

OHCHR Investigation on Sri Lanka

Terms of Reference

Mandate and reporting obligations

In its resolution A/HRC/25/1 adopted in March 2014 on “Promoting reconciliation, accountability and human rights in Sri Lanka”, the United Nations Human Rights Council requested the UN High Commissioner for Human Rights to “undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission (LLRC), and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability, with assistance from relevant experts and special procedures mandate holders”.

The Council requested the High Commissioner to present an oral update at its twenty-seventh session and a comprehensive report on the investigations at its twenty-eighth session.

In accordance with this mandate, the UN High Commissioner for Human Rights established the OHCHR Investigation on Sri Lanka (OISL), based in Geneva.

Timeframe

The period under investigation is that covered by the LLRC, that is, from 21 February 2002 until 15 November 2011, when it presented its report to the President of Sri Lanka. The OISL will also take into consideration any contextual and other relevant information that may fall outside this timeframe which may provide a better understanding of events or which may be pertinent regarding continuing human rights violations.

Legal framework

The mandate of the OISL requires it to undertake investigations into alleged serious violations and abuses of human rights and related crimes by both parties to the conflict. The legal framework that underlies the investigation will comprise of all obligations assumed by Sri Lanka under international human rights treaties and those applicable under customary international law. Although a non-state actor cannot formally become party to human rights treaties, it is now increasingly accepted that non-state groups exercising de facto control over a part of the State’s territory must respect certain human rights obligations of persons in that territory.

During the period covered by the investigations, there existed an internal armed conflict, making necessary the application of international humanitarian law, in particular provisions of the Geneva Convention relevant to non-international armed conflicts, to measure the conduct in the conflict of both the Government and non-state armed groups. Thus, the legal framework is the same as applied by the Lessons Learnt and Reconciliation Commission. Its mandate also requires the OISL to apply international criminal law to the incidents and events under investigation in determining whether crimes have been perpetrated.

Experts

In June 2014, the High Commissioner appointed three distinguished experts, Mr. Martti Ahtisaari, former President of Finland, Ms. Silvia Cartwright, former High Court judge of New Zealand, and Ms. Asma Jahangir, former President of the Human Rights Commission of Pakistan, to play a supportive and advisory role, as well as independent verification throughout the investigation.

As required by the Council resolution, the OISL will also obtain the assistance of specific special procedures mandate holders including on extrajudicial executions, disappearances, internally displaced persons, arbitrary detentions, violence against women and torture.

Methods of work

In order to establish the facts and circumstances of alleged violations, abuses and crimes by both parties, the OISL will conduct a desk review of existing documents and information, including government and civil society reports, collect and document victims' testimonies and the accounts of survivors, witnesses and alleged perpetrators, as well as seeking information from other relevant sources such as satellite images, authenticated video and photographic material and official documents. In analysing the information collected, it will seek to corroborate facts and accounts to meet the agreed standard of proof (see below).

It will continue to seek to engage with the Government of Sri Lanka, as envisioned in the Council resolution. The High Commissioner will continue to request for the OISL to have access to the country to meet with Government officials and others, as well as to have access to all relevant documentation.

The OISL will seek to develop regular dialogue and cooperation with other United Nations entities, including its specialized agencies, interested institutions and academics and non-governmental and community organizations.

Any state, individual or organisation may submit information in writing to the OISL. Submissions to the OISL may be sent to: oisl_submissions@ohchr.org

In carrying out its work, the OISL will be guided at all times by the principles of independence, impartiality, objectivity, transparency, integrity and "do no harm".

Witness protection

The OISL will take appropriate steps to address witness and victim protection concerns and shall adopt procedures and methods of work aimed at protecting such persons during all stages of its work.

The Government of Sri Lanka also has an obligation to protect victims and witnesses and others in Sri Lanka who make contact with the OISL, and it will be requested to make an undertaking that no such person shall, as a result of such contact, suffer harassment, threats, acts of intimidation, ill-treatment or reprisals.

Confidentiality of information

The OISL will take all necessary measures and precautions to protect the confidentiality of information, including by not disclosing the names of individuals in its public reports as appropriate.

At the end of its work, the OISL will archive all its confidential material in accordance with standard UN procedures for strictly confidential material.

Standard of proof

Consistent with the practice of other United Nations fact-finding bodies, the OISL will base its findings on a “reasonable grounds to believe” standard of proof. There are reasonable grounds to believe that an incident or pattern of violations or crimes occurred if the OISL has obtained a reliable body of information, consistent with other information, indicating their occurrence. This standard of proof may be sufficiently high to call for judicial investigations into violations of international humanitarian and human rights law and international crimes.

With regard to assessing information that identifies alleged individuals to have been involved in the violations, the OISL will comply with the standards that require a reliable body of material consistent with other verified circumstances, which tends to show that a person may reasonably be suspected of being involved in the commission of a crime. The OISL will not make final judgments as to criminal guilt; rather, it would make an assessment of possible suspects that may pave the way for future criminal investigations.

Cooperation with the Government of Sri Lanka

The Council in its resolution called upon the Government of Sri Lanka to cooperate with the Office of the High Commissioner for Human Rights in the implementation of the resolution. Such cooperation entails freedom of movement throughout the territory; unhindered access to all places and establishments; freedom to meet and interview representatives of national, local and military authorities, community leaders, non-governmental organizations and other institutions, and any such person whose testimony is considered necessary for the fulfilment of its mandate; and free access to all sources of information, including documentary material and physical evidence.

Other Governments in whose territory the OISL may interview victims, witnesses and sources and gather information are also invited to cooperate with the investigation under the same conditions.

Privileges, immunities and facilities

The experts of the OISL shall enjoy the privileges and immunities accorded to experts on mission under Article IV of the 1948 Convention on Privileges and Immunities of the UN, and the OHCHR staff of the OISL shall enjoy the privileges and immunities of officials under Article V and VII of the Convention in the conduct of the investigation. All Governments are reminded of this obligation and invited to ensure that facilities necessary for the independent conduct of the investigation are provided.

<http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx>