

Reid, John

From: Sheehan, Tony
Sent: Monday, 24 October 2011 6:25 pm
To: Williams, Diana
Cc: Reid, John; Coles, Anthony; Heffernan, Tracy
Subject: RE: Sri Lanka ~~{SEC-IN-CONFIDENCE:LEGAL}~~

~~LEGAL-IN-CONFIDENCE~~

Diana

Re our CHOGM comms protocols - Refresh me on the manner in which these various strands of information about this matter from: Chris Dawson; Tracey; and you (in addition you got Brooke's email) are being brought together for senior officials and the AGO? I don't want to create an email treadmill here, but there are multiple moving parts.

Regards

Tony

From: Williams, Diana
Sent: Monday, 24 October 2011 6:08 PM
To: Sheehan, Tony
Cc: Reid, John
Subject: FW: Sri Lanka ~~{SEC-IN-CONFIDENCE:LEGAL}~~
Importance: High

~~LEGAL-IN-CONFIDENCE~~

Tony, this is the latest from AGD Public Affairs – Tracy Heffernan. Diana

From: Heffernan, Tracy
Sent: Monday, 24 October 2011 4:32 PM
To: 'Gleeson, Daniel'; 'aaron.verlin@chogm2011.org'; Reid, John
cc: 'sandra.O'Malley@dfat.gov.au'; Williams, Diana
Subject: ~~{SEC-IN-CONFIDENCE:LEGAL}~~
Importance: High

~~LEGAL-IN-CONFIDENCE~~

~~LEGAL-IN-CONFIDENCE~~

Hi all,

For information about the emerging issue of Sri Lankan officials being accused of war crimes:

S33(b)





Regards,
Tracy

S33(b)

Tracy Heffernan | CHOGM 2011 Security Media
Strategic Communication Branch | Australian Government Attorney-General's Department
[redacted] (on call number) | e. media@ag.gov.au

S47F(1)

Mason, Timothy

From: Inverarity, Tara
Sent: Monday, 24 October 2011 2:19 PM
To: Coles, Anthony
Cc: Ananijevski, Branko; Winter, Josephine
Subject: RE: Media enquiry, Sri Lanka war crimes [SEC=UNCLASSIFIED]

Security Classification:
UNCLASSIFIED

UNCLASSIFIED

Hi Anthony

As discussed, this piece of correspondence has not been received by my section yet.

We've had similar requests in the past and have used the words below in response:

If the AFP investigation reveals sufficient material to compile a brief of evidence of criminality, or a real possibility of criminality, the AFP will then refer the case to the Commonwealth Director of Public Prosecutions (CDPP). It is then a matter for the CDPP to determine whether to prosecute the offence. This decision is made in accordance with the Prosecution Policy of the Commonwealth, which can be accessed online at <http://www.cdpp.gov.au>. As a matter of longstanding practice by successive Australian Governments, the Attorney-General's consent is only sought once the CDPP has made a decision to prosecute.

Cheers
Tara

From: Coles, Anthony
Sent: Monday, 24 October 2011 2:12 pm
To: Inverarity, Tara
Subject: FW: Media enquiry, Sri Lanka war crimes [SEC=UNCLASSIFIED]

UNCLASSIFIED

TI – can you consider and call me with your thoughts - thanks

Anthony Coles
A/g First Assistant Secretary
Criminal Justice Division
02 6141 2770

From: Clifton, Jacob
Sent: Monday, 24 October 2011 2:01 PM
To: Coles, Anthony
Cc: Little, Matthew
Subject: Media enquiry, Sri Lanka war crimes [SEC=UNCLASSIFIED]

UNCLASSIFIED

Anthony,

Released under the Freedom of Information Act 1982 by the Attorney-General's Department

Ryan has a media enquiry about an incoming request to the Attorney from the Rob Starry for a consent under Crim Code Division 268 (Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court) in relation to action against the Sri Lankan President in the Melb Magistrates Court.

I don't think we've received it yet?

