

The Office on Missing Persons in Sri Lanka: Why Truth Is a Radical Proposition

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ABSTRACT[∞]

In 2016, the Sri Lanka Parliament passed the Office on Missing Persons Act (OMP) ‘to search for and trace missing persons.’ At the time, Sinhala Buddhist nationalist leaders strongly objected to it. In this article, I read their resistance as resistance to a truth-seeking mechanism. Locating my analysis within a global paradigm of ‘dealing with the past’ through truth-seeking that assumes that ‘truth is easier than justice,’ I show that nationalist resistance to the OMP flies in the face of this assumption. In postwar Sri Lanka, truth is not just a second-best option to justice but an equally radical demand. However, I also show that those same resisters have maintained the OMP on returning to power for several different reasons. Finally, I explore the response of relatives of the disappeared to the OMP and their increasing demand for an international truth and justice mechanism.

KEYWORDS: Enforced disappearances, national identity, nationalism, Sri Lanka, survivor’s struggle for justice, truth-seeking

In August 2016, the Sri Lankan Parliament passed the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act No. 14 (OMP), making provision for the establishment of a discrete and independent office in perpetuity with a mandate ‘to search for and trace missing persons and clarify the circumstances in which they went missing’ [Sec. 10(1)(a)]. The office was formally established and operationalized in February 2018. In establishing the OMP, the United Front for Good Governance (UFGG) government was responding to a struggle for truth and justice that had been waged by minority Tamil relatives of the disappeared since the end of the civil war in May 2009, between the Government of Sri

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Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE). It was also fulfilling a commitment it had made in a resolution that it cosponsored at the UN Human Rights Council (UNHRC) in Geneva – Res. 30/1 – in September 2015, to inaugurate a transitional justice process that would respond to allegations of atrocities committed by the GoSL armed forces during the final phase of Sri Lanka's civil war.

From the very outset, Res. 30/1 and the transitional justice mechanisms proposed under it were rejected by the opposition in Parliament and Sinhala Buddhist nationalist groups outside Parliament.¹ When the OMP Bill was tabled in Parliament in mid-July 2016, former President Mahinda Rajapaksa issued a statement declaring that, 'Every member who votes for it [the OMP Bill] will be held responsible by the people for betraying the country and the armed forces.'² Others from the opposition and nationalist organizations followed suit. The *Raṇaviruvan Surakimē Jātika Vyāpāraya* (National Movement for the Protection of War Heroes) and *Lankā Jātika Sangha Sabhāva* (National Buddhist Monks' Congress) released a leaflet denouncing the OMP, titled '10 Deadly Provisions of the OMP'.

On 11 August 2016, the day the bill was up for debate in Parliament, the opposition refused to participate and disrupted the proceedings. In fact, more than 50 members of the opposition walked into Parliament wearing black armbands and neckbands (*satakayas*) that day. Inside Parliament, they refused to take their seats and shouted out their condemnation of the bill as 'unconstitutional,' 'dangerous' (*bayānaka*), 'perilous' (*anaturuḍāyaka*) and a weapon to 'hunt down war heroes' (*raṇa viruvan daḍayam karana*). They also heckled government members who tried to speak over the din. The speakers' efforts to bring order, including an order to 'act like a parliament,' had no effect. Mangala Samaraweera, the Minister for Foreign Affairs who presented the bill, was only able to read a few paragraphs of his prepared speech on the significance of the OMP in postwar Sri Lanka. Amidst this spectacle of chaos, broadcast on national television, the OMP Act of 2016 was passed without a debate, with mainly governing coalition Members of Parliament voting.³

Following the enactment of the OMP Act, a spate of protests followed. The first of these was held on 12 August 2016 in front of the National Monument for War Heroes on the grounds adjacent to Parliament. It was organized by the *Jātika Raṇaviru Ekamutuwa* (National War Heroes Front) and *Vīra Lankā Padanama* (Heroic Lanka Foundation), together with Members of Parliament from the opposition. Bengamuwe Nalaka, the Secretary of the *Jāthika Bhiḱṣhu Peramuṇa* (National Buddhist Monks Front), led a determined (*adhiṣṭāna*) satyagraha with the participation of around 100 protestors, holding aloft posters, on the steps of the monument. 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?'; 'Do away with the Act that betrays the sovereignty of the motherland.'

As I will demonstrate in this article, the OMP is not a judicial accountability mechanism and, while it was mandated by a resolution of the UNHRC, is a purely local mechanism with no foreign involvement. So why were nationalist leaders and ideologues so fiercely opposed to the OMP, and misrepresenting it? I argue that the resistance to the OMP must be recognized as resistance to a truth-seeking process, which all the talk of sovereignty and prosecution of soldiers was intended to obscure. I do so by reading the resistance to the OMP as part of the postwar

¹ Mahinda Rajapaksa, 'The Threat Facing the Country Due to Geneva Resolution,' *Colombo Telegraph*, 25 October 2015, <https://www.colombotelegraph.com/index.php/the-threat-facing-the-country-due-to-the-geneva-resolution/> (accessed 24 May 2021).

² 'Office on Missing Persons' to betray the armed forces – Mahinda, *Adaderana.lk*, 20 July 2016, <http://www.adaderana.lk/news/36142/office-of-missing-persons-to-betray-the-armed-forces-mahinda> (accessed 21 January 2021).

³ Parliamentary Debates (Hansard), 245(9) (11 August 2016): 1316–1340; Chandanie Kirinde, 'OMP Bill Bypasses JO Lost in Its Floor Show,' *Sunday Times*, 14 August 2016, <http://www.sundaytimes.lk/160814/columns/omp-bill-bypasses-jo-lost-in-its-own-floor-show-204748.html> (accessed 18 July 2022).

nationalist narrative of the war, which denies war crimes (including disappearances), constructs soldiers as heroic figures who defeated ‘the most brutal terrorists’ the world has ever seen and demonizes rights activists and victim survivors searching for justice as enemies of the nation. I argue that this hegemonic narrative is intended to shape the way the war is remembered and national identity in postwar Sri Lanka.

Based on a case study of Northern Ireland, Cheryl Lawther notes that transitions from political violence without truth-seeking processes (and indeed with resistance to such processes) remain less explored and under-theorized, while foregrounding the need to critically interrogate such resistance, both theoretically and empirically, to develop the transitional justice field.⁴ In this article, I respond to her call by locating my analysis of the resistance to the OMP within a global paradigm of ‘dealing with the past’ through truth-seeking processes, which have by now become almost naturalized and universalized for postwar, post-authoritarian states. I seek to show that the resistance to truth in Sri Lanka flies against what appears to be a taken-for-granted assumption within transitional justice theory and practice – internalized by the UN, the international community and the UFGG in Sri Lanka – that truth-seeking is far easier to implement than justice. Based on this assumption, the UFGG failed to anticipate or appreciate the resistance to the OMP from Sinhala Buddhist ethnonationalist elements – both inside and outside Parliament.

