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Rt. Hon. Boris Johnson, MP
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9 February 2018

EXTREMELY URGENT

Dear Madam, Sir,

REQUEST TO DECLARE THE SRI LANKAN MILITARY ATTACHE, BRIGADIER PRIYANKA FERNANDO, A “PERSONA NON GRATA” FOR COMMITTING SERIOUS OFFENCES UNDER BRITISH LAW, ABUSING DIPLOMATIC IMMUNITY IN THE UK AND COMMITTING WAR CRIMES & CRIMES AGAINST HUMANITY IN SRI LANKA AND THEREFORE TO CURTAIL HIS LEAVE TO REMAIN IN THE UK

Introduction

We, the undersigned Diaspora Organisations, write to make this very urgent request to declare the Sri Lankan Military Attaché, Brigadier **ANDIGE PRIYANKA INDUNIL FERNANDO**, a “persona non grata” for committing serious offences under the British law, abuse of diplomatic immunity in the UK and for being complicit in the war crimes & crimes against humanity in Sri Lanka.

We, the undersigned further request that the grant of leave to remain in the UK to the Sri Lankan Military Attaché be curtailed on the basis that it is undesirable for the Attaché to remain in the UK in the light of his conduct, character and associations.

This letter is written as a joint letter to the Home Secretary and the Secretary of State for Foreign & Commonwealth Affairs as this matter is directly relevant to both of those offices.

As you may be aware, organisations supporting this request were formed in response to the worsening humanitarian crisis of the Tamil people in Sri Lanka. We function with the specific intention of securing justice for the Tamil people in Sri Lanka, preventing further human rights abuses and ensuring that third parties such as the UK government fulfil their obligations under international law in taking action to halt the systematic and gross violations of human rights being perpetrated against the Tamil people by the Sri Lankan Government.

Brigadier Priyanka Fernando was posted to London as the Sri Lankan High Commission's defence attaché in 2017¹. On Sri Lanka's 70th Independence Day, 4th February 2018, he attracted attention by not only swearing words of racial hatred, but also issuing threats to kill by making throat-slitting gestures to peaceful Tamil protestors outside the High Commission in London. This outrageous action was photographed and filmed by a brave activist named Mr Subeshraj Sathiyamoorthy and first posted on the Social Media by Shivani Jegarajah, a Barrister². This video of Brigadier Priyanka Fernando in full military dress uniform, doing this in front of the High Commission building went viral³.

The victims who feel threatened and intimidated have approached the Police and made complaints to arrest Brigadier Priyanka Fernando.

Tamil Solidarity, the organisation that organised the London protest on Sri Lanka's 70th Independence Day with the Tamils Coordination Committee (TCC-UK) has made a formal complaint to the High Commission and launched an online petition calling for the immediate removal of the abusive defence attaché⁴. The International Centre For Prevention and Prosecution of Genocide (ICPPG) has also made appeals for Brigadier Priyanka Fernando to be prosecuted.

The International Truth and Justice Project Sri Lankan (ITJP) and the Journalists For Democracy in Sri Lanka (JDS) have published a very detailed dossier setting out the background of Brigadier Priyanka Fernando⁵. Diaspora organisations including British Tamils Forum (BTF) have already made representations individually. A cross party British parliamentary group urging the expulsion of Brigadier Fernando has written to Foreign Secretary saying that his gesture was "inappropriate, unacceptable and threatening behaviour from someone who is serving in an official capacity as a guest of this country"⁶.

¹ https://p10.secure.hostingprod.com/@spyblog.org.uk/ssl/ldl/London_Diplomatic_List_-_October_2017.htm

² https://m.facebook.com/permalink.php?story_fbid=2005976662994587&id=100007468185518

³ <http://www.tamilguardian.com/content/sri-lankan-military-official-motions-death-threat-tamils-protesting-london>

⁴ <http://www.tamilsolidarity.org/sri-lankan-high-commission-authority-threatens-tamil-protesters/>

⁵ http://www.itjpsl.com/assets/press/brigadier_api_fernando_final.pdf

⁶ <https://www.colombotelegraph.com/index.php/labour-mps-call-for-expulsion-of-sri-lankas-defence-attache-from-the-uk-following-throat-cutting-gestures/>

As a result of these joint action and public outcry, the authorities in Sri Lanka were forced to suspend Brigadier Priyanka Fernando from his work with immediate effect on 06th February 2018⁷.

