



CENTRE FOR POLICY ALTERNATIVES
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Press Release

Importance of Adhering to the Constitutional and Legal Framework in the Establishment and Operationalizing of the Office on Missing Persons (OMP)

24th July 2017, Colombo, Sri Lanka: The Centre for Policy Alternatives (CPA) is deeply concerned by the failure of President Maithripala Sirisena to adhere to the provisions of the Constitution in allocating subjects and functions to Ministers, particularly in relation to the Office on Missing Persons (OMP). On 19th July 2017 President Sirisena issued [Gazette \(extraordinary\) 2028/45](#) assigning the Office on Missing Persons (Establishment, Administration And Discharge Of Functions) Act No 14 of 2016 [Office on Missing Persons Act], to the Minister of National Integration & Reconciliation. By doing so the President has raised a matter of great constitutional significance, which had been looming for almost two years.

CPA draws attention to the constitutional framework provided by the 19th Amendment to the Constitution enacted on 28th April 2015. [Prior to the 19th Amendment the President could assign to himself any subject or function not assigned to any other Cabinet Minister.](#) This provision was repealed by the 19th Amendment. However a special exception was made for the person holding office as President on the date of commencement of the 19th Amendment. After the General Election of August 2015, the President in terms of Article 43 (2) of the Constitution issued [two Gazettes](#) appointing Members of Parliament in charge of Ministries. Thereafter in terms of Article 43 (1) of the Constitution, the President issued [Gazette \(extraordinary\) 1933/13 dated 21st September 2015](#) which, assigned subjects and functions to the previously allocated Ministries.

Furthermore this gazette of (1933/13 dated 21 September 2015);

- Established a “Ministry of National Integration & Reconciliation” which had not been allocated to any Member of Parliament. The gazette also did not specify any laws that were to be implemented by this Ministry.
- Allocated to the President all subjects and functions and Departments, Public Corporations & Statutory Institutions that are not specifically assigned to any other Minister.

However the President does not have the power to assign to himself any subjects and functions outside those specified in section 51 of the 19th Amendment. As such the parts of Gazette (extraordinary) 1933/13 dated 21st September 2015, which assigned to the President powers as the Minister of National Integration & Reconciliation are unconstitutional.

This would have been only a matter of academic importance so long as the President did not give to himself any powers *qua* Minister of National Integration & Reconciliation. However, with Gazette (extraordinary) 2028/45 assigning the OMP to the Minister of National Integration & Reconciliation, serious concerns are raised regarding the constitutionality of such measures. In terms of operationalizing the OMP, the Minister must issue a gazette in terms of Section 1(2) of the Office on Missing Persons Act. When issuing this gazette, the President will be acting *qua* Minister of National Integration & Reconciliation. CPA is of the belief that the President issuing such a gazette *qua* Minister of National Integration & Reconciliation would raise questions of constitutional importance and uncertainty regarding the validity of the OMP so constituted.

Swift measures are needed to address what seems on the face of it an oversight but may if not corrected demonstrate a lack of regard to the Constitution of Sri Lanka. CPA urges the President and the government to take immediate steps to adhere to the relevant constitutional provisions and assign the Ministry of National Integration & Reconciliation to a Minister other than the President or assign the Office On Missing Persons Act to a different Ministry. CPA believes that the failure to do so would be a violation of the Constitution and negate the positive steps taken by the government to enact the Office on Missing Persons Act. Soon after this, the Minister in question must issue a gazette as provided in the Office on Missing Persons Act, making the Act operational. Subsequent to this, CPA urges the Constitutional Council to publicly call for nominations to the OMP and to ensure that those recommended to the President have the expertise, skill and diversity needed for the effective functioning of the OMP as well as importantly, the trust of victims, affected communities and civil society. CPA reiterates its [earlier calls for timely action](#) and the need to establish the first independent mechanism to address the grievances of thousands of citizens of Sri Lanka.