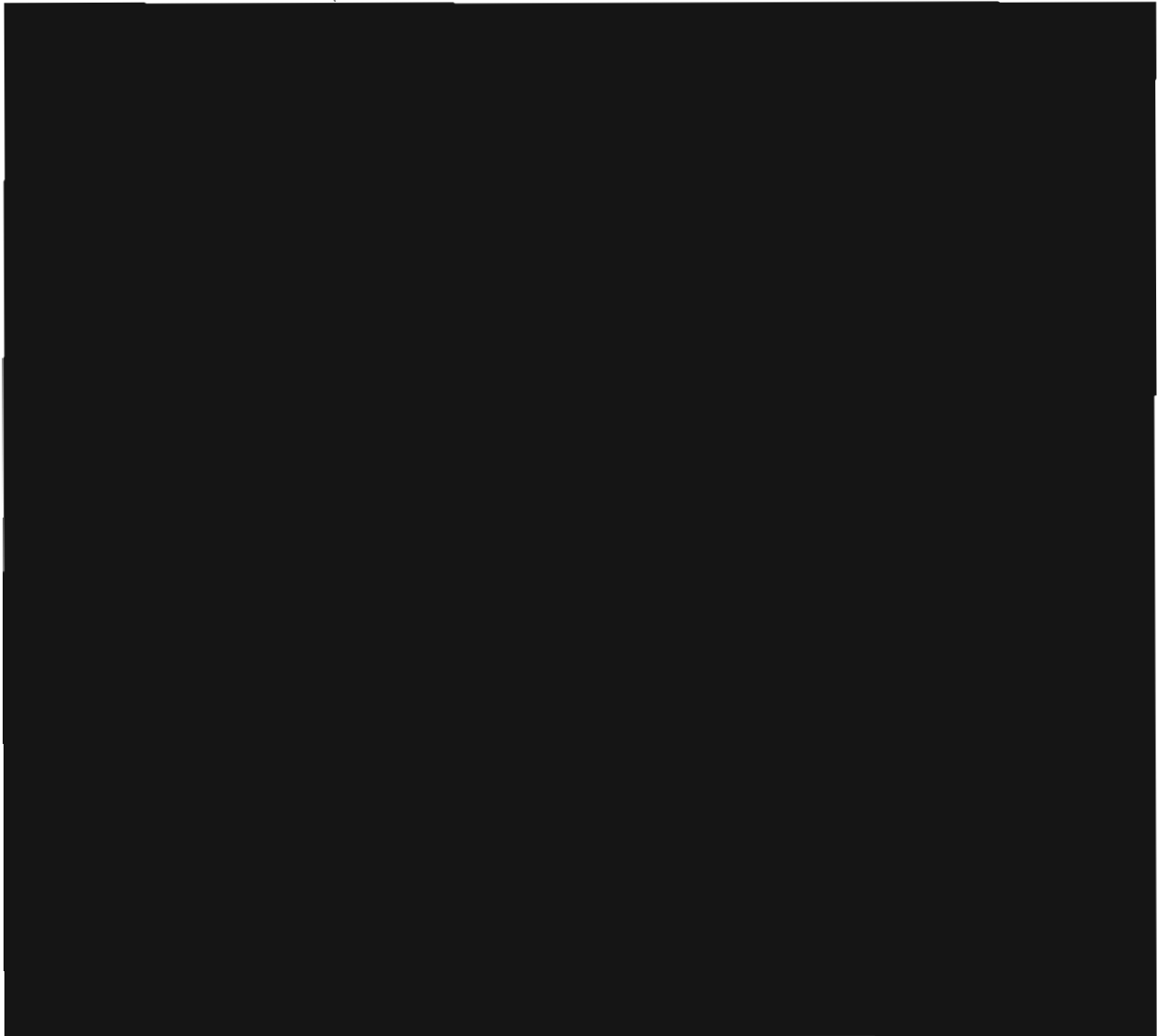


S33(a)(iii), S33(b)



