

**Communication to the Human Rights Committee
Submitted Pursuant to the Optional Protocol to the
International Covenant on Civil and Political Rights**

AHIMSA WICKREMATUNGE

for herself and on behalf of

LASANTHA WICKREMATUNGE

Victims

— v. —

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA,

Respondent

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CONTENTS

I.	INTRODUCTION.....	1
A.	The Authors and Victims.....	1
B.	Request to Prioritize the Case	1
II.	FACTS	1
A.	Country Context	2
B.	The Victims' Story	6
III.	THIS COMMUNICATION IS ADMISSIBLE	15
IV.	SRI LANKA HAS VIOLATED THE COVENANT	18
A.	Right to Life (Article 6).....	18
B.	Right to Freedom from Torture or Other Cruel, Inhuman, or Degrading Treatment or Punishment (Article 7).....	20
C.	Rights to Freedom of Expression and Opinion and Non- Discrimination Based on Same (Articles 19 and 26)....	22
D.	Right to Effective Remedy (Article 2).....	24
V.	SRI LANKA MUST REMEDY ITS VIOLATIONS	25
VI.	RELIEF REQUESTED.....	26

I. INTRODUCTION

1. This communication requests the Committee's assistance in securing justice for Sri Lanka's January 2009 assassination of Lasantha Wickrematunge, a leading independent journalist covering the Sri Lankan civil war, and the Government's subsequent failure to investigate or prosecute those responsible for his death.

A. The Authors and Victims

2. Counsel for Lasantha Wickrematunge's daughter, Ahimsa Wickrematunge, submit this communication in their capacity as her legal representatives and on behalf of both Lasantha and Ahimsa Wickrematunge as victims of violations of the Covenant by the Democratic Socialist Republic of Sri Lanka ("Sri Lanka"). At the time of his death, Lasantha Wickrematunge, born on 5 April 1958, was a citizen and resident of Sri Lanka. Ahimsa Wickrematunge, born on 14 February 1992, is a citizen and resident of the Commonwealth of Australia. Notifications for this communication should be sent to nsarkarati@cja.org, ccheung@cja.org, camirfar@debevoise.com, nlreid@debevoise.com, and enielsen@debevoise.com.

B. Request to Prioritize the Case

3. The authors respectfully request that the Committee prioritize review of this Communication due to the significant impact that a decision by the Committee may have on the protection of rights and freedoms of currently vulnerable journalists in Sri Lanka.¹ Such a decision would address urgent and ongoing issues of "harassment, intimidation, surveillance and attacks against journalists" and "impunity for past cases" that are of such "general concern" that the Committee has elected to study them in connection with its sixth periodic review of Sri Lanka's implementation of the Covenant.² Indeed, Lasantha's case is referenced expressly in the Committee's report on Sri Lanka.³

II. FACTS

4. Lasantha became a Government target due to his reportage on senior officials during the civil war, which ended several months after his assassination. International observers, including the United Nations, have extensively documented human rights violations committed by Sri Lanka, including torture, extrajudicial killing, and failure to investigate gross human rights violations committed by State

¹ Cf. Office of the United Nations High Commissioner for Human Rights, Informal Guidance Note by the Secretariat for the States Parties on Procedures for the Submission and Consideration by Treaty Bodies of Individual Communications (2017), ¶ 34.

² Sri Lanka, CCPR/C/LKA/Q/6 (2020), ¶ 26.

³ See Sri Lanka, CCPR/C/LKA/Q/6 (2020), ¶ 26.

actors. The Government, now led by the senior officials that Lasantha criticized, continues to target journalists with impunity to this day.

A. Country Context

5. At all relevant times for this communication, Sri Lanka has been a dangerous, and even deadly, environment for journalists.

6. Lasantha was assassinated in the final months of Sri Lanka's decades-long civil war between the Government and the Liberation Tigers of Tamil Eelam (the "LTTE"), a victim of the Government's violent campaign against independent journalists and political dissidents. The Sri Lankan civil war ended amid allegations that the LTTE and the Government had committed serious violations of international humanitarian law. In March 2011, a U.N. Panel of Experts found sources showing that as many as 40,000 civilians were killed in the final stages of the conflict to be credible and concluded that these casualties, if proven, would establish international criminal liability for LTTE leaders, military commanders, and senior government officials.⁴

7. Today, the Government, which includes many former military officials and veterans of the violent campaign against journalists during the civil war, continues to threaten and suppress independent journalists.

1. The Rajapaksa Regime's Systematic Attacks on Journalists During the Civil War

8. Two brothers were the chief architects of the Government's violent campaign and corresponding crackdown on journalists and political dissidents: from November 2005 to January 2015, Mahinda Rajapaksa served as President, while Gotabaya Rajapaksa played a key role in the Government's security apparatus as Secretary of Defence.

9. As the most senior civil servant in the Ministry of Defence at the time of Lasantha's assassination, then-Sec. Rajapaksa oversaw all Sri Lankan security and intelligence services, including the military and national police.

10. Then-Sec. Rajapaksa directed investigations involving "national security" and "terrorism," which he expansively applied to investigate media workers, humanitarian aid workers, human rights activists, and individuals the Government deemed "Tiger sympathizers."⁵ A number of wartime measures, including the 1979 Prevention of Terrorism Act and the 2005 Emergency Regulations under the Public Security Ordinance, gave sweeping powers to the Government when

⁴ See Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka (2011), pp. ii-iv, 41, <https://perma.cc/WNL4-7B58>.

⁵ See Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka (2011), pp. 8, 17, <https://perma.cc/WNL4-7B58>.

acting to protect “national security.” Under the 2005 Emergency Regulations, the Secretary of Defence could order arrests and detention if he “is of [the] opinion” that the individual is acting “in any manner prejudicial to the national security or to the maintenance of public order.”⁶ The Prevention of Terrorism Act was broadly worded to criminalize a wide array of conduct, such as any act causing “communal disharmony or feelings of ill-will” between different communities.⁷ That Act also granted government officials broad immunity for actions undertaken “in good faith” for the protection of national security.⁸

11. Sensitive to criticism of its war effort and allegations of corruption, the Rajapaksa regime invoked these laws to justify an assault on the free press, routinely harassing journalists, editors, and other media workers. Although the Rajapaksa regime often denied playing any role in the attacks against journalists—including abductions, assaults, torture, and killings—investigators, including from the United Nations, have traced many attacks to Government security forces reporting to the Secretary of Defence.⁹ More publicly, the Rajapaksa regime arrested, deported, and sued journalists and attempted to enact laws and regulations limiting the free press.¹⁰

12. Many journalists fled Sri Lanka, and international press bureaus and independent media outlets downsized or closed.¹¹ Independent journalists who remained active in the country and did not exercise “self-censorship” were targeted for attack. Press freedom organizations documented serious threats to media workers throughout the Rajapaksa regime, including after the war.¹² During the Rajapaksa’s 10-year rule, violence against journalists spiked. At least 15 journalists and media workers were killed and many others were threatened,

⁶ Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 2005, Part 4, ¶ 18, <https://perma.cc/9SAA-DYZH>; *see also Sri Lanka: Practice Relating to Rule 99: Deprivation of Liberty*, INTERNATIONAL COMMITTEE OF THE RED CROSS, <https://perma.cc/M4FZ-2DEH> (quoting Sri Lanka’s Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 2005, Part 4, ¶ 18).

⁷ Prevention of Terrorism Act (1979), § 2(1)(h), <https://perma.cc/CGT6-R6W8>.

⁸ Prevention of Terrorism Act (1979), § 26, <https://perma.cc/CGT6-R6W8>.

⁹ *See, e.g.,* Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka (2011), p. 17, <https://perma.cc/WNL4-7B58>.

¹⁰ *See Journalists Attacked in Sri Lanka since 1992*, COMMITTEE TO PROTECT JOURNALISTS, <https://perma.cc/H3SW-SFVZ>.

¹¹ Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka (2011), p. 113, <https://perma.cc/WNL4-7B58>.

¹² *See Sri Lanka Special Report: Failure to Investigate*, COMMITTEE TO PROTECT JOURNALISTS (23 February 2009), <https://perma.cc/7TCX-HVLV>; *see also Crackdown on Media Continues*, REPORTERS WITHOUT BORDERS (31 January 2010), <https://perma.cc/S4RH-X383>; *Sri Lanka’s Assault on Dissent*, AMNESTY INTERNATIONAL (2013), pp. 33-35, 38-40, <https://perma.cc/2R7Z-GBRV>.

assaulted, or abducted.¹³ A U.N. human rights investigative body that examined allegations of serious violations of international humanitarian law and human rights abuses committed by both parties in the Sri Lankan civil war from 2002 to 2011 concluded that attacks against journalists were widespread and occurred over an extended period; they also appeared “systematic in their repeated targeting of specific media known for being critical of Government policies or figures.”¹⁴

13. The Ministry of Defence spearheaded this crackdown on independent journalism. The Government branded some journalists critical of the Rajapaksa regime as “Tiger sympathizers” or “terrorists,” and the Ministry of Defence posted their names on its official website so that Government security forces could know whom to assault and arrest.¹⁵ The offices of *Sirasa TV*, *The Sunday Leader*, *The Morning Leader*, and *Irudina* each came under violent attack following inflammatory posts on the Ministry of Defence’s website.¹⁶ Joint security forces and military intelligence units identified and targeted journalists alleged to pose a threat to national security.

14. Many attacks on journalists followed that pattern. For example, in 2008, Keith Noyahr, deputy editor of *The Nation*, was kidnapped outside of his home by unidentified men and taken away in a white van.¹⁷ He was taken to a military intelligence safe house, where he was stripped, suspended in mid-air, beaten, and questioned as to the sources of his news articles.¹⁸ In his search for Noyahr, *The Nation*’s chief executive called the Minister of Public Administration who in turn called then-President Rajapaksa and threatened to resign unless Noyahr was released.¹⁹ The Government finally released Noyahr after a series of

¹³ See, e.g., *Journalists Attacked in Sri Lanka since 1992*, COMMITTEE TO PROTECT JOURNALISTS, <https://perma.cc/H3SW-SFVZ>; see also *Sri Lanka’s Assault on Dissent*, AMNESTY INTERNATIONAL (2013), p. 8, <https://perma.cc/2R7Z-GBRV>.

¹⁴ Report of the OHCHR Investigation on Sri Lanka (OISL), A/HRC/30/CRP.2 (16 September 2015), p. 57.

¹⁵ See Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka (2011), p. 17, <https://perma.cc/WNL4-7B58>; see also *Sri Lanka Special Report: Failure to Investigate*, COMMITTEE TO PROTECT JOURNALISTS (23 February 2009), <https://perma.cc/7TCX-HVLV>.

¹⁶ *Sri Lanka Special Report: Failure to Investigate*, COMMITTEE TO PROTECT JOURNALISTS (23 February 2009), <https://perma.cc/7TCX-HVLV>.

¹⁷ See *Keith Noyahr Recounts the Harrowing Ordeal of Being Abducted by a White Van*, NEWS FIRST (20 August 2018), <https://perma.cc/LNV4-2LN3>.

¹⁸ See *Keith Noyahr Recounts the Harrowing Ordeal of Being Abducted by a White Van*, NEWS FIRST (20 August 2018), <https://perma.cc/LNV4-2LN3>; see also *CID Closes in on Masterminds of Keith Noyahr Abduction*, SUNDAY OBSERVER NEWS (22 April 2018), <https://perma.cc/C694-3T6P>.

¹⁹ See Suranimala Umagiliya, *Mahinda Like Duminda And Ravi – Cannot Remember*, COLOMBO TELEGRAPH (19 August 2018), <https://perma.cc/M4E3-RJJY>; *Phone Records Lead CID to Big Arrest in Journalist Keith Noyahr Abduction Case*, SRI LANKA BRIEF (22 April 2018), <https://perma.cc/WZ7X-QACE>; *CID Closes in on Masterminds of*

telephone calls down the chain of command from then-Sec. Rajapaksa to the commanding officer of the Tripoli Platoon, an elite unit under the Directorate of Military Intelligence whom independent Government investigators later arrested and charged with the attack on Noyahr.²⁰ After he was released, Noyahr fled Sri Lanka with his family.²¹

2. Sri Lanka's Continuing Culture of Impunity

15. The impunity enjoyed by Sri Lankan officials for crimes they committed during the civil war is notorious. U.N. experts and agencies have documented the Government's wilful failure to follow even basic standards for official accountability in no fewer than 10 reports since the end of the civil war in 2009.²² Gotabaya Rajapaksa, as the current President of Sri Lanka, has maintained this culture of impunity and has initiated a new campaign of widespread and systematic attacks against journalists upon coming to power.

16. In a *pro bono* filing in a civil action that Ahimsa brought against President Rajapaksa in U.S. federal court, Juan Méndez—the former Special Rapporteur on Torture and Other Cruel, Inhuman, and Degrading Treatment of Punishment—described Sri Lanka's "significant failures in protecting victims' rights to justice," including delays in investigations and criminal cases, lack of independence of the Sri Lankan judiciary, and lack of independence of the investigative mechanisms in Sri Lanka.²³

17. In another *pro bono* filing in the same case, Steven Ratner, a former member of the U.N. Panel of Experts studying accountability for the civil war, described Sri Lanka's "culture of impunity for high-level officials that precludes any effective remedy."²⁴ The Panel of Experts wrote in 2011 that the Government's understanding of transitional justice lacked "any notion of accountability for its own

Keith Noyahr Abduction, SUNDAY OBSERVER NEWS (22 April 2018), <https://perma.cc/C694-3T6P>.

²⁰ See *Phone Records Lead CID to Big Arrest in Journalist Keith Noyahr Abduction Case*, SRI LANKA BRIEF (22 April 2018), <https://perma.cc/WZ7X-QACE>.

²¹ See *Sri Lanka Arrests Soldiers over Journalist's Abduction During War*, REUTERS (18 February 2017), <https://perma.cc/S8PL-WT3L>.

²² See **Ex. A**, Declaration of Steven R. Ratner in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss, *Wickrematunge v. Rajapaksa*, No. 2:19-cv-02577 (C.D. Cal. 4 April 2019) ("Ratner Declaration"), ¶ 11.

²³ See **Ex. B**, Declaration of Juan E. Méndez in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss, *Wickrematunge v. Rajapaksa*, No. 2:19-cv-02577 (C.D. Cal. 4 April 2019) ("Méndez Declaration"), ¶ 13.

²⁴ **Ex. A**, Ratner Declaration, ¶ 15.

conduct in the prosecution of the war, especially during the final stages.”²⁵

18. That culture endures: in 2017, the Committee Against Torture “note[d] with regret that [Sri Lanka] has not yet concluded its ongoing investigations into certain emblematic cases of violations committed during the conflict period,” and in 2019, the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) noted that, despite the election of a new Government in 2015, “virtually no progress has been made in investigating or prosecuting domestically the large number of allegations of war crimes or crimes against humanity collected by OHCHR in its investigation, and particularly those relating to military operations at the end of the war.”²⁶ Prof. Ratner also described how individuals seeking justice for human rights abuses are often victims of retaliation.²⁷ Prof. Ratner concluded that “the Sri Lankan justice system is especially inadequate” for remedies against a “public figure as powerful as Gotabaya Rajapaksa”—and that was *before* he was elected president.²⁸

B. The Victims’ Story

19. In the context of its crackdown on the media, the Government increasingly subjected Lasantha to surveillance and attack. The Government targeted him for his reporting and commentary as editor-in-chief of *The Sunday Leader*, an English-language weekly that he co-founded in 1994 and ran until his death. Ahimsa has been unable to secure justice for herself or her father in light of the State’s pervasive culture of impunity.

1. Lasantha’s Investigative Journalism and Threats Preceding the Assassination

20. Lasantha’s reporting brought him on a collision course with then-President Rajapaksa and then-Sec. Rajapaksa in 2006. On 24 December, *The Sunday Leader* published an article detailing an approximately US\$4 million government construction project to create a bunker for the Sri Lankan elite. Lasantha’s accompanying editorial criticized the creation of a Rajapaksa “dynasty.”²⁹ Shortly after publication, then-Sec. Rajapaksa ordered the national police’s Criminal Investigation Division (the “CID”) to arrest Lasantha, despite a lack of support from the CID and Attorney General. The Secretary to the

²⁵ Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka (2011), ¶ 281, <https://perma.cc/LJ75-Z3WQ>.

²⁶ Sri Lanka, CAT/C/LKA/CO/5 (2017), ¶ 15; Office of the United Nations High Commissioner for Human Rights, Promoting Reconciliation, Accountability and Human Rights in Sri Lanka, A/HRC/40/23 (2019), ¶ 29.

²⁷ **Ex. A**, Ratner Declaration, ¶ 25.

²⁸ **Ex. A**, Ratner Declaration, ¶ 23.

²⁹ *See No Place for a Rajapakse Dynasty*, THE SUNDAY LEADER (24 December 2006), <https://perma.cc/JCJ5-BRR3>.