On 7 February 2018, by Order of the Sri Lankan President Maithripala Sirisena⁸, Brigadier Priyanka Fernando has been allowed to resume his duties as Military Attaché in the United Kingdom, despite the fact that inquiries are still ongoing into his conduct.

Purpose of this letter

We jointly make this urgent request as the UK has under domestic law and international law, clear obligations to:

- a) Curtail the Diplomatic visa of Brigadier Priyanka Fernando on the following two grounds;
- b) Declare Brigadier Priyanka Fernando a 'persona non grata';
- c) Arrest him for breaching the domestic law and initiate criminal proceedings;
- d) Investigate the credible and serious allegations of his complicity in war crimes in Sri Lanka.

Ground one - Breach of Domestic Law

On the 4th January 2018, outside the Sri Lankan High Commission, Westminster, London, Brigadier Priyanka Fernando committed a series of offences under the British domestic law. He acted in a manner that is;

1. Contrary to S.16 of The Offences Against the Person Act 1861 – without lawful excuse makes to another a threat, intending that that other would fear it would be carried out, to kill that other or a third person.
2. Contrary to S.4 Public Order Act 1986 – displayed to another person, writing, signs or other visible representations which were threatening, abusive or insulting, with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.
3. Contrary to S.5 Public Order Act 1986 – using threatening or abusive words or behaviour, or disorderly behaviour, or displayed any writing, sign or other visible representation, which is threatening or abusive.

⁷ <http://www.mfa.gov.lk/index.php/en/media/media-releases/7429-slukdef>

⁸ <http://www.dailymirror.lk/article/London-Defence-Attaché-back-to-work-on-MS-orders-145381.html>

4. Acting in breach of the Antisocial Behaviour Act 2003 and Police Reform and Social Responsibility Act 2011) - Anti-social behaviour covers a wide range of unacceptable activity that causes harm to an individual, to their community or to their environment. This could be an action by someone else that leaves you feeling alarmed, harassed or distressed.

A large number of protesters were left feeling alarmed, harassed and distressed. They had to approach the Police for protection as they genuinely began to fear for their lives.

In addition to Brigadier Priyanka Fernando's actions of issuing death threat both verbally and physically, the fact that he used his mobile phone to take photos and video of the protesters individually is sufficient to prove his intention to trace them and execute them.

There is credible evidence provided in the Home Office's own Country Information and Guidance to Sri Lanka: Tamil Separatism, published in June 2017⁹, that demonstrates that the Sri Lankan authorities use photographs taken at protests and demonstrations in the UK as a means to trace and persecute those who demonstrate against the Sri Lankan State, and further, to harass and intimidate family members of such protestors.

In the light of the Home Office's own guidance, the act of Brigadier Fernando cannot be viewed as an empty threat, but rather one in support of which there is credible evidence that such actions of harm and unlawful killing will be carried out.

Ground two - Breach of International Law

Those obligations arise in the context of the Sri Lankan Government persistently and systematically breaching the "intransgressible" principles of International Humanitarian Law, arguably perpetrating war crimes, crimes against humanity and committing gross violations of international human rights law during the war between the LTTE and the Sri Lankan Government that ended in May 2009 in a systematic and widespread manner and Brigadier Priyanka Fernando playing a senior role in the Sri Lankan military during the relevant period of time.

The situation in Sri Lanka, particularly in the area of Vanni could not have been more serious. Respected human rights organisations estimate that at least 40,000 civilians were killed during the final stages of the war in 2009. On 21 April 2009, the International Committee of the Red Cross, the only aid agency with a permanent albeit restricted access to the warzone, described the situation as "nothing short of catastrophic"¹⁰ with hundreds of civilians killed or wounded in the last few days¹¹. UN Officials have estimated that as

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/619535/Sri_Lanka_-_Tamil_Separatism_-_CPIN_-_v5.0_June_2017_.pdf

¹⁰ <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/sri-lanka-press-briefing-210409>

¹¹ <http://www.guardian.co.uk/world/2009/apr/22/civilians-sri-lanka-tamil-tigers>

many as 50,000 people remained trapped in the narrow stretch declared a no-fire zone by the Sri Lankan government despite tens of thousands fleeing the area¹². The overwhelming majority of those killed were children¹³.