Kind regards

S47F(1)

Senior Consultant
Jackson McDonald

140 St Georges Terrace, Perth



S47F(1)

www.jacmac.com.au

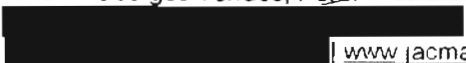
First class legal service

S47F(1)

Partner
Jackson McDonald

140 St Georges Terrace, Perth

S47F(1)



www.jacmac.com.au

First class legal service

Jackson McDonald

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Australian Government
Attorney-General's Department

Time Critical Submission

TITLE:	
Action Officer	Branko Ananijevski
Date due to Office	25 October 2011
Justification for short deadline Please describe why sub is provided less than 7 days before the deadline, and note which adviser has approved this, and when.	<ul style="list-style-type: none"> • Mr Rajapaksa is due to arrive in Australia shortly.
Branch Head approval of Clearance Schedule	Approved
Tara Inverarity (a/g) / /
CLEARANCE SCHEDULE Action Officer to enter dates and submit to Branch Head for approval <u>before</u> clearance process commences (and ASAP after the need for the sub has been identified)	
Tara Inverarity (a/g) Clearance required by 25/10/2011
[^] First Assistant Secretary delete if not required [^] Clearance required by 25/10/2011
[^] Deputy Secretary delete if not required [^] Clearance required by / / [Min 10 days before due date if Secretary's clearance needed, or 7 days if not—unless a short deadline has been agreed as above]
[^] Secretary delete if not required [^] Clearance required by / / [Min 7 days before due date—unless a short deadline has been agreed as above]

For assistance please call the MCU Help Desk on x2777 or mcu@ag.gov.au



Sub No:
File No: 11/2319 Min No: ^Ministerial number^

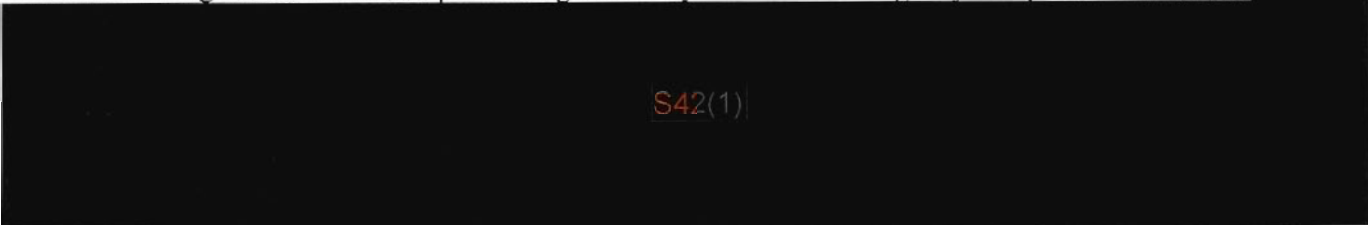
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