President revoked the arrest order minutes before the CID was about to execute it.³⁰

21. Between July and September 2007, *The Sunday Leader* published a series of articles alleging that then-Sec. Rajapaksa was involved in a scheme to embezzle millions of dollars in a 2006 contract to purchase MiG fighter jets from Ukraine.³¹ Then-Sec. Gotabaya stated in a video interview soon after that the media in Sri Lanka “can criticize the President and the Defence Secretary by writing lies and after writing these things, they can nicely drive their cars by themselves alone and go around,” while mimicking holding a steering wheel.³² He was clearly alluding to Lasantha, the only reporter widely known to be critical of the Government and who drove his own vehicle without private security escort. In October 2007, Gotabaya threatened to bring a defamation case against Lasantha and his newspaper for their reporting on the MiG deal.³³

22. On 21 November 2007, black-clad commandos bearing automatic weapons stormed the premises of *The Sunday Leader*, held staff at gunpoint, and set the printing press machinery on fire. The police never carried out a proper investigation into the arson attack and never charged or prosecuted anyone for the attack.³⁴

23. In February 2008, then-Sec. Rajapaksa fulfilled his earlier threats and filed a defamation suit against Lasantha for his reporting on the MiG deal.³⁵ Around September 2008, the State Intelligence Service began intercepting Lasantha’s mobile phone communications, purportedly for “national security” reasons.³⁶ And in October 2008, then-President Mahinda Rajapaksa called Lasantha a

³⁰ See Vimukthi Yapa, *Unbowed and Unafraid*, THE SUNDAY LEADER (25 November 2007), <https://perma.cc/9ZWL-UCBB>; see also *Sunday Leader Editor Faces Arrest*, TAMILNET (28 December 2006), <https://perma.cc/62DA-HEMF>.

³¹ See, e.g., *MiG Deal Crash Lands on Defence Ministry*, THE SUNDAY LEADER (2 September 2007), <https://perma.cc/KYY3-5E56>; *Who Profited from the MiG Deal?*, THE SUNDAY LEADER (5 August 2007) <https://perma.cc/MKJ9-2HM9>; see also *The Anatomy of the MiG Deal*, SUNDAY OBSERVER (6 January 2019), <https://perma.cc/N8JU-Y97A>.

³² See Anurangi Singh, *CID Wants Custody of 2007 Interview with Gota on MiG Deal, Lasantha*, SUNDAY OBSERVER (13 January 2019), <https://perma.cc/AA9F-GM7X>.

³³ Ahimsa Wickrematunge, *What They Did to My Father and Why They Did It*, COLOMBO TELEGRAPH (8 January 2019), <https://perma.cc/3QLB-S4KK>.

³⁴ Ahimsa Wickrematunge, *What They Did to My Father and Why They Did It*, COLOMBO TELEGRAPH (8 January 2019), <https://perma.cc/3QLB-S4KK>.

³⁵ *Defence Secretary sues Sunday Leader*, SUNDAY OBSERVER (24 February 2008), <https://perma.cc/BF36-SWXS>; see also Ahimsa Wickrematunge, *What They Did To My Father And Why They Did It*, COLOMBO TELEGRAPH (8 January 2019), <https://perma.cc/MT2N-CAJW>.

³⁶ *Exclusive: SIS Document Shows Gota Ordered Lasantha’s Phone to Be Tapped Just Weeks Before He Was Killed*, COLOMBO TELEGRAPH (2 November 2016), <https://perma.cc/ZXB6-RCPY>.

“terrorist journalist” in a public interview with Reporters Without Borders.³⁷

24. Threats against Lasantha intensified in the weeks before his assassination: he told his family he thought he was being followed; a funeral wreath was delivered to his office; he received a newspaper dipped in red paint bearing the bearing a chilling missive—“if you write, you will be killed.”³⁸ Two days before his killing, the MTV/MBC Media Network—which operated the country’s main independent TV station, Sirasa TV, on which Lasantha presented a weekly current affairs program—was stormed by black-clad commandos armed with automatic weapons, grenades, and claymore mines. The pattern of the attack, including the use of military-grade weapons, indicates the Government’s connection to the attack.³⁹ Lasantha was one of the first people on the scene of the attack. In a televised interview on *News First*, Lasantha “wholeheartedly condemned” the attack and declared that media personnel must not bow down to threats and intimidation.⁴⁰

2. Lasantha’s Assassination and Aftermath

25. As he drove to work on the morning of 8 January 2009, a few days before he was to testify in then-Sec. Rajapaksa’s defamation case against him, Lasantha noticed black-clad men on motorcycles circling nearby his home and following his car.⁴¹ He called friends and family members to say that he feared he was being followed. As mobile telephone tower logs later showed, the group of motorcycle riders had been following Lasantha for several weeks and were members of the Ministry of Defence’s Tripoli Platoon.⁴² While he stopped at a busy intersection less than 200 meters from a secured military checkpoint, black-clad masked commandos drove up on motorcycles, battering

³⁷ See *Outrage at Fatal Shooting of Newspaper Editor in Colombo*, REPORTERS WITHOUT BORDERS (8 January 2009), <https://perma.cc/SL5M-P6CQ>.

³⁸ See Seth Bodine, *Project Exile: Editor Escapes Sri Lanka After Husband’s Murder*, GLOBAL JOURNALIST (5 June 2019), <https://perma.cc/4PEZ-6JG4>; see also Amelia Gentleman, *If You Write You’ll Be Killed*, THE GUARDIAN (17 January 2009), <https://perma.cc/Z2LP-BM85>.

³⁹ See *Sri Lanka Special Report: Failure to Investigate*, COMMITTEE TO PROTECT JOURNALISTS (23 February 2009), <https://perma.cc/7TCX-HVLV>; see also *Gunmen Raid Sri Lanka TV Station*, BBC NEWS (6 January 2009), <https://perma.cc/NP3A-ACHC>.

⁴⁰ Thamusa Thamusa, *Lasantha Wickrematunge on Sirisena Attack*, YOUTUBE (9 October 2015), <https://www.youtube.com/watch?v=gQWH3OyozC8>.

⁴¹ See *Remembering Lasantha Wickrematunge on the 10th Anniversary of His Assassination*, DAILY FT (5 January 2019), <https://perma.cc/9A6M-2VK5>.

⁴² See *Exclusive: SIS Document Shows Gota Ordered Lasantha’s Phone to Be Tapped Just Weeks Before He Was Killed*, COLOMBO TELEGRAPH (2 November 2016), <https://perma.cc/ZXB6-RCPY>; *CID Tells Court—Former Tripoli Camp Chief Major Bulathwatte Linked to Attacks on Media*, THE LEADER (21 July 2019), <https://perma.cc/TW9Q-JKLS>.

Lasantha and smashing his car windows. After punching a hole in his skull using a sharp instrument, the motorcyclists sped off and entered a “High Security Zone” under the exclusive control of the Sri Lanka Air Force. Onlookers rushed him to the Colombo South Teaching Hospital, where he died hours later despite emergency surgery.⁴³

26. Three days after Lasantha’s killing, *The Sunday Leader* published a posthumous editorial that he had left on file in the event of his death. Newspapers around the world reprinted this chillingly prescient “Letter from the Grave.” Lasantha wrote:

It is well known that I was on two occasions brutally assaulted, while on another my house was sprayed with machine-gun fire. Despite the government’s sanctimonious assurances, there was never a serious police inquiry into the perpetrators of these attacks, and the attackers were never apprehended. In all these cases, I have reason to believe the attacks were inspired by the government. When finally I am killed, it will be the government that kills me.⁴⁴

I hope my assassination will be seen not as a defeat of freedom but an inspiration for those who survive to step up their efforts. Indeed, I hope that it will help galvanise forces that will usher in a new era of human liberty in our beloved motherland. I also hope it will open the eyes of your President to the fact that however many are slaughtered in the name of patriotism, the human spirit will endure and flourish. Not all the Rajapaksas combined can kill that.⁴⁵

27. Tragically, the attack on Lasantha foretold a pattern and practice of State violence against independent journalists. On 23 January 2009, Upali Tennakoon, editor of the *Rivira* newspaper, was driving to his office when four motorcyclists stopped him, smashed in his car windows, and beat him and his wife with metal bars.⁴⁶ In May 2009, then-Sec. Rajapaksa personally called a Channel 4 journalist covering reports of sexual violence and other abuses allegedly committed by the Sri Lankan military to tell him he was being deported because of his

⁴³ See *Sri Lanka Special Report: Failure to Investigate*, COMMITTEE TO PROTECT JOURNALISTS (23 February 2009), <https://perma.cc/7TCX-HVLV>; see also *Ex-Leader’s Brother “Led Death Squad” in Sri Lanka*, AL JAZEERA (20 March 2017), <https://perma.cc/D74C-L8D7>.