However, this is not the end of this story. The trajectory of the OMP further complicates transitional justice theory and practice, because almost the same contestors of the OMP have retained and maintained it on returning to power in 2019/2020. I argue that this about-face is a strategy to simultaneously appease and distract the international community and weaponize the OMP against relatives of the disappeared. However, faced with the inability of the OMP to address their demands during the tenure of the UFGG and its weaponizing under the Rajapaksa government, my extensive ethnographic fieldwork shows how some relatives of the disappeared organized as the Association for Relatives of Enforced Disappearances in the North and East (ARED) are increasingly demanding an international truth and justice mechanism.

The article begins with a section on methods and ethics, followed by a brief theoretical reflection on truth commissions that foreground the relationship between truth-seeking and memory, identity and history. The third and fourth sections trace the history of the OMP and its powers and functions. In the fifth section, I explore the nationalist narrative of the war. In the sixth section, I examine the response of relatives of the disappeared to the OMP, followed by a brief conclusion.

METHODS AND ETHICS

In this article, I take a feminist, interdisciplinary approach to examine the response of the Sri Lankan state and Sinhala Buddhist nationalist ideologues to the struggle for truth and justice for disappearances from the perspective of those waging this struggle – the family members of the disappeared, the vast majority of whom are women. The article draws on work I did at the Consultation Task Force on Reconciliation Mechanisms (CTF) and research conducted for my PhD and for the International Centre for Ethnic Studies (ICES) as part of the Gender, Justice and Security Hub. The CTF was appointed by the UFGG in 2015 (in accordance with para. 3 of Res. 30/1) to undertake consultations with victim survivors of the war on the design of transitional justice mechanisms proposed under Res. 30/1. From April to August 2016, I was one of two senior researchers at the CTF and had the privilege of closely observing

⁴ Cheryl Lawther, ‘Peace without the Past? Truth, Transition and the Northern Ireland Case,’ in *Theorizing Transitional Justice*, ed. Claudio Corradetti, Nir Eisikovits and Jack Volpe Rotundi, (London and New York: Routledge, 2015): 29–42, 29, 37.

its proceedings. Methodologically, I draw on an eclectic combination of research methods, including ethnography as well as documentary and discourse analysis.

In order to understand the OMP, the UFGG's policy on the OMP as well as the Sinhala Buddhist nationalist response to it, I depended entirely on documentary research of sources in both English and the vernacular Sinhala language and discourse analysis. I delved deep into the vast archive of oral and textual sources as well as other ephemera generated by the state and nationalist organizations and individuals available in the public domain, including newspaper reports, speeches, statements, interviews, press releases, parliamentary debates and responses, reports of commissions of inquiry and governmental bodies and legal petitions. In doing so, I privileged the public speech of political leaders such as the President, the Prime Minister, Cabinet Ministers, Members of Parliament, and Opposition Leaders as well as key Sinhala Buddhist ideologues outside of Parliament. To understand and analyse the response of family members of the disappeared to the OMP, I relied both on ethnographic fieldwork conducted in Sri Lanka in 2018 and document analysis.

To be clear, the struggle for truth and justice for enforced disappearances in Sri Lanka is not one struggle but many struggles waged by individual women as well as those organized as collectives. Their wants and demands vary considerably from demanding prosecution of perpetrators, to demanding knowledge of the whereabouts of the disappeared family members, to settling for compensation because of lack of hope in the possibility of truth or justice in their lifetime. What they want can also change over time in response to changes in their own life circumstances or the broader political context. The women next of kin that I refer to here belong to ARED, a group of women that organized to demand truth and justice for disappearances in the aftermath of the transitional justice consultations conducted by the UFGG. Since 2018, I have observed their engagements with the OMP closely, paying attention to where and how they are articulating their demands, including oral and written testimonies given by them and letters and appeals written by or on behalf of them. In particular, this article draws from a field trip to Jaffna and Killinochchi in July 2018 where I was able to observe two consultation meetings with family members of the disappeared and government officials organized by the OMP and ARED's engagement with this process. In attending to the letters and petitions signed by ARED, as well as to what they were saying and doing in public, I privilege their public, political speech. As such, this article does not reflect individual perspectives of women members within ARED nor internal debates and differences within ARED. I only conducted approximately 12 interviews with ARED members who were leaders to clarify their demands, in order to avoid retraumatizing family members as far as possible.

TRUTH AS A GLOBAL PARADIGM OF DEALING WITH THE PAST

As is well known, truth commissions first emerged in post-authoritarian states in Latin America as mechanisms to hold leaders to account – morally and politically – to expose abuses that had been obscured by lies and denial and to acknowledge the stories of individuals whose realities had been denied. In contexts where Cold War alliances often precluded the criminal prosecution of predecessor regimes, truth commissions enabled victims to challenge the state's official version of the past through personal testimonies of suffering, which became one of the most significant weapons against human rights abuses.⁵ Some of the early truth commissions in Argentina (1983), Chile (1990) and El Salvador (1992) came into existence because of the need for political compromise and as a 'second best' option where trials were considered

⁵ Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (New York: Routledge, 2011); Rosalind Shaw, 'Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone,' *International Journal of Transitional Justice* 1(2) (2007): 183–207, 185.

destabilizing.⁶ In 1994, South Africa recast the truth commission as a Truth and Reconciliation Commission (TRC), and provided amnesties to those who confessed their past crimes and could show that these crimes were politically motivated.

In Ruti Teitel's genealogy of transitional justice processes across the world, South Africa's TRC cemented the trend towards a restorative model of justice as the dominant model for seeking accountability for mass violence. By the early 2000s, however, Teitel argues that this restorative model was replaced by what she terms 'steady state transitional justice' characterized by expansion, normalization and institutionalization of transitional justice within international law and the UN system.⁷

In this new model, which also found expression in the UN's toolkit on transitional justice, peace and justice as well as truth and justice are supposed to go hand in hand.⁸ For instance, a 2004 report of the UN Secretary General states that transitional justice strategies must be holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals or an appropriately conceived combination thereof.⁹ Within this new dispensation, truth commissions are no longer a substitute for justice; they are considered to complement criminal tribunals. The South African example of amnesties is now considered to be particular to the South African transition and not to be confused as a norm that accompanies truth commissions. Indeed, they are a violation of international law.¹⁰

Much of the literature – both normative scholarly work and UN policy documents – that challenges the dichotomy between truth and justice proceeds on the assumption that truth is possible even when there is no political will for criminal prosecutions, but that in a holistic model of transitional justice both are important. The concerns and debates within this scholarship tend to be about: whether truth commissions are being employed to avoid prosecution of perpetrators; the work that truth commissions do; the relationship between truth commissions and justice processes; and the potential of truth commissions to reconcile divided communities and their limitations.¹¹

However, taking Northern Ireland as a case study, Cheryl Lawther points out that this literature has little to say about the contexts in which truth, not just justice, is being resisted and where silence or denial remains the dominant approach to dealing with the past.¹² In her view, this gap leaves several questions unanswered, including why silence and denial persist in some postwar contexts, why the benefits of truth recovery maybe rejected and the influences which underpin such opposition. Lawther sets out five thematic areas to explore opposition to truth recovery encompassing political, sociological and practical objections: memory and identity; competing notions of victimhood; legacies of mistrust; the need to honour past sacrifices; and the need to maintain political and social stability.¹³

I contend that the first of these – memory and identity – is the most relevant to understanding the resistance to the OMP in Sri Lanka. Going beyond Lawther, I draw on and contribute to

⁶ Naomi Roht-Arriaza, 'The New Landscape of Transitional Justice,' in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2012): 1–16, 3. Robert I. Rotberg, 'Truth Commissions and the Provision of Truth, Justice, and Reconciliation,' in *Truth versus Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis F. Thompson (Princeton: Princeton University Press, 2010): 3–21, 7.

