict. For instance, at the Polonnaruwa public meeting, two Tamil mothers spoke of how they lost multiple loved ones: the first described how both her husband and daughter were forcibly removed from their house one night by the army; the second stated that she lost all three children after the army took them away at different times. Many participants from the East brought up such multiple events:

*"I lost my son in 1991 and my other son was taken in 2007, while in Muthur. On 2006/8/4 my Father and younger sister were martyred at the same time. Now I'm a lone tree."*

(Tamil mother, FGD on Disappearances Trincomalee, Eastern Province)

*"My 3 sons were abducted. All in front of my eyes... I have no one to help me. The remaining son was taken to Pankulam, beaten and tortured."*

(Tamil mother in Trincomalee, Eastern Province)

*"I got married. After three days, they abducted him in 1989... I know they were JVP... Then I got married again had two children; he was also disappeared."*

(Woman from Puttalam, North Western Province)

46. Many who spoke of disappearances had also experienced other tragedies. Many had also seen loved ones brutally killed. At the Oddusudan Public Meeting, a man who spoke to the CTF of his missing son, also mentioned that seven other members of his family died during the war.

#### **4.1. Consequences for Women**

*"Somehow, try to find my husband. All are considering us rather derogatorily."*

(Tamil woman at FGD on Disappearances Trincomalee, Eastern Province)

*"The society stigmatises the women who have been widowed.... Those women need a special system of law to complain. Going to the police is not a solution. We want something with civil public, like this. And it should especially include a woman. You can discuss certain issues with a woman face to face."*

(Sinhalese participant, wife of disappeared fisherman at Kanthale)

47. A large majority of those who came before the CTF were women, and their stories show how women have disproportionately borne the brunt of the social, economic, and psychosocial consequences of disappearances. Women across the country discussed their isolation, vulnerability,

lack of physical and financial security, and social stigma following the disappearances. Women in the North and East described how they suffered compounded effects of displacement, land loss, injury, and loss of loved ones. Wives of the missing from 88/89 spoke of the social pressure they received from families, first facing allegations from in-laws that they would immediately remarry, and later, blamed by relatives for not remarrying. A Sinhalese participant from Kandy stated that after her husband's disappearance, his relatives told her that her husband had taken loans from them, asking her to repay these debts. A Tamil participant from Kandy whose husband was abducted in a white van stated she hadn't recovered the money that people owed him, as they refused to pay her back, charging that her husband must be part of the LTTE if he was disappeared. Her account shows how the impacts of disappearance are exacerbated for minority women who face additional discrimination based on their ethnicity. Wives of MIA soldiers also spoke of the conflicts that had arisen between themselves and their husbands' relatives over distributing their husbands' salaries. Some, who had remarried were abandoned by their new husbands who left with their compensation.

48. Compounding these effects of loss, wives of disappeared men, both from the insurrection periods and the war, described the difficulties of raising children alone. A significant number of women, particularly wives of young men abducted during the insurrection periods, mentioned that they were pregnant when the event of disappearance happened. They spoke with great pain that their children had never seen their fathers. Ageing widows who had lost their husbands and mothers who lost children found themselves in precarious financial conditions in the late years of their lives. For all these reasons, it is vital that the OMP takes special measures to provide psychosocial, financial and institutional support for women whose kin have been disappeared.

## 5. The Office on Missing Persons (OMP)

*"Disappearance isn't the same as death. Families are searching for the truth. Revealing that truth is important."*

(Sinhala participant, Matara public meeting)

Q: *"So establishing this OMP is good?"*

A: *"Yes."*

Q: *"Some people say that this measure is to hunt out army soldiers."*

A: *"No, I don't think we can say that. I think these family members who are waiting to know what happened to their loved ones need a chance to know the truth."*

(Sinhala participant, Kandy public meeting)

*"If someone went missing, we would definitely want to find out what happened to him/ her. If we lose even a cat, how much do we look for it? We may not even feel like eating till it's found. Then how much more would we want to search for a missing person. If someone is missing, I'd*

*still be looking. So yes, no one would say no to this office. But we have to take our State situation into account. You can't do anything with the State."*

(Muslim participant, Kandy public meeting)

*Q: "What do you think about the OMP? It's going to be established as a permanent office. Do you think that is good?"*

*A: "Yes, it's good. What we say is this should not be just for one section – we're all Sri Lankans, and are as the children of one mother. So this mechanism should be there for everyone equally."*

(Participant, Kandy public meeting)

## 5.1 Response to the Rushed Passage of the OMP Bill

49. The current Government first announced its plan for an Office on Missing Persons in September 2015 based on the transitional justice principle of the 'families' right to know, to be set up by Statute with expertise from the ICRC, and in line with internationally accepted standards.<sup>17</sup> In May 2016, and whilst the CTF was currently undertaking its consultations, the Ministry of Foreign Affairs presented a 'concept note' on the proposed OMP to the CTF, followed shortly after by a de-briefing to members of civil society and a larger meeting with family members of the missing and disappeared.

50. The Bill titled 'Office on Missing Persons (Establishment, Administration and Discharge of Functions)',<sup>18</sup> was then gazetted on 27<sup>th</sup> May 2016 and the second reading of the Bill in parliament was advanced to 11<sup>th</sup> August 2016. Amidst protests by the joint opposition in parliament, the committee stage debate scheduled for 12<sup>th</sup> August, was brought forward and after amendments were moved the Bill was passed on the same day. The Bill certified on 23<sup>th</sup> August as the 'Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016', was gazetted on 26<sup>th</sup> August 2016.<sup>19</sup>

51. In response to prevailing concerns about the proposed OMP Bill and to inform the parliamentary debates on the Bill, the CTF publicly released an interim report titled 'The Office on Missing Persons Bill and Issues Concerning the Missing, the Disappeared and the Surrendered',<sup>20</sup> on 11<sup>th</sup> August 2016. The recommendations in this interim report were based on all written submissions received as at 17<sup>th</sup> July 2016 and FGDs and sectoral consultations conducted until 8<sup>th</sup> August 2016.

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<sup>17</sup><http://www.mea.gov.lk/index.php/en/media/media-releases/6178-slfm-hrc30>

<sup>18</sup><http://www.parliament.lk/uploads/bills/gbills/english/6016.pdf>

<sup>19</sup>[http://documents.gov.lk/files/act/2016/8/14-2016\\_E.pdf](http://documents.gov.lk/files/act/2016/8/14-2016_E.pdf)

<sup>20</sup>[http://media.wix.com/ugd/bd81c0\\_1872d48845bd45afaafa7813ce2c89a0.pdf](http://media.wix.com/ugd/bd81c0_1872d48845bd45afaafa7813ce2c89a0.pdf)

52. The CTF, in a statement<sup>21</sup> welcomed the passage of the OMP Bill into law, however raised concerns around the expedited passage of the Bill while the public consultation process was still ongoing. The interim report too makes the crucial point that ‘the lack of consultations impoverishes the design of the OMP in servicing the needs of those who will be using it.’<sup>22</sup> Submissions received by the CTF, aside from echoing the same frustration about the Bill being drafted prior to the conclusion of consultations, also questioned the Government’s ability to meet the commitment to engage in “broad national consultations with the inclusion of those affected and civil society, including non-governmental organisations, from all affected communities, which will inform the design and implementation of these processes, drawing on international expertise, assistance and best practices.”<sup>23</sup>

53. For example, submissions raised these concerns in the following manner:

*“Frustration at the failure to set in place the promised transitional justice mechanisms and fulfil the commitments made under the 2015 UN Human Rights Council Resolution on Sri Lanka must be balanced against complaints that the process underlying the establishment of the OMP, the first mechanism to see the light of day, has been rushed and failed to consult those most affected...”* The same submission noted that *“This urgency would only make sense if it were driven by a desire to provide speedy redress to families”*

(Email submission)

*...we appreciate the appointment of the Office on Missing Persons. However, we regret the lack of consultations conducted prior to the drafting of the Bill. We also want to note that the manner in which the first of the four transitional justice mechanisms promised by the Government had been introduced, has given rise to scepticism and a fear as to whether the remaining mechanisms too would be designed without due input from affected parties.*

(Sectoral submission made by an organisation)

*The sudden urgency shown by the Government in what appears to be a rushing through of a draft outline for an OMP and it being presented to cabinet within a short period of two weeks as stated by the foreign minister raises questions with regards to the Government’s commitment to a victim driven process as promised by the foreign minister both at national and international forums.*

(Group submission)

*Establishing transitional justice mechanisms in compliance with international standards is the principal of the four prerequisites in providing the UN Peace Building Fund. For that reason, the Sri Lankan Government put forward four mechanisms and went ahead and passed the Office on*

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<sup>21</sup>[http://media.wix.com/ugd/bd81c0\\_3583553d441741deb4bc548c37b5e9e5.pdf](http://media.wix.com/ugd/bd81c0_3583553d441741deb4bc548c37b5e9e5.pdf)

<sup>22</sup>[http://media.wix.com/ugd/bd81c0\\_1872d48845bd45afaafa7813ce2c89a0.pdf](http://media.wix.com/ugd/bd81c0_1872d48845bd45afaafa7813ce2c89a0.pdf) page ix

<sup>23</sup> A/HRC/RES/30/1

*the Missing Persons (OMP) bill in parliament. However, the bill was approved by the Cabinet before the National Consultation process could take place. Further, the reasonable concerns and recommendations put forward by the war affected people and the initiatives taken up by the Government seem to lack relevance. We wish to draw attention to the contents of the Interim Report of the National Consultation Task force on Reconciliation Mechanisms.*

(Submission by an organisation)

54. Aside from groups and organisations that expressed frustration at the establishment of the office prior to the conclusion of consultation, affected communities, at zonal level attending public meetings and FGDs too expressed similar sentiments. A submission from the North Western province stated: *“The consultation has been finalised. Only the Speaker’s sign is missing. What’s the point of talking about this?”* (Participant, Chilaw public meeting)

55. While there were persons who did not support the establishment of an OMP from the outset (for example, one mother in a public meeting in Kandavalai noted the establishment of such an office would only exacerbate the problem as the office would require the continuation of disappearances in order to keep functioning), the CTF was able to observe a general sense of relief about the establishment of the OMP- if only with the hope that it acts as a mechanism that takes on the search of family members who have disappeared.