As per the evidence available in public domain and the detailed dossier prepared by the ITJP/JDS, *“Brigadier Fernando was clearly active in the final offensive in the north of Sri Lanka from at least April 2008 – and on those grounds alone should have been subjected to a scrupulous vetting process by both the Government of Sri Lanka and the UK which should have precluded his diplomatic appointment to London”*.

“Furthermore, Brigadier Fernando is cited repeatedly in media reports for his combat role as part of the 59 Division in the push towards capturing Mullaitivu. From August 2008 to January 2009 the UN and other sources cite repeated shell attacks on the Mullaitivu Hospital coming from the south from where the 59 Division was advancing. It is not possible to say if Brigadier Fernando’s battalion was responsible for those specific attacks on the hospital which if proven in a court of law could amount to war crimes.”¹⁴

In light of these facts relating to the final stages of the war, should the UK Government / FCO fail to declare Brigadier Priyanka Fernando’s a ‘persona non grata’ and decide to continue his diplomatic visa, it would amount to a very serious breach of its responsibilities under international and domestic law. In the face of such systematic and widespread violations of international humanitarian law and human rights law by another state, the UK government has a number of obligations under international law. These obligations have not been met.

We, jointly and urgently call upon the Foreign Secretary to set out in clear detailed terms, supported by evidence of the actions taken by Her Majesty’s Government, exactly how it has met and continues to meet all of its obligations imposed by international and domestic law arising from the acceptance of Brigadier Priyanka Fernando as a Military Attaché. Additionally, we seek an immediate declaration from the UK Government / FCO that in accordance with its international and domestic obligations the UK will declare Brigadier Priyanka Fernando a ‘persona non grata’, curtail his diplomatic visa in order to allow the Met Police to arrest him and investigate him for the offences committed.

It has now become clear that the UK government has clearly not done the due diligence to ensure that potential human rights violators are prevented from entering the UK and being allowed to hold office in the UK. The ITJP/JDS report has pointed out that the Brigadier should have been asked to clarify what his role, if any, was in those incidents. However, this had not been done in Brigadier Fernando’s case. There is regrettably no longer any information available online about Brigadier Fernando’s role in the war between January – May 2009. The Vetting authorities should have asked him to clarify this period

¹² http://news.bbc.co.uk/1/hi/world/south_asia/8007465.stm

¹³ http://www.unicef.org/emerg/index_48791.html

¹⁴ http://www.itjpsl.com/assets/press/brigadier_api_fernando_final.pdf

in his career before he was offered a diplomatic position in the UK. In order to remedy this failure, we invite the UK Government/FCO to refer this matter to the War Crimes/Special Branch of the Met Police for immediate investigation.

Sri Lanka's Violations of International Law

We welcome the efforts made by the UK government to secure the resolution that was passed by the UN Human Rights Council on Sri Lanka on 22 March 2012. However, the Sri Lankan Government has clearly failed to implement the resolution to date despite successfully obtaining an extension with the support of the UK Government.

Throughout 2008, the conflict intensified in the LTTE-controlled areas of northern Sri Lanka, known as the Vanni and in September 2008 the government expelled international humanitarian agencies from the region citing security concerns. In its 2008 Human Rights Report for Sri Lanka, the US State Department observed:

The government's respect for human rights declined as armed conflict escalated. The overwhelming majority of victims of human rights violations, such as killings and disappearances, were young male Tamils, while Tamils were only 16 percent of the overall population. Credible reports cited unlawful killings by paramilitaries and others believed to be working with the awareness of the government, assassinations by unknown perpetrators, politically motivated killings, the continuing use of child soldiers by a paramilitary force associated with the government, disappearances, arbitrary arrests and detention, poor prison conditions, denial of fair public trial, government corruption and lack of transparency, infringement of freedom of movement, and discrimination against minorities. Pro-government paramilitary groups were credibly alleged to have participated in armed attacks against civilians and practiced torture, kidnapping, hostage-taking, and extortion with impunity. During the year, no military, police or paramilitary members were convicted of any domestic human rights abuse. The executive failed to appoint the Constitutional Council, which is required under the Constitution, thus obstructing the appointment of independent representatives to important institutions such as the Human Rights Commission, Bribery Commission, Police Commission, and Judicial Service Commission.¹⁵

In January 2009, Sri Lankan forces seized control of major areas that had previously been held by the LTTE. Since that time there had been rising international concern over the humanitarian situation of the thousands of civilians who were trapped in the Vanni region together with condemnation of the Sri Lankan government's role in the worsening humanitarian crisis.