⁷ Ruti Teitel, 'Transitional Justice Genealogy,' *Harvard Human Rights Journal* 16 (2003): 69–94.

⁸ *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616, (23 August 2004), 4. [hereinafter 'Report of the Secretary-General']; Dustin Sharp 'Interrogating the Peripheries: The Preoccupation of Fourth Generation Transitional Justice,' *Harvard Human Rights Journal* 26 (2013): 149–178, 156; Teitel, *supra* n 7.

⁹ 'Report of the Secretary-General,' *supra* n 8 at 9.

¹⁰ Hayner, *supra* n 6 at 104.

¹¹ For an overview of some of these debates, see Hakeem O. Yusuf, 'Truth Commissions,' in *Transitional Justice: Theories, Mechanics and Debates*, ed. Hakeem O. Yusuf and Hugo van der Merwe (Abingdon and New York: Routledge, 2022), 95–121. See also Roht-Arriaza and Rotberg, *supra* n 6.

¹² Lawther, *supra* n 4.

¹³ *Ibid.*, 37.

the broader scholarship that has explored how truth commissions mediate questions of history, memory and identity that I found particularly instructive for my analysis here.¹⁴ This scholarship teaches us that, when truth-seeking processes provide victim survivors of state violence a space to make representations in contexts where such violence has long been denied, suppressed or erased, they perform a significant role that goes beyond mere acknowledgment of past violence. They are also moments that shape the future. What is at stake in the debates and contestations about truth and justice processes is not merely guilt or innocence or punishment or amnesty, but history, memory and national identity.

Truth commissions reshape and redefine national identity by putting into question long-standing, firmly institutionalized, hegemonic collective historical self-perceptions, narratives and memories about past violence; rewriting histories of political violence and human rights violations; complicating simple and polarized histories; and challenging one-sided narratives of blame and the binary of construction of victims and perpetrators, heroes and traitors – through which conflicting parties (more often than not) try to make sense of violent conflict.¹⁵ In Molly Andrews' words, when citizens come together to tell and listen to stories that have been suppressed or erased, these stories can form the threads of a new national narrative.¹⁶ This case study illustrates that in analysing resistance to truth, discourses of resisters should not be taken at face value but socially and politically contextualized if we are to identify resistance as struggles over memory and identity. I will return to this question of identity and memory further below once I have traced the history of the OMP in Sri Lanka.

FROM THE GLOBAL TO THE LOCAL

The OMP arrived in Sri Lanka seven years after the end of the war via the international tool kit of transitional justice and transitional justice experts who advised the UFGG in the aftermath of the 2015 elections. Between 2009 (when the war ended) and 2015, President Mahinda Rajapaksa and his government, which had presided over the military defeat of the LTTE, refused to recognize the history of discrimination, political marginalization and violence against the minority Tamil community that precipitated the war. They also failed to implement a meaningful truth and justice process to address allegations of war crimes committed by the Sri Lankan state during the final phase of the war. In the context of this refusal, local and international human rights organizations worked together to mobilize the international community – foreign governments, foreign media and UN mechanisms – to put pressure on the state to initiate a transitional justice process that would address allegations of war-related atrocities committed by the armed forces during the war. The UNHRC in Geneva became the primary site of this pressure campaign.

Between 2012 and 2014, the advocacy efforts at the UNHRC resulted in a flurry of resolutions against Sri Lanka on the topic of reconciliation and accountability. The Resolution adopted in 2014 tasked the Office of the High Commissioner for Human Rights (OHCHR) to conduct an investigation into 'alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka.'¹⁷ The OHCHR investigation resulted in a nearly 300-page report titled *The Report of the Office of High Commissioner for Human Rights Investigation on Sri Lanka*

¹⁴ Molly Andrews, 'Grand National Narratives and the Project of Truth Commissions: A Comparative Analysis,' *Media, Culture & Society* 25(1) (2003): 45–65; Cheryl Lawther, 'Denial, Silence and the Politics of the Past: Unpicking the Opposition to Truth Recovery in Northern Ireland,' *International Journal of Transitional Justice* 7(1) (2013): 157–177, 161–162; Mark Osiel, *Mass Atrocity, Collective Memory and the Law* (New Brunswick: Transaction Publishers, 1997), 76; Aletta J. Norval, 'Memory, Identity and the (Im)possibility of Reconciliation: The Work of the Truth and Reconciliation Commission in South Africa,' *Constellations* 5(2) (1998): 250–265; Fiona C. Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (London: Pluto Press, 2003).

¹⁵ Ibid.

¹⁶ Andrews, *supra* n 14 at 45–46.

¹⁷ UNHRC Resolution on 'Promoting Reconciliation, Accountability and Human Rights in Sri Lanka,' (A/HRC/25/L.1/Rev.1) of 26 March 2014.

(OISL) which was released in September 2015.¹⁸ However, by the time this report was released, presidential and parliamentary elections had been held in Sri Lanka in January and August 2015 respectively. The Rajapaksa government was ousted from power at these elections and a new President Maithripala Sirisena and the UFGG had assumed power.

The OISL found that serious war crimes and human rights violations were committed by the Sri Lankan military and the LTTE during the period under consideration, i.e., between 2006 and 2009. In particular, the report documented: unlawful killings; violations related to the deprivation of liberty; enforced disappearances; torture and other forms of cruel, inhuman and degrading treatment; sexual and gender-based violence; abduction of adults and forced recruitment; recruitment and use of children; hostilities against civilians and civilian objects; control of movement; denial of humanitarian assistance; and screening and deprivation of liberty of internally displaced persons in closed camps. However, in stark contrast to the Rajapaksa government, which had rejected this fact-finding process in no uncertain terms, the UFGG recognized the legitimacy of the process as well the report's findings. One of the first actions of the new government was to inaugurate a transitional justice process at the UNHRC in Geneva by cosponsoring a consensus resolution (30/1) at the Council. The UFGG's decision was driven by multiple political incentives. During the 2015 elections, the United National Party, the main constituent party of the UFGG, had promised to implement a transitional justice process if elected to power, to woo the minority Tamil vote. More importantly, Res. 30/1 was also designed to win back international support from the west, which had dwindled under a foreign policy shift in favour of China during the Rajapaksa years.

