

EXECUTIVE SUMMARY

ARTICLE 15 COMMUNICATION SUBMITTED TO THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT ON THE DEPORTATION, DEPRIVATION OF THE RIGHT TO RETURN AND PERSECUTION OF TAMIL CIVILIANS BY SRI LANKAN AUTHORITIES

This Communication outlines the information that explains the basis for why the Prosecutor of the International Criminal Court (ICC) should investigate and in due course arrest and try the following individuals who belong(ed) to the Government of Sri Lanka (GoSL):

1. Gotabaya Rajapaksa, current President and former Secretary of Defence of Sri Lanka,
2. Kamal Gunaratne, current Secretary of Defence of Sri Lanka and former Army Commander in the Sri Lankan Army (SLA)
3. Jagath Jayasuriya, former Army Commander and Chief of Defence Staff of the SLA,
4. Successive Inspector-Generals of Sri Lankan Police (SLP) since 2002;
5. Sisira Mendis, former Deputy Inspector General of Criminal Investigation Division (CID) and Terrorism Investigation Division (TID) within the SLP; and
6. Successive commandants of the Special Task Force (STF) of the SLP since 2002.

The information contained in the Communication provides more than a reasonable basis for concluding that these individuals are responsible for crimes against humanity of deportation (through underlying acts of abductions, unlawful detention and torture), deprivation of the right to return and persecution committed against numerous Tamil victims in Sri Lanka and the United Kingdom (UK). The information shows that these individuals held positions of command and/or authority over the Sri Lankan security forces, including SLP (including the CID, TID and STF) and the SLA, that are directly involved in the perpetration of crimes against humanity, including the notorious “white van abductions”, against Tamil victims. Through their acts and omissions, these suspects are directly responsible for the commission of these mass atrocities. Nevertheless, none of these individuals has ever been made subject to a criminal investigation or prosecution in Sri Lanka notwithstanding the gravity of these offences. As such these potential ICC cases would be admissible before the ICC.

This Communication is provided to the Prosecutor of the ICC under Article 15 of the Rome Statute by Global Rights Compliance LLP (GRC) on behalf of 200 Sri Lankan Tamil victims (Victims). GRC will also provide it to the national police authorities of the UK for the initiation of an investigation and issuance of arrest warrants under the principle of universal jurisdiction against the Sri Lankan authorities, including President Gotabaya Rajapaksa and some of the other individuals named above, who are expected to be visiting Glasgow between 31 October – 12 November 2021 to participate in the United Nations Climate Change Conference 2021 (COP26).

The Communication provides an overview of the cogent information regarding the widespread and systematic commission of the crimes against humanity of deportation, deprivation of the right to return as an inhumane act and persecution (under Article 7 of the Rome Statute) in Sri Lanka and the UK against the Tamil nationals who were perceived supporters or members of the Liberation Tigers of Tamil Eelam (LTTE) by the Government of Sri Lanka (GoSL) at least since 2002.

Thousands of actual or perceived Tamil supporters or members of LTTE have been systematically subjected to abduction, unlawful detention and/or torture by the GoSL officials belonging to the Sri Lankan security forces named above in the course of, as well as after the end, of the armed conflict between the LTTE and GoSL in 2009. Although this filing is on behalf of 200 Victims, the experiences of the Victims outlined therein concern thousands of more victims. Thus, these victims represent only

a fraction of the heinous crimes committed and that continue to be committed against Tamil men, women and children in Sri Lanka and the UK.

The underlying purpose of the GoSL authorities in committing these crimes has been/is to annihilate, by any means necessary, the Tamil separatism in Sri Lanka embodied within the LTTE and its supporters. However, the GoSL makes no distinction between those with these political beliefs and the thousands of Sri Lankan men, women and children who wish for nothing but peace, security and a place to call home.

As such, the officials of GoSL committed these criminal acts on ethnic and political grounds, meaning that they were in fact committed as underlying acts of discrimination and persecution. The severity of the persecution they have faced left the Victims with no option but to flee Sri Lanka and seek refuge in the UK. Subsequently, the Victims were and continue to be deprived of their right to return to their homes as a result of the threats, torture and persecutory policies of the GoSL security forces led by Gotabaya Rajapaksa and Kamal Gunaratne. These men and the GoSL as a whole have initiated policies that continue to this day to prevent the Victims from returning home. They face the risk of torture, injury and death if they returned to Sri Lanka, whether they are LTTE supporters or not. The Victims continue to suffer from the harassment of and threats to their loved ones who remain in Sri Lanka, as well as the ongoing surveillance, harassment and persecution directed towards themselves in the UK. These as well as the indignities and difficulties inherent in being refugees in the UK including the agonies of having to start their lives again in a foreign country where they are deprived of their homes, culture and families have caused and continue to cause the Victims severe mental harm.

In this sense, of particular concern is the continued persecution of these Victims in the UK by the current GoSL through these acts. The entirety of the conduct and this continued brutality amounts to three distinct crimes against humanity (deportation, deprivation of the right to return and persecution) that have been and continue to be committed against the Victims in the UK. As the UK is a state party to the Rome Statute, this gives the ICC jurisdiction over them and also provides the UK with another basis – besides the pursuant to universal jurisdiction principles – to arrest them upon their arrival in the UK.

As this Communication shows, this is for two reasons: first, deportation is a continuing crime, meaning that it continues to take place on the territory of the UK as long as the victims are prevented from returning their homes in Sri Lanka due to the acts of these men and the continuing persecutory acts of the GoSL authorities. Second, as confirmed by the recent jurisprudence of the ICC, the crime of the denial of the right to return home takes place where the victims are present as refugees, which is the now the UK. The Victims have been abducted, detained, tortured, persecuted (in Sri Lanka and the UK) and thus deprived of their right to return home due to their ethnic and political identities.

Based on the foregoing, the Victims contend that the initiation of an investigation by the Prosecutor of the ICC is imperative to deter the continuing commission of these crimes and ensure that the inalienable rights of the Victims to return home, know the truth, to see their torturers face justice and request reparations for their losses are realised.