Request for consent to prosecute Mr Mahinda Rajapaksa for alleged war crimes

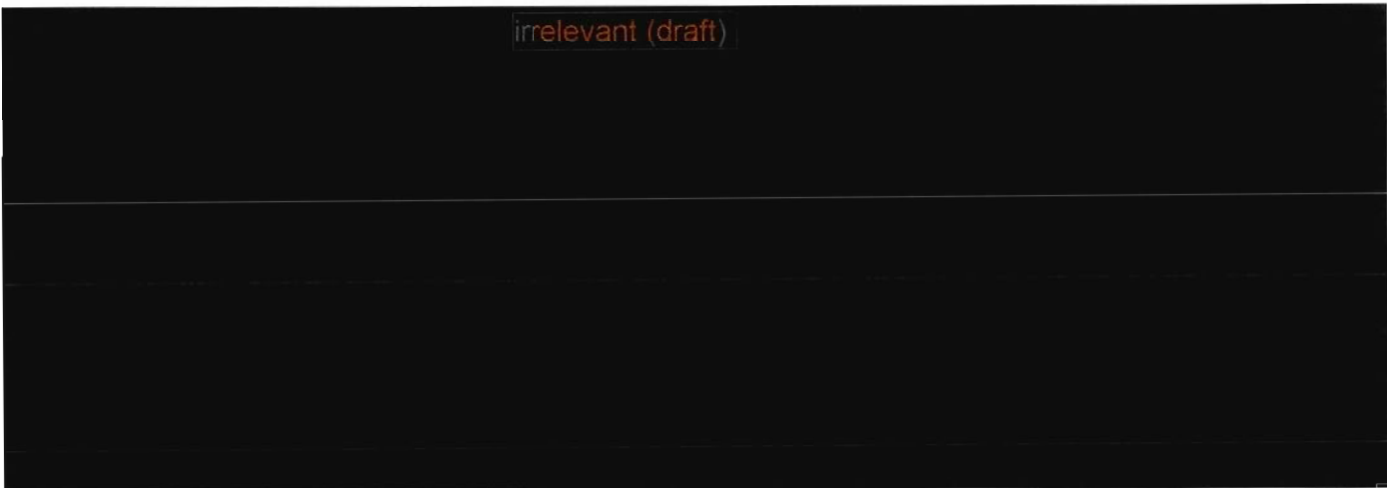
irrelevant (draft)



AGD Analysis: Section 268.121 of the Criminal Code provides that prosecutions for the offences listed above cannot be commenced without the consent of the Attorney-General. Under the *Foreign States Immunity Act 1985* (Cth) and the *Diplomatic Privileges and Immunities Act 1967* (Cth) as well as relevant international law, Mr Rajapaksa possesses certain immunities as a Head of State that would prevent him from being arrested, detained or being served with court proceedings either by a Government agency or a private individual.



S42(1)



irrelevant (draft)

.....
Tara Inverarity
A/g Assistant Secretary, Criminal Law
and Law Enforcement Branch
(02) 6141 2842
/ / 2011

.....
Minister for Justice
/ / 2011

.....
Attorney-General
/ / 2011

Cleared by:
.....
Anthony Coles (a/g) Tony Sheehan
/ / 2011 / / 2011

Action Officer: Branko Ananijevski. (02) 6141 3108. 25/10/2011

Mason, Timothy

From: Ananijevski, Branko
Sent: Tuesday, 25 October 2011 11:45 AM
To: Reid, John
Cc: Ng, Phillip, Inverarity, Tara
Subject: FW: Request to meet 1 30pm today regarding recent Sri Lankan referrals [SEC=UNCLASSIFIED]

Security Classification:
UNCLASSIFIED

UNCLASSIFIED

Hi John and Phillip

See below for a meeting request with the AFP to discuss this matter. I note that Sarah has been copied in, but I thought I would forward to you just in case, given the urgency.

Regards
Branko

From: Bourne, Fiona
Sent: Tuesday, 25 October 2011 11:39 AM
To: Ananijevski, Branko
Cc: Inverarity, Tara; Winter, Josephine; Buckingham, Lindsay
Subject: FW: Request to meet 1.30pm today regarding recent Sri Lankan referrals [SEC=UNCLASSIFIED]

UNCLASSIFIED

Dear Branko

As discussed, please find below the email from AFP requesting a meeting today at 1.30pm re Sri Lanka developments.

Grateful if you could please advise me of CrJD's attendance so I can please coordinate an AGD response back to Linda.