Resolution 30/1 reiterated the state's commitment to a comprehensive package of judicial and non-judicial measures necessary to advance accountability and reconciliation, as well as to strengthening protection of human rights, democracy and the rule of law. It committed to establishing a transitional justice architecture that would comprise (i) a commission for truth, justice, reconciliation and non-recurrence; (ii) an office on missing persons based on the principle of the right to truth; (iii) a judicial mechanism to address the problem of impunity for human rights violations suffered by all communities; and (iv) an office for reparations. The resolution also committed to undertaking 'broad national consultations' to ensure that victim survivors and those traditionally excluded from decision-making have a central role to play in the design and implementation of these mechanisms and processes.¹⁹

The transitional justice strategy that was put in place following Res. 30/1 was based on 'sequencing, integration and coordination.' Within this strategy, the OMP was considered the 'low hanging fruit,' the least controversial and divisive of all the promised transitional justice mechanisms that would help to build trust amongst victim survivors without angering or alienating the majority community.²⁰ This thinking echoed the scholarship cited above that the truth-seeking process would be far less difficult to implement than a judicial mechanism. In the words of the late Mangala Samaraweera, the Foreign Minister at the time, who was the chief architect and champion of the OMP, it is 'merely a truth-seeking mechanism with a mandate that cuts across all ethnic and religious boundaries, without aiming to benefit only one community and without threatening another' (my emphasis).²¹ In the speech that he planned to give in

¹⁸ Office of the UN High Commissioner for Human Rights, *Report of the OHCHR Investigation on Sri Lanka (OISL)*, 16 September 2015. A/HRC/30/CRP.2.

¹⁹ UNHRC Resolution on 'Promoting Reconciliation and Accountability in Sri Lanka,' UN Doc. A/HRC/30/1 (1 October 2015).

²⁰ Statement by Foreign Minister Mangala Samaraweera at the 32nd Session of the UNHRC in Geneva, <http://slebassyusa.org/new/media-center/news/1599-Statement-by-foreign-minister-mangala-samaraweera-at-the-32nd-session-of-the-human-rights-council-in-geneva.html> (accessed 21 January 2021).

²¹ 'Sri Lanka's OMP Is a Truth Seeking Mechanism, Not a Law-Enforcement Body,' Minister Mangala Samaraweera Clarifies, *Colombo Page*, 4 March 2008, http://colombopage.com/archive_18A/Mar04_152018124SCH.php (accessed 17 November 2022).

Parliament on the day the bill was being debated, but was blocked from delivering, Samaraweera presented the OMP Bill as a historic and unprecedented piece of law that would not only *heal* but also *unite* the nation. In his view, seven years after the end of the war and the defeat of the LTTE, Sri Lanka was ready to win peace and heal the scars of conflict. The OMP was the first step in this process; a step that would empower the people to ‘face the challenges of the future as a united nation.’ Indeed, ‘unity in diversity’ was Samaraweera’s shibboleth for the OMP.²²

Based on such thinking, the government did little to raise public awareness about Res. 30/1 or the OMP. Nor was there a serious attempt to vernacularize the OMP for a local audience, except for a reference to Buddhist ideas of compassion in Samaraweera’s planned speech in Parliament. The government was therefore ill-prepared to counter the backlash against the OMP. Nevertheless, it had sufficient votes within its own ranks to eventually pass the bill without the support of the opposition.

THE OFFICE ON MISSING PERSONS

Sri Lanka has a long history of recurring cycles of enforced disappearances being deployed by the state as a counter-insurgency measure going back to 1971. The UN Working Group on Disappearances (WGEID) has noted that Sri Lanka has the second-highest rate of disappearances in the world, next to Iraq.²³ The preamble to the OMP Act opens with a proclamation that recalls this long history of disappearances in Sri Lanka, followed by the promise that ‘relatives are entitled to **know** the circumstances in which such persons went missing and the fate and whereabouts of such missing persons.’ The Act defines a missing person as someone ‘whose fate or whereabouts are reasonably believed to be unknown and which person is reasonably believed to be unaccounted for and missing,’ irrespective of the date and the context of disappearance [27(i) and (ii)]. In terms of Sec. 4(1)(a) of the Act, the OMP consists of seven members appointed by the President on the recommendation of the Constitutional Council.

The OMP belongs to the genre of non-judicial search mechanisms that have emerged to undertake investigations into the disappearances of persons in contexts of mass disappearances. Similar initiatives now exist in Peru, Colombia, Mexico, El Salvador and Nepal, even if their mandates and priorities differ considerably.²⁴ The primary objective of the OMP in Sri Lanka is to search for and trace missing persons [12(a)]. To fulfil this objective, the Act endows the OMP with extensive powers including powers to examine witnesses [12(c)(i)]; summon persons to provide statements or produce any document or thing in such persons possession [12(c)(ii)]; carry out excavations and/or exhumations of suspected grave sites [12(d)]; and request assistance necessary to achieve its mandate from any State or other authority [12(e)]. Additionally, the OMP can make recommendations to relevant authorities towards reducing incidents of missing persons [2(b)]; protect the rights and interests of missing persons and their relatives [2(c)]; identify avenues of redress [10(d)]; collect data related to missing persons including data obtained by other institutions; and centralize all available data in a database established under the Act [10(e)].

The Act does not mention the word ‘truth’ anywhere. However, I contend that for all intents and purposes, the OMP is a truth-seeking mechanism – the scope of which is of course limited to a single issue, i.e., enforced disappearances. The duty to trace the whereabouts of missing persons through inquiry and investigation and to communicate the findings to family members amounts to the pursuit of truth, which has the potential to directly challenge the denial

²² Hansard, supra n 3.

²³ See ‘Statistical Summary of Cases Reported to the Working Group between 1980 and 2019,’ in *Report of the Working Group on Enforced or Involuntary Disappearances*, 30 July 2019, A/HRC/42/40, 24–29, <https://reliefweb.int/sites/reliefweb.int/files/resources/G1922925.pdf> (accessed 24 January 2021).

²⁴ Cath Collins, ed., *An Innovative Response to Disappearances: Non-Judicial Search Mechanisms in Latin America and Asia* (New York: Global Initiative for Justice, Truth and Reconciliation, 2022).

of disappearances. The Act also grants the OMP wider powers beyond investigation of individual cases, which mimic the functions of a conventional truth commission. For instance, it has the power to take steps to: create public awareness of the causes, incidence and effects of missing persons [13(1)(j)]; encourage public support to fulfil the needs of the relatives of missing persons; and facilitate their access to economic, psycho-social, legal and administrative support [12(j)]. Moreover, it has the power to make recommendations: to prevent future disappearances based on patterns identified in the course of its work; on methods of commemoration and acknowledgement; and on the handling of unidentifiable and identifiable remains [13(1)(k)]. These powers vested in the OMP have the potential to challenge discourses of denial not merely at an individual level but at a very public, political level.

