

## SUMMARY NOTE ON THE JAGATH JAYASURIYA SANCTIONS SUBMISSION

On 4 March 2022, the International Truth and Justice Project (ITJP) and the Australian Centre for International Justice (ACIJ) made a submission<sup>1</sup> to the Department of Foreign Affairs and Trade (DFAT) concerning the possible designation of retired General Jagath Jayasuriya, Former Army Commander of Sri Lanka under Australia's Autonomous Sanctions Act 2011's Magnitsky-style and Other Thematic Sanctions Regulations.

The following is a brief summary of the 99-page document submitted together with an additional nine annexures numbering over 200 pages.

### Part I: Overview

The submission requests the Minister for Foreign Affairs designate retired General Jagath Jayasuriya, a Sri Lankan national, for his responsibility and complicity in serious human rights violations, including, but not limited to, extrajudicial killings, torture, rape and other forms of sexual violence committed during the final phase of the 2008-9 war in Sri Lanka. It focuses on the final phase of the civil war in Sri Lanka which took place between September 2008 and May 2009, and which saw the Sri Lankan military launch a massive offensive on the areas controlled by the Liberation Tigers of Tamil Eelam (LTTE) in the north of Sri Lanka which were home to approximately 400,000 civilians who were caught up in the offensive. The sources used include the UN *Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka (UN PoE Report)*,<sup>2</sup> the UN *Report of the OHCHR Investigation on Sri Lanka (OISL Report)*,<sup>3</sup> reports of non-governmental organisations and most notably, eye-witness and insider witness testimony, which establish reasonable grounds to suspect that Jagath Jayasuriya is a 'person engaged, responsible for or complicit' in relation to violations of the right to life and the right to be free from torture, cruel, inhuman or degrading treatment or punishment.

### Part II: Person to be designated – retired General Jagath Jayasuriya

Part II provides an overview of Jagath Jayasuriya's conduct and the violations perpetrated during his tenure as the Commander of Joseph Camp between 2007-2009, and his specific role during the period of the final phase of the war between 2008 and May 2009.<sup>4</sup>

<sup>1</sup> ITJP and ACIJ ensure that that any information provided in the submission is accurate, necessary and proportionate. ITJP and ACIJ took all reasonable steps to ensure that the information is verified or verifiable and from trusted sources, and to provide only information relevant to the proposed designation. Building on the findings presented in the OISL Report, ITJP has gathered a considerable archive of evidence including videos, photographs, SMS, and testimony of eyewitnesses to the atrocities perpetrated by the Sri Lankan Army.

<sup>2</sup> United Nations Secretary-General's Panel of Experts on Sri Lanka, *Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka* (31 March 2011).

<sup>3</sup> Human Rights Council, *Report of the OHCHR Investigation on Sri Lanka (OISL)*, UN Doc A/HRC/30/CRP.2 (16 September 2015).

<sup>4</sup> See ITJP, *General Jagath Jayasuriya Military Career* (2022).

The allegations made against him relate to the period Jayasuriya was the Security Force Commander of operations in the Vanni region, the main scene of the hostilities during the final phase of the war, from 7 August 2007 to 14 July 2009. As the Vanni Security Force Headquarters Commander, Jayasuriya had overall command of the offensives in the final stages of the conflict in the Vanni and was responsible for coordinating the attacks on the Vanni.

On 15 July 2009, Jagath Jayasuriya was appointed the 19<sup>th</sup> Commander of the Sri Lankan Army. On 1 August 2013, when he was appointed the Chief of Defence Staff of the Sri Lanka Defence Forces. In June 2015, Jagath Jayasuriya retired from the Sri Lankan Army and was appointed Ambassador to Brazil in August 2015 from where he was also accredited to Chile, Peru, Colombia, and Suriname.

On 28 August 2017, ITJP filed complaints in Brazil, Colombia, and Chile and at the Embassy of Suriname against Jagath Jayasuriya, for his alleged involvement in war crimes and crimes against humanity committed during the final phase of the Sri Lankan civil war.<sup>5</sup> On 27 August 2017, Jagath Jayasuriya fled to Sri Lanka.