⁴⁴ *And Then They Came for Me*, THE SUNDAY LEADER (11 January 2009), <https://perma.cc/M9AY-HPNW>.

⁴⁵ *And Then They Came for Me*, THE SUNDAY LEADER (11 January 2009), <https://perma.cc/M9AY-HPNW>.

⁴⁶ See Yanqi Xu, *Project Exile: Sri Lanka Editor Fled After Attempt on Life*; GLOBAL JOURNALIST (19 January 2018), <https://perma.cc/W3XW-YHY4>.

reporting.⁴⁷ On 1 June 2009, men in a white van abducted and severely beat journalist Poddala Jayantha several days after the Inspector General of Police referred to him as a traitor.⁴⁸ In October 2009, *The Sunday Leader* editors Frederica Jansz and Munza Mushtaq received death threats in the mail similar to those sent to Lasantha weeks before his death.⁴⁹ On 24 January 2010, journalist Prageeth Eknaligoda disappeared after leaving his office; he had recently published articles in support of then-President Rajapaksa's opponent in the upcoming election and was developing a "family tree" of the dozens of members of the Rajapaksa family holding government office.⁵⁰ In 2013, *The Sunday Leader* reporter Faraz Shauketally was shot in his home.⁵¹ Later that year, associate editor Mandana Ismail Abeywickrema was assaulted and threatened in her home by assailants who searched through her files.⁵²

28. And so on. In its 2014 Concluding Observations on Sri Lanka, the Committee urged the Government to "refrain from any measures amounting to intimidation or harassment taken against persons exercising their right to freedom of expression."⁵³

3. Impunity for Lasantha's Killing

29. The Government, now led by President Gotabaya Rajapaksa and Prime Minister Mahinda Rajapaksa, has undertaken no credible investigation into Lasantha's attack and killing. The Government's intransigence, coupled with Sri Lanka's infamous culture of impunity, has precluded Ahimsa from securing any judicial remedy on behalf of her father.

⁴⁷ See Nick Paton Walsh, *Journalist Who Reported on Internment Camps in Sri Lanka Tells His Story*, THE GUARDIAN (10 May 2009), <https://perma.cc/BG3U-SJKL>.

⁴⁸ See WikiLeaks: *Poddala Jayantha has been a key contact for the Embassy*, COLOMBO TELEGRAPH (26 December 2011), <https://perma.cc/85Y4-A4NQ>; Krishan Francis, *Reporter Seeks Justice for "White Van" Torture in Sri Lanka*, AP NEWS (24 June 2017), <https://perma.cc/4A2H-ULXL>.

⁴⁹ See *Sri Lanka Must Investigate Death Threats Against Two More Journalists*, AMNESTY INTERNATIONAL (28 October 2009), <https://perma.cc/8965-F4NC>.

⁵⁰ See *Political Reporter and Cartoonist Missing in Colombo on Eve of Election*, REPORTERS WITHOUT BORDERS (25 January 2010), <https://perma.cc/9N5B-QJ6F>; Amanda Perera, *Sri Lanka's Missing Thousands: One Woman's Six-Year Fight to Find Her Husband*, THE GUARDIAN (28 January 2016), <https://perma.cc/H25W-4GC2>.

⁵¹ See *Desire to Silence Outspoken Journalist Seen in Murder Attempt*, REPORTERS WITHOUT BORDERS (18 February 2013), <https://perma.cc/T8SP-T5SE>.

⁵² See *RWB and JDS Address Open Letter to Navi Pillay*, REPORTERS WITHOUT BORDERS (27 August 2013), <https://perma.cc/X4ZC-X3RD>.

⁵³ Sri Lanka, CCPR/C/LKA/CO/5 (2014), ¶ 21.

i. Failure to Investigate or Prosecute

30. In the immediate aftermath of Lasantha's killing, Sri Lankan law enforcement agencies either failed to conduct a credible investigation into the killing or actively interfered with any attempts to conduct a credible investigation. OHCHR has documented how the Government's investigation was flawed from the start: shortly after the killing, the Judicial Medical Officer assigned to the case issued a false autopsy report indicating that Lasantha was killed by a firearm, despite crime-scene evidence and notes from the emergency surgeon to the contrary. Then, Lasantha's notebook—in which he had scrawled two license plate numbers on the day of the attack and which the police had collected at the scene of the crime—disappeared. A police investigator later admitted to removing pages of the notebook and doctoring police logbook entries mentioning the notebook at the order of his superiors.⁵⁴

31. Then-Sec. Rajapaksa shamelessly dismissed Lasantha's killing and concerns surrounding the investigation. He told the BBC that Lasantha's assassination was “just another murder,” insisting that he was “not concerned about that.” He asked the interviewer “why are you so worried about one man?”⁵⁵

32. The Sri Lankan police acted on then-Sec. Rajapaksa's indifference by blocking the inquiry into Lasantha's death. The investigating officers failed to make any progress for nearly a year following the killing, prompting Ahimsa's attorneys and other family members to petition the relevant magistrate court to transfer responsibility for the investigation to the CID. The court granted that request in December 2009.⁵⁶

33. Later that month, a military intelligence officer abducted one of Lasantha's former household employees, demanding he remain silent if questioned by investigators about Lasantha's death. The employee went into hiding following his release. In a line-up that the CID conducted in 2016, the employee identified his abductor as the same officer who was later indicted for attacking Upali Tennakoon several weeks after Lasantha's killing.⁵⁷

34. In 2010, shortly after CID investigators identified members of the Tripoli Platoon for interviews concerning Lasantha's

⁵⁴ OHCHR Report, A/HRC/37/23 (2018), ¶ 37; *OIC Gave Lasantha's Notebook to DIG*, SRI LANKA MIRROR (23 February 2018), <https://perma.cc/PCZ7-DAQF>.

⁵⁵ *See Sri Lankan President Promises “Media Freedom” Under His Government*, TAMIL GUARDIAN (13 December 2009), <https://perma.cc/9JBH-9VNR>.

⁵⁶ *See The Need for Accountability in Sri Lanka's Criminal Justice System*, CENTRE FOR POLICY ALTERNATIVES (2019), p. 45, <https://perma.cc/4FAH-ENRY>.

⁵⁷ *Exclusive: The Inside Story of Lasantha's Driver's Abduction*, COLOMBO TELEGRAPH (28 July 2016), <https://perma.cc/Y9ZT-6K3N>.

killing, the Inspector General of Police ordered the CID to halt its investigation and to transfer the case to the Terrorist Investigation Division (the “TID”), a detachment of the Sri Lanka police.⁵⁸ Around the same time, then-Sec. Rajapaksa issued a letter to the Ministry of Foreign Affairs, instructing that, within 13 days, the Ministry must recall an official serving in the Sri Lankan Embassy to Thailand and assign the commanding officer of the Tripoli Platoon in his stead.⁵⁹

35. In February 2010, the TID arrested 17 military intelligence officers on suspicion of Lasantha’s killing and other abductions and assaults on journalists. But the TID released all 17 officers without charging them or even presenting them to witnesses for identification.⁶⁰ That same month, the TID took into custody one member of the Tripoli Platoon whom the CID had sought to question. While he was in custody, the military promoted him, continued to pay his salary, and issued him loans—all in violation of applicable regulations. The TID later released him without thorough questioning or charge, only after his accuser died in police custody.⁶¹

36. The investigation languished until 2015, when then-President Mahinda Rajapaksa lost the general election, forcing him and then-Sec. Gotabaya Rajapaksa out of office. Judicial independence began to improve in the first few years of the Sirisena administration, which committed to engaging with U.N. human rights bodies and experts.⁶² Under President Sirisena, the Sri Lankan police re-activated its investigation into Lasantha’s killing and re-assigned the investigation to the CID, providing some hope to Lasantha’s family that justice in Sri Lanka would be possible. The CID made some progress with the investigation.⁶³

37. President Sirisena’s final year in office, however, was marked with constitutional crises and efforts to undermine accountability. In October 2018, President Sirisena dismissed the Prime Minister, appointed former President Mahinda Rajapaksa in his place, and dissolved Parliament, leaving the country in political turmoil for weeks.⁶⁴ In 2019, President Sirisena appointed to positions of power

⁵⁸ See Manoj Colabage, *The Bulathwatte Bewilderment*, SUNDAY OBSERVER (19 May 2019), <https://perma.cc/U8ZD-HCUY>.

⁵⁹ See Manoj Colabage, *The Bulathwatte Bewilderment*, SUNDAY OBSERVER (19 May 2019), <https://perma.cc/U8ZD-HCUY>.

⁶⁰ See Sonali Samarasinghe, *Sri Lanka’s Democratic Institutions Have Metastasized into Something Dangerous*, COMMITTEE TO PROTECT JOURNALISTS (8 January 2012), <https://perma.cc/M6WX-66B7>.