¹⁵<http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119140.htm>

Breaches of the “intransgressible” principles of international customary law

The brutality of the actions of the Sri Lankan government against the civilian Tamils is well documented by the UN expert panel report, US State Department report and reports by many respected international human rights groups.

Civilian Deaths and Indiscriminate Attacks

According to United Nations reports 70,000 civilians were killed during the last stages of the war in Sri Lanka. During the war, the UN High Commissioner for Human Rights noted that “the current level of civilian casualties is truly shocking and there are legitimate fears that the loss of life may reach catastrophic levels in the fighting in this way”¹⁶. With rapid military successes the Sri Lankan army pursued an uncompromising military end game without any regard to the Tamil civilians caught in the crossfire. Calls for cease-fires to allow humanitarian access were repeatedly resisted and the 2 day ceasefire that was announced on 13 and 14 April 2009 was inadequate to allow in significant amounts of aid, or indeed to allow visits by humanitarian workers to the area. On 24 April 2009, hours after the UN announced the dispatch of a humanitarian team to the area and called for a pause in fighting to allow aid into the conflict zone, the Sri Lankan government stated that there would be no further breaks in its military offensive¹⁷.

A high number of those civilian deaths had reportedly been caused by indiscriminate artillery attacks and aerial bombardment by the Sri Lankan forces including in the areas declared as “safe zones” by the government¹⁸. In a briefing published by Amnesty International in March 2009 it was noted “reports from the few remaining UN staff, aid workers and civilians able to contact the outside world speak of regular, heavy bombardment of the safe zone, including hours-long artillery barrages”¹⁹. The Office for the Coordination of Humanitarian Affairs (OCHA), reported in a press briefing at UN Headquarters that it continued to receive reports of shelling, mortar fire and aerial attacks in the “no fire” zone in Sri Lanka²⁰.

In a statement published on 3 April 2009, the United Nations Secretary General Ban Ki-Moon expressed deep concern at the continuing reports from the Vanni region that civilians were at extreme risk. At the same time the Secretary-General reminded the government of its responsibility to protect civilians, and, as promised, to avoid the use of heavy weaponry in areas where there were civilians.²¹ Newspapers reports continued to report shelling

¹⁶ <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/FFDE961C9D0236C5C1257578004B8E4B?opendocument>

¹⁷ http://news.bbc.co.uk/1/hi/world/south_asia/8015818.stm

¹⁸ Human Rights Watch: War on Displaced, Sri Lankan Army and LTTE Abuses against Civilians in the Vanni. February 2009

¹⁹ Amnesty International, *Stop the War on Civilians in Sri Lanka: a briefing on the humanitarian crisis and lack of human rights protection*. March 2009

²⁰ <http://www.un.org/News/press/docs/2009/0904.sgsm.htm#StoryID=17547>

²¹ <http://www.un.org/apps/sg/sgstats.asp?nid=3768>

in civilian areas on an almost daily basis²² causing a high number of casualties. Mediciens Sans Frontiere which was not allowed access to the war zone but treats those fleeing, reported in its press release on 22 April that:

“Busloads of patients are arriving from the conflict zone to the hospital and the government-run camps in Vavuniya. “The buses are still coming and they’re actually unloading dead bodies at times as some wounded people died on the way” says Karen Stewart, MSF mental health officer working in Vavuniya. More than 30 wounded people died on their way to the hospital on Monday 20th April.”²³

There has been round condemnation of the actions of the Sri Lankan government. On 22 April 2009, Secretary of State, Hillary Rodham Clinton said “I think that the Sri Lankan government knows that the entire world is very disappointed that in its efforts to end what it sees as 25 years of conflict, it is causing such untold suffering”²⁴.

