

Australian Tamil Congress

A Unified Voice for All Tamils



29 February 2020

Joint Standing Committee on Foreign Affairs, Defence and Trade
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Australia

Submission by the Australian Tamil Congress to the Australian Parliament Joint Standing Committee on Foreign Affairs, Defence and Trade on the Inquiry into whether Australia should examine the use of targeted sanctions to address human rights abuses.

The Australian Tamil Congress, the national body representing the views of Australian Tamils in this country, wishes to show its support for the enactment in Australia of legislation comparable to the United States' Magnitsky Act 2012.

We believe Australia should join the many other countries with similar legislations and pass such a law specifically making human rights and corruption criteria in applying targeted sanctions. This law will create a more transparent process in applying sanctions. Furthermore, this will send a strong message to human rights violators that there are far-reaching consequences for their action.

Current laws in Australia are unclear on how the Australian government determines who will be sanctioned and the criteria of sanctions, and hence have less impact in imposing a cost for serious human rights violations.

This submission while addressing the Terms of Reference (ToR) will highlight the human rights violations and mass atrocity crimes by Sri Lankan state forces and how the current law of Autonomous Sanctions Regime and a "character" test as part of its visa laws will be transparent and effective.

Sri Lanka and Mass Atrocities

Our work on issues that concern Australian Tamils has included projects focusing on gross violations of human rights including acts of mass atrocity crimes by Sri Lankan state forces against Tamil civilians in the island of Sri Lanka. Victims and survivors of these heinous crimes and their family members include Tamils who currently call Australia home.

We have worked in collaboration with several human rights organisations in Australia and globally to collect and bring to light evidence of these crimes in an attempt to eventually bring much deserved justice to Tamil victims and survivors and their family members.

Many such allegations of human rights violations and mass atrocity crimes against Tamils by the Sri Lankan state have been verified by esteemed human rights organisations and have been documented in multiple reports including those produced by the United Nations [United Nations, 2011; Petrie, 2012; Human Rights Council, 2015].

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Rather than investigating and prosecuting perpetrators Sri Lanka has instead repeatedly appointed political and military personnel accused of mass atrocity crimes to diplomatic positions shielding them with diplomatic immunity.

However, based on credible evidence of human rights violations and using their own domestic laws many countries have imposed travel sanctions and visa restrictions on such individuals in an attempt to deny entry to abusers of human rights, using the *effectiveness of sanctions as an instrument of foreign policy to combat human rights abuses (ToR #3)*. Cases of other jurisdictions, including the United States regarding their *Global Magnitsky Human Rights Accountability Act (2016) (ToR #4)* against Sri Lankan state officials exist.

Most recently on 14 February 2020 the United States imposed a travel ban on Commander of the Sri Lankan army, Shavendra Silva, and his family, citing Silva's command responsibility for "gross violations of human rights, namely extrajudicial killings, by the 58th division of the Sri Lanka army during the final phase of Sri Lanka's civil war in 2009" [Pompeo, 2020] as the reason. During the escalation of military offensives in Tamil areas, General Silva was then commander of the Army's 58th Division, which has been accused of war crimes including the shelling of hospitals. In 2010, he was promoted to the position of Sri Lanka's Deputy Permanent Representative to the United Nations Headquarters in New York with the rank of Ambassador in 2010 and served till 2015. Amongst other diplomatic and international posts and responsibilities he also served as a visiting lecturer at the Marine Corps War College in Quantico in the United States [Sri Lanka Army, 2019].

Major General Jagath Dias who led the Army's 57th Division, which has also been accused of serious violation of international humanitarian and human rights law, was appointed as Chief of Staff of the Sri Lankan armed forces, and in 2009 as a diplomat to Deputy Chief of Mission for Germany, Switzerland and the Vatican [International Truth and Justice Project, 2017]. In 2011 Dias was stripped of his diplomatic status due to allegations of war crimes and recalled to Sri Lanka following indication by the Swiss Federal Attorney General that a criminal investigation would be launched if Dias returned to Swiss territory [TRIAL International, 2011]. Since then Dias has also been denied entry visa to United States due to possible involvement in war crimes [Human Rights Watch, 2015].

In 2017, Commander General Jagath Jayasuriya, another accused war criminal, who was appointed as Sri Lanka's ambassador to Brazil, Colombia, Peru, Chile, Argentina and Suriname fled back to Sri Lanka the same year [Journalists for Democracy in Sri Lanka, 2017] after criminal law suits were filed against him based on evidence of him bearing "individual criminal responsibility as the commander of units that committed repeated attacks on hospitals, acts of torture and sexual violence, enforced disappearances and extrajudicial killings" [International Truth and Justice Project, 2017].