⁶¹ Vimukthi Yapa, *Military Intelligence Coddles Remanded Murder Suspects*, SUNDAY LEADER (21 August 2016), <https://perma.cc/Q669-LWCX>.

⁶² See **Ex. B**, Méndez Declaration, ¶ 14; see also **Ex. A**, Ratner Declaration, ¶ 15.

⁶³ OHCHR Report, A/HRC/37/23 (2018), ¶ 37.

⁶⁴ See Umesh Moramudali, *The Deep Roots of Sri Lanka’s Political Crisis*, THE DIPLOMAT (11 December 2018), <https://perma.cc/D7R4-78K8>.

individuals implicated in human rights and humanitarian law violations, including reinstating the leader of the military intelligence unit implicated in Lasantha's killing and Keith Noyahr's attack.⁶⁵

38. The election of Gotabaya Rajapaksa to the presidency in November 2019 was effectively a death knell for the investigation into Lasantha's death. Just days after Gotabaya was elected, Shani Abeysekara, the director of the CID who oversaw the investigation into Lasantha's killing and other investigations implicating military personnel, was demoted and transferred out of the CID to serve as the personal assistant to the Southern Province Deputy Inspector General.⁶⁶ Days later, Nishantha de Silva, the main CID investigator on Lasantha's case, fled Sri Lanka for fear of retribution, seeking asylum in Switzerland. De Silva's flight prompted the Government to adopt rules to prevent all other CID officers from leaving the country "without following the proper procedure of obtaining permission for overseas travel."⁶⁷ The Government also abducted a Sri Lankan employee of the Swiss Embassy, forcing her to unlock her mobile phone to reveal sensitive information about de Silva's asylum application.⁶⁸ When the Swiss Embassy protested the abduction and complained to the police, the police arrested the employee and indicted her for allegedly making a false complaint and fabricating evidence. The abduction was never credibly investigated.⁶⁹

39. With de Silva and other investigators out of the way, the CID's efforts have focused on covering up, rather than investigating, Lasantha's killing: in July 2020, CID investigators interrogated Srilal Priyantha, the editor of the monthly news magazine *Eethalaya*, for several hours over a 2017 article on Lasantha's killing. He was asked to reveal his sources.⁷⁰ Also in July 2020, the Colombo Crimes Division (the "CCD") arrested former CID director Abeysekara for allegedly concealing evidence in a case. But, according to press reports, a police sub-inspector testified in court that CCD officers threatened him with

⁶⁵ See **Ex. A**, Ratner Declaration, ¶ 16.

⁶⁶ *CID Director Overseeing High Profile Cases Demoted*, TAMIL GUARDIAN (23 November 2019), <https://perma.cc/GG9R-8XGW>.

⁶⁷ *Top Detective Who Investigated High-Profile Cases Flees Sri Lanka*, AL JAZEERA (26 November 2019), <https://perma.cc/GD78-LZMX>.

⁶⁸ *Swiss Raise Alarm Over "Attack" on Sri Lanka Embassy Worker*, AL JAZEERA (28 November 2019), <https://perma.cc/5ZWB-AQ52>.

⁶⁹ *See AG indicts Swiss Embassy's Garnier Francis*, DAILY NEWS (23 October 2020), <https://perma.cc/W294-7Y86>; *see also Sri Lanka Arrests Swiss Embassy Worker Who Claimed Abduction*, ABC NEWS (16 January 2019), <https://perma.cc/5HC2-JGUE>.

⁷⁰ *Journalist Interrogated by CID About 2017 Article on Lasantha Wickrematunge Murder*, COLOMBO TELEGRAPH (15 July 2020), <https://perma.cc/Y7TP-F3EN>.

arrest unless he made a false statement against Abeysekara.⁷¹ Abeysekara remains in custody, and his wife has written letters to senior officers expressing concern that he may be killed while in custody because of his involvement in the investigations into Lasantha's killing and other cases involving human rights violations committed by State actors.⁷²

40. With the lead investigators removed and the serious threat of retaliation against witnesses, meaningful progress on the investigation into Lasantha's killing is unlikely, if not impossible. The regular judicial hearing into the progress of the investigations into Lasantha's murder, set for December 2020 before Mount Lavinia Magistrate Udesh Ranatunga, was postponed until June 2021. No representations on the status of the investigation have been made by the Attorney General's Department for over one year, since the previous investigation team was dismissed and arrested and President Gotabaya Rajapaksa assumed office.⁷³

ii. U.S. Litigation

41. Ahimsa has been unable to achieve justice for her father even in competent courts outside Sri Lanka. Unsatisfied with her options in Sri Lanka, Ahimsa, in 2019, brought a case against Gotabaya Rajapaksa, then a U.S. citizen, in the U.S. federal court for the Central District of California under the Torture Victim Protection Act and the Alien Tort Statute seeking damages for his involvement in Lasantha's death.⁷⁴ Rajapaksa, without squarely addressing the merits of the charges against him, asserted that he was immune from suit for official acts he undertook as Secretary of Defence.⁷⁵ In February 2020, following Rajapaksa's election to the presidency, the Court of Appeals for the Ninth Circuit dismissed the complaint without prejudice in light of his immunity as head of state.⁷⁶

⁷¹ See *Urgent Action: Former Police Investigator Jailed with COVID-19*, AMNESTY INTERNATIONAL (27 November 2020), <https://perma.cc/F4QD-GX52>.

⁷² *Urgent Action: Former Police Investigator Jailed with COVID-19*, AMNESTY INTERNATIONAL (27 November 2020), <https://perma.cc/F4QD-GX52>.

⁷³ Zulfick Farzan, *Lasantha Wickrematunge Homicide Cases Postponed*, NEWS FIRST (4 December 2020), <https://perma.cc/J3GP-HF8H>.

⁷⁴ See **Ex. C**, Complaint for Damages and Demand for Jury Trial, *Wickrematunge v. Rajapaksa*, No. 2:19-cv-02577 (C.D. Cal. 4 April 2019).

⁷⁵ **Ex. D**, Defendant's Notice of Motion and Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(b)(6), *Forum Non Conveniens*, and International Comity, *Wickrematunge v. Rajapaksa*, No. 2:19-cv-02577 (C.D. Cal. 4 April 2019).

⁷⁶ **Ex. E**, Order Granting Appellant's Motion to Dismiss, *Wickrematunge v. Rajapaksa*, No. 19-56312 (9th Cir. 27 February 2020).

III. THIS COMMUNICATION IS ADMISSIBLE

42. The claims arising out of these facts, all of which occurred after Sri Lanka acceded to the Covenant on 11 June 1980 and ratified the First Optional Protocol on 3 October 1997, are admissible.⁷⁷ Sri Lanka's only declaration to the First Optional Protocol—which states that individual communications shall not be considered by the Committee “unless it has ascertained that the same matter is not being examined or has not been examined under another procedure of international investigation or settlement”—is irrelevant here as Ahimsa has not pursued any such procedure.⁷⁸

43. Sri Lanka cannot meet its burden to show that this Communication is inadmissible for any failure to exhaust domestic remedies.⁷⁹

44. *First*, Ahimsa need not exhaust all domestic criminal remedies because they have been “unreasonably prolonged.”⁸⁰ The Government's investigation into Lasantha's death has spanned nearly 12 years with nothing to show for it except manipulated evidence, political interference, the death of witnesses in custody, and the enrichment and release of suspects. The Committee has admitted a communication against Sri Lanka where the delay of the domestic criminal proceeding was a quarter of that time.⁸¹ The Government has had every opportunity to demonstrate that it would take the investigation seriously. Ahimsa held out hope that President Sirisena's administration would make progress on her father's case following his 2015 election. But the October 2018 constitutional crisis and Gotabaya Rajapaksa's election to the presidency in November 2019 ended any hope for accountability. The effective termination of the investigation into Lasantha's death and the passage of the Twentieth Amendment to the Sri Lankan Constitution—which consolidated the President's power over the judiciary and the Attorney General, removing the rule-of-law measures implemented under the prior administration⁸²—reflect what is at best the indifference of the now-President to “just another murder,” and at worst,

⁷⁷ U.N. Treaty Series, Chapter IV.4 (International Covenant on Civil and Political Rights), p. 3; U.N. Treaty Series, Chapter IV.5 (Optional Protocol to the International Covenant on Civil and Political Rights), p. 2.

⁷⁸ *Cf.* U.N. Treaty Series, Chapter IV.5 (Optional Protocol to the International Covenant on Civil and Political Rights), p. 4.

