

# **A Brief Guide on the Draft Legislation to Establish an Office on Missing Persons**

**Centre for Policy  
Alternatives**

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## **Background**

Sri Lanka has a significant caseload of enforced and involuntary disappearances spanning decades. In response to the continuing problem involving thousands of missing, successive governments established official investigations and inquiries including several Commissions of Inquiry (CoIs). Despite a string of CoIs, many Sri Lankans continue their search for truth and justice for past abuses. In 2015, the United Nations Human Rights Council adopted the consensus Resolution titled 'Promoting Reconciliation, Accountability and Human Rights in Sri Lanka' which provided a framework for transitional justice in Sri Lanka, including the establishment of four specific mechanisms. The Office on Missing Persons (OMP) is to be the first.

The Government of Sri Lanka introduced a bill to establish the OMP on the 22<sup>nd</sup> of May and the bill was gazetted on the 27<sup>th</sup> of May 2016. This bill provides the OMP with a range of powers discussed briefly in this guide. The introduction of the bill is an important step forward in terms of addressing the large caseload of missing persons via an independent and permanent entity. The next steps in the establishment of the OMP are critical. The bill is now before Parliament and it is essential that the legislature strengthen the mandate of the OMP in keeping with the demands for truth and justice by victims across Sri Lanka. Subsequent to enactment, it is crucial that full implementation takes place without any delays and that independent and experienced individuals are appointed and the necessary resources and assistance provided for its effective functioning.

The Centre for Policy Alternatives (CPA) has monitored and engaged with state initiatives on the issue of missing persons and related issues and welcomes the Government's commitments on transitional justice. This short guide is the latest by CPA to raise awareness on the OMP's mandate as set out in the draft bill and related issues. The bill can be changed by Parliament during the committee stage debate and CPA hopes that this guide will help those who want to engage with that process. Once the bill becomes law CPA hopes to update this guide in order to ensure that stakeholders are aware of the OMP and able to engage with it in the pursuit of truth, justice, reparations, and non-recurrence.

## **Definition of a Missing Person (Clause 27)**

A missing person is defined as a person whose fate or whereabouts are reasonably believed to be unknown and is reasonably believed to be unaccounted for and missing in one of three specific contexts. The three contexts are:

1. The conflict which took place in the Northern and Eastern Provinces or its aftermath, or the person is a member of the armed forces or police who is identified as “missing in action”;
2. Political unrest or civil disturbances; and
3. An enforced disappearance as defined in the International Convention for the Protection of All Persons from Enforced Disappearances.

## **Mandate (Clause 10)**

The OMP has a broad mandate, outlined in Clause 10 of the bill. The primary mandate appears to be that of searching for and tracing missing persons and identifying appropriate mechanisms for the same, and of clarifying the circumstances in which such persons went missing. Other aspects of the OMP mandate include making recommendations to relevant authorities to address the incidence of missing persons, protecting the interests of missing persons and their relatives, identifying avenues of redress available to missing persons and their relatives and informing them of same, and collating data related to missing persons from previous processes carried out by other entities and establishing a centralized database. Unlike previous mechanisms, the mandate of the OMP covers all missing persons regardless of the time period during which such person became a missing person.

## **Powers of the OMP (Clause 11 & 12)**

Clauses 11 and 12 introduce the powers provided to the OMP. In exercising its powers the OMP must reiterate the importance of equality and nondiscrimination in ensuring the rights of the missing person and their relatives as provided in Clause 14. Furthermore, the OMP has the authority to make rules to ensure it can function effectively. Such rules have to be tabled before Parliament and made public (through publishing in the gazette) within 3 months (Clause 26).

### **Investigative powers (Clause 12):**

- Receive complaints relating to missing persons from any relative of a missing person, or any other person or organization.
- Initiate an inquiry or investigation into disappearances pursuant to either a complaint or information provided by previous commissions. Priority will be given to cases that are of public importance, most recent or that have substantial evidence already available.
- Take necessary steps to investigate cases effectively by procuring and receiving any statements either written, oral, or through the use of videoconferencing facilities or cameras while maintaining a high level of confidentiality. The OMP has the responsibility to ensure confidentiality of information received. The recently enacted Right to Information Act does not apply to the OMP (Clause 25).
- The power to summon any person to be present before the OMP to provide a statement or produce a document in their possession.
- Apply to the appropriate Magistrate's Court having territorial jurisdiction in order to carry out an excavation and/or exhumation of suspected grave sites, and to be able to act as an observer at such proceedings.
- Request assistance necessary for the achieving of its mandate from any state, governmental, or local authority or agent.
- Authorize an OMP officer to enter without a warrant and investigate suspected places of detention or to make an application to the magistrate for the issuance of a search warrant to enable police to search suspected premises and procure evidence that is necessary for the investigation conducted by the OMP.
- Refer cases falling outside the mandate of the OMP to the police or relevant law enforcement authority.
- Hand over reports containing information on a missing person if an offense has been committed that warrants an investigation. Provided a witness consents, the OMP may also inform the relevant authority of the details of such witness, in order to enable such relevant authority to secure a statement from such witness to be used in the process of investigation.