Attacks on Hospitals

Human Rights Watch had compiled information from aid agencies and eyewitnesses of more than two dozen incidents of artillery shelling or aerial bombardments on or near hospitals in the Vanni Region from 15 December 2008 to 10 February 2009²⁵. Including three shellings on a hospital on 1 and 2 February 2009 where according to the ICRC more than 800 people including 500 in-patients were sheltering²⁶. In an extraordinary interview with Sky News, the Defence Secretary of the Sri Lankan government Gotabaya Rajapase stated that the shelled hospital²⁷ was not within the unilaterally declared 'no-fire zone' set up by the government and therefore a legitimate target. Two days later on 4 February another hospital was bombed²⁸. On 22 April 2009, the UK Guardian carried eyewitness accounts of cluster bombs and artillery shelling having killed large numbers of civilians in a makeshift hospital²⁹.

Illegal Use of Weaponry

The concerns regarding indiscriminate attacks on the civilian Tamil populations were heightened by evidence that the government had used illegal weaponry or legal weapons in an illegal manner³⁰. Human Rights Watch stated that they had received information that the Sri Lankan forces

²² [http://www.inthenews.co.uk/news/world/autocodes/countries/sri-lanka/60-killed-in-sri-lanka-as-civilian-safe-zone-shelled-\\$1286745.htm](http://www.inthenews.co.uk/news/world/autocodes/countries/sri-lanka/60-killed-in-sri-lanka-as-civilian-safe-zone-shelled-$1286745.htm); <http://www.thisislondon.co.uk/standard/article-23678425details/Thousands+flee+war+zone+as+Tamils+defy+surrender+deadline/article.do>

²³ <http://www.guardian.co.uk/world/2009/apr/22/sri-lanka-civilian-deaths>

²⁴ <http://www.doctorswithoutborders.org/press/release.cfm?id=3550&cat=press-release&ref=home-center-relatedlink>

²⁵ <http://www.independent.co.uk/news/world/asia/tamil-rebels-surrender-ndash-but-hunt-for-their-leader-goes-on-1672717.html>

²⁶ Human Rights Watch: War on Displaced, Sri Lankan Army and LTTE Abuses against Civilians in the Vanni. February 2009, see page 18.

²⁷ <http://www.icrc.org/Web/eng/siteeng0.nsf/html/sri-lanka-interview-020209>

²⁸ <http://news.sky.com/skynews/Home/World-News/Sri-Lanka-War-Hospital-In-Puthukkudiyiruppu-Shelled-Killing-Adults-And-Children/Article/200902115214899>

²⁹ <http://www.guardian.co.uk/weather/2009/feb/04/srilanka-terrorism>;

³⁰ <http://www.guardian.co.uk/world/2009/apr/22/sri-lanka-civilian-deaths>

³⁰ See the written testimony of Karen Parker before the subcommittee on Near East and South and Central Asian Affairs, Committee of Foreign Affairs at the United States Senate, 24 February 2009.

were using multi-barrell rocket launchers which could not target with sufficient precision to be accurate against military targets, rightly pointing out that their broad area effect made their use incompatible with the laws of war in areas where civilian or civilian objects (such as schools or hospitals) were located³¹.

Accusations of the use of cluster bombs by the Sri Lankan army were widespread³² and Karen Parker in her evidence to the US Senate stated that “there appears to be reliable evidence of the use of white phosphorous as weapons rather than tracers, or that white phosphorous was used with disregard for possible civilian casualties. There is also photographic evidence of the use of fire bombs against Tamils in camps for internally displaced people.”³³

Internally Displaced Persons (“IDPs”)

The treatment of IDPs by the Sri Lankan government raised serious concerns by international agencies and human rights organisations³⁴. Instead of providing the internally displaced with the assistance and protection they are entitled to under international law it appears that the Sri Lankan government are violating their fundamental human rights. Human Rights Watch, report:

“The government has arbitrarily detained people during screening procedures; subjected all internally displaced persons, including entire families, to indefinite confinement in military controlled camps; and failed to provide adequate medical and other assistance to displaced persons. The government has directly restricted the efforts of relief agencies seeking to meet emergency needs, and has deterred agencies from offering greater support through policies that the agencies rightly perceive as unlawful...

