

OHCHR Sri Lanka accountability project

Terms of Reference

1. On 23 March 2021, at its 46th session, by its resolution 46/1 on “Promoting reconciliation, accountability and human rights in Sri Lanka”, the Human Rights Council recognized the importance of preserving and analysing evidence relating to violations and abuses of human rights and related crimes in Sri Lanka with a view to advancing accountability and decided to strengthen the capacity of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in this regard.
2. In accordance with this mandate, OHCHR established an accountability project on Sri Lanka within the Office, subject to the authority of the High Commissioner for Human Rights.

I. Mandate

3. In resolution 46/1, paragraph 6, the Human Rights Council specifically decided to strengthen the capacity of OHCHR to collect, consolidate, analyse and preserve information and evidence and to develop possible strategies for future accountability processes for gross violations of human rights or serious violations of international humanitarian law in Sri Lanka, to advocate for victims and survivors, and to support relevant judicial and other proceedings, including in Member States, with competent jurisdiction. In resolution 51/1, paragraph 8, the Human Rights Council decided to extend and reinforce the capacity of OHCHR in this regard.¹
4. In pursuance of this mandate, and consistent with the legal framework applicable to the United Nations Secretariat, in implementing the accountability project, OHCHR will act with professionalism, independence, integrity and impartiality in considering violations and abuses by all parties against any victim in respect of the situation in Sri Lanka. OHCHR will discharge its mandate, including with respect to advocating for victims and survivors, with an emphasis on the importance of a comprehensive approach to dealing with the past, including judicial and non-judicial processes to ensure accountability measures and the rights of victims to justice, truth, reparations and guarantees of non-recurrence. In all its activities, the project will fully integrate and ensure inclusion of relevant gender perspectives and related considerations, as well as approaches aimed at ensuring comprehensive protection of children and of their best interests.
5. In implementing the accountability project, OHCHR will act in full accordance with the present terms of reference, the Charter of the United Nations, relevant international law, and United Nations rules, regulations and policies. It will also take into account, as far as appropriate, the policies and practices of comparable international accountability mechanisms. The activities pursuant to Human Rights Council resolution 46/1, paragraph 6, resolution 51/1, paragraph 8 and subsequent mandates

¹ These Terms of reference apply to OHCHR’s mandate pursuant to 46/1, 51/1 and subsequent resolutions.

will be undertaken independently of the United Nations Resident Coordinator and Country Team in Sri Lanka. Relevant developments related to the work of the project will be included in future OHCHR reports to the Human Rights Council, as well as through oral updates and, as appropriate, other public outputs.

II. Collect, consolidate, analyse and preserve information and evidence

A. Collection

6. OHCHR is mandated through the accountability project to collect information and evidence relating to gross violations of human rights and serious violations of international humanitarian law by all parties in Sri Lanka. In that regard, and to that end, it will:
 - a. Seek access to, make use and build upon information and evidence collected by the OHCHR investigation on Sri Lanka mandated by the Human Rights Council in its resolution 25/1, within limits of applicable consent, conditions applied by relevant information providers, and other limitations applicable to sensitive material under United Nations rules, regulations and policies;
 - b. Collect relevant information and evidence, by receiving it from any or all other sources, including from relevant entities and mechanisms of the United Nations system, including the United Nations Panel of Experts on accountability in Sri Lanka, from national authorities, international, regional or national organizations or institutions, non-governmental organizations, other non-State, corporate or private sector entities or other groups or individuals, within limits of applicable consent, conditions applied by relevant information providers, and other limitations applicable to sensitive material under United Nations rules, regulations and policies;
 - c. Collect additional information and evidence, including interviews, witness testimony, documentation and other relevant material, as appropriate and consistent with relevant standards and methodology.

B. Consolidation and analysis

7. The accountability project will organize, assess and structure, as applicable, the information and evidence in its possession, including interviews, witness testimony, documentation and all other relevant material, with a view to ensure its best accessibility, relevance and use in future accountability processes, whether at national, regional or international levels, consistent with international standards.
8. The analysis conducted by the accountability project will include preliminary assessment of the information and evidence in its possession, for credibility, reliability, weight and probative value, while identifying potential evidentiary gaps and need for collection of additional information and evidence.

C. Preservation

9. Through the accountability project, OHCHR will create an information and evidence repository, and record, organize and preserve information and evidence in its possession, in accordance with OHCHR's methodology on gathering, documenting and managing information and the policies and practices of other comparable international accountability mechanisms, where relevant.
10. The accountability project will ensure, to the maximum extent possible, uninterrupted chain of custody of evidence in its possession, as necessary for the implementation of its mandate.
11. The accountability project will apply all due guarantees in preserving, handling and storing the information and evidence it gathers, consistent with the legal framework applicable to the United Nations Secretariat, including full respect for applicable guarantees of security and confidentiality and for the privileges and immunities of the United Nations.
12. The accountability project will, from the outset, ensure appropriate organization, possession and archiving of material, including through the development of appropriate procedures for the long-term storage of, and regulation of access to, the archives following the completion of the mandate, consistent with the legal framework applicable to the United Nations Secretariat and, subject thereto, applicable conditions imposed by information providers.