⁷⁹ *Cf. C.F. v. Canada*, CCPR/C/OP/1 at 13 (1980), ¶ 6.2 (“[I]t is incumbent on the State party concerned to prove the effectiveness of remedies which it claims have not been exhausted . . .”).

⁸⁰ *Cf.* Covenant, Optional Protocol, Article 5(2)(b).

⁸¹ *Rajapakse v. Sri Lanka*, CCPR/C/87/D/1250/2004 (2006), ¶¶ 6.1–6.2 (finding an unreasonably prolonged delay when a case was still pending three years after the institution of legal proceedings).

⁸² *See Sri Lanka: Newly Adopted 20th Amendment to the Constitution Is Blow to the Rule of Law*, INTERNATIONAL COMMISSION OF JURISTS (27 October 2020), <https://perma.cc/HXE3-N5YN>.

a refusal to investigate because the killing implicates the sitting President.

45. *Second*, even if the Government did resume a serious investigation (against all indications to the contrary), it would be both futile and dangerous.⁸³ Prof. Méndez testified to the devastating consequences of the failure of Sri Lanka's witness protection program; victims and witnesses who testify against the Government's human rights violations face reprisals that put their lives at risk and lead other witnesses to refuse to come forward out of fear for their own security.⁸⁴ Prof. Ratner and Prof. Méndez both testified to the lack of judicial independence that would preclude fair consideration of even a proper investigation into Lasantha's killing.⁸⁵

46. *Finally*, Sri Lanka in fact offers *no* effective domestic remedies for the relief that Ahimsa seeks. No remedy would enable her to force the Government to investigate thoroughly the attacks against her father or to prosecute those responsible, as this Committee has recognized in relation to Sri Lanka.⁸⁶ Neither is any remedy available for the declaratory or compensatory relief that she seeks. Suri Ratnapala, Professor of Public Law at the University of Queensland and a lawyer with more than 50 years' experience in Sri Lankan law, testified in a *pro bono* report in U.S. court that "[a]ny civil claims or administrative claims based on" Ahimsa's allegations regarding her father's assassination "would be barred by the statute of limitations in Sri Lankan law," including tort claims, a fundamental rights petition before the Sri Lankan Supreme Court, or an administrative petition to Sri Lanka's Human Rights Commission.⁸⁷ This Committee has admitted communications based on similar findings in respect of Sri Lanka.⁸⁸

47. The State's failure to afford the victims an effective domestic remedy also precludes any contention that Ahimsa's communication is an abuse of right under Rule 99(c) of the Committee's

⁸³ Cf. *Pratt & Morgan v. Jamaica*, CCPR/C/35/D/225/1987 (1989), ¶ 12.3 ("That the local remedies rule does not require resort to appeals that objectively have no prospect of success, is a well established principle of international law and of the Committee's jurisprudence.").

⁸⁴ **Ex. B**, Méndez Declaration, ¶¶ 29-31.

⁸⁵ **Ex. A**, Ratner Declaration, ¶ 14; **Ex. B**, Méndez Declaration, ¶¶ 14-17.

⁸⁶ *Amarasinghe v. Sri Lanka*, CCPR/C/120/D/2209/2012 (2017), ¶ 5.3.

⁸⁷ **Ex. F**, Declaration of Suri Ratnapala in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss, *Wickrematunge v. Rajapaksa*, No. 2:19-cv-02577 (C.D. Cal. 4 April 2019), ¶ 6.

⁸⁸ See *Samathanam v. Sri Lanka*, CCPR/C/118/D/2412/2014 (2016), ¶¶ 5.4, 5.5 (admitting a communication when, although some domestic remedies were available, "in the context of impunity of human rights violations and the lack of independence of the judiciary, as stated in reports by international organizations and well-known non-governmental organizations, they had and have no reasonable prospect of success, as illustrated by cases with similar facts that have been brought before the Sri Lankan courts.") .

Rules of Procedure.⁸⁹ Any delay in Ahimsa's submission is due exclusively to the State's interminable investigation, its lack of transparency and judicial independence, and the risk of official reprisals against potential witnesses.⁹⁰

48. Ahimsa submits this communication as a last resort after over a decade of the Government's broken promises to provide a domestic remedy for her father's death. Between 2012 and 2015, the Human Rights Council adopted multiple resolutions detailing recommendations for promoting peace, accountability, and human rights in Sri Lanka that included the investigation and prosecution of abuses against journalists and human rights defenders.⁹¹ In 2015, Sri Lanka co-sponsored a joint resolution in the Council in which it committed to establishing a Special Hybrid Court, a Truth and Reconciliation Commission, an Office of Missing Persons, and an Office for Reparations—institutions which could have made an independent and credible investigation into allegations of violations of international human rights law and international humanitarian law.⁹² Moreover, several U.N. inquiries identified Lasantha's death as an unlawful killing, which gave Ahimsa and her family hope that his case would be one of the emblematic cases to proceed to a future Special Hybrid Court.⁹³ Despite these commitments, however, the Sirisena government did not implement the legislation necessary to establish any of the accountability mechanisms identified in the resolution, and in February 2020, the newly elected government under President Gotabaya Rajapaksa made clear that

⁸⁹ See *Khadzhiyev v. Turkmenistan*, CCPR/C/122/D/2252/2013 (2013), ¶ 6.4.

⁹⁰ Cf. *Khadzhiyev v. Turkmenistan*, CCPR/C/122/D/2252/2013 (2013), ¶ 6.4.

⁹¹ See Human Rights Council, Resolution 25/1, Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka, U.N. Doc. A/HRC/RES/25/1 (9 April 2014); Human Rights Council, Resolution 22/1, Promoting Reconciliation and Accountability in Sri Lanka, U.N. Doc. A/HRC/RES/22/1 (9 April 2013); Human Rights Council, Resolution 19/2, Promoting Reconciliation and Accountability in Sri Lanka, U.N. Doc. A/HRC/RES/19/2 (3 April 2012).

⁹² Human Rights Council, Resolution 30/1, Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka, U.N. Doc. A/HRC/RES/30/1 (14 October 2015); see also Human Rights Council, Resolution 40/1, Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka, U.N. Doc. A/HRC/RES/40/1 (4 April 2019); Human Rights Council, Resolution 34/1, Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka, U.N. Doc. A/HRC/RES/34/1 (3 April 2017).

⁹³ See United Nations, Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, ¶¶ 64, 414 (31 March 2011), <https://perma.cc/2HUB-BVMZ>; OHCHR, Report of the OHCHR Investigation on Sri Lanka, ¶¶ 266-68, U.N. Doc. A/HRC/30/CRP.2 (16 September 2015).

Sri Lanka would no longer abide by the promises it made in the Human Rights Council resolutions.⁹⁴

IV. SRI LANKA HAS VIOLATED THE COVENANT

49. The attacks on Lasantha Wickrematunge represented grave violations of his rights, alone and in conjunction with the others, to (A) life, (B) freedom from torture or other cruel, inhuman, or degrading treatment or punishment, (C) freedom of expression and opinion and non-discrimination based on same, and (D) access to effective remedy.

A. Right to Life (Article 6)

50. The death threats and arbitrary assassination of Lasantha—and the State’s failure to investigate or prosecute them—violated his rights under Article 6, which provides that “[e]very human being has the inherent right to life” and that “[n]o one shall be arbitrarily deprived of his life.” The Committee has noted the interaction between the rights to life and to free expression in cases of threats, assaults, and murders of journalists.⁹⁵

51. The Committee has made clear that “a deprivation of life that lacks a legal basis or is otherwise inconsistent with life-protective laws and procedures is, as a rule, arbitrary in nature” under Article 6 of the ICCPR.⁹⁶ Arbitrary deprivations of life constitute extrajudicial killings and include political assassinations; executions without due process; deaths resulting from law enforcement officials’ intentional use of lethal force without meeting the requirements of necessity, proportionality, or precaution; and the State’s failure to address systematic patterns of violence through precautionary measures, including with respect to journalists and human rights defenders.⁹⁷

52. Article 6 obliges the State to prevent and punish arbitrary killings by its own security forces, other groups under its

⁹⁴ See *Foreign Relations Minister Meets UN High Commissioner for Human Rights*, PERMANENT MISSION OF SRI LANKA TO THE UNITED NATIONS (29 February 2020), <https://perma.cc/X7M8-MVNB>; see also *Sri Lanka: Withdrawal from UN Commitments Requires Robust Response by Human Rights Council*, AMNESTY INTERNATIONAL (27 February 2020), <https://perma.cc/AP42-4Q2J>.

⁹⁵ See, e.g., El Salvador, CCPR/C/SLV/CO/7 (2018), ¶ 37; Pakistan, CCPR/C/PAK/CO/1 (2017), ¶ 37; Colombia, CCPR/C/HND/CO/2 (2017), ¶ 40.

