

The Office on Missing Persons Post-2020: Who and What is it for?

Chulani Kodikara

The 2022 budget has allocated 300 million Rupees to “compensate the disappearances of people during different eras owing to various reasons” and “to do justice to the families of such missing persons.”¹ This budget allocation comes in the wake of the current Rajapaksa government expressing its commitment to “continuing with the Office on Missing Persons [OMP]”. On the resignation of the first chairperson of the OMP in September 2020, the government appointed a new chairperson in December 2020. On the expiration of the terms of the other commissioners in February 2021, the government also appointed a new slate of commissioners (Fernando 2021). In August 2021, it opened an office in Kilinochchi.² On 30 August 2021, it held a webinar in order to commemorate the International Day of the Disappeared, “inviting all who have a genuine interest in justice over narrow race politics / election agendas to join (them) in mapping an acceptable action plan to find solutions.”³ However, all this rhetoric and activity around disappearances is curious given that those in power today, together with Sinhala Buddhist nationalists, fiercely opposed the OMP when it was proposed and established by the United Front for Good Governance (UNFGG) government (2015-19), and have continued to deny the fact of disappearances, even after the elections.

When the Bill to establish the OMP was tabled in Parliament in mid-July 2016, former President Mahinda Rajapaksa, in a statement issued under his signature declared that, “Every member [of Parliament] who votes for it (OMP Bill) will be held responsible by the people for betraying the country and the armed forces” (Indian Express 2014). Others from the Joint Opposition (JO) and Sinhala nationalist organisations followed suit rejecting it out of hand. *Ranaviruwan Surakeeme Jathika Vyaparaya* and *Lanka Jathika Sangha Sabbhawa* released a leaflet titled ‘10 deadly provisions of the OMP’.

On the day the OMP bill was taken up for debate on 11 August 2016, more than 50 members of the JO walked into Parliament, wearing black armbands and neckbands. They were expressing their condemnation and rejection of the Bill as “unconstitutional”, “dangerous” (භයානක), “perilous” (අනතුරුදායක), and as a weapon to “hunt down war heroes” (රණ චිරුවන් දඩයම් කරන). As Parliament prepared to debate the Bill, members of the JO proceeded to invade the well of Parliament shouting and chanting slogans accusing the government of betraying the nation. Foreign Minister Mangala Samaraweera was only able to deliver less than a quarter of his prepared speech before conceding time to MPs M.A. Sumanthiran of the Tamil National Alliance (TNA) and Bimal Ratnayake of the *Janatha Vimukthi Peramuna* (JVP) to second the motion in favour of the Bill. They both spoke for less than five minutes. At the conclusion of Bimal Ratnayake’s speech, which proposed three amendments to the Bill, the Speaker inquired from the JO whether they would participate in the debate and if they intended to do so, they should take their seats. However, since none of the members complied with this request, the Leader of the House declared that the second reading of the Bill is deemed to be over and moved the House to committee stage of the debate, where amendments suggested by the JVP were read out and the Bill was passed without a vote over and above the shouting and heckling of the JO. Calls by UPFA MP Wimal Weerawansa that a vote be taken with a division by name went ignored and soon after the vote, the House was adjourned. Ultimately, whether it was the intention of the JO or not, The Office on Missing Persons (Establishment, Administration, and Discharge of Functions) Act No. 14 of 2016, was passed in Parliament without a debate (Kirinde 2016).

Following the enactment of the OMP Act, a spate of protests followed. The first of these was held on 12 August 2016 and organised by the *Jathika Ranaviru Ekamuthuwa* (National War Heroes Front) and the

Weera Lanka Padanama (Heroic Lanka Foundation) together with the JO in front of the national monument for war heroes in the grounds adjacent to Parliament.⁴ About 100 protestors were gathered on the steps of the monument on that day, holding posters. Secretary of the Bhikku Front, Bengamuwe Nalaka Thera led a determined *satyagraha* (අධිෂ්ඨාන සත්‍යග්‍රහණය). The posters on display carried slogans which are now familiar at protests such as these: “Tear up the Act that treats war heroes the same as murderous LTTE members”; “War heroes to the gallows via the OMP”; “Tear up the Act that will take the nation to a murderous end”; “What is this office that is not under any law?”; “The OMP is the cat’s paw of the Tamil Diaspora”; and “Do away with the Act that betrays the sovereignty of the motherland!”