56. The CTF continued to receive submissions on the issue of enforced disappearances, missing and the surrendees even after the adoption of the OMP Act. Many participants expressed disappointment regarding the failure of the Government to guarantee or incorporate recommendations provided to them through the CTF, by including them in the draft Bill or as amendments to the Bill in parliament. A sense of mistrust around the Government’s true intentions relating to the OMP was already apparent, with participants from the Western province drawing parallels to past failed mechanisms on the disappeared. They noted that they are not ready to trust the OMP and reiterated the importance of truth and justice (by way of an investigation followed by the perpetrator held to account) before they can have any faith in the OMP.

## **5.2. Summary of Recommendations to Amend the OMP Bill**

57. There were a number of suggestions, recommendations and comments received by the CTF on the proposed OMP. The interim report tabulated these recommendations as suggested amendments to the OMP bill. Annex 15 replicates this tabulation and indicates the status of their incorporation into the OMP Act.

58. At the time of writing, only 3 amendments made to the OMP Bill were reflected in the OMP Act. These pertain to the general powers of the OMP (section 11a), powers of investigation (section 12f), and the power of the OMP to raise funds (section 21). And indeed, **none of the**



amendments adopted were reflective of suggestions coming out of the CTF's public consultations. Instead, some of these *counter* the essence of recommendations that asked for clarity and explicitness in the Act.

59. In summary, recommendations for the amendment of the OMP bill as reflected in the Interim report related to:

(a) **The name of the proposed office:**

The number of submissions that expressed their frustration at the name of the office illustrated that it is a very emotive issue for many affected families. While understanding the rationale for using the term 'missing', i.e. in order to ensure that persons whose fate and whereabouts are unknown for reasons other than due to enforced disappearances are not excluded from the OMP's mandate, submissions urged that they would like the name of the office to acknowledge the deliberate nature of the act of being disappeared. Submissions therefore suggested that the name of the OMP be changed to include 'Involuntary or Enforced disappearances', or add 'Forcibly disappeared and Surrendees' to the existing title.

(b) **Definition of 'missing person'**

It was submitted that the definition of missing person be brought in line with that of the International Convention on Enforced Disappearances (i.e. recognise the enforced nature of disappearances) while also recognising that non-state actors may also be perpetrators of enforced disappearances.

(c) **Mandate**

While appreciating the expansive scope of the mandate, submissions pointed out that in some cases ascertaining whether the disappearance relates to the armed conflict, political unrest or civil disturbance- as defined in OMP's mandate- may only be possible after an investigation. Submissions therefore requested that there is provision 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.

(d) **Aims and powers**

- *Establishment of a database*- To provide the OMP with power to access, collate and archive all information held by a range of governmental and non-governmental agencies.
- *Investigations*- Submissions listed out the investigative powers the OMP must have in order to effectively carry out its mandate in a community & victim-centred manner, while also listing out points about investigations that relate to initiating investigations, the manner of conducting investigations and truth seeking including enabling a flow of information

through a targeted public campaign, criteria for selecting investigators, the prioritising of investigations as well as the time taken for investigations.

- *Excavations and exhumations*- Creation of a forensic unit, OMP's role in Magistrates' inquiries and legal reform in order to handle cases of mass graves.
- *Provisions relating to the confidentiality regime*- Indicating clear identifiable criteria for sharing of information, especially with prosecution.
- *OMP's role in carrying out/enabling/facilitating prosecutions*- Calls for a mandatory (as opposed to discretionary) duty of the OMP to refer all cases to prosecutions; Calls for a prosecutor within the office; Recommendation that the prosecuting authority must be privy to all information with the OMP in relation to the offence.
- *Witness and Victim protection*- Called for a clarification of the role and relationship of the Victim and Witness Protection Authority established under the Assistance to and Protection of Witness and Victim Protection Act and the OMP's Victim and Witness Protection Division, highlighting inadequacies of the former.
- *Issuance of reports to families of the missing and disappeared*- Calling for mandatory provision for sharing of information with family members, to make provision with regard to frequency with which these reports are issued, and clarification of OMP's relationship with the RTI Act.
- *The Certificate of Absence*- Recommendations to review the title of the Certificate, to extend the period of validity beyond two years, to include a provision to cancel any Certificate of Death already issued in place of a Certificate of Absence for families who are uncertain of the fate of their loved ones.
- *Recommending reparations*- To establish a unit within the OMP to handle reparations, as well as list out types of reparations.

(e) **Structure**

- *Head office and regional offices*- Calling for mandatory establishment of regional offices.
- *Additional units*- On forensics, reparations, communication and outreach, psychosocial, complaints on the OMP as well as an oversight, advisory or monitoring body.

(f) **Members**

- *Appointment process*- Recommending a public call for nominations with sufficient time provided for responses.
- *Composition*- To be reflective of the pluralistic nature of Sri Lankan society, including gender, ethnic, regional and representation of families. For members to have previous experience and qualifications relevant to the carrying out OMP's functions.
- *Role, function and status of members*- Clarifying their nature of interaction with affected persons, function as executive or governance role, membership on full-time or part-time basis and security of tenure.

- (g) **Staff**  
Eligibility, qualifications and competencies to represent gender, language proficiency, family members of the missing and disappeared.
- (h) **Women**  
To issue gender-sensitive policies and guidelines.
- (i) **International involvement**  
To make provision for international involvement in OMP's membership, as staff in specific functions and to fulfil an oversight function.
- (j) **Relationships with other transitional justice mechanisms**  
To clarify the relationship with other TJ mechanisms.

For the sake of brevity and the avoidance of repetition, please refer to the interim report for full details of these recommendations.

## 6. Operationalisation of the OMP

60. Noting the difference in the Government's approach to operationalising the Right to Information (RTI) Act and the OMP, a submission stated that the OMP Bill (now Act), does not contain any provision as to when the law will come into effect, as it gives the Minister the discretion to decide when the law will come into effect. The RTI Act, on the other hand, provides that the law is to come into effect within 6 months of its passage through parliament. Highlighting the rushed passage of the OMP bill at the cost of comprehensive consultations, the submission urged that the OMP Act becomes operational as early as possible, of course taking into account other factors such as criminalising disappearances.

61. A number of recommendations speak directly to the operations of the OMP. Despite the passage of the Act, it is evident that a number of written and oral submissions received by the CTF particularly from family members remain relevant and must be taken into account in the operationalisation of the OMP. Submissions further stated that *"The OMP must engage throughout its tenure in ongoing consultations with families of the disappeared and greater civil society, especially since its creation did not involve extensive consultation with these important sources of legitimacy and information"* (Submission by an organisation). Not only will these suggestions and recommendations on operationalising the OMP strengthen the effectiveness of the office and make it more responsive and acceptable to the affected groups, it will also relieve the distress and compounded suffering associated with the callous and indifferent encounters family members have so far faced at the hand State agencies when searching for their loved ones.

62. The CTF urges the membership of the OMP in particular to read through carefully the recommendations for the OMP listed out in great detail in the interim report and wishes to draw their focus to the sections below, dealing with operational and functional aspects of the OMP, to make the office survivor/victim-centred, as envisaged and enriched by the process of public consultations.

### **6.1. Membership, Staffing and Operation**

*“The competency, political independence and ethnic neutrality of the members of the OMP recommended by the Constitutional Council and appointed by the President, along with other staff of the body, including investigators, researchers, and translators, will be crucial to the success of this effort.”*

(Submission by an organisation)

#### **6.1.1. Appointment and removal of members**

*“If it’s a membership of 7 persons, there definitely has to be a representative from the MIA families... they shouldn’t be some Presidential appointee. Someone who we can trust to bring up our problems.”*

(Participant, FGD, Matara)

*“Get people to nominate candidates for OMP members.”*

(Participant, Public Meeting Southern province)

*“Include the victims and their loved ones, their representative organisations, and the civic organisations that advocate on their behalf as full time functionaries. They will then be able to co-opt any other technical instruments and initiatives that may be required.”*

(Web submission)

63. Submissions suggested that the Constitutional Council should make a public call for nominations specifying the criteria and qualifications for membership in the OMP with sufficient time and opportunity given for families and the public to nominate suitable persons. A submission expressing regret that the Bill did not expressly require a fair balance of female and male members, requested that this should be addressed by the Constitutional Council in its public call, by encouraging highly qualified women to apply and ensuring that the call is brought to their attention. Submissions noted that the call should be made with a minimum period of two weeks for nomination. They suggested that once nominations are received, a shortlist of nominees, comprising approximately 15–20 persons, should be made public to enable families and the public to comment as part of a vetting process. The list was then asked to be reduced to the number of positions in the OMP on the basis of comments and views received from the public and on the

judgment of the Constitutional Council, which is forwarded to the President and also made public. Submissions noted that it would be useful to have at least four of the seven members function as full-time members and the rest of the members be available for at least fifteen working days a month. Submissions further spoke about ensuring security of tenure of OMP members in order for them to be able to perform their responsibilities without hindrance or political interference.