The Act specifically states that the findings of the OMP will not give rise to any criminal or civil liability [13(2)]. However, if it appears to the OMP that an offence within the meaning of the Penal Code or any other law has been committed and warrants an investigation, it can report such offence to the relevant law enforcement or prosecuting authority after consultation with relatives of the missing person. Moreover, the Act is silent on the question of amnesties. Presumably, the power vested in the OMP to summon any person before it includes the power to summon members of the police and armed forces as well as elected political leaders. Unlike in the paradigmatic South African case, the Act does not, however, offer any incentives for perpetrators who may be summoned before it to reveal the truth. This was most likely shaped by international norms relating to truth commissions and amnesties that I discussed in the preceding section.

The OMP officially commenced its work following the appointment of members in February 2018. During the term of office held by the first slate of OMP Commissioners from 2018 to 2021, it held a series of regional-level consultations commencing in May 2018; released one interim report (2018) and three annual reports (2018, 2019, 2020); observed the exhumation and excavation of five suspected gravesites in Mannar, Mullaitivu and Kilinochchi; established regional offices in Batticaloa, Matara, Mannar and Jaffna; compiled a list of 14,988 missing persons based on complaints received by the OMP covering all districts (except Batticaloa), as well as those missing from the army, navy and the air force; and assisted family members to obtain certificates of absence.²⁵ It wasn't, however, able to throw any new light on a single case of disappearance because of the lack of cooperation from the armed forces and government authorities and serious challenges faced in recruiting staff with the requisite expertise and skills to conduct investigations at the government-approved salary scale.²⁶

UNPACKING NATIONALIST RESISTANCE TO THE OMP

In unpacking the nationalist's resistance to the OMP, one interlocutor told me that it had little to do with the mandate of the OMP and that the resisters were deliberately misrepresenting the mandate for political gain. I contend that such a politics is still a politics that is deeply antithetical to any kind of truth-seeking in Sri Lanka. Or given the provisions relating to the findings of the OMP that disclose offences and the lack of provisions relating to amnesty, it is also possible to read the nationalist opposition as concerned with future prosecutorial actions that the OMP might open up. I believe that such a reading of the resistance is also too limited. If that was the concern, nationalist leaders and actors could have demanded a clarification of any ambiguities in relation to criminal accountability. Yet, they have at no point explicitly demanded a clause relating to amnesty in exchange for truth in any postwar transitional justice mechanism. Indeed, more than 10 years after the end of the war in Sri Lanka, the country is still to have

²⁵ Office on Missing Persons, Annual Report (2020), <http://www.ompsrilanka.org/storage/app/uploads/public/604/847/009/604847009edfb770550416.pdf> (accessed 24 January 2021).

²⁶ Office on Missing Persons, Annual Report (2019), <http://www.omp.gov.lk/storage/app/uploads/public/601/142/db5/601142db52d27533751009.pdf> (accessed 25 January 2022).

any sort of open and honest discussion about prosecutions versus amnesty. In fact, it is well-nigh impossible to have such a discussion when nationalist leaders and actors and much of the Sinhala Buddhist population deny that the armed forces committed any atrocities during the war, including enforced disappearances. It is to this discourse of denial, which is embedded in a broader nationalist narrative about the war, that I turn next.

Following the military defeat of the LTTE by state forces in May 2009, then President Mahinda Rajapaksa, his government and Sinhala Buddhist nationalists categorically denied all allegations of atrocities committed by the armed forces. This denial was embedded in a broader triumphal ideological discourse about how and why the war was waged, as well as who its victims and perpetrators were. In this ideological discourse, the Sri Lankan state conducted a 'humanitarian operation' to save innocent Tamil civilians from the LTTE, described as the 'most brutal terrorists' the world had ever seen. Moreover, soldiers of the state were constructed as heroic figures who 'carried a gun in one hand and the Human Rights Charter in the other.'²⁷ Initially, President Rajapaksa claimed that there were 'zero civilian casualties' during the war. When it became impossible to sustain this narrative in the face of allegations and evidence of atrocities, he later admitted to 'some civilian casualties,' claiming that it had been impossible to avoid these in a 'battle against a ruthless opponent actively endangering civilians.'²⁸ While the heroism and sacrifices of the soldiers were immortalized and celebrated in monuments across the country, Tamil civilians who died and disappeared were reduced to unmnorable and ungrivable lives.²⁹

In this nationalist discourse, all state violence during the war was just and lawful, and all LTTE violence was brutal, unlawful and inhumane. All allegations of atrocities attributed to the army are refuted and dismissed as an insult to the heroic troops and a conspiracy planned by the west, hand in hand with the Tamil diaspora and NGOs, to undermine the peace that was won, to divide the country and to send soldiers to international gallows.³⁰ Moreover, all victims, human rights activists and journalists demanding truth and justice are constructed as terrorists, traitors or enemies of the state who are placed outside the rule of law.³¹

Thus, from the very first day after the war's end, the violence of the war was defined and framed within a powerful Sinhala Buddhist nationalist discourse relating to the country (*rata*), nation (*jātiya*) and religion (*āgama*). It set the framework for understanding and making meaning of the war, what was thinkable and unthinkable and what was defensible and indefensible: it marked the boundaries of community and nation in postwar Sri Lanka.

Sumathi Ramaswamy states that the nation 'longs for form.'³² Moreover, the nation is an 'inherently fragile social achievement' and remains ephemeral unless hard and regular work is undertaken to produce and maintain its materiality.³³ Similarly, Stuart Hall suggests that narratives of the nation, including stories, images, landscapes, scenarios, historical events, national symbols and rituals, which stand for or represent the nation's shared experiences, sorrows, triumphs and disasters are vital to people's identification with and understanding of the nation.³⁴ War memories occupy a central place among such stories and recollections of the past. In Renan's

²⁷ Mahinda Rajapaksa, Speech Delivered on Fourth Victory Day Celebrations held on 18 May 2013, <https://www.youtube.com/watch?v=UApR-8gx2tg> (accessed 1 June 2021).

²⁸ Ministry of Defence, Democratic Socialist Republic of Sri Lanka, *Humanitarian Operation-Factual Analysis: July 2006–May 2009*, July 2011, <http://slembassyusa.org/wp-content/uploads/2011/08/Sri-Lankan-Humanitarian-Operation-Factual-Analysis.pdf> (accessed 24 May 2021).

²⁹ Judith Butler, *Frames of War: When Is life Grievable?* (London and New York: Verso, 2010).

³⁰ Rajapaksa, supra n 27.

³¹ 'Sri Lanka Minister Mervyn Silva Threatens Journalists,' *BBC News*, 23 March 2012, <https://www.bbc.com/news/world-asia-17491832> (accessed 24 May 2021).