III. Develop possible strategies for future accountability processes

13. OHCHR will engage through the accountability project with relevant stakeholders, including with competent investigative, prosecutorial and/or judicial authorities, non-governmental and civil society organizations, victims and their legal representatives to develop possible strategies for future accountability processes for gross violations of human rights or serious violations of international humanitarian law in Sri Lanka.
14. Drawing on best practices at international, regional and national levels, relevant strategies for future accountability processes may include elements of judicial and non-judicial approaches, or combinations thereof, in line with international norms and standards, and will prioritise efforts aimed at advancing the rights of victims to truth, justice, reparations and guarantees of non-recurrence.

IV. Advocate for victims and survivors

15. OHCHR will proactively work through the accountability project with victims and survivors, and their representatives and advocates, from the outset, in discharge of this mandate, in recognition of their key roles in fostering and facilitating accountability

and justice, and in the elaboration of a comprehensive approaches to dealing with the past, taking into account gender and child competent approaches.

16. In advocating for victims and survivors OHCHR will engage through the accountability project with victims and survivors without distinction or preference and will take due account of their views and concerns in developing strategies for accountability. To this end, the accountability project will also engage with victim representatives and civil society actors, including non-governmental organizations and victim advocates, as appropriate.

V. Advance accountability through support to relevant judicial and other proceedings

17. The accountability project will support OHCHR's sharing of relevant information and evidence, in accordance with international law standards, with relevant competent national, regional or international courts, tribunals, or investigative, prosecutorial or judicial authorities, that have or may in the future have jurisdiction over those violations and crimes, along with other judicial and non-judicial processes, including on reparations, as appropriate and deemed competent.
18. Such sharing of information and evidence will be undertaken in accordance with United Nations Secretariat rules, regulations and policies, relevant international law and OHCHR's internal guidelines and procedures, while taking into account good practices of other comparable international accountability mechanisms.
19. As appropriate, OHCHR may consider sharing relevant information and evidence with relevant competent national, regional or international courts, tribunals or investigative, prosecutorial or judicial authorities, along with other judicial and non-judicial processes, including on reparations, as appropriate and deemed competent.
20. In considering the sharing of information and evidence, OHCHR will, among other factors, consider and respect the scope of consent expressed by sources, the confidentiality of the information or evidence and the rights of victims and witnesses, alongside other factors applicable to sensitive information held by the United Nations. It will assess any protection and other relevant concerns that may arise from the use of such information and evidence. Where informed consent has been provided for sharing, OHCHR will undertake a risk assessment to ensure victims and their families are not placed at undue risk, or request such assessment from competent services.
21. Furthermore, information and evidence may be shared only with authorities, bodies and organizations that credibly ensure and demonstrate that any use of the information and evidence will be in accordance with international human rights law and standards, *inter alia*, the right to a fair trial, the rights of victims and witness protection. Consistent with the United Nations policy, OHCHR will not share information and evidence for use in criminal proceedings in which capital punishment could be imposed or carried out.

VI. Standards and procedural requirements

22. The accountability project will be based on procedures, processes and methods of work in accordance with OHCHR's standard procedures and methodology, including OHCHR standard operating procedures on cooperation with national, regional and international judicial institutions and on access to classified records and declassification, as well as OHCHR's methodology on human rights investigations, as applicable, taking due account of policies and practices of other comparable international accountability mechanisms, where relevant.
23. Procedures will be based on the highest possible standards, consistent with the Charter of the United Nations, United Nations rules, regulations, policies and good practices, relevant international law and standards, including human rights law. These procedures will be victim-centred and duly sensitive to considerations of sex, gender, age, religion, ethnicity and other factors of prohibited discrimination under international human rights law.

VII. Composition

24. Staff of the accountability project will be composed of personnel with specific expertise in the areas encompassed by the project's mandate, including with respect to substantive international human rights, humanitarian and criminal law, transitional justice standards and processes, victims' rights, gender and child rights, as well as technical investigative experience, along with relevant support staff. Staff of the project shall be recruited with due regard to geographical diversity, gender and regional expertise, in accordance with standards applicable to the United Nations Secretariat.

VIII. Privileges and Immunities

25. Staff of the accountability project, as staff of the United Nations, enjoy the privileges and immunities of officials under Articles V and VII of the 1946 Convention on Privileges and Immunities of the United Nations in the conduct of their work under Human Rights Council resolutions 46/1, 51/1 and such subsequent mandates as may be adopted by the Human Rights Council.

IX. Final provisions

26. The present terms of reference are subject to written amendment by the High Commissioner for Human Rights, at any time.
27. These terms of reference enter into formal effect as of the date approved by the High Commissioner for Human Rights.