Many thanks,

Fiona

Fiona Bourne | (02) 6141 3354

From: Champion, Linda [mailto:Linda.Champion@afp.gov.au]
Sent: Tuesday, 25 October 2011 11:25 AM
To: McCosker, Sarah; McDougall, Carrie; Bourne, Fiona; Rendina, Michael; mark.decrespigny@cdpp.gov.au
Cc: Turner, Michael
Subject: Request to meet 1.30pm today regarding recent Sri Lankan referrals [SEC=UNCLASSIFIED]

Dear All

In light of the recent developments regarding the criminal proceedings commenced against Mahendra Rajapaksa - it is requested that AFP, DFAT, and DIAC all meet as soon as possible to discuss the most appropriate course of action in addressing this matter, both politically and criminally.

I am suggesting a meeting at 1.30pm today.

Can you please respond with:

- confirmation of your availability OR a nominated representative
- additional representation that you deem appropriate

I will send out details of the meeting room etc once I have received your responses

thanks

Linda



LINDA CHAMPION
 NATIONAL COORDINATOR SPECIAL REFERENCES
 CRIME OPERATIONS
 Tel +61(0) 2 61312523 Ext 142523 [REDACTED]
www.afp.gov.au

S47F(1)

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AFP Web site: <http://www.afp.gov.au>

Ng, Phillip

From: Ng, Phillip
Sent: Tuesday, 25 October 2011 11:54 AM
To: Reid, John
Subject: FW: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi {SEC=IN-CONFIDENCE}
Attachments: Sub - consent to prosecute Sri Lanka pres.doc
Classification: ~~IN-CONFIDENCE~~
Security Classification: ~~IN-CONFIDENCE~~

~~IN-CONFIDENCE~~

Hi John

I will review and draft some comments, and then come and discuss with you

Thanks

Phil

From: Ananijevski, Branko
Sent: Tuesday, 25 October 2011 11:30 AM
To: Reid, John; Ng, Phillip
Cc: Winter, Josephine; Inverarity, Tara
Subject: RE: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi
Importance: High

IN-CONFIDENCE

Hi John and Phillip

As per below, please find attached a draft submission recommending the AG refuse consent to prosecute for your comment.

Feel free to give me a call if you wish to discuss.

Thanks

Branko

Branko Ananijevski
Legal Officer
Criminal Law Reform Section
Criminal Law & Law Enforcement Branch
Attorney-General's Department
3 - 5 National Circuit | Barton ACT 2600
T: 02 6141 3108 | E: branko.ananijevski@ag.gov.au W www.ag.gov.au

From: Inverarity, Tara
Sent: Tuesday, 25 October 2011 9:11 AM
To: Reid, John

Cc: Ananijevski, Branko; Winter, Josephine; Ng, Phillip
Subject: RE: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi [SEC=UNCLASSIFIED]

UNCLASSIFIED

Thanks John

The documents haven't arrived with us yet – we're just working off the Lateline ones so that the sub is ready to go when the originals arrive in the Department.

Tara

From: Reid, John
Sent: Tuesday, 25 October 2011 9:07 am
To: Inverarity, Tara
Cc: Ananijevski, Branko; Winter, Josephine; Ng, Phillip
Subject: RE: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi [SEC=UNCLASSIFIED]

UNCLASSIFIED

)
Thanks Tara.

If you can't get me, the action officer here is Phillip Ng (3254).

Has the request to grant consent arrived?

Cheers,
John

John Reid
Assistant Secretary
International Law, Trade and Security Branch
Office of International Law
Attorney-General's Department

61 2 6141 3554
F: +61 2 6141 4096
[REDACTED] S47F(1)
E: john.reid@ag.gov.au

From: Inverarity, Tara
Sent: Tuesday, 25 October 2011 9:03 am
To: Reid, John
Cc: Ananijevski, Branko; Winter, Josephine
Subject: FW: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi John

S42(1)



I think we have enough information from OIL to do a first cut of the submission which we will aim to get to you for comment by lunch time today. Grateful if you could let me know if there is an action officer in OIL that we should consult with in the first instance.

Happy to discuss. I'm on x2842 and the action officer is Branko Ananijevski on x3108 if you can't get me on the phone.