⁹⁶ General Comment No. 36, CCPR/C/GC/36 (2018), ¶ 11.

⁹⁷ See United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E/ST/CSDHA/12 (1991), p. [3]; General Assembly, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, A/71/372 (2016), ¶¶ 51, 87-94.

control, and non-State actors.⁹⁸ For example, in views adopted with regard to another communication against Sri Lanka, the Committee found that the State had violated Article 6 when the authorities took no action to protect a man who had received death threats after his family filed complaints against the police during the civil war.⁹⁹ The Committee has also reminded Sri Lanka of its “duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, particularly violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations.”¹⁰⁰

53. There is no valid basis or justification in Sri Lankan law for the threats against Lasantha’s life or his assassination, making them arbitrary by definition.

54. The State has committed at least three distinct breaches of Article 6. *First*, the State did nothing to protect Lasantha from the repeated public death threats he received. To the contrary, in clear violation of Article 6, senior Sri Lankan officials *encouraged* attacks on Lasantha: then-President Rajapaksa even went so far as to call Lasantha a “terrorist”—a dog whistle during a civil war in which the Government had deployed that label to justify attacks against those it deemed as critics and political opponents. The State utterly failed to address systematic patterns of violence against independent journalists, including against Lasantha, through precautionary measures.

55. *Second*, circumstantial evidence strongly supports the conclusion that the State, including through then-Sec. Rajapaksa, directed or ordered the threats and attacks against Lasantha as retaliation for his independent journalism and that State-aligned security forces carried them out.¹⁰¹ Then-Sec. Rajapaksa and then-President Rajapaksa had publicly threatened Lasantha—calling him a “terrorist” and bringing a court case against him—after Lasantha had published the results of his investigative reporting into then-Sec. Rajapaksa’s role in the MiG deal.¹⁰² Then-Sec. Rajapaksa personally directed Sri Lanka’s military

⁹⁸ General Comment No. 36, CCPR/C/GC/36 (2018), ¶ 3; *El Alwani v. Libya*, CCPR/C/90/D/1295/2004 (2007), ¶ 6.7; *Hernandez v. Philippines*, CCPR/C/99/D/1559/2007 (2010), ¶ 7.3; United States, CCPR/C/USA/CO/4 (2014), ¶ 5; Colombia, CCPR/C/COL/CO/7 (2016) ¶ 22.

⁹⁹ *See Peiris v. Sri Lanka*, CCPR/C/103/D/1862/2009 (2011), ¶ 7.2.

¹⁰⁰ *Amarasinghe v. Sri Lanka*, CCPR/C/120/D/2209/2012 (2017), ¶ 5.3.

¹⁰¹ *See supra*, ¶¶ 25-27 (detailing circumstantial evidence that State security forces assassinated Lasantha, and situating the assassination in the context of a consistent pattern of violence against journalists directed by then-Secretary Rajapaksa).

¹⁰² *See Outrage at Fatal Shooting of Newspaper Editor in Colombo*, REPORTERS WITHOUT BORDERS (8 January 2009), <https://perma.cc/SL5M-P6CQ> (President Rajapaksa publically labelling Lasantha as a “terrorist”); *Defence Secretary sues Sunday Leader*, SUNDAY OBSERVER (24 February 2008), <https://perma.cc/BF36-SWXS> (reporting on Secretary Rajapaksa’s retaliatory lawsuit against Lasantha for his reporting); *Sunday Leader*

and intelligence apparatus, taking a hands-on role in cases that mattered to him most.¹⁰³ Individuals within the Ministry of Defence's Tripoli Platoon followed Lasantha and spied on him in the weeks leading up to the attack.¹⁰⁴ Armed men carrying weapons that only State security forces can lawfully purchase and possess then attacked Lasantha's place of work two days before his assassination by men in the same all-black tactical outfits.¹⁰⁵ These black-clad commandos surrounded his vehicle and executed the fatal blow to Lasantha's skull before driving off to a high-security military zone.¹⁰⁶ This evidence indicates Lasantha's death was a political assassination, resulting from law enforcement officials' intentional use of lethal force without meeting the requirements of necessity, proportionality, or precaution, constituting an extrajudicial killing in violation of Article 6.

56. *Finally*, far from conducting a thorough investigation into Lasantha's killing, the State has actively interfered with efforts to hold those responsible to account, again in blatant violation of Article 6.¹⁰⁷

57. The Covenant does not permit derogation from Article 6.¹⁰⁸

B. Right to Freedom from Torture or Other Cruel, Inhuman, or Degrading Treatment or Punishment (Article 7)

58. The attacks on Lasantha constituted torture or cruel, inhuman, or degrading treatment or punishment, which Article 7 proscribes.

Editor Faces Arrest, TAMILNET (28 December 2006), <https://perma.cc/62DA-HEMF> (describing Secretary Rajapaska's attempt to arrest Lasantha for his critical reporting about the Rajapaska family).

¹⁰³ Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka (2011), p. 17, <https://perma.cc/WNL4-7B58> (detailing Secretary Rajapaska's oversight and direction of State security forces)

¹⁰⁴ *See Exclusive: SIS Document Shows Gota Ordered Lasantha's Phone to Be Tapped Just Weeks Before He Was Killed*, COLOMBO TELEGRAPH (2 November 2016), <https://perma.cc/ZXB6-RCPY>; *CID Tells Court—Former Tripoli Camp Chief Major Bulathwatte Linked to Attacks on Media*, THE LEADER (21 July 2019), <https://perma.cc/TW9Q-JKLS> (summarizing cell-phone tower evidence reflecting the Tripoli Platoon's involvement in the assassination).

¹⁰⁵ *See Sri Lanka Special Report: Failure to Investigate*, COMMITTEE TO PROTECT JOURNALISTS (23 February 2009), <https://perma.cc/7TCX-HVLV>

¹⁰⁶ *See id.*

¹⁰⁷ *See supra* ¶¶ 30-39 (detailing Sri Lanka's efforts to obstruct investigations into Lasantha's assassination and other related accountability efforts).

¹⁰⁸ Covenant, Article 4(2).

59. The Committee has adopted a definition of torture that contains the elements found in Article 1 of the Convention Against Torture (the “CAT”), namely:

any act by which severe pain or suffering . . . is intentionally inflicted on a person for such purposes as . . . punishing him for an act he . . . committed or is suspected of having committed, or intimidating or coercing him . . . , or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.¹⁰⁹

60. The Committee has held that the State violates Article 7 when it is unwilling or unable to prevent torture by non-State actors.¹¹⁰ The Committee has also interpreted the CAT’s definition of torture to extend to extrajudicial killings.¹¹¹ In addition, it has noted the interaction between Articles 7 and 19 as regards the torture and mistreatment of journalists.¹¹²

61. The circumstances of Lasantha’s assassination meet all the elements of torture or cruel, inhuman, or degrading treatment or punishment. As detailed above, he was intentionally attacked in a manner that caused great suffering and extrajudicially killed in retaliation and punishment for his journalism. Overwhelming circumstantial evidence strongly suggests that State actors, including then-Sec. Rajapaksa, ordered plainclothes hitmen to attack Lasantha. At the very least, public officials abetted the attack and were unwilling to prevent it.

62. The Covenant does not permit derogation from Article 7, and the Committee has not credited justifications or extenuating circumstances to excuse conduct falling within its prohibitions.¹¹³

¹⁰⁹ See, e.g., Ghana, CCPR/C/GHA/CO/1 (2016), ¶ 25.

¹¹⁰ General Comment No. 20, HRI/GEN/1/Rev.1 at 30 (1994), ¶ 2; United States, CCPR/C/USA/CO/4 (2014), ¶ 12; Yemen, CCPR/C/YEM/CO/5 (2012), ¶ 24; cf. *Chen v. The Netherlands*, CCPR/C/99/D/1609/2007 (2010), ¶ 6.4.

¹¹¹ See, e.g., Committee Against Torture, *B.M.S. v. Sweden*, CAT/C/56/D/594/2014 (2016), ¶ 8.6 (finding that deporting an alien who would be subject to extrajudicial killing in the receiving State would violate the CAT); Committee Against Torture, *CAT/C/BDI/CO/2/Add.1* (2016), ¶ 8.

¹¹² See, e.g., *Khadzhiyev v. Turkmenistan*, CCPR/C/122/D/2252/2013 (2018), ¶ 7.5; *Akunov v. Kyrgyzstan*, CCPR/C/118/D/2127/2011 (2016), ¶¶ 2.1, 8.8; *Zakharenko v. Belarus*, CCPR/C/119/D/2586/2015 (2017), ¶¶ 2.1, 7.4; *Kerrouche v. Algeria*, CCPR/C/118/D/2128/2012 (2016), ¶ 8.3.