64. A submission, elaborating on security of tenure of OMP members noted that while section 7(3) contains a number of grounds for removal from office, requested that this should be *“applied strictly in accordance with the requirement in international standards that persons should not be removed during their term of office except on grounds of incapacity or behaviour rendering them unfit to discharge their duties and pursuant to procedures ensuring fair, impartial and independent determinations.”* (Submission by an organisation)

### 6.1.2. Language

*“Speak our language. Listen to what we’re saying.”*  
(Written submission from a female in Mannar)

65. A large number of those who made submissions to the CTF emphasised the need for competent OMP members and staff with Tamil language capacity- a notable flaw in previous Commissions of Inquiry (COIs). The inability to receive and share information in the language of their understanding not only increased the sense of alienation and frustration experienced as a result, but also seriously impeded the accuracy of sometimes even in the most basic and fundamental of information – such as when taking down the names of those who have been disappeared. To avoid such misrepresentation of crucial information, OMP must employ competent personnel with good language skills and equally good translators, however some submissions spoke of the competency to respond to and interact with those affected and their families without having to resort to translations on a regular basis. Another key operating principle that was proposed is that the OMP should be able to function in all three languages. All communications – both conversation and correspondence – must be in the native language of those appearing before the OMP so they are able to fully comprehend its contents. They said:

*“The OMP must operate in all three languages; Tamil, Sinhala, and English. Families who wish to engage with the OMP must be able to do so in their preferred language. Procedures for families to follow (such as filling out forms and selecting from available options) should be communicated in all three languages. Families should not be detrimentally affected due to language.”*

(Group submission)

### 6.1.3. Contextual understanding

66. Submissions highlighted that OMP members and staff must possess understanding of the context in which the disappearances took place. In a number of accounts brought before the CTF, this lack of understanding of the complexities of the conflict context undermined the ability to share relevant information and proceed with follow-up, in a meaningful manner. Submissions also noted that knowing the areas in which families reside in and being able to visit them at their homes will also create a better understanding of the specific needs of the families and the circumstances of the disappearance and make the OMP more accountable to those they serve. To this end, Families' involvement in the mechanism is described in a section below.

### 6.1.4. Sensitivity, demeanour and qualities

67. In a number of submissions, participants described the requisite manner and personal qualities of OMP members and staff to ensure that families are provided with the appropriate space and support during their engagement with the OMP by 'people-friendly', dedicated members and staff. They also asked that the appointees be of high integrity and have the respect of the community. The large majority of submissions across the board, from all parts of the country urged that there be no members or staff in the OMP who are even the least bit politically affiliated or partisan (for example, one submission: *"They do whatever the politicians say if their own needs are fulfilled. So I am in no way agreeable to involving politicians in this endeavour. There should be no politicians."* (Participant, Public Meeting, Kandy). Submissions also spoke of trustworthy and neutral persons who will protect the privacy and confidentiality of all communications, testimony and data.

68. Describing the demeanour expected of those working in the OMP, participants said they need to recognise the significance of enforced disappearance and its devastating impact on families and appreciate the enduring drive of family members to seek the whereabouts of their loved ones. Participants asked that those appointed must be able to respect the opinions of those coming before the OMP. As explained in submissions,

*"The demeanour and approach of the OMP staff will be crucial. The overriding purpose of the OMP should be to assist a family find their missing or disappeared family member. Families should not feel judged, treated like criminals, or dismissed when engaging with the OMP and its staff. The OMP should operate with a focus on assisting victim families and create a caring, accepting, and respectful environment for the victim families."*

(Group submission)

*“When the mechanisms are being operationalised, staff should be understanding and empathetic to our feelings.”*

(Participant, FGD, Trincomalee)

*“The OMP should be honest, open... they must understand the feelings of the affected people... Those who are favourable to the Government must not be members”.*

(Participant, FGD, Mannar)

#### **6.1.5. Diversity**

69. Another point repeatedly encountered in the submissions was the need for diversity in the backgrounds of OMP personnel. The need for multi-ethnic, religious representation reflecting the pluralistic nature of Sri Lankan society was made, for instance at the public meeting in Kuchchaveli, a participating male whose 16-year old brother went missing in 1986, said: *“the OMP should not be biased, it must have all communities”*. Submissions also highlighted the need for staff and members from all affected regions, with a good community and communication network. Submissions argued that the different perspectives of those such as retired judges, lawyers, doctorate holders, academics, “neutral” religious leaders, other professionals, gender activists and civil activists would allow for a more nuanced and better informed documentation, investigation and response to the cases brought before the OMP.

#### **6.1.6. Staff and specialists**

70. Submissions received by the CTF recommend that OMP should stipulate clear criteria for recruiting staff/personnel at all levels, as well those who will not be eligible for recruitment. They state that staff should have the requisite professional qualifications and experience, relevant to their particular position/unit. Submissions, from across the country urged the importance of OMP being equipped with various experts and technical specialists required to carry out its mandated tasks. These include, human rights experts, personnel with previous experience in fact finding, investigations and working with the families of the missing and disappeared, technical specialists to obtain information, assistance and training in forensics, database management, database privacy etc., to carry out investigations, for witness and victim protection, to provide psychosocial support and to perform an oversight/monitoring role.

#### **6.1.7. Vetting of personnel**

71. Submissions also urged a vetting process for both members and staff of the OMP. They urged that *“offenders accused of sexual and gender based violence are not part of these processes”* (Submission by an organisation) and that *“OMP staff should be carefully vetted to ensure they are trustworthy and do not have any prior record of harassment, intimidation, or violence. They should be*

*persons who can be trusted to protect the privacy and confidentiality of all communications, testimony, and data. They should be known for their neutrality*” (Submission by an organisation). Submissions went on to suggest that persons who have been or are implicated/held responsible for disappearances or being complicit by way of denying, justifying, or covering up the crime in the past in any local and international fora, persons who are or have been members of the security forces or armed groups and persons who hold or have held political office, must not be involved in the OMP. While a majority of submissions explicitly rejected the idea of having those militarily involved within the OMP (for example a web submission stated: “*Definitely not military personnel or politicians*”), some submissions suggested that their inclusion is necessary to address the perception that the OMP was established only to service the North and the East of the country.

#### **6.1.8. Confidentiality**

72. In light of section 12(c)(iv) and (v), the latter of which empowers the OMP to ‘establish a process to accept information on the condition of confidentiality’, submissions noted that the OMP must provide clear guidelines and limitations to the operation of the confidentiality clause, to clarify if confidentiality will extend even in cases where there is material to suggest that a crime has been committed. On this point, a submission recommended the OMP should clarify that such agreements will exclude information relating to crimes under international law which will be shared with criminal investigators.

73. Submissions further suggested that only information regarding the identity of the person providing the information be withheld from the family if confidentiality is explicitly requested, and not the information itself.

#### **6.1.9. Witness and victim protection**

74. While noting a number of inadequacies in the Assistance to and Protection of Victims of Crimes and Witness Protection Act, submissions generally welcomed the division within the OMP to carry out this function, however made reference to some aspects that will be useful when operationalising it in terms of sections 13(1)(g) and 18. Submissions expressed general fear and suspicion regarding providing testimony, and specifically mentioned that they did not trust State intelligence personnel or the Police. Submissions also indicated that this division should be required to function independently from the AG, IGP, and TID and be staffed with members of civil society, Human Rights Commission Sri Lanka, and international human rights observers. The OMP must therefore pay due heed when appointing personnel responsible for implementing victim and witness protection. Furthermore, submissions called for the unit to guarantee personal safety as well as protection from any societal backlash, especially for those affected and witnesses who share confidential information. The submission recommended that members of the community can be mobilised to help ensure this.



## 6.2. Families' Involvement

*"If there's going to be an office set up to look at disappearances, I want to recommend that they appoint representatives of family members of the disappeared and those who actually faced these issues, to it."*

(Participant, FGD, Hambantota)

*"It is a grave mistake to dismiss victims and family members, as being incapable of providing input into this 'technical exercise' on account of their lack of knowledge or a heightened level of emotional involvement that would compromise their ability to effectively engage. Arguably, victims and families may not have specific input on, for example, whether or not foreign experts should be involved in certain technical aspects of the OMP, but they bring what none of us can to the table – years of experience in engaging State mechanisms in a hostile and challenging environment on the issue of disappearances."*

(Email submission)

75. In stark contrast to previous Government mechanisms established to inquire into the missing and the disappeared, where Presidential appointees and public servants carry out mandated tasks, submissions to the CTF envisage a more proactive role for families of the missing and the disappeared, in the OMP. An email submission also noted that a *"purely State-led top-down initiative would be alienating and distressingly reminiscent of the failure of previous State/Government initiatives to inspire confidence amongst families of the disappeared."* Furthermore, it elaborated that representation is *"crucial at a time when the country is undergoing an attempt to transform aspects of the conflict, but crucially, methods of governance. A high-handed approach to victims would undermine the essence of the democratic politics that was promised or at least wished for following the political transformation in January 2015."*

76. An overwhelming majority of submissions highlighted the participation of families in the OMP- from all affected groups in all parts of the country, including but not limited to the North, East and the South- as paramount. Participation and engagement of families, submissions urged, must extend to not only as members and staff, but also in various other forms. Families involvement was envisioned in a monitoring/advisory capacity in the proposed oversight body, as well as in specific functions such as in assisting investigations of detention centres, in monitoring gravesites and excavations. It is noteworthy that family members, as opposed to civil society groups, tended to highlight a more proactive role for themselves in activities of the OMP. Furthermore, participants from both Kilinochchi and Mullaithivu urged that families should be involved in the tracing and investigating process, where they would, with international supervision, be able to take part in investigation of camps and other detention centres. Submissions also specifically named

family members of ex-cadres who have disappeared as those who might have information on and be able to assist in investigations.

