

# Omp is for reconciliation not to satisfy anyone else

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The Office on Missing Persons (OMP) is one of the main transitional justice mechanisms, the others being a truth commission, an office on reparations and a judicial mechanism to investigate allegations of violations and abuses of human rights. The OMP intends to promote justice and bring closure to those whose loved ones have gone missing. With the recent appointment of the Chairman and the members to the OMP, hopes are now anew that the truth will surface. In an interview with the **Daily mirror** its newly appointed Chairman, **Saliya Pieris PC**, who is a former member of the Human Rights Commission, stressed that the OMP is not a punitive mechanism, but a mechanism to find the whereabouts of loved ones who have gone missing and provide relief.

**Excerpts:**

**QThe OMP has been established and its members were appointed. But has the OMP actually begun work?**

The initial work of the OMP has begun. But as you are aware the OMP is entirely a new institution. So with the appointment of the commissioners the first step is to set up the mechanism which includes among other things appointing the secretary, staff, and obtaining premises. We are in the very early stages of setting them in motion. For the moment, we have appointed the secretary who will have to get the government machinery moving. In that sense the preliminary work has begun. We have had certain discussions with certain stakeholders. The commissioners have met. So work has begun.

**We also have a retired legal advisor to the Sri Lankan Army, General Mohanti Pieris. We have Jayatheepa Punniyamoorthy who is a victim, whose husband disappeared**

**QAt the moment does the OMP have the required expertise and resources to do the work it is mandated to do?**

We have just started. We have to acquire the resources, obtain the staff and the experts. In doing so we have to consult the stakeholders, especially the families of the missing and other important stakeholders. That is the present process.

**QWhen will the OMP actually be set up?**

That we cannot say. That depends on how quickly the machinery moves. We intend to shift to our temporary premises by the first week of April. It will be in Nawala. So that is the first step. Then we will start the recruitment of basic staff. Then there are Government processes. For instance, there should be a scheme of recruitment to recruit permanent staff because this is a state institution. So there should be a transparent recruitment process. We have to obtain the necessary approvals from Government institutions like the National Salaries and Cadres Commission, and the Management Services Department. We are hopeful that other Government agents will cooperate with us to expedite the process.

**QThe Act also mentions setting up of regional offices. Has any decision been taken so far regarding this?**

We have not taken a final decision regarding that. But we will certainly have regional offices both in the North, East and the South.

- **OMP is a mechanism to find loved ones who have gone missing and provide relief**
- **OMP intends to shift to its temporary premises in Nawala by the first week of April**
- **It's primary mission is to keep in mind the needs of the victims**
- **The mandate of this office is not restricted to what happened in the North and East**
- **This office is not there to facilitate the prosecution of people**

**QWho can make a complaint to the OMP?**

We have not really decided on that protocol. But any person who is aggrieved or who has credible knowledge of such a disappearance can make a complaint. But we will inform of the procedures in due course.

**QHow should they approach the OMP and make a complaint?**

We have not come to that stage. We have not yet formulated the process

**QHow do you view your responsibilities as the Chairman of the OMP?**

The Chairman of the OMP is also the Chief Executive Officer of the institution. I view my responsibilities not only from that angle. I think it is quite a huge responsibility because you have to address the needs of the victims. As we have said in a recent media statement, our primary mission is to keep in mind the needs of the victims. The burden is heavy because you have to establish a new institution and recruit new staff. The ultimate goal is to find out what has happened to the missing. Our mandate is not restricted to what happened in the North and East. Our mandate goes back in time to any period where people have been missing. In other words 1987 to 1989 and 1971, would also be within our mandate.

**For the moment, we have appointed the secretary who will have to get the government machinery moving. In that sense the preliminary work has begun. We have had certain discussions with certain stakeholders**

**QIf it's an issue regarding an abduction which happened for example in 1960 would it come under the purview of the OMP?**

There were no particular cases of disappearances in 1960. The OMP Act defines as to who is a missing person. It is those who have gone missing during the times of conflict or the incident must relate to the phrase “enforced disappearances”. The OMP Act, No. 14 of 2016 has defined who a missing person is. Basically it is when a person whose fate or whereabouts are unknown or unaccounted for or is missing in the course of the conflict in the North and East or its aftermath. Missing persons also include members of the armed forces or police who are missing in action, people who have been missing in connection to political unrest or civil disturbances like during the period of 1987-89, or 1971, and also those who come within the meaning of enforced disappearance. So it’s not just ‘abduction’ in that sense, but where there is enforced disappearance that would come within our mandate.

**QWhat do you think of the team that you will work with?**

Our membership comprises different segments. For instance, we have activists, professionals and people who have been in the public service. So they have contributed to human rights and the society in different ways. We also have a retired legal advisor to the Sri Lankan Army, General Mohanti Pieris. We have Jayatheepa Punniyamoorthy who is a victim, whose husband disappeared. The OMP represents a cross section of society. But as far as possible we will act collectively.

