

2nd February 2018

Civil Society Statement on the Office on Missing Persons

We the undersigned wish to express our deep disappointment in the process through which the legislation on the Office on Missing Persons (OMP) was enacted and the Office operationalised. Following the co-sponsoring of UN Human Rights Council resolution 30/1 in 2015, the Government of Sri Lanka made firm promises to establish the OMP by law, appoint credible and competent members to it and allocate adequate resources for its functioning. We appreciate the enactment of the OMP Act in August 2016. However, we have been concerned about the protracted delay in operationalizing the Office as well as the flawed process through which the OMP Act is being implemented. We are also disturbed by the lack of transparency in the appointment of the OMP members.

From the very outset, the Government of Sri Lanka adopted a flawed process with respect to the enactment and operationalization of the OMP Act. It appointed a Consultation Task Force to consult the public on the proposed transitional justice mechanisms, including the OMP; yet, to the disillusionment of those who made representations to the Task Force, the government enacted the OMP Act before the publication of the Final Report of the Task Force. Despite this initial rush in enacting the OMP Act, the President took nearly a year to assign the Act to a particular ministry. The President's decision to assign the Act to himself in his capacity as Minister of National Integration and Reconciliation, despite serious doubts raised regarding the constitutionality of his decision, is also cause for concern. To date, the OMP members are yet to be appointed with no public information on the process of selection.

We wish to express further concerns regarding this appointment process. The Constitutional Council called for applications, and recommended seven names to be appointed by the President in terms of section 4 of the OMP Act. We observe that the President is bound under section 5 of the Act to appoint the chairperson and OMP members within fourteen days of receiving the Constitutional Council's recommendations. However, while this delay has lapsed, the names of the OMP members have not been publicly released. Furthermore, the overall appointment process has thus far lacked transparency, contrary to what was specifically recommended by the Consultation Task Force.

The operationalization of the OMP is the first significant step taken by the Sri Lankan government to fulfil its promises with respect to the broader reconciliation agenda which it committed to, including through the co-sponsoring of UN Human Rights Council resolution 30/1. As such, compliance with due process and transparency requirements is essential to ensure affected families' and civil society's trust in the government's commitment to implement resolution 30/1. Indeed, the protracted delay in the establishment of the OMP compounded with procedural flaws observed thus far have contributed to eroding affected families' confidence in the institution.

We hereby call upon the Constitutional Council and the President to fully abide by the principle of transparency and publicly disclose the list of OMP members, including the chairperson, and the process through which such members were selected. Finally, we call upon the Government of Sri Lanka to ensure that such appointments are fully compliant with the spirit and letter of the OMP Act. In particular, specific attention must be paid to the credibility, experience and expertise of the members.