77. Groups of affected persons were also prepared to take up tasks to assist the OMP by way of checking forms and any output of the OMP. Individual submissions saw the employment in the OMP as a form of reparation.

78. The point was also made in the submissions that there should be clear guidelines on involvement of family members in cases where there is a conflict of interest.

### 6.3. International Involvement

*“There should be direct involvement of affected people and the international community in the office. The officers involved should be righteous and truthful. There should be no involvement of politicians in the OMP.”*

(Participant, FGD, Vavuniya)

*“Respectful local and international members.”*

(Web submission)

*“If we need the assistance of the international community to resolve this issue, then we can involve them also.”*

(Participant, Ruwanwella FGD, Sabaragamuwa)

*“Political interference shouldn’t take place. Undue pressure shouldn’t be exerted. If foreigners are to come, they should come without any conditions. An honest individual who is accepted by everyone, and thinks of the country should be in this process. People should be appointed according to a process stipulated in law. Educational qualifications are important and this individual shouldn’t be appointed based on the fancy of the Government. It should be a just man with social standing who has an understanding of the law. That individual also requires protection. There may be attempts to influence this individual or his/her family.”*

(Participant, Eheliyagoda FGD, Uva)

79. A majority of submissions favoured a level of international involvement in the OMP, while a minority felt there shouldn’t be any foreign involvement in the OMP. Those that see internationals as necessary, felt internationals are necessary as members, staff and in order to provide technical/expert advice and to fulfil an oversight function. The need for international involvement in investigations, victim and witness protection and the forensic unit was also specifically mentioned, not just in terms of legitimacy but also expertise. Aside from calls for international

involvement in the OMP by participants from the North and the East, it was a significant point raised also by families affected by disappearances in the South, including families of MIA soldiers who recommended international forensic expertise in OMP's investigations.

80. An expansive interpretation of the phrase 'any person or organisation' as seen in section 11(a) of the Act (which 'makes provision to enter into agreements with any person or organisation in order to achieve its mandate') is strongly called for by submissions received by the CTF at public consultations, given the lack of trust in the Government to carry out functions of the OMP. Although diluted by way of an amendment moved to the Bill in parliament, the Act does not remove OMP's power to involve international agencies and individuals at various levels of the OMP. These include: as members of the OMP, to provide information, to provide technical expertise, support and training (in forensics, database, database privacy), to carry out investigations, for witness and victim protection and to perform an oversight/monitoring role.

81. Submissions called for qualified foreign individuals known for their integrity, independence and professionalism appointed by the UN, through the UNWED or OHCHR, should form half of the membership of the OMP. They went on to state that without international involvement it will be *"extremely difficult for victims to place faith in the OMP and that it is difficult to conceive how the OMP made exclusively of Sri Lankans... will have the moral and practical courage to enter camps and prisons and properly investigate alleged acts of disappearance."*

#### 6.4. Gender

*"All OMP members should be gender-sensitive or they must be trained to deal with gender-specific issues, since large number of survivors who would engage with OMP are women."*

(Submission by an organisation working on Women)

82. Since the majority of those who conduct the search for their loved ones are women, it is necessary to ensure that women constitute a significant part of the OMP. Submissions called for female representation *at all levels*, including as members of the OMP, as staff, in the recommended oversight body. This will contribute towards making complainants less vulnerable to harassment and exploitation— as has been their experience with previous State mechanisms in the past—and indeed help to create a safer space for the complainants, thereby removing a considerable source of stress for families.

83. Submissions also called,

- To ensure that staff at all levels must include at least 50% women (some submissions asked for a larger female to male representation ratio in staff)
- For a mechanism whereby the OMP offers women support for various livelihood and other activities through the participation of women field officers

- To prioritise gender concerns when mobilising resources for the OMP
- For gender training of staff
- To ensure that a conducive environment is created so that women who access its services feel comfortable and at ease in providing their statements.
- To ensure that women engaging with the OMP are reimbursed for associated costs
- To ensure provision of child-care facilities to accommodate children who will accompany adults to the OMP (submissions urged sensitivity and special attention to this section, specifically highlighting needs of those engaging with OMP, such as a room for breast-feeding mothers)
- To ensure that the reports that are prepared by the OMP dedicate a chapter to capture the experiences of women who have accessed the services and remedies that are provided by the OMP

84. It is recommended therefore that the OMP puts in place gender-sensitive policies, rules and guidelines in the operation of the OMP.

#### 6.5. Location of Offices

*If they are designing offices, they should plan for offices at the district level. We have kids to look after and without a husband we live in great difficulty. We're not able to go to Colombo for everything.*

(Participant, FGD with disabled soldiers, Matara)

85. Given that the OMP Act allows for the establishment of regional offices (section 3(3)), setting up such offices, as specified in the recommendations, would serve to alleviate difficulties that impede the search for family members. Submissions noted the importance of establishing a number of regional offices in its early stages, to reach out to all communities and assist those affected and their families to engage in the process. Having to regularly travel back and forth to Colombo to the various Government agencies has left a lot of families exhausted and financially constrained. Some participants spoke of having to take loans in order to finance their visits, leaving them in an additionally precarious and vulnerable situation of indebtedness.

86. For this reason, accessibility to regional offices was valued highly, with many submissions from all over the country, making the case for location of offices in areas well-served by public transport, where those making complaints 'can come and go without fear.' In some cases, specific locations/towns were identified based on the volume of cases and accessibility of families- for example, in Trincomalee, Ampara, Vavuniya, Kilinochchi, Mullaithivu. Some submissions even recommended offices in each village, divisional, district or provincial level, and even at local kovils, temples and mosques for new registrations. It was also submitted that OMP's Head Office should be located in the North- all illustrating the level of accessibility perceived as necessary by affected

groups to engage with the OMP. Recommendations also included having OMP officers at existing Divisional Secretary offices. There was general consensus that locating the offices in or close to areas with high incidence of enforced disappearances would help with investigations and with understanding the context in which loved ones were taken away and were disappeared. Submissions also requested proactive engagement from regional offices, by dispatching field officers to families of the missing and the disappeared without placing the burden of follow-up solely on them.

## 6.6. Consolidation of Data and Database

*“The first task of the OMP should be to analyse the evidence that already exists. The OMP should not request additional information from families relating to existing victim files, request information from the public, or conduct field investigations until the existing evidence is analysed and rationalised. In this first phase of the OMP, the only new information it should accept should be completely new cases of missing or disappeared persons. That is, cases that have not previously been reported to any Sri Lankan Government mechanism (including Commissions of Inquiry, the HRCSL, the Police, and other investigative mechanisms into missing and disappeared persons).”*  
(Group submission)

*“The ICRC and HRC also need to let us know what they know... Need to identify what happened, where it happened etc., Everything needs to come out, only then will it not happen again. They can't cover up what has happened or even bigger problems than this will happen.”*  
(Participant, FGD, Polonnaruwa)

*“We go everywhere they tell us to go to register our complaint. Commissions, Police, ICRC, the list is endless. Then we go to various camps and police stations. We continue to go everywhere with the hope we will find them... We have begged for money just to get photocopies, how many photocopies... all to submit to various people in the hope of getting our children back.”*  
(Participant, Public Meeting, Kandavalai)

*“Check from an available list, who are left in the detention camps. Then make public the list of missing persons and officially accept that they are missing.”*  
(Web submission)

87. Several submissions stated that the preceding series of Government mechanisms to address the issue of the missing and the disappeared would already have within its possession, valuable information that will assist the work of the OMP. Given that the main purpose of the OMP is to clarify the fate of those who have disappeared, having access to various sources of information, submissions noted, must be treated as critical. The submissions call for the Government to utilise

this data, based on sections 10(e) and sections 13(l)(h) of the Act.<sup>24</sup> This measure is expected to avoid duplication of efforts taken already by mechanisms such as COIs to document complaints and information relating disappearances, and to also avoid re-traumatisation of families of the missing and the disappeared who have appeared before COI after COI seeking answers and closure.

88. To consolidate this information to create the database, it was requested that the OMP approach:

- All Government mechanisms- COIs and units created to address disappearances
- The Human Rights Commission of Sri Lanka
- The National Child Protection Authority
- Sri Lanka Police
- Tri forces
- Political parties and representatives
- Non-governmental organisations 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
- IDP camp records
- Rehabilitation centre records
- Detainees lists
- Surrendees lists

89. Submissions recommend that the OMP procure through the above sources, information provided to them on each case- such as copies of documents etc. and not just the basic details of the case. Submissions also suggested creating individual files on affected persons for better organising the case-load, to establish a line of communication with families whose cases are being considered by the OMP, and to create an archive of material collected during the course of tracing and investigations since, as one submission put it, ‘recording stories of the families is important. It is part of the history of the Tamils.’

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<sup>24</sup> Provides for collating ‘data related to missing persons obtained by processes presently being carried out, or which were previously carried out, by other institutions, organisations, Government Departments and Commissions of Inquiry and Special Presidential Commission of Inquiry and centralise all available data within the database established under this Act’, and making the OMP duty bound to ‘to create, manage and maintain a database which will include all particulars concerning missing persons.’