**QSo far how has been the support of the Government?**

I have nothing to complain about. We have just started. We are supported by the Ministry of National Integration & Reconciliation and we are also supported by the Secretariat for Coordinating Reconciliation Mechanisms (SCRM), the Presidential Secretariat and the Prime Minister’s Office. So far we have nothing to complain about, but certainly as it gets implemented we will need to obtain approvals quickly, of course within the Government procedures. So far people have been positive in their approach to the OMP.

**We expect to be allowed to act independently and impartially. We do also expect that there would not be unwarranted interference in whatever way by any party**

**QIs the OMP an independent body?**

Yes. Its members are appointed by his Excellency the President on the recommendations of the Constitutional Council and there is a process for the removal of a member. Our view and the structural view of the OMP is similar to that of an independent commission.

**QAre you hopeful that the OMP would be able to conduct investigations without State interference?**

We expect to be allowed to act independently and impartially. We do also expect that there would not be unwarranted interference in whatever way by any party. Looking at the purpose of our law and the objectives we expect to operate independently, without fear or favour.

**QThere is this notion that the OMP is operationalized to please the international community. Do you think that the OMP being operationalized is a genuine effort on the part of the Government to achieve transitional justice?**

We will re-intend to make it a genuine effort. We are of the view that the requirement for an OMP is not to please either Geneva or the international community. We think it's a genuine requirement which has arisen due to problems within our country. If you look at the history of our country, there have been periods of civil unrest which have resulted in disappearances and people going missing. Then there was the war in the North and East where there were disappearances, people went missing and those belonging to the forces, the police and the civil defense force also went missing in action. Their relatives want to know and they have a right to know what has happened to their loved ones. We believe that the establishment of the OMP must arise from that need. It is about the need of the country and the needs of its own people. It is our view that it is only if that is done that there would be genuine reconciliation in Sri Lanka. The need for the OMP is for reconciliation in Sri Lanka and not to satisfy anyone else.

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**QFrom the perspective of families of those who have gone missing they have lodged complaints with several Commissions of Inquiries and other places. What assurance can you give that the OMP will unearth the truth regarding what happened to their loved ones?**

The assurance we can give them is that on the part of the OMP we will endeavour to do what has been entrusted to us by Parliament. We will do that with responsibility. In doing that we will take into account the views of the families of the victims and all other stakeholders. We would like it to be a participatory process. But at the same time one cannot expect results short-term. It would have to be systematic, the office must be set up, the mechanism will have to be set up, the units must be set up and it's going to take a fair period of time. The assurance we'd like to give people is that on our part we will be genuine in our efforts.

**QOMP's opponents have said that the RTI Act and the Evidence Ordinance don't apply to the OMP. Is this so?**

There is a reason for that. The Evidence Ordinance is inapplicable not only to the OMP. The Evidence Ordinance is inapplicable to many other institutions. For instance, the labour tribunal. The reason is it is not a court of law. The OMP is not a punitive institution. It is not established to punish. It doesn't give rise to any criminal or civil liability. It is there to find out the truth. We want to stress that the OMP is not a court of law. We are not going to sit in judgement and punish people. That is not our role. In that sense the Evidence Ordinance is not applicable.

Now as to why the RTI Act is not applicable, it is explained in the Act that during the course of an inquiry, where confidential information is obtained, the RTI is excluded. The reason is that when confidential information is provided with regard to a person that information cannot be divulged. There are provisions even under the RTI Act where information of a confidential nature can be safeguarded. So that is why the OMP Act also in certain instances has excluded the provisions of the RTI Act.

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**QIf the OMP is not a punitive institution and if the OMP finds that someone has committed a crime what steps would the OMP take to punish them?**

That is covered under Section 12(i) of the OMP Act. What it says is that where it appears to the OMP that an offense has been committed and warrants an investigation the OMP may after consulting the relatives and considering the best interests of the victims, relatives and society, report the same to relevant law enforcement or the prosecution authority. So it is not an automatic process. But with regard to an issue, say if the OMP is of the view, considering all the circumstances and including the interests of the victims and the society, that it must be referred to a law enforcement authority, that could be done.

**QIn that sense is it possible that the OMP will facilitate the prosecution of army soldiers?**

No. I want to stress that the OMP is not there to facilitate the prosecution of people. The purpose of the OMP is to provide relief and to help people find their loved ones. It's not a punitive mechanism. There is no process where the OMP facilitates prosecutions.

**QThe Enforced Disappearances Bill was passed in Parliament recently. How would this Act assist the mandate of the OMP?**

Our definition of enforced disappearances is in line with the International Convention for the Protection of All Persons from Enforced Disappearance. I think the Enforced Disappearances Act is something that is necessary because part of our mandate is to make proposals to prevent future recurrence of enforced disappearances. In that sense the Act is an important step. As an institution we will be studying the provisions in the Act and we will be making our observations to the State as to what our views are regarding the Act. Certainly the Act is welcome as a first step towards recognizing that enforced disappearances cannot recur in this country.

**The OMP Act, No. 14 of 2016 has defined who a missing person is. Basically it is when a person whose fate or whereabouts are unknown or unaccounted for or is missing in the course of the conflict in the North and East or its aftermath**