Gotabaya Rajapaksa commenced his Presidential election campaign in 2019 with the very same rhetoric of Sinhala Buddhist triumphalism and denial of disappearances that had defined the post-war regime of his brother Mahinda. He has continued to deny disappearances after his election in November 2019 (Kodikara 2019). In January 2020, at a meeting with the UN Resident Coordinator in Sri Lanka, he stated that all missing persons are dead, and that the government would make arrangements to issue death certificates to family members (Srinivasan 2020). Later, when human rights organisations, activists, and families expressed their opposition to taking death certificates, the Presidential Secretariat issued a statement to the effect that, “because bodies have not been recovered, families do not know the fate of those who had disappeared. However, *most of these families attest that those disappeared had been recruited or forcibly conscripted by the LTTE* (my emphasis). Therefore, after the necessary investigations, steps would be taken to issue a death certificate and the necessary support for the families to rebuild their lives.”⁵ In February 2020, a delegation sent by President Rajapaksa to the UN Human Rights Council headed by Minister of Foreign Relations, Dinesh Gunawardena, announced that the Sri Lankan State will no longer abide by commitments made in Res. 30/1 and would be implementing its own home-grown peace and reconciliation process (Marasinghe and Mallawarachchi 2021).

So why is the present government continuing to maintain the OMP? Why this change of heart after the elections? Is the government sincerely committed to addressing demands for truth and justice for disappearances during “different eras”? If the government is not interested in pursuing a genuine process of truth seeking and reconciliation, why bother with a costly mechanism such as the OMP?

Human Rights Half Measure or Non-Measure?

Sri Lanka has a long history of appointing commissions of inquiry to buy time, deflect international pressure and criticism, and launch partisan attacks against opponents (Amnesty International 2009). Drawing attention to the considerable energy and resources that the post-war Mahinda Rajapaksa regime (2009-2015) poured into establishing a string of institutional mechanisms such as the Lessons Learnt and Reconciliation Commission (LLRC) and the Presidential Commission Investigating Cases of Missing Persons (PCICMP) under pressure from Western governments, Kate Cronin-Furman (2020) conceptualises these domestic commissions of inquiry as “human rights half measures” (139). Cronin-Furman argues that even though these mechanisms failed to convince Western governments calling for accountability and human rights organisations, nevertheless they served the purpose of swaying the votes of non-activist States on the Human Rights Council to vote in favour of the government of Sri Lanka (147).

Following Cronin-Furman, it is possible to argue that the Gotabaya Rajapaksa regime will keep the OMP going as a “human rights half measure” in order to instrumentalise its existence in various human rights fora. It is, however, perhaps too generous to conceptualise the OMP as a half measure when there is no evidence to suggest that it is making any effort to fulfil its mandate—i.e. to search and trace the whereabouts of missing persons. It is more of an empty shell: a human rights non-measure. Governmental actions as opposed to its rhetoric suggest that the OMP (which was conceived as an independent commission) now exists at the complete mercy of the President. The new slate of commissioners has not inspired the confidence of human rights organisations or activists (*Daily FT* 2020). Consider the fact that on the resignation of the first Chairperson of the OMP—Saliya Peiris—to run for the presidency of the Bar Association, President Gotabaya appointed Upali Abeyratne, a former judge of the Supreme Court as President of the OMP (*Sunday Times* 2020). Just prior to taking up this appointment, Abeyratne served as the Chairman of the Presidential Commission on Political Victimisation (PCPV) appointed in January 2020. As Chairperson of this Commission, Abeyratne had entertained complaints from the accused in two emblematic disappearance cases—the Prageeth Ekneligoda case and the Navy Abduction and Disappearance case. The complaint made by the accused in the Prageeth Ekneligoda disappearance case for instance alleged that they were being politically harassed and the case against them has no merit despite the fact that they were indicted

following a lengthy inquiry (almost nine years) at the Magistrate Court, Homagama, which had amassed sufficient evidence to enable the Attorney General's Department to indict the accused at a trial-at-bar.⁶