³² Sumathi Ramaswamy, 'Visualizing India's Geo-Body: Globes, Maps, Bodyscapes,' in *Beyond Appearance? Visual Practices and Ideologies in Modern India*, ed. Sumathi Ramaswamy (New Delhi: Sage Publications, 2003), 151–189.

³³ Arjun Appadurai, *Modernity at Large* (Minneapolis: University of Minnesota Press, 1996), 180–181, cited in Ramaswamy, supra n 32.

³⁴ Stuart Hall, 'The West and the Rest: Discourse and Power,' in *Formations of Modernity*, ed. Stuart Hall and Bram Gieben (Cambridge: Polity Press, 1992): 275–320, 293.

words, the ‘constitution of a nation is based on the possession in common of a rich legacy of memories,’ particularly remembrances of past glories and past suffering.³⁵ War heightens the collective identity of people and incites whole populations to define themselves against enemy others. War simultaneously inspires sacrifice and suffering, as well pride and glory in the nation. Thus, whether wars are won or lost, they are marked and remembered in a myriad of ways: politically and culturally, officially and unofficially, by the state and by citizens, through myths, monuments, museums, parades, dedicated days, stamps, coins, poems, songs and films. Through these sites of memory and repetitive performances of commemoration, war is made into a meaningful or even sacred event in the nation’s narrative – what George Mosse refers to as the ‘Myth of the War Experience.’³⁶ This is the kind of social capital upon which Renan tells us one bases a national idea.³⁷

In postwar Sri Lanka, the military defeat of the LTTE, the denial of war crimes and the myth of the heroic soldier who waged a humanitarian operation are such a narrative of the nation. What is at stake in any transitional justice process in Sri Lanka are therefore questions relating not merely to guilt or innocence, or punishment or amnesty, but also to national identity and who belongs to the nation. Sinhala Buddhist nationalists fear truth, because any meaningful truth-seeking process would need to not only reckon with this narrative but also offer a revision of it, and thereby redefine the hegemonic understandings of victims and perpetrators as well as heroes and villains in postwar Sri Lanka.³⁸ It would make it impossible for nationalists to sustain their narrative of the nation, and by extension their hegemonic power and prestige within the Sinhala Buddhist polity. However, this is not the end of this story.

THE SECOND RAJAPAKSA REGIME AND THE OMP

In elections held in 2019 and 2020, Gotabaya Rajapaksa, the brother of Mahinda Rajapaksa, was elected as President and an alliance headed by the Sri Lanka Podujana Pakshaya (SLPP) – a new party formed by the Rajapaksas – won a landslide majority in parliament. This new government retained the OMP.

Gotabaya Rajapaksa commenced his presidential campaign with the very same rhetoric of Sinhala Buddhist triumphalism and denialism of disappearances that had defined the postwar regime of his brother Mahinda from 2009 to 2015.³⁹ Following his election as President in November 2019, he continued to deny disappearances. In January 2020, at a meeting with the UN Resident Coordinator in Sri Lanka, he stated that all missing persons were dead, and that the government would make arrangements to issue death certificates to family members. Later, when human rights organizations, activists and families expressed their opposition to the imposition of death certificates, the Presidential Secretariat issued a statement as follows:

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*. 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.⁴⁰ (My emphasis)

³⁵ Ernest Renan, ‘What Is a Nation?’ in *Ernest Renan: What Is a Nation? and Other Political Writings*, trans. and ed. M. F. N. Giglioli (New York: Columbia University Press, 2018 [1882]), 261, 247–263.

³⁶ George Mosse, *Fallen Soldiers: Reshaping the Memory of the World War* (New York: Oxford University Press, 1990), 7.

³⁷ *Supra* n 35 at 261.

³⁸ Jemima Garcia-Godos, ‘Victim Reparations in the Peruvian Truth Commission and the Challenge of Historical Interpretation,’ *International Journal of Transitional Justice* 2(1) (2008): 63–82.

³⁹ Chulani Kodikara, ‘What Is the Question? The Matter of Surrendees and Gotabaya Rajapaksa’s Response,’ *Groundviews*, 17 October 2019, <https://groundviews.org/2019/10/17/what-is-the-question-the-matter-of-surrendees-and-gotabaya-rajapaksas-response/> (accessed 24 January 2021).

⁴⁰ ‘Death Certificates for Missing after Investigation,’ Presidential Secretariat Press Release (24 January 2020).

In February 2020, a delegation sent by President Rajapaksa to the UNHRC headed by his Minister of Foreign Relations announced that the GoSL would no longer abide by commitments made in Res. 30/1 and would be implementing its own home-grown peace and reconciliation process.⁴¹ The Minister declared that Res. 30/1 undermined national security and intelligence, and was unconstitutional, impractical, illegal and a 'blot on the sovereignty and dignity of the people of Sri Lanka.' Notice the reappearance of sovereignty and dignity here. Moreover, he asserted that:

In terms of reputational damage, it eroded Sri Lankans' trust in the international system and the credibility of Sri Lanka as a whole in the eyes of the international community. This irresponsible action also damaged long nurtured regional relationships and Non-Aligned as well as South Asian solidarity. The deliberate polarisation it sought to cause through trade-offs that resulted in Sri Lanka's foreign policy being reduced to a 'zero-sum game,' made my country a 'pawn' on the chess board of global politics, and unnecessarily drew Sri Lanka away from its traditional neutrality.⁴²

However, even as the government refused to abide by Res. 30/1, it expressed its commitment to continuing with the Office on Missing Persons. On the expiration of the terms of the first slate of commissioners to the OMP in February 2021, the government appointed a new set of commissioners.⁴³ In August 2021, it opened yet another office at the district level. 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.'⁴⁴ The government also allocated Rs. 300 million (roughly US\$15 million in November 2021) in the 2022 budget to compensate for the disappearances of people during different eras owing to various reasons and to enact justice for the families of such missing persons.⁴⁵

Why this change of heart after the elections? How should we understand these contradictory moves by the second Rajapaksa regime? 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?

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.⁴⁶ The Rajapaksa regime was no different. Between 2009 and 2015, it established two Presidential commissions of inquiry called the Lessons Learnt and Reconciliation Commission (LLRC) and the Presidential Commission for the Investigation of Complaints into Missing Persons (PCICMP) under pressure from the UN and western governments, to respond to

⁴¹ Sandasen Marasinghe and Amali Mallawarachchi, 'Govt to Have Own Peace, Reconciliation, Accountability Process,' *Daily News*, 21 February 2020, <http://www.dailynews.lk/2020/02/21/political/212148/govt-have-own-peace-reconciliation-accountability-process> (accessed 20 April 2021).

⁴² Dinesh Gunawardena, Minister of Foreign Relations, 'Text of Speech of Delivered at the High-Level Segment of the 43rd Sessions of the UNHRC,' *Ministry of Foreign Affairs*, 26 February 2020, <https://www.mfa.gov.lk/43rd-session-hrc/> (accessed 24 May 2021).