### **Parts III and IV: Activities that justify the imposition of sanctions and Jayasuriya's involvement in grave human rights violations**

This section demonstrates how the right to life of tens of thousands of Tamil civilians,<sup>6</sup> alleged to have been killed by the Sri Lankan Army in the 'Final War', was violated through the targeted bombardment and shelling of civilians in the campaign conducted in the north of Sri Lanka, including through the use of white phosphorus and cluster munitions. It provides detailed witness and photographic evidence relevant to summary executions of the incident known as the 'White Flag' surrendees and the Father Francis group. It also details serious violations on the right not to be subjected to torture, (including allegations of rape and other forms of sexual violence) all of which constitute activities that warrant designation under the sanctions regime.

#### **Grave violations in the 'No Fire Zones'**

The submission cites evidence which indicates that the Sri Lankan Army conducted intentional and indiscriminate attacks against the civilian population in in Kilinochchi, Puthukkudiyiruppu (PTK), Ampalavanpokkanai (Pokkanai), Putumattalan, Valayanmadam and Mullivaikkal that resulted in extensive civilian casualties and thus violations of the right to life. These areas were under so-called 'No Fire Zones' (NFZs) which came under repeated attacks by government forces despite knowledge they were packed with hundreds of thousands of civilians. Military attacks included shelling of civilians, hospitals, medical facilities and in some cases the deliberate targeting of humanitarian operations and food distribution centres.

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<sup>5</sup> ITJP, *The Case Against Jagath Jayasuriya* (29 August 2017).

<sup>6</sup> See ITJP, *Death Toll in Sri Lanka's 2009 War* (10 March 2021).

## Eyewitness account

*“Nine members of my family (father’s side) were killed in two separate attacks on the hospital or in the immediate area of it. One was a cluster bomb and the other attack was with artillery shells fired from the security forces. I saw and heard these attacks. On both occasions, I went and loaded the bodies of my family. Only my father’s brother was of a sufficient size for us to bury. The other eight bodies were in so many small pieces from the shrapnel and were taken by the TRO to bury in nearby trenches.... There were hundreds of wounded there at the time and many were placed outside under trees waiting for help. My wife was in a UNHCR tent near the hospital. While she was at the hospital there was a security forces attack and a shell landed inside the compound about 25 metres from the main hospital building. It damaged one wall and tiles on the roof. The roof was clearly marked with large ICRC markings. People inside the hospital were wounded.”*

## Widespread use of torture and gender-based sexual violence

This section points to extensive and compelling evidence that exists which reveals that torture was systematically used by the Sri Lanka Security Forces during the war, and continues to be carried out across Sri Lanka by a number of state agencies against the Tamil population suspected to be associated with the LTTE.<sup>7</sup> The site commonly known as Joseph Camp, a military base under the command of Jagath Jayasuriya between 2008 and July 2009, was notorious for torture and sexual violence. The submission contains evidence from survivors which provides a sample of a much larger picture of widespread and systematic torture perpetrated by the security forces. Methods of torture include: blunt force trauma, such as beating and/or assault; burning and branding; sexual torture and violence including rape; suspension and other forced positioning; asphyxiation; cutting or stabbing with sharp implements and/or electric shock.

Sexual and gender-based violence was used as an interrogation method, a punishment, an intimidation, or even as a way of extorting money from concerned family members. The systemic use of sexual violence as torture at Joseph Camp has been corroborated by witnesses interviewed by the ITJP. ITJP has 14 male and female survivors who testify that they were repeatedly tortured and sexually abused in Joseph Camp during the period 2008-2014.<sup>8</sup> Of the 14 witnesses from Joseph Camp, five are female, and of these four said their torture in Joseph Camp included rape. Nine of the ITJP torture witnesses suffered sexual violence at the time when Jagath Jayasuriya was the Commander of the Joseph Camp. A number of ITJP witnesses provided horrific accounts of sexual violence experienced at the time when Jayasuriya was in charge.

The violations described in detailed testimonies of witnesses followed a pattern and chain of events that involved similar tools and methods used in a variety of detention locations, strengthening the conclusion that torture and sexual violence were part of an institutional policy within the security forces.

<sup>7</sup> See example, Freedom from Torture *Tainted Peace: Torture in Sri Lanka since May 2009* (August 2015); ITJP, *Unsilenced: Male Survivors Speak of Conflict-Related Sexual Violence in Sri Lanka*, (September 2018) ; ITJP, *A Still Unfinished War: Sri Lanka’s Survivors of Torture and Sexual Violence 2009-2015* (July 2015); ITJP, *Ongoing Torture*.