In October – December 2008, Human Rights Watch documented the plight of hundreds of civilians detained in de facto internment camps established by the government since March 2008...the situation has further deteriorated since the beginning of 2009 with the arrival of thousands of new displaced persons in government-controlled areas. The government continues to immediately confine all of them in existing and newly established camps.”³⁵

In a letter to the International Monetary Fund, on 23 March 2009, Human Rights Watch further noted:

³¹ Human Rights Watch: War on Displaced, Sri Lankan Army and LTTE Abuses against Civilians in the Vanni. February 2009.

³² <http://www.guardian.co.uk/world/2009/apr/22/sri-lanka-civilian-deaths>; <http://www.youtube.com/watch?v=zG-9vCRi3-I>

³³ See the written testimony of Karen Parker before the subcommittee on Near East and South and Central Asian Affairs, Committee of Foreign Affairs at the United States Senate, 24 February 2009.

³⁴ Amnesty International, *Stop the War on Civilians in Sri Lanka: a briefing on the humanitarian crisis and lack of human rights protection*. March 2009

³⁵ Human Rights Watch: War on Displaced, Sri Lankan Army and LTTE Abuses against Civilians in the Vanni. February 2009.

“All internally displaced persons who cross to the government side, including entire families, are sent to internment centers, which are military-controlled, barbed-wire camps where there are no rights to liberty and freedom of movement. Humanitarian agencies have tenuous access, but do so at the risk of supporting a long-term detention program for civilians fleeing a war.”³⁶

The Office for the Coordination of Humanitarian Affairs stated that up to the end of March 2009, 58,378 persons who have crossed from the conflict were being accommodated in camps for IDPs in the Vavuniya area while another 8,204 IDPs (including the injured and those who accompany the patients) had gone to Tricomalee.³⁷

International bodies, including both the UN High Commissioner for Refugees³⁸ and the UN Secretary-General's representative on internally displaced persons³⁹ had consistently called upon the Sri Lankan government to honour its international legal obligations in relation to displaced persons.

Catherine Bragg, the U.N.'s deputy humanitarian chief, said in New York that appeals to the government for access to the refugees and for permission to be present at the initial screening of refugees received no response.⁴⁰ With the Sri Lankan government estimating that over a 100,000 people had fled the conflict zone within the last week ensuring the cooperation of the Sri Lankan government on the treatment of IDPs was of the utmost priority⁴¹.

Summary

The above only touches upon the human rights violations that the Tamil community was enduring during the last stages of the war in Sri Lanka. Well documented cases of extra judicial killings, disappearances, torture and political repression were widespread. There was also the ongoing failure to provide adequate medical assistance or relief access to those displaced and injured meaning that all those stranded were at grave threat not only from the military but from lack of food, health supplies and the outbreak of disease⁴². The true scale of the humanitarian crisis and human rights atrocities occurring was extremely difficult to verify at that time because the Sri Lankan government restricted international humanitarian aid agencies from conducting relief operations in the Vanni region and refused any monitoring of the conflict by international actors and organisations.

³⁶ Ibid. See also <http://www.timesonline.co.uk/tol/news/world/asia/article5721635.ece>

³⁷ <http://ochaonline.un.org/tabid/5362/language/en-US/Default.aspx>

³⁸ UNHCR Colombo, Aide Memoire, August 29 2008

³⁹ UN Doc. A/HRC/8/6/Add.4, para 8.

⁴⁰ <http://www.google.com/hostednews/ap/article/ALeqM5gVoaDFmbCYS-Usz9ACDRlengj21QD97O1EVO0>

⁴¹ http://news.bbc.co.uk/1/hi/world/south_asia/8011862.stm

⁴² For further information on violations of human rights and humanitarian law by the Sri Lankan government the complaint filed by Tamils Against Genocide against Timothy Geithner and Meg Lundsager at the U.S. District Court of Colombia <http://www.tamilnet.com/art.html?catid=13&artid=28882>; The International Commission of Jurists in March 2009 published Sri Lanka: Briefing Paper, Emergency Laws and International Standards which details concerns with Sri Lanka's emergency laws: immunity clauses that encourage impunity, overly vague definitions of offences, sweeping powers delegated to the military, arbitrary grounds for arrest and detention, erosion of fair trial and due process rights, and the curtailing of fundamental freedoms, including freedom of expression, freedom of assembly, freedom of movement and the right to privacy.