90. Submissions also recommended that a version of the database be prepared to be placed with the Department of National Archives for public access of documentation and archival of historical information that will be gathered: *“It should be duplicated and one set of documents should be placed in the Dept. of National Archives. (Web submission), Archive such information and make it accessible to the public via internet and traditional spaces.” (Web submission)*

## 6.7. Additional Units

*“The functions of the office should include giving credible information regarding the missing people, providing security, providing counselling services to affected relatives, providing compensation from the date of disappearance to now and giving livelihood assistance which are not to be considered as the compensation for the lives of the disappeared.”*

(Participant, FGD, Jaffna)

91. The Act empowers the OMP to create new units in section 11(e): ‘to establish from time to time, and in addition to those Units and Divisions specifically mentioned in this Act, such Committees and/or Divisions and/or Units as are required for the effective administration and functioning of the OMP, and shall also have the power to delegate such powers and functions as are necessary to such Committees, Divisions and Units.’ As such, the OMP could implement the recommendations proposed by participants on the structure of the OMP by establishing the units outlined below:

- **Psychosocial Support Unit**

92. An explicit recommendation made in the submissions before the CTF was to create a Psychosocial Support Unit, to ensure that affected persons and families have access to appropriate psychosocial support, including group support and clinical psychological services. Submissions stated that families should be offered psychological assistance either *via* the unit or separate referrals to psychologists who would meet affected families on a *pro bono* basis. Submissions also pointed out the need for specialised psycho-social training to carry out this task.

- **Forensic Unit**

93. The OMP will benefit from a Forensic Unit with a mandate to identify those affected and return remains to families, which should work closely with the families of the disappeared in developing a database of *ante-mortem* data and in exhumation of graves. A submission stated: *“To meet international best practices, forensics work does not start with DNA, but instead with a comprehensive database of ante mortem data. This data allows forensics experts to draw correlations and suggest hypotheses about who the remains in mass graves may be. Under an investigative-led approach, families are at the center of the process of gathering ante mortem data, and DNA is used only later to corroborate results.”* The unit should collaborate and coordinate with the other branches of the OMP to consider issues of compensation, death certificates and psychosocial support.

- **Reparations Unit and Reparations Fund**

94. Although as it stands the OMP is only given the power to recommend reparations to be administered through the relevant authority to grant reparations (section 13(1)(f)), submissions urged that the OMP should itself have an Interim and Final Reparations Unit in order to avoid a situation where affected families are subject to retelling the tragic details of their story to a number of authorities. Submissions suggested that this unit could either include personnel from the relevant reparations authority from the outset of OMP's operations or in addition to the dedicated Office of Reparations envisaged by the Government, the OMP should be mandated and structured to provide reparations, as a mechanism specialising on missing and disappeared persons. Submissions requested that the reparations fund within the OMP should be created within four months of the Office's establishment and resourced from the National Budget whilst reserving the right to raise independent funds.

- **Advisory or Monitoring Body**

95. The lack of faith in Government mechanisms has been consistently expressed by families of the missing and disappeared. Submissions request a body/bodies to perform an oversight function of the OMP, particularly at the district level. It is expected that this body would regularly review the work of the OMP and make its findings public, suggest improvements to the structure and processes of the OMP and be partly composed of rotating family members of the missing/disappeared from different ethnic backgrounds, geographical areas and time periods when incidents occurred, and include local and international experts, experts on gender and representatives from local women's groups and organisations working on disappearances. There should be continuous consultation with the affected and organisations working on disappearances in order to avoid mistakes and help build trust. The interim report also lists out the recommended composition of this unit.

- **Complaints Mechanism**

96. There should be a mechanism to make complaints against OMP members of staff who behave insensitively or inappropriately towards families of the missing and disappeared, especially where the affected are women. The OMP should take immediate corrective action based on these complaints received. A submission indicated this unit to be responsive to the feedback of those who engage with the office: *"there must be a mechanism for families to communicate their concerns on the practical working of the OMP and for these concerns to be considered and internalised."* (Email submission)

- **Communications and Outreach Unit**

*"To ensure public trust and confidence in the Office and ensure the engagement of victims and their families, the Government should develop and launch a public outreach campaign as soon as possible which includes addressing some of the criticisms regarding the process to date and concerns about the content of the Bill. As soon as the Office is established, it should develop an on-going*



*outreach strategy to inform victims and families from all sectors of Sri Lankan society about the work of the office, its strategies and how victims and their families can engage with it. Family members of victims who are active on enforced disappearances have advocated appointment of victim representatives to work with the Office to support this engagement.”*

(Submission by an organisation)

97. This unit will be responsible for regular communication with families and also raise awareness of the OMP. This unit will also support investigations by way of crowdsourcing information/witnesses on cases of the missing and the disappeared. There were submissions that called for a transparent database of missing persons to be made available on the web. (Web submission). Submissions also requested that a dedicated unit of professionals who are sensitised to the needs of families to carry out this function.

## 6.8. Investigations

*“If you’re ready, take us directly to camps so we can search for those persons. That will give us chance and hope.”*

(Participant, FGD, Mullaitivu)

*“The missing children are kept secretly in Camps. Secret camps still exist. Recently evidence for one had been found in Trincomalee and cases are pending in the local courts. In one day all the secret camps and army camps must be searched.”*

(Participant, FGD)

*“We’ve heard that there’s a massive detention camp like a big hole, in Anuradhapura. Apparently a lot of those who disappeared are held there. If possible, please show us even a photo if our sons are alive? Doesn’t matter if they’re disabled or without limbs. If they’re alive that’s enough. That will be a huge relief.”*

(Participant, FGD, Western province)

*“OMP must have the power to investigate Police investigations.”*

(Participant, Public Meeting, Matara)

98. Disappointed by the lack of follow-up and investigations through previous mechanisms appointed to search for the disappeared, participants expected the OMP to be equipped with a strong investigation arm. Submissions, particularly from organisations, urged that investigations are closely followed by criminal prosecutions of any wrong-doers. The submissions suggest that investigations by the OMP must be informed by the context within which the disappearances took place; the time lapse between the incident and investigation; and the extent of evidence relating to

disappearances already available—within communities, families and organisations working on this issue—but which may not be recorded in official complaints.

99. Families of the missing and the disappeared making submissions before the CTF were enthusiastic to provide information which could be useful in investigations such as links and patterns related to history and context and responsibility for acts and patterns of disappearances stressing the need to facilitate witness testimonies. Submissions alluded to cases that had not been taken up for investigation, despite family members and other witnesses providing considerable evidence, including the identity of the individuals who had abducted or arrested the family member. The sense of desperation and urgency with which they offered to assist the OMP was proof of families' unwavering hope that their loved ones are still alive. Participants from the North and the East listed out detention sites in Palali, Kathirkamam and Trincomalee, and alleged to secret detention centres, in Kadirgamam (Kataragama), Pulmottai and the Maldives, Trincomalee and Verugal. Participants further called for an investigation into officers who were operating Omanthai camp, where a number of those who surrendered at the end of the war are alleged to have been disappeared.

100. Participants from the Southern zones were keen to provide information on disappearances during the insurrections and on servicemen MIA with equal ambition. At the same time these participants flagged the need for investigations to strategise in a way that enables investigations where the availability of evidence is minimal due to significant lapse of time. In the case of servicemen MIA, it was submitted that it may be necessary to interview LTTE cadres who are in custody, or who have been rehabilitated, as well as certain politicians, in the effort to find the truth relating to the fate of these servicemen. It was submitted that a lot of family members of servicemen still believe that they are alive and are living in camps in India, and they require closure through truth. These submissions too spoke of OMP's responsibility to go beyond the investigation of individual cases to understand patterns and the larger context within which these incidents took place. The need to offer an amnesty as an incentive to obtain information also came from the Association of Families of Servicemen Missing in Action.

101. While submissions spoke of OMP's ability to prosecute perpetrators or undertake criminal investigations with a view of enabling prosecutions (see section on link to judicial mechanism), some submissions made the point that they are prepared to forego punishment for perpetrators just to get their loved ones back alive, and some were reluctant to even broach the subject of prosecutions, afraid that their loved ones may be killed by whoever that is holding them captive. For example, submissions stated: *"If people provide information on the whereabouts they should definitely be provided amnesty, offer incentives to come forward."*

102. It was also stated that some families were not prepared to accept a certificate of death without a proper investigation: *"Can't take death certificate without knowing truth."*

*“They said they have just been requested to take the death certificate of their missing relative without giving any information regarding them, and they asked why they can’t know where he/she is buried.”*

(Participant, FGD, Vavuniya)

103. While appreciating the OMP’s broad powers of investigation, submissions also highlighted the manner in which they expect investigations to be conducted that could make ascertaining the fate of missing and disappeared persons, faster and more effective. While the interim report details recommendations for conducting investigations based on submissions, the CTF lists them out here, summarised, as suggestions for operationalising investigations of the OMP.

- Initiate investigations into all cases consolidated in the database, including those reported to national and international bodies and *habeas corpus* cases.
- Formulate criteria for selection of investigators, including a vetting process especially if current or past members of the Police or military are considered as investigators. Submissions stated that at no point should the TID or Military personnel, particularly Military intelligence, be involved. Participants from war affected areas expressed strong views about the composition and investigations of the OMP, overwhelmingly calling for international presence in investigatory teams.
- Initiate targeted public campaigns to enable the flow of information. This may be through crowdsourcing information through State and non-State media, and through a secure and dedicated telephone number, email and postal address.
- Identify possible mass gravesites and secure those sites for further investigations. Submissions noted that since the OMP’s mandate covers prevention of further disappearances, it is important to pay attention to the cases of large-scale killings.
- Those affected and their families must be consulted regarding their readiness to interact with perpetrators in the course of investigations.
- Secure the assistance of families themselves who have essential information which may not have been recorded in official complaints.
- Treat politically-sensitive cases with extra care and caution.
- Get assistance and information from ex-cadres in custody and those rehabilitated.
- Be committed to continue investigations into a case until it is, or has as best as possible, provided information of the fate of the missing person and clarified the circumstances in which the person went missing, and in cases where the missing person is deceased, their remains are returned to the family.