Cheers
Tara

From: Coles, Anthony
Sent: Tuesday, 25 October 2011 8:23 am
To: Sheehan, Tony; Williams, Diana; Wilkins, Roger
Cc: Reid, John; Campbell, Bill; Barnes, Jennifer; Clifton, Jacob; McMullan, Kathryn; Inverarity, Tara; Winter, Josephine
Subject: FW: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi [SEC=UNCLASSIFIED]

UNCLASSIFIED

Colleagues,

OIL (John Reid) is considering points 8 & 9 below. We will provide further advice asap.

Jacob – I assume you still have not seen the request for consent under 268.121 that Mr Stary purports to have made?

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

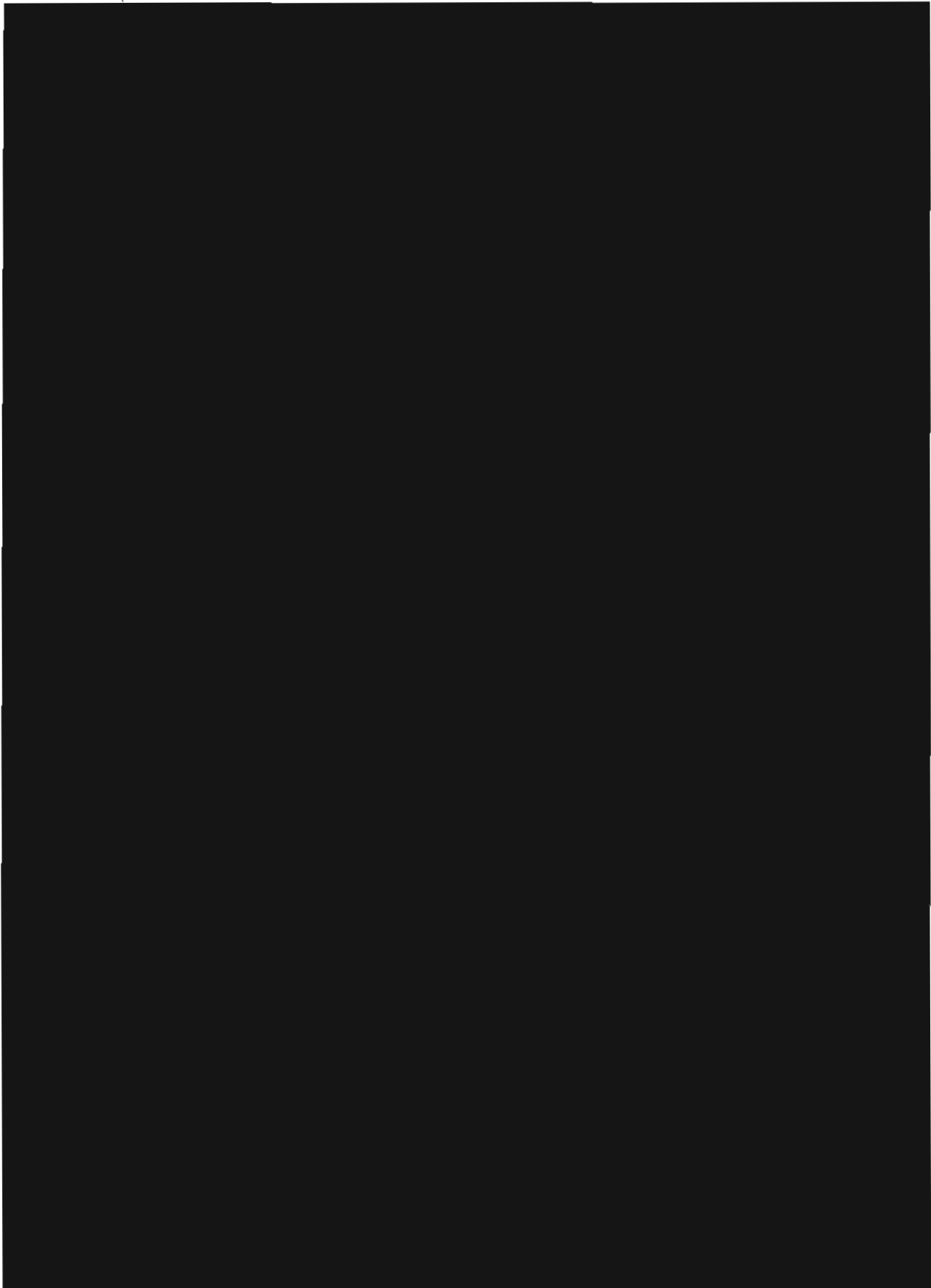
From: Anderson, Iain
Sent: Monday, 24 October 2011 11:12 PM
To: Coles, Anthony; Sheehan, Tony
Subject: Fw: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi [SEC=UNCLASSIFIED]

Classification: UNCLASSIFIED

S47F(1)

From: [Redacted]
To: Clifton, Jacob; Whelan, John
Cc: Attorney Correspondence; kevin.rudd@dfat.gov.au ; Anderson, Iain; Jennings, Mark; dominic.trindade@dfat.gov.au ; aaron.verlin@chogm2011.org ; Rob McKenzie ; Thisara Samarasinghe
Sent: Mon Oct 24 22:03:03 2011
Subject: CHOGM - President of Sri Lanka - Private & Confidential - URGENT
Dear Mr Clifton and Mr Whelan,

S33(a)(iii), S33(b)



Kind regards

S47F(1)



Senior Consultant

Mason, Timothy

From: Reid, John
Sent: Tuesday, 25 October 2011 12:57 PM
To: Ng, Phillip
Subject: FW: Rajapaksa : War Crimes Charges . Legal Briefing ~~{SEC=IN-CONFIDENCE:LEGAL}~~
Attachments: Talking points for meeting with Rajapaksa 25 Oct 2011.docx

Security Classification:
~~LEGAL-IN-CONFIDENCE~~

~~LEGAL-IN-CONFIDENCE~~

From: Day, Elizabeth [mailto:Elizabeth.Day@dfat.gov.au]
Sent: Tuesday, 25 October 2011 12:55 pm
To: Klugman, Kathy; Sawczak, Peter; Stokes, Deborah
Cc: Nelson, Diana; Pierce, Mark; Stuart, David; Trindade, Dominic; Koppe, Sonya; Brennan, Cecilia; Dalton, James; Reid, John; French, Greg; Coles, Anthony; dave.sharma@pmc.gov.au; Lee, Joanne; Bird, Gillian
Subject: Rajapaksa : War Crimes Charges : Legal Briefing ~~{SEC=IN-CONFIDENCE:LEGAL}~~

All

Please find attached a legal briefing cleared by Dominic Trindade AS/DLB on war crimes charges brought against Sri Lankan President Rajapaksa.

Regards
Liz Day

Elizabeth Day
Director
Consular, Passports and Protocol Law Section
DFAT
Tel 6261 9227

President Rajapaksa
War crimes complaints
"If Raised" briefing

Talking points

1. The separation of powers in Australia means that the executive cannot interfere in judicial processes.
2. Questions of whether prosecutions should be taken are usually made by prosecutors on advice from the police at arms-length from the Government.
3. The charges purportedly issued by the Melbourne Magistrates Court were not initiated by the police or state prosecutors, but by a private citizen.
4. As the charges relate to alleged war crimes, they can only be brought with the consent of the Attorney-General.
5. The Attorney-General has not yet received a formal request for his consent.
6. Australia recognises the immunity of foreign heads of state under the *Foreign States Immunities Act 1985*. This act provides immunity, (equivalent to that of Heads of diplomatic missions), including immunity from arrest, detention and prosecution. The Attorney-General administers this legislation.
7. Australia takes seriously its responsibilities to protect the dignity of foreign Heads of State.

Background

On 20 October 2011, the Chief Magistrate of the Victorian Magistrates' Court authorised issue of criminal charges against Sri Lankan President Rajapaksa for alleged war crimes and crimes against humanity (Division 268 of the *Criminal Code Act 1995*).

A Charge Sheet and Summons were issued purportedly in accordance with Victorian criminal law procedures (although there are questions about the legal validity of this). The prosecution of these offences requires the consent of the Commonwealth Attorney-General, who has not yet received a formal request for consent.

S42(1)





S42(1)

Mason, Timothy

From: Media AGD
Sent: Tuesday, 25 October 2011 1:04 PM
To: Coles, Anthony; Ananijevski, Branko
Subject: FW: Jegan Waran enquiry [SEC=UNCLASSIFIED]

Security Classification:
UNCLASSIFIED

UNCLASSIFIED

FYI [REDACTED] irrelevant

From: Media AGD
Sent: Tuesday, 25 October 2011 11:58 AM
To: Liddell, Ryan
Cc: Media AGD; 'anthony.coles@ag.ov.au'
Subject: Fw: Jegan Waran enquiry [SEC=UNCLASSIFIED]

Classification: UNCLASSIFIED

Hi Ryan,

Do you want to take the SBS enquiry below?

Regards,
Tracy

From: Emmanuel Tsigas
To: Media AGD
Sent: Tue Oct 25 11:43:46 2011
Subject: Jegan Waran enquiry
Hi Kaitlyn,

The story I'm doing today is about a Sri Lankan-born Australian citizen (Jegan Waran) who filed an indictment for war crimes against the Sri Lankan president.

<http://www.sbs.com.au/news/article/1599303/Indictment-filed-against-Sri-Lankan-leader>

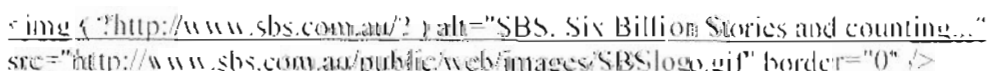
To my understanding, the Attorney General needs to give final approval for them to proceed. I was wondering if there were any updates on that, and if the Attorney General will be making any public comment on it today. I will be speaking to the Sri Lankan government's legal representatives later today as well.

Please let me know ASAP

Thanks

Manny Tsigas

[REDACTED] S47F(1)

 alt="SBS. Six Billion Stories and counting..." data-bbox="85 884 707 916"/>
src="http://www.sbs.com.au/public/web/images/SBSlogo.gif" border="0" />

Mason, Timothy

From: Media AGD
Sent: Tuesday, 25 October 2011 1:09 PM
To: Coles, Anthony; Ananijevski, Branko
Subject: FW: CHOGM media enquiry: allegations of war crimes against Sri Lankan president [SEC=UNCLASSIFIED]

Security Classification: UNCLASSIFIED

UNCLASSIFIED

Please see below amended TP on the AFP and AGO approval to use.

From: Liddell, Ryan
Sent: Tuesday, 25 October 2011 12:20 PM
To: Media AGD
Cc: Clifton, Jacob
Subject: RE: CHOGM media enquiry: allegations of war crimes against Sri Lankan president [SEC=UNCLASSIFIED]

UNCLASSIFIED

Right – sure.

From: Media AGD
Sent: Tuesday, 25 October 2011 12:02 PM
To: Liddell, Ryan
Subject: Fw: CHOGM media enquiry: allegations of war crimes against Sri Lankan president [SEC=UNCLASSIFIED]

Classification. UNCLASSIFIED

@lease see below request from AFP to amend your TPm Can you advise if OK to make this change?