<sup>8</sup> ITJP *A Still Unfinished War* (2015) 64.

In addition to sexual torture, the evidence equally suggests that sexual violence was perpetrated at the Joseph Camp, and that acts by alleged perpetrators could amount to sexual slavery. According to the OISL Report and ITJP, women and teenage girls were brought to the Joseph Camp and then raped by security officers.<sup>9</sup>

The UN found that there was ‘widespread, systematic and particularly brutal’ use of torture by Government security forces (including the army) at the end of the war and after the war, concluding that there were reasonable grounds to believe that torture was committed on a widespread scale and could amount to war crimes and/or crimes against humanity.<sup>10</sup>

### **Failure to investigate**

This section analyses spurious attempts by Jayasuriya to constitute inquiries to look into the allegations. The UN OISL Report questioned the independence and impartiality of the inquiries, given it was established by Jayasuriya who should have been under investigation too, given his command responsibility for the military operations on the ground.

Jayasuriya had the responsibility for investigating and prosecuting such conduct, and deliberately chose to deal with it in a manner that would prejudice any accountability process, so as to exonerate both himself and those under his command, in effect benefitting from such conduct.

### **Jagath Jayasuriya’s role as commander**

As the highest-level military commander for the Vanni region during the final phase of the war, Jayasuriya was responsible for the overall command of military operations, including war tactics and the use of military equipment and weapons. These facts are based on extensive evidence from the Army itself, Jagath Jayasuriya’s descriptions of his authority, and Ministry of Defence reports. Media reports further corroborate the role of Jagath Jayasuriya in commanding military operations on the ground through the chain of command and photographs place him at the spot, inspecting corpses.

The submission states that Jagath Jayasuriya was in effective command and control over the troops who were responsible for the extrajudicial killings and enforced disappearances of the LTTE political wing leaders and others - incidents he personally witnessed, observing them safely crossing over to the army’s custody. He knew about the violations, but did nothing to stop them or to punish the perpetrators. For these reasons, Jagath Jayasuriya is responsible for the commission of crimes by units under his authority on the basis of command responsibility.

In relation to torture and sexual violence perpetrated at Joseph Camp, this section submits that the evidence clearly shows that Jagath Jayasuriya, as a Commander of Joseph Camp, had reason to know that torture and sexual violence were perpetrated there by military intelligence who, among others, fell under his chain of command. These were not isolated activities but formed part of the larger plan and policy. Despite having the power to do so, Jagath Jayasuriya failed to take the necessary steps to prevent or stop these violations, or to hold the perpetrators accountable.

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<sup>9</sup> ITJP *A Still Unfinished War* (2015) 66.

<sup>10</sup> OISL Report [1130].

## Part V: Legal test

Part V illustrates that the legal test is met. It provides reasons for why a designation against Jayasuriya will have broad and significant effects on him and more broadly for accountability for serious international crimes in Sri Lanka, by:

- preventing him from holding influential positions within international organisations or other countries, including Australia. A travel ban would signal caution as to his freedom of movement and the freezing of assets would restrict his economic activity;
- the Australian Government would send the Sri Lankan Government and the international community a strong foreign policy signal on the need and urgency to ensure accountability for the violations which amount to serious international crimes, which is consistent with Australia's support for the UN HRC Resolution 46/1 in Geneva in 2021 that established an evidence-gathering mechanism for Sri Lanka;<sup>11</sup>
- a designation would send a strong signal of support to victims of these violations, many of whom reside in the Australian community, that they matter and that their rights matter, which will afford them a small measure of justice;
- a designation would send a strong signal that impunity for gross human rights violations, some of which amount to international crimes, is not tolerated by Australia;
- the designation will help deter similar activities from happening in the future. This is particularly crucial in the light of the UN High Commissioner's Report to the Human Rights Council published on 27 January 2021 warning that the failure of Sri Lanka to address past violations has significantly heightened the risk of human rights violations being repeated;<sup>12</sup>
- according to evidence obtained by ITJP and ACIJ, in 2019 Jagath Jayasuriya visited Melbourne, Australia in what appears to be multiple entries. A designation would prevent Jagath Jayasuriya ever obtaining a visa to return to Australia – a country where hundreds of his victims and close family members of his victims reside.