Furthermore, no independent journalists were allowed into the conflict zone and dissenting voices from the media were the subject of harassment, violence and even assassination⁴³.

However, despite the Government's best efforts a clear picture had emerged of gross violations of the intransgressible principles of international humanitarian law⁴⁴ and international recognised human rights standards. Human rights law continued to apply in times of armed conflict save where derogations were applicable. The relevant instruments here included the International Covenant on Civil and Political Rights including the first and second Optional Protocols; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racist Discrimination and the United Nations Convention Against Torture.

The targeting of areas sheltering civilians, hospitals and unarmed individuals is utterly forbidden by Article 3 common to the Geneva Conventions of 1949 that binds both parties⁴⁵ and the rules of customary international law. The wilful killing or infliction of harm on civilians through the use of indiscriminate weapons such as multi barrel rocket launchers in densely populated areas constituted grave breaches of international humanitarian law. The forcible displacement of civilians was also prohibited under international customary law and the Sri Lankan government's treatment of the IDPs failed to adhere to the UN Guiding Principles on Internal Displacement and violates the prohibition on arbitrary detention under international humanitarian and human rights law⁴⁶. The deliberate and systematic denial of basic services and assistance such as health care and food is prohibited by international humanitarian law⁴⁷ and where such action is calculated to bring about the destruction of part of the population constitutes a crime against humanity.⁴⁸

There is already clear prima facie evidence of 'war crimes' as defined by Article 8(2) and 'crimes against humanity' as defined by Article 7 of the Rome Statute of the International Criminal Court⁴⁹. While Sri Lanka is not a signatory to the Rome Statute it is well established that the norms of international humanitarian law prohibiting war crimes, crimes against humanity and genocide have the status of *jus cogens* norms⁵⁰. *Jus cogens* norms as defined in Article 53 of the Vienna Convention on the Law of Treaties are those rules "which are accepted and recognised by the international

⁴³ Sri Lanka was ranked 165th out of 173 countries in the Reporters Without Borders 2008 press freedom index which was the lowest ranking of any democratic country.

⁴⁴ 'Serious violations of international law committed in Sri Lanka conflict: UN Human Rights Chief', Statement by the United Nations High Commissioner for Human Rights, 13 March 2009, Geneva.

⁴⁵ Article 3 is applicable in all cases of 'internal armed conflict'. UN Security Council Resolution 1674 (2006) on the prosecution of civilians in armed conflict, reaffirmed that "parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians".

⁴⁶ International Covenant on Civil and Political Rights (ICCPR) U.N. Doc. A/6316 (1966); ICRC, *Customary International Humanitarian Law*, Rule 99 and accompanying text.

⁴⁷ Rule 55, ICRC Rules

⁴⁸ Article 7 (2)(b) of the Rome Statute of the International Criminal Court.

⁴⁹ On 20 April 2009, Human Rights Watch has called for a United Nations commission of inquiry to investigate war crimes by both sides: <http://www.hrw.org/en/news/2009/04/20/sri-lanka-protect-civilians-final-attack>

⁵⁰ *Prosecutor v. Kupreli*, ICTY, 14 January 2000, Case No. IT-95-16-T. See also Advisory Opinion of the ICJ on the *Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports 1996.

community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” They are elementary considerations of humanity to which the conventions merely give expression.

Given the slaughter of the ethnic Tamil population during the last stages of the war there is also a case for Brigadier Fernando and the Sri Lankan government to answer on the commission of genocide under the 1948 Genocide Convention. The definition of genocide contained in Article 2 of the Genocide Convention and Article 6 of the International Statute of the Criminal Court includes “any of the following acts committed with intent to destroy, in whole or in part, a national ethnical, racial or religious group, as such: a) killing members of the group; b) causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part....”⁵¹ And under Article 3, the acts which shall be punishable include genocide, conspiracy to commit genocide, attempt to commit genocide and complicity in genocide. Recent case-law particularly from the International Criminal Tribunal for the Former Yugoslavia is instructive on the evolution of the law as relating to Genocide.⁵²

Relevant principles of Immigration Law

As the Home Secretary in particular will be aware, the British Government has wide-ranging powers to exclude those whose presence in the UK is not deemed to be conducive to the public good. The Immigration Rules directly provide for the refusal of leave to enter or the curtailment of leave already granted in circumstances where there are discretionary powers to allow the Home Secretary to act in a manner that protects the interests of the United Kingdom and those resident within the country.