⁴³ Manjula Fernando, 'Govt. Will Present Its Position Clearly at the UNHRC – Foreign Secretary, Prof. Jayanath Colombage,' *Sunday Observer*, 19 September 2021, <https://www.sundayobserver.lk/2021/01/24/opinion/govt-will-present-its-position-clearly-unhrc-foreign-secretary-prof-jayanath> (accessed 20 September 2021).

⁴⁴ International Day of the Disappeared, Webinar organized by the Office on Missing Persons, 30 August 2021, <https://www.facebook.com/drsurenaghavan/videos/4028529017269283> (accessed 31 August 2021).

⁴⁵ Basil Rajapaksa, Budget Speech, November 2021, 66, <https://www.treasury.gov.lk/api/file/91c69189-9b2f-4ab2-8e90-53213a60cddd> (accessed 30 November 2021). It should be noted that the Sri Lankan rupee has since dramatically depreciated against the US dollar.

⁴⁶ Amnesty International, *Twenty Years of Make Believe: Sri Lanka's Commissions of Inquiry* (London: Amnesty International, 2009).

demands for truth and justice for war-related atrocities. Kate Cronin-Furman has conceptualized these domestic commissions of inquiry as ‘human rights half measures,’ which allowed Sri Lanka to emphasize the primacy of domestic processes and sovereignty from western interference, while undermining the possibility of coalition-building against Sri Lanka at the UNHRC.⁴⁷

Following Cronin-Furman, I argue that the Gotabaya Rajapaksa regime has maintained the OMP as a human rights half-measure in order to instrumentalize its existence in various human rights fora. However, I go beyond her analysis to contend that the government has an even more compelling motive to keep the OMP; it is using the OMP to once and for all bury the matter of disappearances in Sri Lanka by way of payment of compensation to family members of the disappeared, and it is the OMP that is now tasked to do this work. The Minister for Justice for the new regime, at a webinar organized 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 is 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 ... belonged to an 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.

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, as well as by the Foreign Minister in a statement he made in October 2021. According to the Foreign Minister,

(T)he 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.⁴⁸

The Rs. 300 million allocated by the 2022 budget is for this purpose.

This means that, once institutional mechanisms such as the OMP are established, even governments who are opposed to such institutions can weaponize or capture these mechanisms not simply to undermine international pressure but also to tame and depoliticize struggles for truth and justice waged by family members of the disappeared.⁴⁹ Yet Tamil women family members of the disappeared, who have waged a courageous struggle since the end of the war, have refused

⁴⁷ Kate Cronin-Furman, ‘Human Rights Half Measures: Avoiding Accountability in Postwar Sri Lanka,’ *World Politics* 72(1) (2021): 121–163, 147. For critical analysis of the PCICMP and the LLRC, see also Neloufer de Mel and Chulani Kodikara, ‘The Limits of Doing Justice: Compensation as Reparation in Postwar Sri Lanka,’ in *Contesting Justice in South Asia*, ed. Deepak Mehta and Rahul Roy (New Delhi: Sage and Yoda Press, 2018), 39–73. Richard Gowing, *War by Other Means? An Analysis of the Contested Terrain of Transitional Justice under the ‘Victor’s Peace’ in Sri Lanka*, Working Paper No. 13–138 (London: London School of Economics, 2013); Sharika Thiraganama, ‘Claiming the State: Postwar Reconciliation in Sri Lanka,’ *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 4(1) (2013): 93–116.

⁴⁸ Sulochana Ramiah Mohan, ‘Relatives Take Issue with President’s Statement,’ *Ceylon Today*, 23 September 2021, <https://ceylontoday.lk/news/relatives-take-issue-with-president-s-statement>; Pamodi Waravita, ‘OMP Finalising Missing Persons List,’ *The Morning*, 6 October 2021, <https://www.themorning.lk/omp-finalising-missing-persons-list/> (accessed 23 September 2021).

⁴⁹ Given that the UNHRC has no power to enforce its resolutions, there is little the UN can do when a country backtracks on commitments made. The UN country also has very little say in the implementation of UN resolutions, with the exception of providing funding and technical assistance if requested by a government.

this idea of closure based on blood money given by the state. They are now demanding a *purely* international justice process.

ARED AND THE OMP

From the very outset, Tamil relatives of those who were disappeared during the war were ambivalent about the OMP. Given the magnitude of the problem of disappearances, of all the mechanisms promised by Res. 30/1, the OMP resonated the most with survivors of the war in the north and east. Based on both oral and written submissions received from war-affected communities, the Consultation Task Force on Reconciliation Mechanisms (CTF) appointed by the President in late January 2016, in its final report, observed that ‘disappearances constituted the most recurrent and pressing issue brought before the CTF.’⁵⁰ It also noted that, strikingly, a higher number of persons affected by disappearances came before the CTF than persons affected by other violations. Several Zonal Task Force members, who assisted the CTF’s work, additionally observed that ‘even participants who had suffered other violations chose to foreground their experiences of disappearances.’⁵¹ In submission after submission made to the CTF, family members outlined the range of ways in which disappearances took place, but also made suggestions and recommendations relating to the OMP, informed by their own experiences with state officials in the past, which they did not want to be repeated.⁵² While these recommendations ranged from its name and powers to its location(s) and composition, there was one theme that came up again and again in these submissions: the need for international involvement at all levels of the OMP, including in specific functions such as investigations and victim and witness protection.

One mother from Mullaitivu who attended a consultation on the OMP said: ‘We can’t trust local mechanisms.’ Another from Vavuniya stated:

We see the OMP, not as a remedy for the issue of the families of the disappeared. Instead, we see it as drama staged for the international community, and this is why we are requesting international oversight.

Yet another referred very specifically to the need for UN involvement.⁵³

The government, however, completely disregarded this call for international involvement. Moreover, the delay in setting up the Office after the bill was passed led to further loss of faith in the OMP amongst family members. It is in the interregnum between the enactment of the OMP law and the appointment of OMP commissioners that women family members of the disappeared from the eight districts in the north and east organized under the banner of ARED and began a series of continuous roadside tent protests. Given the lack of international involvement, ARED was of the view that the OMP was likely to be an ‘exercise in futility.’ In a letter handed over to the Chairperson of the OMP in Kilinochchi in July 2018, they asked, ‘How do you expect us to have confidence in OMP given the long and failed history of Sri Lankan government appointed commissions to deal with abuses against Tamils?’

Nevertheless, after the OMP was constituted, ARED expressed that they were willing to engage with the OMP, despite their disappointments (reflecting the desperation most family members feel), provided they ‘see action, not words, not more offices.’ By action, ARED meant

⁵⁰ Consultation Task Force on Reconciliation Mechanisms, *Final Report of the Consultation Task Force on Reconciliation Mechanisms* Vol. 1, 17 November 2016, Colombo, 176.

⁵¹ *Ibid.*, 177.

⁵² The submissions contained references to different types and modes of disappearances, including ‘white van’ abductions, disappearances following arrests and ‘village round-ups’ carried out by the military, disappearances of former LTTE cadres who had been surrendered to the army and the disappearances of those who had joined the LTTE.