*“We must be immediately informed of whether the children who were caught or handed over are still there or not.”*

(Participant, FGD, Mullaithivu)

Prioritisation of cases for investigation:

Section 12(b) of the Act provides for a prioritisation of cases based on,

- (i) Incidents of missing persons that have occurred most recently,
- (ii) Incidents in which there is substantial evidence already available,
- (iii) Such incidents that are, in the opinion of the OMP, of public importance.

Submissions noted that this prioritisation should also,

- 1) Extend to include cases where there is evidence that a person may still be alive, and
- 2) Include the public's view of which cases are of 'public importance',
- 3) Recognise that the availability of evidence may differ in cases of missing persons, enforced disappearances, and surrendees,

104. On time taken to conclude investigations, affected families stressed the need to know, as a matter of urgency. Many felt that they have waited long enough. Families say that they need answers within 3 months to one year.

105. Given the number of complaints in submissions around the treatment of families in their search for missing loved ones, the CTF notes that where during the OMP investigations it is revealed that a crime has taken place, such as sexual harassment or extortion, the OMP must investigate the allegation or refer it to the prosecutorial body who will undertake criminal investigations.

## **6.9. Notification of Status of and Information from the Investigation**

*"We need to know what's happening to the complaint and this trail needs to be made public particularly to the family- what has happened to the complaint."*

(Participant, FGD, Batticaloa)

106. Provided that investigations will begin, based on prioritisation, with material already available with previous State mechanisms, families of the disappeared desired a notification of their case being taken up by the OMP. Submissions pointed to the importance of specifically being informed of the date of when investigations are beginning (which has a bearing upon periodic updates on investigation status expected by families), and corroboration of information already collated by the OMP to initiate investigations, as some submissions noted that information given to Government authorities have not been recorded accurately or have been misrepresented.

107. Although the OMP Act holds the office duty bound under section 13 to inform relatives of the status of investigations, it does not stipulate the provision of information to family members as a mandatory duty nor does it give the frequency with and the extent and manner in which such

information ought to be shared or the language it should be communicated to families in. Submissions recommended that the OMP formulate rules or guidelines in this regard to report its activities, procedures and general findings, where appropriate to the public and/or family members and provide an explanation for any delay, in a language of the families' choice. In their submissions, people recommend making it mandatory for families to be provided with updates relating to an on-going investigation:

- Periodically (at least twice a year);
- Whenever there is a significant development; and
- When a case has been sent to a law enforcement or prosecuting authority on evidence that an offence under the law has been committed.
- Aside from reports to families, submissions recommend that OMP must also publicly “*publish reports in all three languages on progress in a timely (at least quarterly) and transparent manner if it is to have credibility*” (Submission by an organisation), as enabled by the Act.

108. While section 13(c) obliges the OMP to keep the relatives informed of the status of investigation, it also provides the office the discretion to withhold information if it is ‘of the view that such would hinder the ongoing investigation or that it is not in the best interests of the missing person.’ Submissions raised the concern that this limitation is vague and unclear as to how this discretion will be exercised. They suggested, that at the very minimum, and in the interest of operational transparency, there must be a duty for the OMP to provide reasons to family members where information is withheld.

109. Furthermore, although section 13(b) makes provision for the OMP to provide information to the families, as to the whereabouts of the person if the person is found alive, the disclosure of this information is subject to the consent of the missing person. This limitation, submissions raised, applies even at the conclusion of an investigation except that under Clause 13(d) family members will at least be provided information regarding the circumstances of the disappearance. A submission raised that “*it is imperative that families are able to verify that a person is in fact alive; are capable of making free and independent decisions; and that they are not being held in detention or under any form of duress. An individual’s right to privacy, especially where they do not wish to be reconnected with their family, is not in doubt. However, this must be balanced against the rights of families to know the truth and to ensure that the person is in fact alive and well.*” (Email submission)

110. Aside from the report to be issued by the OMP to family members on the conclusion of an investigation, submissions also requested a “receipt” or “certificate” as a form of acknowledgement from the State that an individual has been disappeared.

## 6.10. Excavations and Exhumations

111. As noted in the interim report, aside from a separate forensics unit, submissions raised the need to include forensic experts, including internationals, in the membership of the OMP, as members of staff as well as monitors, especially within the Tracing Unit. As the Act only allows the OMP to act as an observer during excavations and exhumations and noting the limited resourcing and capacity of domestic systems in place at present, submissions also suggested the OMP build a working relationship in order to assist or advise Magistrates with experts in the fields of forensic anthropology, forensic archaeology, forensic pathology, forensic medicine and other similar expertise to conduct and/or to supervise the excavations and/or exhumations, especially in mass graves, **with a view of enabling any criminal prosecutions**. Furthermore, the OMP, where possible and when appropriate, must make it a standard operating procedure to engage special services to preserve the body so as to enable family members to identify their loved ones and direct appropriate authorities and supervise the return of human remains or any items associated with such remains, which have been identified as belonging to relatives of missing persons.

112. Submissions spoke to the need of a sound scientific approach in cases of mass grave excavations. The current legal framework, which is intended to cover instances of routine ‘domestic murder, is inadequate to address the problem of mass graves and has contributed to the mishandling of these sites right from the outset’ (College of Forensic Pathologists). While submissions recommended legal reform to address this critical gap (enacting new laws to handle mass graves and amending the Criminal Procedure Code to include the *post-mortem* examination of the dead in large-scale disasters and atrocities), at the lack of a dedicated legal framework around the issue of mass graves, the CTF observes that OMP’s operations must formulate and set out procedural guidelines and best practices around the subject to avoid mishandling of these sites. This ensures the successful completion of investigations with a view to deliver justice to the affected by respecting the right of a person to be correctly identified after death, returning the remains to families for dignified burial, and finding answers to relevant medico-legal and legal issues in any subsequent prosecution of the culprits.

113. Submissions further recommended that the Government should give clear instructions to the security forces and police that they are not to interfere with the OMP’s work, for example, *“security and police forces should be barred from presiding over exhumations of mass graves as their presence could be construed as a form of intimidation. The OMP should be provided adequate security to ensure that its staff, collected evidence and work materials are not harmed or destroyed during the course of its work.”* (Submission by an organisation)

## 7. The Certificate of Absence and Certificate of Death

*“Temporary certificates should be given... they should be given by the Government and it should be legally valid to perform certain functions.”*

(Participant, FGD, Mullaithivu)

*“1990.08.2016, 135 persons were taken away from the Campus. They have issued death Certificates but their bodies were never given. We only know that the Army came and took them away.”*

(Female participant, Public Meeting, Valachchenai)

*“Along with my son, another boy from Madawachchiya went missing. They gave his wife a job. They offered our daughter a job too but I refused saying look what happened after sending my son to the Navy. Forces are trying to somehow give us the death certificate and shape it off.”*

(Participant, Public Meeting, Southern province)

### 7.1. Certificate of Absence

*“The Certificate must allow resolution of such vital issues for survivors as inheritance, land tenure, pensions, widows’ benefits, accessing frozen bank accounts, etc. There is apprehension among the relatives of accepting certificates of absence. They should be reassured that it is only an acknowledgment of their loved ones status as a missing person, but efforts will continue to find out their whereabouts, circumstances and eventual status. Providing a Certificate by itself without a vigorous effort of searching out information on what befell the missing person will not be sufficient. This initial acknowledgment should also entitle survivors to receive partial reparations from the body entrusted with Reparations.”*

(Submission by an organisation)

114. Although the OMP does not have the power to directly issue a Certificate of Absence (CoA) or a Certificate of Death (CoD), it is mandated (in section 13(1)(a)(i)) to provide interim reports to family members which enables the Registrar-General’s Department to issue either a CoA or a CoD. This links operations of the OMP quite closely with the provision of these documents to affected families. Compared to the attention around the OMP, there was relatively little focus on the CoA, which aims to, given the staggering the number of cases of such in Sri Lanka, create a legal status for the missing and the disappeared.

### 7.1.1. Recommendations relating to the Certificate of Absence

115. On 25<sup>th</sup> August 2016, the Registration of Deaths (Temporary Provisions) (Amendment) bill<sup>25</sup> that enables the issuing of a CoA, was passed in parliament. The Act, certified on 7<sup>th</sup> September 2016 was gazetted as law on 9<sup>th</sup> September, 2016.<sup>26</sup> **The CTF notes that the only suggestion coming out of public consultations incorporated in the Act is to make provision to cancel a CoD and opt for a CoA. None of the other recommendations detailed in the Interim Report were incorporated into the Act.**

116. Based on suggestions made to the CTF at the time, the CTF recommended amendments to the Bill in its interim report. These recommendations are explained in detail in the interim report, however below is a summary of some those recommendations.