We noted with relief that in 2013 Australia had denied entry visa to Jagath Dias due to possible involvement in war crimes [Human Rights Watch, 2015]. However, many others Sri Lankan state personnel with credible allegations of human rights violations while enjoying impunity in Sri Lanka also freely travel to Australia on official or unofficial trips to further their interests.

Such cases include that of dual Australian-Sri Lankan citizen Palitha Kohona, who has strong allegations of war crimes against him [Doherty, 2011] and has enjoyed several diplomatic posts over the years, and that of Thisara Samarasinghe, a former commander of Sri Lanka's navy which has been accused of war crimes, who was appointed as Sri Lankan High Commissioner to Australia in 2011 and served till 2015.

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Such perpetrators who have escaped domestic prosecution due to Sri Lanka's culture of impunity also continue to evade justice overseas as they are safeguarded by diplomatic immunity in the form of diplomatic posts gifted to them by the Sri Lankan state.

Through legislation that enables targeted sanctions on such individuals a clear message can be sent that Australia will no longer tolerate the presence on our soil of perpetrators of such crimes. Through the *use of such sanctions alongside other existing tools in Australia, we can further promote human rights internationally (ToR #2)*. It will also give a sense of reassurance to Australian citizens that our government has taken steps to help prevent us inadvertently engaging with potential abusers of human rights.

Far too many violators of human rights act with impunity and escape justice under their domestic jurisdiction. It is important that Australia leads the way in this region by enacting legislation comparable to the United States' Magnitsky Act 2012 to send a clear message that perpetrators can no longer enjoy impunity overseas as well.

References:

Doherty, B. (2011, May 14), 'Walk to the troops': SMS sent Tamils to their death, <https://www.smh.com.au/world/walk-to-the-troops-sms-sent-tamils-to-their-death-20110513-1emin.html> (accessed 29 February 2020)

Human Rights Council (2015, September 16), Report of the OHCHR Investigation on Sri Lanka (OISL), https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A.HRC.30.CRP.2_E.docx (accessed 29 February 2020)

Human Rights Watch (2015, May 17), Sri Lanka: New Army Chief a Blow to Justice, <https://www.hrw.org/news/2015/05/17/sri-lanka-new-army-chief-blow-justice> (accessed 29 February 2020)

International Truth and Justice Project (2017, May), Sri Lanka Major General Jagath Dias: Dossier, http://www.itjpsl.com/assets/ITJP_Jagath_Dias_dossier-final.pdf (accessed 29 February 2020)

International Truth and Justice Project (2017, August 29), The Case Against Jagath Jayasuriya, <https://itjpsl.com/reports/the-case-against-jagath-jayasuriya> (accessed 29 February 2020)

Journalists for Democracy in Sri Lanka (2017, August 29), Former Sri Lanka army chief flees Latin America fearing war crimes lawsuit, <http://www.jdslanka.org/index.php/news-features/politics-a-current-affairs/706-former-sri-lanka-army-chief-flees-latin-america-fearing-war-crimes-lawsuit> (accessed 29 February 2020)

Petrie, C. (2012, November 17), Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka, <https://digitallibrary.un.org/record/737299?ln=en> (accessed 29 February 2020)

Pompeo, M. R. (2020, February 14), Public Designation, Due to Gross Violations of Human Rights, of Shavendra Silva of Sri Lanka Under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, Press Statement, US Department of State, <https://www.state.gov/public-designation-due-to-gross-violations-of-human-rights-of-shavendra-silva-of-sri-lanka-under-section-7031c-of-the-department-of-state-foreign-operations-and-related-programs-appropriations-a/> (accessed 29 February 2020)

Sri Lanka Army (2019, August 19), Lieutenant General Shavendra Silva, New Commander of the Army, <https://www.army.lk/news/lieutenant-general-shavendra-silva-new-commander-army> (accessed 29 February 2020)

Trial International (2011, October 30), Jagath Dias, <https://trialinternational.org/latest-post/jagath-dias-2/> (accessed 29 February 2020)

United Nations (2011, March 31), Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, <https://www.securitycouncilreport.org/un-documents/document/poc-rep-on-account-in-sri-lanka.php> (accessed 29 February 2020)