⁵³ Consultation meeting with family members of the disappeared organized by the Secretariat for Coordinating Reconciliation Mechanisms, 20 May 2016.

investigations into disappearances that occurred during the last phase of the war and the compilation of a list of surrendees, detainees, political prisoners and secret detention centres and the release of all reports of prior commissions of inquiry on disappearances. Their refusal to engage with the OMP unless these demands were met manifested most dramatically during the OMP's initial visits to Mannar, Mullaitivu, Trincomalee, Jaffna and Kilinochchi, where increasingly large numbers of women from ARED boycotted the meetings while staging protests outside the meeting venues.⁵⁴

In Mullaitivu, one of the women leaders of the protesting group demanded to know from the Chairperson of the OMP, who came out to speak to the women (through an interpreter): 'what happened to our relatives who disappeared during the war, in hospitals, etc.?', 'what happened to the 100s of people who we personally handed over to the army during the last days of the war and then disappeared? What happened to them?'⁵⁵

The protests and the boycott became progressively more aggressive when the OMP visited Trincomalee, Jaffna and Kilinochchi. I was present at the OMP consultation at both Jaffna and Kilinochchi which was held back-to-back on 14 and 15 July 2018. In Jaffna, no more than two minutes into the Chairperson's welcome speech, the women tried to disrupt the meeting by walking into the hall weeping, wailing, waving their arms in the air and beating their chests, while shouting: 'We don't want the OMP'; 'We don't trust the OMP'; 'Our loved ones are lost, give back our children'; 'We want the military arrested'; 'All come out, and we will fight from outside.' Efforts by the Chairperson and the two Tamil-speaking OMP members to persuade the leaders to allow those who wished to participate to do so were to no avail.

Since then, ARED has consistently rejected the OMP while demanding an international mechanism. In doing so, they are not merely challenging the power of the state to disappear and kill with impunity, the discourse of denial or the state technologies of appeasement. Nor are they simply asserting their right to know and the right to justice. In their persistent struggle for truth and justice, these women family members of the disappeared are making visible the concealed violence of the state, keeping the memories of the disappeared alive and rejecting that some citizens can be reified and heroized, and others placed outside of the nation as unintelligible, ungrievable and unmournable lives. They are refusing to reconcile with the state according to the terms laid out by the state, and refusing to submit to the binary logic underlying the figures of the soldier-hero-patriot and the traitor-terrorist-enemy. In doing so, they are disrupting the boundaries of the nation as delineated by nationalists and posing a radical challenge to the nationalist ideological project itself, while reimagining the very contours of the nation-state, and their place within it.

CONCLUSION

The establishment of the OMP was one of the few achievements of the UFGG, which came to power in 2015 on the promise of implementing a transitional justice programme for war-related human rights abuses. In this article, I trace the arrival of the OMP in Sri Lanka, via the UNHRC and the international tool kit of transitional justice, while documenting the resistance to the OMP by the opposition in Parliament and Sinhala Buddhist nationalist ideologues on the grounds that it would undermine Sri Lanka's sovereignty and send war heroes to international gallows. Given that the OMP is not a judicial mechanism, I argue that this resistance must be

⁵⁴ The OMP organized a series of district-level consultations as a way to increase awareness of the Office and obtain feedback from family members about current and future activities. Women who were not part of ARED attended these meetings, although in Kilinochchi ARED enforced an almost total boycott by family members.

⁵⁵ 'බහුතරයක් දෙනා අනුරුද්දහන් කරවන ලද අය බව OMP සභාපති කියයි' (bahutarayak denā aturudahan karavana lada aya bava OMP sabhāpati kiyayi; The OMP Chairman says that the majority of the people were made to disappear), video, *Gagana*, <http://old.radiogagana.com/?p=46197> (accessed 20 August 2018).

recognized as resistance to a truth-seeking process that has the potential to challenge longstanding, firmly institutionalized, collective historical self-perceptions and narratives of the war that go to the heart of majoritarian identity in postwar Sri Lanka. I attempted to illuminate that Sinhala Buddhist nationalist ideologues and political parties such as the SLPP, which is aligned to that ideology, cannot support a truth-seeking process in Sri Lanka, because such a process will inevitably call into question how they want to write the history of the war – how the war was fought, its causes and consequences and its victims, perpetrators and heroes – and how it is to be remembered. Sinhala Buddhist nationalist ideologues in postwar Sri Lanka want to erase atrocities committed during the war so as to build national identity on a narrative of triumphalism, the heroization of soldiers and the institutionalization of the soldier as the citizen par excellence within the nation-state, while demonizing Tamil war survivors demanding truth and justice as enemies and traitors of the nation. In their view, Res. 30/1 and the agreement to participate in a transitional justice process presuppose human rights abuses by the state. It is an admission that the soldiers committed war crimes and the country's judicial system is deficient. As one writer put it, in the view of nationalists, 'both these "*a priori*" assumptions do not hold true in the case of Sri Lanka.'⁵⁶

Moreover, the case of the OMP in Sri Lanka demonstrates the limits of international intervention in local justice struggles. In an early critique, Chandra Lekha Sriram cautioned about the risks and perils of implementing internationalized justice based on one model in very different political and legal contexts.⁵⁷ This is not to deny the need for truth or justice, but to emphasize the need for caution before such mechanisms are imposed.

The OMP in Sri Lanka challenges one of the most common-sense assumptions underlying the international tool kit of transitional justice, that implementing truth is somehow easier than pursuing criminal justice and that truth can lead to reconciliation in a divided society. This case study of Sri Lanka shows that in ethnonationalist, deeply divided contexts such as Sri Lanka, truth is not just a second-best option to justice but is an equally radically destabilizing and unsettling commodity. Unless we understand why truth is a radical proposition in Sri Lanka, it is impossible to implement a meaningful truth-seeking mechanism in the country.

This case study of the OMP also demonstrates that even as nationalist forces reject truth-seeking mechanisms such as the OMP, they are still capable of co-opting, instrumentalizing and weaponizing such mechanisms to undermine justice struggles and further their own agendas. As I discuss in the preceding paragraphs, the very opposition that categorically rejected the OMP is now using the database collated by the OMP during the UFGG to attempt to award compensation and force 'closure' upon grieving families. However, Tamil relatives of the disappeared from the north and east, whose family members vanished during the last phase of the war, are resisting the offer of compensation to continue their struggle for truth and justice. Their gendered struggle represents one of the most radical refutations of the narrative of the nation put forward by nationalists in postwar Sri Lanka.

⁵⁶ Dr Kamal Wickramasinghe, Hazards of Truth Commissioning, *The Island*, 10 April 2018, <http://ceylon-ananda.com/hazards-of-truth-commissioning/> (accessed 20 June 2018).

⁵⁷ Chandra Lekha Sriram, 'Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice,' *Global Society* 21(4) (2007): 579–591.