117. Amend the Bill to,

- Rename the Certificate of Absence as a Certificate of (Enforced) Disappearance or Certificate of Surrender to explicitly express that the person was made to disappear or surrendered, and is not merely absent or missing.
- Review the terms used in Sinhala and Tamil for “absence”
- Extend the CoA’s period of validity beyond 2 years: It was submitted that this short validity period and renewal of the CoA may result in undue distress and bureaucratic hassle for families of the disappeared, and as a result is “unrealistic and unreasonable,” particularly given the large volume of cases. It was submitted that where the OMP is still investigating a case the CoA’s period of validity must be extended to 10 years. Submissions further held that *“It would be difficult for the public to keep renewing the Certificate every two years... besides, it’s the Government’s duty to search and inform us. Therefore, I ask that the Government issues a certificate of absence instead of a death certificate and that it investigates the case and it works towards renewing the certificate on its own initiative. Until such time that it can be proven that a death certificate can be issued, it is up to the Government to do this.”* (Participant, FGD, Hambantota)
- Include a provision to cancel any CoD already issued in place of a CoA for families who are uncertain of the fate of their loved ones: *“A few have been given death certificates by force. We won’t take them. We should be issued with the Missing Person’s Certificate. Already issued Death Certificates must be taken back and missing persons’ certificates must be issued to them. Along with that our lost children must be found and given.”* (Participant, FGD, Trincomalee)

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<sup>25</sup><http://www.parliament.lk/uploads/bills/gbills/english/6018.pdf>

<sup>26</sup>[http://documents.gov.lk/files/act/2016/9/16-2016\\_E.pdf](http://documents.gov.lk/files/act/2016/9/16-2016_E.pdf)



- Include a provision that where the OMP has declared a person as missing even after an investigation, the CoA should have no expiry date.
- To ensure that the definition of missing persons and conflict is consistent with that of the OMP.
- To broaden the definition of the term ‘relative’ to include minors (through a guardian) and relatives living abroad.
- Implement a public awareness campaign about the purpose and implications of the CoA.

118. In addition to the recommendations made above, submissions raised a number of practical challenges that would need to be resolved when implementing the CoA under the provisions of the Act. They also highlighted that the Act places an unfair burden on affected families to provide information on the status of the disappeared. The CTF hopes that these practical difficulties are accounted for in implementing the CoA. For example, submissions raised ground realities such as:

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

#### **7.1.2. Lack of awareness**

119. The CTF observed that while some submissions, particularly from organisations, welcomed the proposal of the CoA, many participants from the CTF’s zonal consultations were apprehensive about the CoA as they were not aware of its potential benefits. The CoA provides a legal status to the missing and aims to address the practical needs of the families (to access bank accounts, exercise ownership over land and other assets.) without families having to obtain a CoD in cases where they believe the person is still alive. Submissions also highlighted the need for the CoA to be recognised by the private sector. These issues were raised by a number of participants across the island:

*“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, FGD, Kandy)

*“He was insured with Ceylinco. They are willing to pay us money, but are asking for the death certificate.”*

(Participant, Public Meeting, Southern province)

*“The land we’re living in now belongs to my missing husband. Because there’s no death certificate for him we won’t get ownership to this land.”*

(Participant, Public Meeting, Puttlam)

120. Because of the lack of information about the CoA, it was evident to the CTF during consultations that some affected communities harboured a sense of suspicion of the certificate, while others feared the consequences of accepting a CoA. Submissions spoke of instances of families being forced to accept a CoD (*“on the orders of the Government the GS forced me to take the Death Certificate”* - Female participant, Valachchenai public meeting), and perhaps resulting from that, some feared accepting a CoA reasoning that it might later be equal to a death certificate and therefore their plea to find their missing loved ones would not be heard anymore: *“they will give the certificate and that will be it.”* (Participant, FGD, Kilinochchi)

*“CID keeps coming to my house lately and once said we will give you Rs. 50000 sign this document that your son has died. I said prove that my son is dead I will sign it. The GS also said that he will get me a death certificate for my son. I want to know the truth about what happened to my son.”*

(Participant from Silavathurai)

121. As noted in the interim report, a number of perspectives emerged on the CoA’s title. A considerable number of submissions associated the CoA with a State certification of their loved one’s “absence” rather than “disappearance.” As it appeared that families were seeking for a clear acknowledgement that a crime of disappearance had taken place, submissions requested that it be re-titled as ‘Certificate of Disappearance.’ Some participants specified that they were not happy with the certificate because it only spoke to those who went missing. These families of surrendeers reiterated that they handed over their husbands to Sri Lanka military, personally, and therefore insisted that the CoA must acknowledge that their husbands have been enforced disappeared. (Western Province FGD). At the same time, there were also persons who felt that whatever the certificate was titled, they would not accept it since it would be akin to accepting a death certificate: *“It would be a betrayal to accept it, when we continue to search.”* On this matter, the CTF notes that establishing whether a person is missing or absent may be easier than establishing whether they were subject to enforced disappearance, which will require an investigation. However, the CTF deems it necessary that families are reassured that the CoA is different to the CoD, in order for affected communities to gain back some of the faith that was lost due to their previous experiences with the State.

122. The CoA is an example of how even positive measures by Government to provide relief to affected persons are looked upon negatively and are perceived with scepticism due to deep rooted mistrust of Government, exacerbated by the limited communication of Government's intentions.

## 7.2. Certificate of Death

123. On the CoD, participants, across the island noted the difficulties they have faced when trying to obtain a CoD. Even after applying for it, a significant number of participants expressed frustration about how they are still waiting for it to be issued:

*"It has been over 10 years since I applied for a death certificate. I still haven't got one."*  
(Participant, FGD, Devinuwara)

*"There should be legal action against those who are responsible for the omission to provide a death certificate."*  
(Participant, Public Meeting, Matara)

124. Submissions from across the country emphasised that law enforcement authorities were reluctant to say their family members were 'disappeared' in the CoD and instead said in their report that the victim was 'shot by unidentified persons'.

125. Another issue that came out through submissions was the lack of information available on getting a death certificate, even in instances where families were willing to do so. Submissions recommended that the Government makes public and seeks ways of issuing compensation and death certificates where necessary (Web submission).

126. Noting these defects, the CTF notes that it is important for the Government to ensure that the process through which the CoA and CoD is implemented, addresses public confusion and fears as stated in submissions. The OMP must therefore include in their operational guidelines to inform individuals of any consequences in accepting a CoA or a CoD.

## 8. Beyond the OMP: Other Measures to Address Disappearances

*"PTA must be removed. If it is removed there won't be any more troubles. If the abductor is caught, then the person who ordered him to do so should be punished. Then only these types of things will not happen again."*

(Tamil man at Public Meeting, Trincomalee, Eastern Province)

*“Don’t let those who have suffered suffer further. Release the children being held in prisons as well as those who have been disappeared. This is the only way to soothe” (thavitthu thiriyum pengalukku oru aaruthal)*

(Tamil Participant at Ampara, Eastern Province)

127. Submissions received by the CTF on disappearances drew attention to issues that went beyond the articles of the Act and operationalising the OMP, to urgent measures to assist in the search for the missing, as well as to address justice, memorialisation, trauma, and non-recurrence. Both written and oral submissions made recommendations regarding immediate and long-term needs of those affected and their families. Immediate measures that submissions addressed dealt with two areas: (1) Measures for those currently in detention and (2) support for families in the interim until a reparations package is established. These are elaborated below:

**Detention centres, detainees and rehabilitees:**

- Release list of all detention centres;
- Release the names of all political prisoners currently in detention;
- Publish list of all surrendees/those in rehabilitation;
- Take measures to free political prisoners within one year;
- Ensure that political prisoners are not tortured and harmed while in detention and while investigations are on-going;
- Expedite and complete within six months all *habeas corpus* cases.

**Support for families of the missing:**

- Guarantee witness protection to families searching for the missing;
- Implement a financial allowance for families of the disappeared;
- Appoint a special officer at District and Divisional Secretariats to support the affected. Amongst these officers ensure that there are female officers to support women and ensure the prevention of sexual harassment of female relatives;
- Give preference/priority to families of the disappeared in providing Government facilities such as housing and land.

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

1. The repeal of the PTA: It is stated that laws like the PTA are one of the major causes of enforced disappearances, torture and custodial deaths of Tamils in the North and East, as they have allowed State security forces to abduct and arbitrarily detain persons without the requirement that they should be produced before a Magistrate within 24 hours. It is also

submitted that despite promises of reform, the PTA remains in effect, and the CID and TID continue to subject persons in the North and East to widespread surveillance, harassment and detention with impunity under the provisions of the Act.

2. Ensure Presidential Directives on arrests and detention are implemented.
3. Enactment of enabling legislation to give effect to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), including criminalisation of enforced disappearance.
4. Enactment of a new law dealing specifically with mass gravesites in order to address the lacunae in the law and reform existing laws.
5. Amendment of sections 269–273 of the Criminal Procedure Code to include the *post-mortem* examination of dead in large-scale disasters and atrocities.

## 9. Links with Other Mechanisms

### 9.1. OMP and Reparations

*“They gave assistance under the headings of affected due to war and affected due to tsunami. Never under the category of disappeared. Anyway this issue must be given importance under the new office.”*

(Female participant, Public Meeting, Valachchenai)

*“My son disappeared when we come to Vavuniya from Vanni in 2009. I searched in every camp, but couldn’t find him. Till I find him, the Government should help me monthly to get my daily food.”*

(73-year old Tamil mother at Public Meeting in Vavuniya, Northern Province)

129. Section 13(1)(f) and 13(1)(k)(vii) of the OMP Act states that the OMP is empowered to recommend that the relevant authority grant reparations to missing persons and their relatives, including administrative, welfare, and psychosocial services, as well as support with other means to improve their social and economic conditions. A large number of submissions addressed reparations and discussed different types of compensation and flagged their needs and concerns related to its distribution. Submissions recommended a ‘Reparations Unit and Reparations fund’ within the OMP itself to provide interim and final reparations (as described in section 6.7). Submissions also noted the practical difficulties that would arise, given the sequencing of these proposed mechanisms, given that *“there is no timeline for the setting up of such an authority and it ignores the needs of families of the disappeared for even interim reparations to be granted by the OMP at a minimum.”*

130. For all other forms of reparations, it is advised that the OMP maintains a working relationship with the mechanism tasked with reparations. A written submission from a women’s

collective directly addressed the relationship between the OMP and the Office of Reparations saying: “The OMP should be linked to a reparations unit/office that can quickly process reparations; people who are affected by such violence should not have to go to multiple different places as they rebuild their lives.”