The Home Secretary is referred to her policy guidance: Home Office: Exclusion from the UK, version 1.0, published on 13 April 2017⁵³ which is further instructive on the powers conferred on the Home Secretary to protect the interests of the United Kingdom.

Under Paragraph 322(5) of the Immigration Rules, the Secretary of State has the power to exclude a person in the light of:

(5) the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C), character or associations or the fact that he represents a threat to national security;

⁵¹ See also Article 6 of Rome Statute of the International Criminal Court.

⁵² See for example *Prosecutor v. Jelusic* (Case No. IT-95-10-T), Judgment 14 December 1999; *Prosecutor v. Sikirica et al.* (Case No. IT-95-8-1), Judgment on Defence Motions to Acquit, 3 September 2001; *Prosecutor v. Krstic* (Case No. IT-98-33-T), 2 August 2001

⁵³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/608797/exclusion-from-the-uk-v1.0EXT.pdf

Those undersigned content that the conduct of Brigadier Fernando's is not conducive to the public good, on the basis that his actions were clearly intended to cause racial tension (between the Sinhalese and Tamil Sri Lankan populations in the United Kingdom) and has further exacerbated the fear of many individuals who have been forced to flee Sri Lanka.

According to the Home Office's Modernised Guidance⁵⁴ there are specific reasons, in the light of Brigadier Fernando's former involvement in the Sri Lankan civil war, which amount to complicity in war crimes, and in the light of his recent conduct to peaceful protestors as to why Brigadier Fernando should be deemed a person whose conduct makes his presence in the United Kingdom, not conducive to the public good.

The Home Office's approach⁵⁵ to denying British Citizenship to individuals in relation to whom there is information to suggest that a person has been involve or associated with war crimes, crimes against humanity or genocide, is further instructive in terms of the approach that should be taken in Brigadier Fernando's case, where there is clear and credible evidence in relation to his complicity in such crimes.

Conclusion

In the circumstances, we urge the Home Secretary and Secretary of State for Foreign and Commonwealth Affairs, to give urgent consideration to the curtailment of Brigadier Priyanka Fernando's visa, on the basis that his presence in the UK is not conducive to the public good.

We further urge that it would be appropriate in this case to declare Brigadier Priyanka Fernando a 'persona non grata' in the light of the credible evidence of his complicity in war crimes and crimes against humanity and further, in the light of demonstrable evidence that he has acted in breach of UK domestic law under the Public Order Act 1986 and the Offences against the Person Act 1861 it would be appropriate for this matter to be referred to the Metropolitan Police for investigation.

The British Government is under a clear obligation to the citizens of this country to ensure that those who incite racial hatred are prevented from propagating such views in the United Kingdom. There is clear precedent in the exclusion of individuals from the United Kingdom where their conduct falls below acceptable levels of this country. We urge you to conclude that Brigadier Priyanka Fernando is a person "*Considered to be engaging in unacceptable behaviour by seeking to provoke others to serious criminal acts and fostering hatred which might lead to inter-community violence*", such that he should be determined to be a persona non grata in the UK.

⁵⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674001/GGFR-Section-4-v29.0EXT.PDF

⁵⁵ Section 5 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/658456/annex-d-v2.0-EXT.pdf

We ask you to provide an urgent response by close of business on 12th February 2018.

Yours faithfully,

British Tamil Conservatives (BTC)
British Tamils Forum (BTF)
Global Tamil Forum (GTF)
International Centre for the Prevention and Prosecution of Genocide (ICPPG)
Tamils Coordinating Committee (TCC-UK)
Tamils for Labour
Tamil Friends of the Liberal Democrats
Tamil Information Centre (TIC)
Transnational Government of Tamil Eelam (TGTE)
Tamil Solidarity (TS)