### Jagath Jayasuriya's connection to Australia

This section details Jagath Jayasuriya's connections in Australia and the consequences that a designation against him will have a significant and effective impact. In May-June and October-November 2019, Jagath Jayasuriya was present in Australia. It is remarkable that he was given a visa and allowed to visit Australia given the public nature of the allegations of serious abuse against him at the time.

In Australia, he was hosted as a guest of honour at two public events. In one event, commemorating 10 years since the end of the civil war, Jayasuriya spoke at some

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<sup>11</sup> Human Rights Council, 'Promoting Reconciliation, Accountability, And Human Rights In Sri Lanka' UN Doc A/HRC/RES/46/1 (23 March 2021). Australia was not a member of the HRC but supported the draft resolution circulated on 16 March 2021.

<sup>12</sup> OHCHR, *Sri Lanka On Alarming Path Towards Recurrence Of Grave Human Rights Violations–UN Report* (27 January 2021).

length about his experience as commander of the Vanni. Jayasuriya was also photographed attending homes of influential members of the Australian Sinhalese community. He and his family were received with great reverence which is evidenced by the special treatment bestowed on them by Australian Sinhalese community members and the celebrity-like nature of his visit and attendance at public and private functions. A designation would prevent Jagath Jayasuriya ever returning to Australia and being welcomed and honoured in similar ways again.

## **Part VI: Other relevant factors for consideration**

Part VI of the submission draws on some of the policy priorities of the Australian Government and factors to consider when assessing whether someone should be designated. The submission points to the importance of collective international action. While the international community does not have much power to influence the decision-making processes in Sri Lanka, there exist much greater possibilities at the international level, or within Australia, through the sanctions process.

## **Part VII: Immediate family members**

Part VII requests that the immediate family members of Jagath Jayasuriya also be considered for designation pursuant to regulation 6A(8). The request is made on the basis that it is reasonable and proportionate and would influence and deter the primary actor, Jagath Jayasuriya.

The submission lists the immediate family members of Jagath Jayasuriya be considered as designated persons, and to be prevented from traveling, from, entering or staying in Australia. The submission states that Jayasuriya's family members are heavily involved in his work and legacy. His wife hosts events for children of 'War Heroes.' His daughter chaired a military organisation for youth that Jagath Jayasuriya helped establish. His family attends numerous events with him, including fundraising events celebrating the Sri Lankan Army.

His daughter lived and undertook tertiary education in Australia for several years until approximately April 2020. Both Jagath Jayasuriya and his wife visited Australia on multiple occasions while his daughter was undertaking her studies. There is no evidence to suggest these immediate family members have displayed any public abhorrence to the serious human rights abuses alleged to be perpetrated by their husband or father, or attempted to distance themselves from him. The evidence shows they benefit from their association with him, giving them fame and reverence, including from members of the Australian Sinhalese community in Melbourne who have hosted them publicly and in private. This is clear from the reception provided to his wife and daughter as associated guests of honour at the public events Jagath Jayasuriya was invited to in Melbourne in 2019.

The submission notes that the Minister for Foreign Affairs has stated that extending sanctions to a family member may "influence the behaviour of, or deter, a primary actor. Where appropriate, extending sanctions to immediate family members ensures that sanctioned individuals are not able to easily circumvent Australian sanctions."<sup>13</sup>

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<sup>13</sup> Senator the Hon. Marise Payne, Minister for Foreign Affairs and Trade, Supplementary Submission 63.3 Answers to Questions on Notice, (15 September 2020) 4, to Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry Into Whether Australia Should Examine the Use of Targeted Sanctions to Address Human Rights Abuses*.

The presence, and privilege afforded to Jagath Jayasuriya's family is significant. Through Jagath Jayasuriya's standing and means, his daughter has the resources to study and live in Australia for many years. Obtaining a tertiary education from an educational institution in the West is coveted among Sri Lanka's elite. In addition, the ability to travel freely to western destinations such as Australia is also something coveted by Jagath Jayasuriya and his family. Extending sanctions to the immediate family members and preventing their travel or entry in Australia is proportionate and reasonable given the circumstances outlined above. The impact on family members will create significant social pressure in the social circles of Jagath Jayasuriya as a serious human rights abuser.

**ENDS**

**March 2022**