

**GAZA: GOLDSTONE REPORT
WAR CRIMES AND USE OF MUNITIONS**

s22(1)(a)(ii)

s22(1)(a)(ii)

Background

s22(1)(a)(ii)

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Israeli nationals in Australia

On 6 December 2009, Israeli Prime Minister Ehud Olmert and Vice Prime Minister Silvan Shalom conducted an official visit to Australia as part of the Australia Israel Leadership Forum. Several NGOs protested his presence in Australia, including Students for Palestine, Australians for Palestine, the Federation of Australian Muslim Students and Youth, and the Palestine Community Association.

Australians for Palestine have written to the Attorney General, the Hon Robert McClelland MP, requesting his consent to commence a prosecution of Prime Minister Olmert for war crimes. Prime Minister Olmert was Prime Minister during the conflict in Gaza from December 2008 to January 2009.

s33(a)(iii)

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Date: 8 February 2010	Date: Type in Date
Consultation: SMD/MEB/MEA	Date: 8 February 2010
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**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*).

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s 33(a)(iii), s 42(1)

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s 33(a)(iii), s 42(1)

High Court Decision on Aung San Suu Kyi matter (*Taylor vs the Attorney-General of the Commonwealth*) – 19 June 2019

Talking points

- The Australian Government takes all allegations of crimes against humanity extremely seriously.
- Note that the Full Court of the High Court of Australia has dismissed the case [19 June]
 - the Government will consider the Court's reasons once available.
- Further questions should be directed to the Attorney-General.

Background

On 19 June, the Full Court of the High Court dismissed the case of *Taylor vs the Attorney-General of the Commonwealth*, in which civil society organisation Human Rights For All challenged the Attorney-General's March 2018 decision not to consent to a private prosecution of Aung San Suu Kyi for crimes against humanity.

s 42(1)

s 33(a)(iii), s 42(1)

s 42(1)

From: s22(1)(a)
To: s22(1)(a)(ii)
Subject: s 42(1)
Date: Thursday, 11 July 2019 10:06:33 AM
Attachments: s22(1)(a)(ii)
 s 42(1)

Hi s22(1)(a)(ii)

Here is the first email.

s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Friday, 14 June 2019 6:59 PM
To: s22(1)(a)(ii) @dfat.gov.au>
Cc: s22(1)(a)(ii) @dfat.gov.au>; deZoeten, Sarah <Sarah.Dezoeten@dfat.gov.au>;
 Heckscher, Julie <Julie.Heckscher@dfat.gov.au>; Faulkner, Andrea <Andrea.Faulkner@dfat.gov.au>;
 Worthaisong, Lynda <Lynda.Worthaisong@dfat.gov.au>; Milton, Ben <Ben.Milton@dfat.gov.au>; s47F
 @dfat.gov.au>; s22(1)(a)(ii) @dfat.gov.au>; s22(1) (1)
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s 42(1)

Dear s22(1)(a)(ii)

s 42(1)

s22(1)(a)(ii)

Prior to any decision by the High Court on the case, we propose to use the below talking points, should we receive any media enquiries (these have previously been cleared by AGD for DFAT use).

If asked: about an appeal to the Australian High Court concerning the Attorney-General's decision not to consent to a private prosecution of Aung San Suu Kyi

- This is a matter for the Attorney-General.
- The government does not comment on matters that are before a court.

Kind regards,

s22(1)(a)(ii)

Assistant Director, Myanmar Section
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