Does your team have any relevant holding lines that we should use until the request is received?

ie The Attorney is yet to receive this request and will consider it when it arrives etc

I've copied what appears to be the relevant section of the Cth Crim Code below.

Jacob.

268.121 Bringing proceedings under this Division

(1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.

(2) An offence against this Division may only be prosecuted in the name of the Attorney-General.

(3) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.

268.122 Attorney-General's decisions in relation to consents to be final

(1) Subject to any jurisdiction of the High Court under the Constitution, a decision by the Attorney-General to give, or to refuse to give, a consent under section 268.121:

(a) is final; and

(b) must not be challenged, appealed against, reviewed, quashed or called in question; and

(c) is not subject to prohibition, mandamus, injunction, declaration or certiorari.

Mason, Timothy

From: Winter, Josephine
Sent: Monday, 24 October 2011 3:45 PM
To: Inverarity, Tara
Cc: Ananijevski, Branko
Subject: RE: Media enquiry, Sri Lanka war crimes [SEC=UNCLASSIFIED]

Security Classification:
UNCLASSIFIED

UNCLASSIFIED

Also suggest changing 'accusation' to 'allegation' but otherwise looks good.

Jo

From: Inverarity, Tara
Sent: Monday, 24 October 2011 3:43 pm
To: Ananijevski, Branko; Winter, Josephine
Subject: FW: Media enquiry, Sri Lanka war crimes [SEC=UNCLASSIFIED]

UNCLASSIFIED

You guys happy with this (apart from clarifying that the allegation is against Mahinda Rajapaksa, not the individual making the complaint)?

From: Clifton, Jacob
Sent: Monday, 24 October 2011 2:55 pm
To: Coles, Anthony
Cc: Little, Matthew; Inverarity, Tara
Subject: RE: Media enquiry, Sri Lanka war crimes [SEC=UNCLASSIFIED]

UNCLASSIFIED

Suggested response.

"The Attorney General has not been informed of any criminal matter relating to Mr Jegapheeswaran.

The matter will be considered if and when correspondence is received.

In most instances the AFP and the CDPP will assess an accusation under the Criminal Code before the Attorney General's consent is sought.

If the AFP investigation reveals sufficient material to compile a brief of evidence of criminality, or a real possibility of criminality, the AFP will then refer the case to the Commonwealth Director of Public Prosecutions (CDPP). It is then a matter for the CDPP to determine whether to prosecute the offence. This decision is made in accordance with the Prosecution Policy of the Commonwealth, which can be accessed online at <<http://www.cdpp.gov.au>>. As a matter of longstanding practice by successive Australian Governments, the Attorney-General's consent is only sought once the CDPP has made a decision to prosecute."

From: Coles, Anthony
Sent: Monday, 24 October 2011 2:35 PM
To: Clifton, Jacob
Cc: Little, Matthew; Inverarity, Tara
Subject: RE: Media enquiry, Sri Lanka war crimes [SEC=UNCLASSIFIED]

UNCLASSIFIED

Jacob,

It looks like we have not received the relevant corro yet.

We've had similar requests in the past and have used the words below in response:

Anthony Coles
A/g First Assistant Secretary
Criminal Justice Division
02 6141 2770

From: Clifton, Jacob
Sent: Monday, 24 October 2011 2:19 PM
To: Coles, Anthony
Cc: Little, Matthew
Subject: FW: Media enquiry, Sri Lanka war crimes [SEC=UNCLASSIFIED]

UNCLASSIFIED

A second request has just come in.

From: Michael Gordon
To: Liddell, Ryan
Sent: Mon Oct 24 14:02:12 2011
Subject: request re war crimes charge

Hi Ryan,

I am seeking confirmation that the AG has been informed that a Sri Lankan-born Australian citizen, Mr Jegapheeswaran, represented by Rob Starry, has lodged a charge under Australian criminal code against the Sri Lankan President, Mahinda Rajapaksa alleging war crimes. As I understand it, the Federal Attorney-General would have to take on the case if it were to proceed. Can you confirm and comment?