### **General Powers (Clause 11):**

- Enter into agreements with any person or organization, whether local or foreign, including agreements to secure information; maintain confidentiality of information; obtain technical support, training and collaboration; and establish databases.
- Power to make rules to be followed by all staff of the OMP relating to the exercise, performance, and discharge of its powers, duties, and functions and rules governing the meetings of the OMP.
- Appoint and dismiss staff and consultants and request secondment of public officers to the OMP.
- Establish committees, units, and divisions as required for the effective management and operation of the office.

## **Functions and Duties of the OMP (Clause 13)**

- Provide status reports on ongoing investigations to the family as long as it does not hinder the investigation.
- Disclose information with the missing person's consent, if the person is found to be alive.
- Upon the conclusion of an investigation, the OMP should inform relatives of the fate of the missing person and the circumstances in which the person went missing.
- Conduct an investigation into the missing person and issue reports (interim and final) so the Registrar General can issue either a Certificate of Absence or a Certificate of Death.
- Provide administrative assistance and welfare services to the relatives of the missing person.
- Recommend that the relevant authority grant reparations to missing persons and/or relatives of the missing person.
- Establish a system for the protection of victims and witnesses coming before the OMP.
- Create, manage, and maintain a database with regards to missing persons.
- Take steps toward creating public awareness of the causes, incidence, and effects of missing persons and toward supporting relatives of missing persons and facilitating their access to legal, psycho-social, and administrative support.
- Make recommendations to relevant authorities on the following: prevention of future disappearances, ways of commemorating and acknowledging those missing, publishing information relevant to a missing person, development of relevant laws and regulations, reparations, and the handling of unidentifiable and identifiable remains. The findings from investigations done by the OMP will not give rise to criminal or civil liability.
- When making such recommendations, consult as it deems appropriate, relatives of missing persons and/or organizations representing missing persons.

**Office on Missing Persons  
(Clause 4)**

**To be appointed by the President on the recommendation of the Constitutional Council. The OMP will consist of 7 members one of whom will be appointed as the chairmen. The members of the office must have prior extensive experience in the humanitarian field including but not limited to: international humanitarian law, human rights law, humanitarian response and investigation/fact finding as stated in the OMP bill. The members shall hold office for three years and can serve a maximum of two terms. The head office will be situated in Colombo with the OMP having the discretion to establish regional offices if needed.**

**Secretariat  
(Clause 16)**

A secretariat will be established with responsibility for the affairs of the OMP, i.e. the undertaking of the OMP's duties and functions and the discharge of its vested powers outlined in clauses 11 through 13 in this bill. Furthermore, the secretariat will handle the all-around administration of the OMP. The OMP will have specific units and divisions to assist in its work. Two are named in the bill with the discretion to appoint others in the future.

**Tracing Unit  
(Clause 17)**

This unit will be responsible for tracing and searching for missing people and shall include "competent, experienced and qualified investigators including those with relevant technical and forensic expertise" to carry out its functions.

**The Victim & Witness  
Protection Division  
(Clause 18)**

This division will be charged with taking all "appropriate measures" in ensuring the welfare and protection of victims and witnesses who engage with the OMP and may coordinate with the relevant law enforcement agencies when necessary.

## **Finance (Clause 19)**

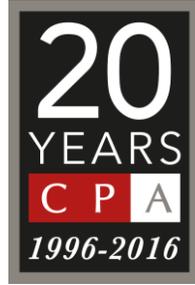
The OMP can receive funds from the Consolidated Fund and raise its own funds to achieve its mandate. The OMP must submit annual reports to Parliament, and those reports must be made public. Accounts of the OMP will be audited by the Auditor General's Department.

## **An Offence of Contempt (Clause 24)**

An offence of contempt against the OMP is possible under specified instances as provided in Clause 24 which criminalizes certain acts. Trial and punishment is to be by the Court of Appeal for contempt of the OMP.



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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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