131. Both organisations that work with families of the disappeared, and families themselves, described the financial and psychological burden they experience when they are forced to go to different places information and compensation. Significantly, they saw this process of being referred from place to place without answers as an integral part of the problem of access to information and compensation that they expected the OMP to rectify. To prevent cases from becoming held up or lost in the bureaucratic process of coordinating between offices, participants recommended that persons from the relevant reparations authority be part of the OMP from the outset in order to facilitate the reparations process. It was also recommended that family members should have the opportunity to question reparation decisions.

132. Participants requested the OMP to coordinate with the Office of Reparations to provide the following reparations:

1) **Monetary compensation.** Families requested both (a) lump-sum payments and (b) long-term financial support that take into account how long the victim was missing and the amount of money the person would have otherwise brought home as remuneration. Some from Vavuniya said they wanted monthly payments, similar to what families of army soldiers receive. Families also requested support for expenses incurred while the OMP conducts its investigations, especially to cover travel and other expenses.

2) **Material reparations.** The most common form of material reparation requested was housing, especially those in the North and East who have faced displacement and disappearance.

3) **Debt Relief.** Families requested the cancellation of all debt provided to the disappeared or assistance in reducing debt obligations for affected women.

4) **Pensions** for aging kin, including parents of disappeared children and wives.

5) **Educational and job opportunities.** Preferential school admission and educational scholarships were requested for children of the disappeared. Families also requested preferences in job quotas in Government and private sectors and support in securing employment for children of those affected.

6) **Psychosocial services** should be made available in an accessible manner for any relative of disappeared victim throughout the entire process- from the initial engagement, to learning of a disappeared person's whereabouts, to identifying remains and performing death rituals if the person was killed.

7) **Other assistance** such as for recovery of monies paid to the CID, TID, politicians and paramilitary groups in the search for missing and disappeared family members.

133. Family members affected by disappearances in the late 1980s and early 1990s who received a one-time compensation pointed out the lack of any long term support by the State. They requested:

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

134. While families of the disappeared across the country highlighted their needs for support and compensation, many expressed divergent views about reparations, with some wanting them, others refusing them, and many others emphasising that their capacity to think about reparations was tied to other needs such as finding out what happened to their kin, and finding justice. Although most participants' main focus of concern was learning of the fate of the disappeared, many described the socio-economic difficulties they were facing and the need for support, at least for their children. Therefore, it is vital that the staff of the OMP and the Office of Reparations is trained to engage sensitively with families on these issues while facilitating or providing compensation. It is also important that the OMP coordinate with the other three mechanisms of transitional justice to ensure that families of the affected receive reparations in a range of ways that they envision it, including symbolic and judicial forms.

## 9.2. Links with Judicial Mechanism and Views on Accountability and Justice

*"If there is to be an OMP, it has to investigate who gave the orders to carry out the disappearances, find why they gave such orders and committed such crimes. An Office on Missing Persons that doesn't do that is of no use to us. We need justice."*

(Sinhalese participant from FGD on Disappearances, Western Province.)

*"If we talk about the punishment, they won't release [our kin]."*

(Tamil Participant from Mullaitivu, Northern Province)

135. 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.' Although there is no provision for the OMP to get directly involved with prosecutions within the existing framework of the OMP, **the expectation by affected families that the findings of the OMP would lead to some form of justice, cannot be overstated.** As with the Office of Reparations, submissions

underscored the critical importance of the OMP's close collaboration with a prosecutorial authority or the Judicial Mechanism and Special Court, with information gathered by the OMP indicating individual criminal responsibility for crimes under international law (including enforced disappearance, torture, war crimes and crimes against humanity), is forwarded confidentially to the Special Counsel of the proposed justice mechanism for further criminal investigation, highlighting the close link between the OMP's tracing investigations and criminal investigations leading to prosecutions (Email submission from an organisation). A submission further urged that the OMP does not provide amnesty or use immunity to persons providing evidence and documentation of crimes under international law. Submissions highlighted how important it is that the OMP handles the evidence and material made available to it or uncovered in the course of its tracing inquiries, carefully, as the OMP will play a crucial role in facilitating or hindering prosecutions and the affected persons' right to justice. This is essential, as a significant portion of the OMP's work will involve investigative issues that directly deal with legal issues including, but not limited to: arrests and detentions that took place under the PTA; surrenders of affected persons to the army; continued detentions of political prisoners; and the chain of command that enabled and permitted enforced disappearances as a tool of war. It also involves broader issues brought forward by the affected concerning justice, accountability, prosecutions, amnesty, and forgiveness. On this point, submissions raised concern about the sequencing of Government's proposed transitional justice mechanisms: *"Since the OMP will not engage in criminal investigations and the office of the special prosecutor has yet to be set up, it is unlikely that inquiries by the OMP will happen alongside criminal investigations. This raises concern regarding the proper handling of evidence. Not enough safeguards are in place to ensure the proper handling of evidence to ensure that it does not compromise prosecutions, forcing families to make an impossible choice between truth and justice."* (Email submission)

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

137. Yet the question of justice and accountability for disappearances is not directly addressed by the OMP. It is vested with the power to refer cases where it suspects a criminal offence has been committed, to a prosecuting or law enforcement authority. However, in the absence of legislation giving effect to Sri Lanka's obligation under the ICPPED, including criminalising disappearances and the lack of information about the mandate of the Special Court, several submissions raise the



question of whether these cases will be referred to the Attorney General's office or the Police for prosecution. Submissions clearly articulate their lack of trust and confidence in the existing criminal justice system. In the current context, submissions point out that law enforcement officers who are implicated in disappearances [including the Terrorism Investigation Department (TID) and the Criminal Investigation Department (CID)] may get involved in the investigations and prosecution of these complaints, a conflict of interest in ordinary circumstances. Submissions urge as imperative that adequate administrative arrangements and checks are instituted to ensure independence and foster confidence in the eyes of the families of the missing and disappeared.

### 9.3. Links to TJRNRC

138. While the overwhelming idea of justice that emerges from submissions is the idea of retributive justice, a few submissions refer to the need for "rehabilitation" of perpetrators and reconciliation between the affected and perpetrators. One submission points out that affected persons and perpetrators of disappearances are living side by side in some communities, and that therefore they would ask the Government to explore mechanisms that have a restorative justice process in mind. They would like the Government to commit, at a minimum, the same space for restorative justice processes as for legal processes. Another states that those persons who are found guilty of disappearances must go through the same kind of rehabilitation that the LTTE cadres were subject to, following the end of the war. Some expressed that those who opted to become State witnesses could be pardoned. At an FGD held in Kilinochchi, one mother whose son had surrendered to the Army during the final phase of the war stated that she simply wants her son back and she is not interested in seeing those responsible punished. She further stated that she does not want another mother to go through the kind of suffering that she is going through. Given these sentiments, it is recommended that there is a link between the OMP and the proposed TJRNRC, which is expected to take up matters relating to truth as well as forms of non-retributive justice.

### 9.4. Recognition of Shared Experiences and Non-recurrence

*"If there was justice done to the perpetrators at that time, there wouldn't have been a situation like this for the Tamil sisters in the North and East today."*

(Mother from Moneragala at Meeting with SCRM)

*"No mother like me, should be in tears again."*

(Tamil mother whose son was a mechanic in LTTE, who went to 18 places to look for him, from Kandavalai, Northern Province)

*"We will not get justice from being given a sum of money. How can money give life to a life that was lost? It must be ensured that this will never happen again."*

(Participant from Colombo, Western Province)

139. The observation that enforced disappearances have been a shared experience of communities across ethnic groups and geographic locations was made by participants themselves. Some Tamil participants from the Northern Province stated that the OMP should examine not only their cases but also those of Sinhalese families whose relatives were abducted by the LTTE during the war, and those disappeared by the State and JVP during the insurrection periods. Sinhalese families who had experienced the insurrections made similar comments about Tamil victims of disappearances in the North and East. This recognition of shared suffering came through clearly in the statement of a woman from Kandy who said: “As of late, for about 5 days a year, we go to Jaffna. When we go there, and see how they have suffered, it almost feels like our suffering is negligible.” Similarly, a Sinhalese man who described his experiences from the insurrection period, grimly noted that if the Sinhalese army committed such atrocities towards Sinhalese people, he could not begin to imagine what it had done to Tamil minorities in the North and East. While not all families of disappeared persons were ready to recognise the pain of families from other ethnic groups, these sentiments show that shared traumas may also provide some grounds for empathy and alliance building across lines of ethnicity.

140. Alongside the recognition of shared suffering, the CTF also heard a resounding call across the country to criminalise enforced disappearances ensure that it is no longer used as an extra-legal procedure in Sri Lanka. This call not only came from families that had lost relatives to disappearances but also from one of the few voices of the disappeared that the CTF was able to hear. A Sinhalese man from Deraniyagala who had been abducted multiple times during the 1971 insurrection, and escaped, recounted his experiences to the CTF, saying that no prior commission had asked him about, or documented, what he went through as an abductee. Following his long and detailed account of the immense terror he underwent during these successive abductions and the multiple crimes he had witnessed in detention, including the rape of several female abductees, he concluded with the statement: *“we suffered because of an army that had no discipline and because of a Government that had no discipline... and because of a lack of democracy. We must take the responsibility to ensure that something like this will never happen again.”*