Thanks
Michael

Michael Gordon
National Editor
The Age
...
655 Collins Street Docklands VIC 3008
T 03 8657 2729 F 03 9670 7514
mgordon@theage.com.au | www.theage.com.au

s 47F

THE AGE

SUNDAY, JULY 17, 2011

RUNmelbourne
PRESENTED BY THE AGE

CLICK HERE

From: Clifton, Jacob
Sent: Monday, 24 October 2011 2:01 PM
To: Coles, Anthony
Cc: Little, Matthew
Subject: Media enquiry, Sri Lanka war crimes [SEC=UNCLASSIFIED]

UNCLASSIFIED

Anthony,

Ryan has a media enquiry about an incoming request to the Attorney from the Rob Starry for a consent under Crim Code Division 268 (Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court) in relation to action against the Sri Lankan President in the Melb Magistrates Court.

I don't think we've received it yet?

Does your team have any relevant holding lines that we should use until the request is received?

ie The Attorney is yet to receive this request and will consider it when it arrives etc

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Mason, Timothy

From: Inverarity, Tara
Sent: Monday, 24 October 2011 3:53 PM
To: Clifton, Jacob
Cc: Coles, Anthony; Wintler, Josephine; Ananijevski, Branko; Little, Matthew
Subject: RE: Media enquiry, Sri Lanka war crimes [SEC=UNCLASSIFIED]

Security Classification:
UNCLASSIFIED

UNCLASSIFIED

Hi Jacob

We have made some minor changes, highlighted in yellow. In particular, we have amended it to be clear that the allegations of criminal conduct relate to actions by Mr Mahinda Rajapaksa, not Mr Jegapheeswaran (who seems to be an Australian citizen seeking a prosecution of Mr Rajapaksa).

Happy to discuss

Cheers
Tara
x2842

From: Clifton, Jacob
Sent: Monday, 24 October 2011 2:55 pm
To: Coles, Anthony
Cc: Little, Matthew; Inverarity, Tara
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Suggested response.

"The Attorney General has not been informed of any criminal matter relating to Mr Mahinda Rajapaksa.

The matter will be considered if and when correspondence is received.

It is usual practice for the AFP and the CDPP will assess an allegation of an offence under the Criminal Code before the Attorney General's consent is sought.

If the AFP investigation reveals sufficient material to compile a brief of evidence of criminality, or a real possibility of criminality, the AFP will then refer the case to the Commonwealth Director of Public Prosecutions (CDPP). It is then a matter for the CDPP to determine whether to prosecute the offence. This decision is made in accordance with the Prosecution Policy of the Commonwealth, which can be accessed online at <<http://www.cdpp.gov.au>>. As a matter of longstanding practice by successive Australian Governments, the Attorney-General's consent is only sought once the CDPP has made a decision to prosecute."

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Thanks
Michael

Michael Gordon
National Editor
The Age

655 Collins Street, Docklands VIC 3008
T 03 8667 2729 | M [REDACTED] | F 03 9670 7514
mgordon@theage.com.au | www.theage.com.au

S47F(1)

THE AGE

SUNDAY, JULY 17, 2011

RUNmelbourne

PRESENTED BY THE AGE

CLICK HERE

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Sent: Monday, 24 October 2011 2:01 PM
To: Coles, Anthony
Cc: Little, Matthew
Subject: Media enquiry, Sri Lanka war crimes [SEC=UNCLASSIFIED]

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Mason, Timothy

From: Trahanas, Christina
Sent: Monday, 24 October 2011 4 21 PM
To: Reid, John
Cc: Ng, Phillip
Subject: RE: CHOGM [SEC=IN-CONFIDENCE:LEGAL]

Hi John

Would you like Phil or I to do anything in response to this?