Moreover, despite maintaining the OMP, and even establishing a new office in Kilinochchi, the Fisheries Minister Douglas Devananda recently disclosed receiving instructions from the President to discuss ways and means of addressing the grievances of the families of missing persons. What has fisheries got to do with missing persons and, what is Minister Devananda (who himself stands accused of disappearances and other forms of terror as Ambika Satkunanathan, former Commissioner of the Human Rights Commission of Sri Lanka points out), expected to do? (*The Island* 2021)

It is clear that the government may have another motive for keeping the OMP going other than to deceive the international community. It wants to once and for all bury the matter of disappearances in Sri Lanka by way of payment of compensation and it is the OMP that is now tasked to do this work. Justice Minister Ali Sabry PC, at the webinar organised by the OMP on 30 August 2021, stated that the President had repeatedly told him:

Forget about the guilt if somebody's missing. Don't look for why he's missing, whether he belongs to which side or the other side [sic]. Our approach is—a Sri Lankan is missing, one of our own, irrespective of race, religion or language or the area from which he is coming. One of our own is missing as a result of which we all understand the pain. Maybe they would have belonged to any organisation or anything but for that mother, that family, that parent, that friend, for them I know the pain, we understand. That is why irrespective of the guilt or irrespective of the nature that leads to the circumstances to be called a missing person, we are willing to look into this, identify the missing person and compensate. The compensation is coming, not because we accept guilt. It comes as a collective reparation as a community, one of our own is missing, we can't leave that family alone.

I contend that the Minister is in fact stating the quiet part aloud here. OMP is no longer committed to investigating the circumstances that led to disappearances in Sri Lanka. It will only ascertain that a person in respect of whom they have received a complaint is missing, in order to compensate those left behind. This point about compensation was repeated by the President in a statement he made in September 2021, following his speech at the UN General Assembly and by the Foreign Minister in a statement made in October. According to the Foreign Minister, the "The OMP, in fulfilling its core function, is finalising the list of missing persons in collaboration with other agencies,

with a view to enabling the granting of closure for a number of grieving families." (Mohan 2021). The 300 million Rupees allocated by the 2022 budget is for this purpose. Tamil family members of the disappeared (particularly during the last stages of the war) who have waged a courageous struggle for truth and justice since the end of the war, have overwhelmingly rejected and refused to take compensation from the government until they are told the truth about disappearances. Not only that, they also overwhelmingly rejected and refused to engage with the OMP even under the UNFVG due to lack of international involvement in the OMP. They will no doubt continue to refuse this idea of 'closure' based on 'blood money'. Whether non-activist States in the Human Rights Council and others will or will not be taken in by this human rights non-measure is another matter.

Chulani Kodikara is a feminist researcher, activist, and contributor to Violence and the Quest for Justice in South Asia (Deepak Mehta & Rabul Roy eds., Sage New Delhi 2019) among other publications.

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Notes

1 Basil Rajapaksa, Budget Speech, November 2021 (p. 66). Accessed 20.04.2021. Available at <https://www.treasury.gov.lk/api/file/91c69189-9b2f-4ab2-8e90-53213a60cddd>

2 During the UNFVG, the OMP established offices in Matara, Mannar, Jaffna, and Batticaloa.

3 International Day of the Disappeared, webinar organised by the Office on Missing Persons, 30 August 2021. Available at <https://www.facebook.com/drsurenraghavan/videos/4028529017269283>

4 For more information, see <http://www.lankaweb.com/news/items/page/28/?s7>

5 'Death Certificates for Missing after Investigation', *Presidential Secretariat Press Release*, 24 January 2020.

6 Sandya Ekneligoda's lawyer has recently argued that Upali Abeyratne should be held in contempt of court.

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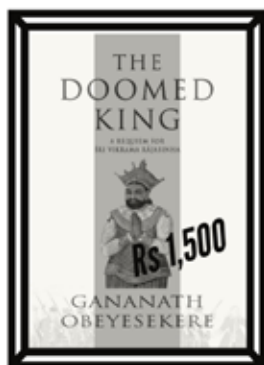
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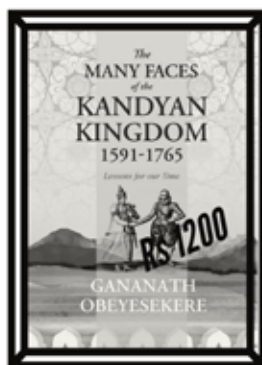
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