Regards,
Tracy

From: Kelland, Kristen
To: Media AGD
Cc: AFPNationalMedia
Sent: Tue Oct 25 11:36:59 2011
Subject: RE: CHOGM media enquiry: allegations of war crimes against Sri Lankan president [SEC=UNCLASSIFIED]
Good morning,

Thank you for sending the below email for our information.

Could the AFP please request the following change be made to the AGD talking points regarding allegations of war crimes against Sri Lankan president.

Current talking point:

- The AFP has also received a request to investigate the matter, which it is **considering**.

Requested amendment:

- The AFP has also received a request to investigate the matter, which it is **evaluating**.

Greatly appreciate your assistance with this.

Kind regards,



KRISTEN KELLAND
NATIONAL MEDIA
CLOSE OPERATIONS SUPPORT
Tel +61(0) 2 61316333 Ext 143431 Fax +61(0) 2 61326085
www.afp.gov.au

From: Media AGD [mailto:media@ag.gov.au]

Sent: Monday, 24 October 2011 11:56 PM

To: [PCD - Strategic Communication]; Aaron Verlin; Adam Smith; ICC; AFPNationalMedia; Alex Konrad; Andrew Gradle; Appleton, Emma; Ashton, Stephen; ASIO Media; Brigadier Alison Creagh; Bryant, James; Carmel Condermi; Catherine McDonald; Wallace, Christine; Cian Manton; Cindy Ritchie; Cox, Cyril; Craig Stone; Crisis Coordination Centre; Daniel Gleeson; Darby, Campbell; Darryl Johnston; Dave Curry; Dave Seale; Defence; Edwards, Paul; Enid Chua; Gary Booth; Harrigan, Greg; Greg Kimball; Harris, Craig; Heffernan, Tracy; Hyland, Naomi; Infrastructure media; Jean Perkins; Hope, Julie; Kate Filor; Lewer, Felicity; Liddell, Ryan; Lindsay Paterson; McGilvary, Pam; Natalie Larkins; Neil Stanbury; Ryan, Nigel; Peter Hatch; Quinton Devlin; Sandra O'Malley; Sarah McSporrán; Sheehan, Tony; Stacey Brant; Suzie Brady; Swinbourn, Kaitlyn; Vine-Camp, Kerryn; Walter, Andrew; Weeding, Michelle; Williams, Diana

Subject: CHOGM media enquiry: allegations of war crimes against Sri Lankan president [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi all,

Please find below for information TPs provided to media tonight by a spokesman for the Attorney-General in regard to questions about purported legal action in Victoria against the Sri Lankan president.

- The Criminal Code Act 1995 (Cth) provides that prosecutions of this nature cannot be commenced without the consent of the Commonwealth Attorney-General.
- The Attorney-General has not received any request for consent in relation to this matter.
- The AFP has also received a request to investigate the matter, which it is considering.

PLEASE NOTE: all media responses are provided to Security Media Working Group members for information only. Any enquiries should be directed to the relevant agency.

Regards,
Tracy

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)

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AFP Web site: <http://www.afp.gov.au>

Ng, Phillip

From: Reid, John
Sent: Tuesday, 25 October 2011 1:31 PM
To: Campbell, Bill
Cc: Ng, Phillip
Subject: FW: Sri Lanka - immunity claim - timeline ~~[SEC=IN-CONFIDENCE]~~

-IN-CONFIDENCE

Request from the Office – I'll put something together and run it past you.

From: Little, Matthew
Sent: Tuesday, 25 October 2011 12:56 pm
To: Reid, John
Cc: Ng, Phillip; Clifton, Jacob
Subject: Sri Lanka - immunity claim - timeline ~~[SEC=IN-CONFIDENCE]~~

IN-CONFIDENCE

Hi John

I've just discussed with Jacob. The info you provided is very useful and exactly what we were after. The AG, PMO etc are seeking that advice in Perth and so would it be possible to capture our conversation in a rough timeline re. r/ship between consent and immunity, who claims etc.

Thanks very much

Matt