Christina

From: Trindade, Dominic [mailto: Dominic.Trindade@dfat.gov.au]
Sent: Monday, 24 October 2011 4:09 PM
To: Reid, John; Trahanas, Christina
Subject: FW: CHOGM [SEC=IN-CONFIDENCE:LEGAL]

John

S47F(1)

As discussed, please see e-mail from [REDACTED], acting for the Sri Lankan government.

Dominic Trindade
Assistant Secretary
Domestic Legal Branch
Department of Foreign Affairs and Trade

s 47F

From: [REDACTED]
Sent: Monday, 24 October 2011 2:41 PM
To: Trindade, Dominic
Cc: Thisara Samarasinghe
Subject: CHOGM

Contact details and email from Lateline set out below.

We urgently need to speak to the relevant people in AGs.

s 47F

[REDACTED] Senior Consultant
Jackson McDonald

140 St Georges Terrace, Perth

s 47F

[REDACTED] | www.jacmac.com.au

First class legal service

From: Allison McClymont <McClymont.Alison@abc.net.au>
Date: Mon, Oct 24, 2011 at 11:43 AM
Subject: Lateline ABC Television
To: "admin@slhcaust.org" <admin@slhcaust.org>
Cc: Hamish Fitzsimmons <Fitzsimmons.Hamish@abc.net.au>

Dear Ambassador Samarasinghe,

I am a producer at Lateline, ABC Television's flagship news & current affairs program in Sydney. On our program tonight we are running a story concerning an Australian citizen who has filed charges in an Australian court against the Sri Lankan President concerning crimes against humanity between July 2008 and May 2009. We have a series of questions for you concerning these allegations. If you could possibly get back to me with your responses by 4:00 pm today I would be very grateful.

Here are the questions:

The Melbourne Magistrate's court last week issued summonses in which an Australia citizen alleges that President Mahendra Rajapaksa committed war crimes and crimes against humanity as commander of the armed forces between July, 2008 and May 2009. What is the response of the Sri Lankan High Commission?

Is President Rajapaksa aware of the planned legal action which has been brought against him in Australia?

The charges have been approved to proceed by Victoria's chief magistrate. How does President Rajapaksa plan to respond?

You said last week that Tamil groups are manipulating human rights groups and other people in Australia. What evidence do you have of this?

In light of these latest allegations, does there need to be an independent investigation into possible war crimes by both sides in the recent conflict in Sri Lanka, in line with the United Nations' Panel recommendations in April?

Thank you for your time Ambassador. Please do not hesitate to call or email me if you have any queries.

Kind regards,

Alison



Alison McClymont
Producer

Lateline

P +61 2 8333 4815 E mcclymont.alison@abc.net.au

F +61 2 8333 4062

M



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Jackson McDonald

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Mason, Timothy

From: Reid, John
Sent: Monday, 24 October 2011 5:08 PM
To: Trahanas, Christina; Ng, Phillip
Cc: Reimers, Katherine
Subject: FW: CHOGM [SEC=UNCLASSIFIED]
Attachments: SKMBT_75011102412510.pdf

Security Classification:
UNCLASSIFIED

UNCLASSIFIED

FYI

From: Jennings, Mark
Sent: Monday, 24 October 2011 4:55 pm
To: Reid, John; Campbell, Bill
Subject: FW: CHOGM [SEC=UNCLASSIFIED]

UNCLASSIFIED

Mark Jennings
Senior Counsel
Office of International Law
International Law and Human Rights Division
Attorney-General's Department
Canberra, Australia
61-2-6141 3368

s 47F

From: [REDACTED]
Sent: Monday, 24 October 2011 4:43 pm
To: Jennings, Mark
Subject: CHOGM

s 47F

[REDACTED] | Senior Consultant
Jackson McDonald
140 St Georges Terrace, Perth

s 47F

[REDACTED] | www.jacmac.com.au

s 47F

First class legal service

Jackson McDonald

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Monday, 24 October 2011

Attachments 1 and 2 (3 pages) removed
under s33(a)(iii)

s 47F

Att: [REDACTED]
Senior Consultant
Jackson McDonald

From: Alison McClymont
Producer
Lateline ABC TV

s 47F

Dear [REDACTED]

Please find attached the documents requested (3 pages in all):

- 1) Charge sheet
- 2) Letter from Magistrate confirming charges

Please note we have blacked out the name of the petitioner. These documents have been provided to you in good faith for the purpose of assisting your client to respond to our program. They should not be disseminated to any other party.

Please do not hesitate to contact me if you require any further information.

Kind Regards



Alison McClymont
Producer *Lateline*

Mason, Timothy

From: Reid, John
Sent: Monday, 24 October 2011 5:25 PM
To: Campbell, Bill; Jennings, Mark
Cc: Ng, Phillip; Trahanas, Christina
Subject: FW: Sri Lankan War Crimes Charges - Media Inquiry [SEC=UNCLASSIFIED]

Security Classification:
UNCLASSIFIED

UNCLASSIFIED

FYI

From: Sheehan, Tony
Sent: Monday, 24 October 2011 5:11 pm
To: Coles, Anthony; McMullan, Kathryn; terry.crane@pmc.gov.au; McCarthy Margot [PMC]; Wilkins, Roger; O'Rourke, Brooke
Cc: Inverarity, Tara; Anderson, Iain; Williams, Diana; Reid, John
Subject: RE: Sri Lankan War Crimes Charges - Media Inquiry [SEC=UNCLASSIFIED]

UNCLASSIFIED

Colleagues

Chris Dawson (WAPOL Deputy Commissioner) called me a little while ago to tell me he had heard from Jackson McDonald law firm in Perth (who have been hired by the Sri Lankan Government) that an action launched in the Melbourne Magistrates Court against President Rajapaksa in respect of alleged war crimes. We understand there will be media coverage on Lateline this evening and note the media approach to DPP below. Anthony Coles advises that Jackson McDonald have been in touch with OIL seeking advice.

We are trying to get more facts from DPP and will send out an update email with more detail in due course.

Regards

Tony

From: Anderson, Iain
Sent: Monday, 24 October 2011 4:59 PM
To: Sheehan, Tony
Cc: Coles, Anthony
Subject: Fw: Sri Lankan War Crimes Charges - Media Inquiry [SEC=IN-CONFIDENCE:LEGAL] [SEC=UNCLASSIFIED]

Classification: UNCLASSIFIED

Tony,
For info.

Iain

From: Anderson, Iain
To: 'mark.decrepigny@cdpp.gov.au'
Cc: Coles, Anthony
Sent: Mon Oct 24 16:58:04 2011
Subject: Re: Sri Lankan War Crimes Charges - Media Inquiry [~~SEC=IN-CONFIDENCE:LEGAL~~] [~~SEC=UNCLASSIFIED~~]

Classification: UNCLASSIFIED

Thanks, Mark

I am overseas until Fri 4/11 and Anthony Coles is acting in my position.

He will contact you if he needs any more info on this.

Regards,
Iain

From: mark.decrepigny@cdpp.gov.au
To: Anderson, Iain
Sent: Mon Oct 24 16:21:51 2011
Subject: Sri Lankan War Crimes Charges - Media Inquiry [~~SEC=IN-CONFIDENCE:LEGAL~~]
Dear Iain

For your information this Office has had an inquiry from Ms Milanda Rout of *The Australian* asking about our knowledge of war crimes charges laid in the Melbourne Magistrates' Court against President Mahinda Rajapaksa. The person Ms Rout spoke to in our Office understood that the reporter had spoken to the Attorney's Office.

This Office is not aware of any such charges.

Regards

Mark

Mark de Crespigny
Senior Assistant Director
Legal and Practice Management and Policy Branch
Commonwealth Director of Public Prosecutions
tel: 02 6206 5646
fax: 02 6206 5688

~~LEGAL IN CONFIDENCE~~

.....
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.....

Mason, Timothy

From: Inverarity, Tara
Sent: Monday, 24 October 2011 6:14 PM
To: Winter, Josephine; Ananijevski, Branko
Subject: Fw: Legal Action alleging War Crimes against Presedent Rajapaksa - Sri Lanka ~~{SEC=IN-CONFIDENCE}~~
Attachments: SKMBT_75011102412510.pdf

~~Classification: IN CONFIDENCE~~

FYI

From: Sheehan, Tony
To: Coles, Anthony; Reid, John; Inverarity, Tara
Sent: Mon Oct 24 18:07:16 2011
Subject: FW: Legal Action alleging War Crimes against Presedent Rajapaksa - Sri Lanka ~~{SEC=IN-CONFIDENCE}~~

~~**IN-CONFIDENCE**~~

The latest from WA

From: DAWSON Chris [PD05715] [mailto:chris.dawson@police.wa.gov.au]
Sent: Monday, 24 October 2011 5:58 PM
To: Sheehan, Tony; 'dianna.williams@ag.gov.au'; 'margot.mccarthy@pmc.gov.au'; 'Peter Conran'; Crane, Terry; Verlin, Aaron; BELL Duane [PD06134]; FORDHAM Alf [PD05890]; O'SULLIVAN John [PD70760]
Cc: DAWSON Chris [PD05715]; RUDAKS Ilmars [PD05704]; SAWYER Pete [PD06293]; 'p.lochore@sso.wa.gov.au'; Shelton, Barry (POL); CHOGM 2011 Intelligence SMAIL; CHOGM JIG AFP LIAISON; CHOGM JIG ADF LIAISON;
Subject: Legal Action alleging War Crimes against Presedent Rajapaksa - Sri Lanka

Dr Margot McCarthy
A/National Security Advisor

Mr Tony Sheehan
Deputy Secretary
National Security & Criminal Justice

cc. Dianna Williams, AGD

Director General Mr Peter Conran
Department of Premier & Cabinet

Assistant Commissioner Duane Bell
Incident Controller - Operation Demille

cc. Commander Fordham
cc. Mr Neil STANBURY

Mr Terry Crane
CHOGM 2011 Taskforce

cc. Mr Aaron Verlin

**SRI LANKAN PRESIDENT – WAR CRIME CHARGES BROUGHT BEFORE MELBOURNE
MAGISTRATES COURT**

Please note that Western Australia Police have been advised by Jackson McDonald, legal firm retained by the Sri Lankan Government of charges brought before the Victorian Chief Magistrate Gray earlier today alleging war crimes charges against Percy Mahendra RAJAPAKSA. See scanned copy of relevant documents.

HE President Rajapaksa is scheduled to arrive at Perth Airport at 2000 hours (WST) this evening.

Furthermore, *ABC Lateline* have been alerted to this legal action and will undoubtedly be seeking comment.

While WA Police will continue to provide support Dignitary Protection, it is important that relevant agencies are made aware of this legal action. Given the involvement of *ABC Lateline*, please also ensure your relevant Media Liaison officers are alerted.

I request that the Sri Lankan High Commission be also advised through relevant CHOGM Taskforce channels.

Chris DAWSON APM | Deputy Commissioner | Western Australia Police

Police Headquarters, 2 Adelaide Terrace, East Perth WA 6004 | T (08) 9222 1034

F (08) 9222 1380 | chris.dawson@police.wa.gov.au

From: O'SULLIVAN John [PD70760]
Sent: Monday, 24 October 2011 13:58
To: Elizabeth.day@dfat.gov.au
Cc: p.lochore@sso.wa.gov.au.; DAWSON Chris [PD05715]
Subject: FW: Scans27East

Dear Elizabeth

Please find attached the following documents provided to John Reynolds by Lateline.

Regards

john

S 47F

From: [REDACTED]
Sent: Monday, 24 October 2011 13:49
To: O'SULLIVAN John [PD70760]
Subject: FW: Scans27East

S47F(1)

Please see attached documents just received from Lateline.

Kind regards,