¹¹³ Covenant, Article 4(2); General Comment No. 20, CCPR/C/GC/20 (1992), ¶ 3; *Ahani v. Canada*, CCPR/C/80/D/1051/2002 (2004), ¶ 10.10; *Jamshidian v. Belarus*, CCPR/C/121/D/2471/2014 (2017), ¶ 9.5.

C. Rights to Freedom of Expression and Opinion and Non-Discrimination Based on Same (Articles 19 and 26)

63. The State's intimidation, harassment, torture, and killing of Lasantha constitute grave violations of his rights to freedom of expression and non-discrimination based on political opinion under Articles 19 and 26 of the Covenant independently and in conjunction with Articles 6 and 7.

1. Freedom of Expression and Opinion

64. Sri Lanka has contravened its obligations under Article 19 to safeguard the rights to freedom of opinion and expression, including by implementing "effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression."¹¹⁴

65. Article 19's scope of protection is expansive and undoubtedly applies to journalism. The Committee has made clear that the Article 19(1) right to "hold opinions without interference" extends to "*every form of idea and opinion capable of transmission to others,*" including opinions on political discourse and public affairs.¹¹⁵ The drafters of the Covenant intended the phrase "without interference" to encompass private and State conduct.¹¹⁶ The right to freedom of expression under Article 19(2) is similarly broad, encompassing the "freedom to seek, receive and impart *information and ideas of all kinds*" and in any form. The Committee has emphasized that, "in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high."¹¹⁷

66. The media plays a particularly important role in fulfilling the interrelated objectives of Article 19. The Committee has recognized that a "free, uncensored and unhindered press" that is "independent and diverse" is essential in enabling others to enjoy their political rights under the Covenant, including to free opinion and expression, as well as to take part in the conduct of public affairs.¹¹⁸ Journalists disseminate information in the public interest and therefore

¹¹⁴ General Comment No. 34, CCPR/C/GC/34 (2011), ¶ 23; *see also, e.g., Ribeiro v. Mexico*, CCPR/C/123/D/2767/2016 (2018), ¶ 10.7.

¹¹⁵ General Comment No. 34, CCPR/C/GC/34 (2011), ¶ 11 (emphasis added).

¹¹⁶ *See* Commission on Human Rights, Compilation of the Comments of Governments on the Draft International Covenant on Human Rights and on the Proposed Additional Articles, E/CN.4/365 (1950) (rejecting the original proposal that would have limited the scope of the right to holding opinions "against *government* interference" (emphasis added)).

¹¹⁷ General Comment No. 34, CCPR/C/GC/34 (2011), ¶ 38.

¹¹⁸ General Comment No. 34, CCPR/C/GC/34 (2011), ¶¶ 13–15.

generally enjoy the freedom to express opinions on public and political issues “without censorship or restraint.”¹¹⁹

67. Accordingly, the Committee has called on State parties to “guarantee . . . the protection of journalists” and made clear that “harassment, intimidation or stigmatization” based on an individual’s opinions constitute violations of Article 19(1).¹²⁰ Indeed, “[a]ny form of effort to coerce the holding or not holding of any opinion is prohibited.”¹²¹ The Committee has found violations of the freedom of expression in numerous cases involving the intimidation of journalists.¹²²

68. The State’s targeting, intimidation, harassment, torture, and killing of Lasantha for his reporting are quintessential violations of Article 19. There can be no doubt that Lasantha was targeted *because of* his controversial opinions. For months prior to his death, Lasantha had been the target of then-Sec. Rajapaksa’s arrest order, defamation suit, and surveillance mission—all stemming from Lasantha’s reporting on government corruption. Then-President Mahinda Rajapaksa called Lasantha a “terrorist *journalist*,” and in the weeks before his death, he received death threats scrawled in red paint on newsprint. State security forces attacked *The Sunday Leader* and the MTV/MBC Media Network, including in the run-up to Lasantha’s killing, which itself occurred just days before Lasantha was due to testify against then-Sec. Rajapaksa in a defamation suit.

69. Lastly, the State has not—nor could it—meet the ICCPR’s stringent test for permissible restrictions on the exercise of freedom of expression. Pursuant to Article 19(3) of the ICCPR, a State party may only impose restrictions on the exercise of freedom of expression where the restrictions are “provided by law” and “necessary” for the “respect of the rights or reputations of others” or for the “protection of national security or of public order (*ordre public*), or of public health or morals.”¹²³ Here, it would be ludicrous for the State to argue that death threats, targeted attacks, and political assassination of Lasantha were “necessary” to protect “national security,” the invocation of which is itself nothing more than a bald pretext to shield itself from public accountability.¹²⁴ Indeed, as the Committee has expressly

¹¹⁹ General Comment No. 34, CCPR/C/GC/34 (2011), ¶ 13.

¹²⁰ General Comment No. 34, CCPR/C/GC/34 (2011), ¶ 9.

¹²¹ General Comment No. 34, CCPR/C/GC/34 (2011), ¶ 10.

¹²² Algeria, CCPR/C/DZA/CO/3 (2007), ¶ 24; *Marques v. Angola*, CCPR/C/83/D/1128/2002 (2005) ¶¶ 6.7-6.8; *Bodrozic v. Serbia & Montenegro*, CCPR/C/85/D/1180/2003 (2005), ¶ 7.2; *Mukong v. Cameroon*, CCPR/C/51/D/458/1991 (1994), ¶ 9.7; *Zhagiparov v. Kazakhstan*, CCPR/C/124/D/2441/2014 (2018), ¶ 13.4.

¹²³ Covenant, Article 19(3).

¹²⁴ General Comment No. 34, CCPR/C/GC/34 (2011), ¶ 23; *see also, e.g., Ribeiro v. Mexico*, CCPR/C/123/D/2767/2016 (2018), ¶ 10.7; *Njaru v. Cameroon*, CCPR/C/89/D/1353/2005 (2007), ¶ 6.4; *Mukong v. Cameroon*, CCPR/C/51/D/458/1991 (1994), ¶ 9.7.

recognized, “[n]or, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.”¹²⁵

2. Non-Discrimination Based on Political or Other Opinion

70. Sri Lanka failed to comply with its obligations under Article 26 not to discriminate against Lasantha based on his political or other opinion, as reflected in his critical coverage of the Government.

71. Article 26 proscribes any action having the intent or effect of discrimination based on “political or other opinion” in law or in fact in any field regulated by public authorities.¹²⁶ The Committee has interpreted the scope of such “discrimination” as encompassing “any distinction, exclusion, restriction or preference which is based on any ground . . . and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”¹²⁷ For example, in *Bahamonde v. Equatorial Guinea*, the Committee found that the author’s arbitrary arrest and detention based on “his political opinions and his open criticism of, and opposition to, the government” violated Article 26.¹²⁸

72. Here, Sri Lanka violated Article 26 by targeting Lasantha for his perceived opposition to the Rajapaksa regime through his honest and exacting journalism. The State subjected Lasantha to the same systematic discrimination that it applied to all journalists it cast as “Tiger sympathizers.”

D. Right to Effective Remedy (Article 2)

73. Article 2(3) requires Sri Lanka to ensure that all persons have accessible, effective, and enforceable remedies in order to vindicate their rights under the Covenant. States bring those responsible to justice when investigations reveal the criminal violation of a right, such as death threats, attacks, torture, and murder.¹²⁹ The State must prosecute and, where appropriate, punish those responsible.¹³⁰ Failure to carry out a

¹²⁵ General Comment No. 34, CCPR/C/GC/34 (2011), ¶ 23.

¹²⁶ See General Comment No. 18, CCPR/C/GC/18 (1989), ¶ 9; see also, e.g., *Simunek et. Al. v. Czech Republic*, CCPR/C/54/D/516/1992 (1995), ¶ 11.7 (“A politically motivated differentiation is unlikely to be compatible with article 26.”).

¹²⁷ General Comment No. 18, CCPR/C/GC/18 (1989), ¶¶ 7, 12.

¹²⁸ *Bahamonde v. Equatorial Guinea*, CCPR/C/49/D/468/1991 (1993), ¶ 9.5.

¹²⁹ General Comment No. 31 [80], CCPR/C/21/Rev.1/Add.13 (2004), ¶¶ 15, 18.

¹³⁰ *Sathasivam v. Sri Lanka*, CCPR/C/93/D/1436/2005 (2008), ¶ 6.4; *Amirov v. Russia*, CCPR/C/95/D/1447/2006 (2009), ¶ 11.2; *Olmedo v. Paraguay*, CCPR/C/104/D/1828/2008 (2012), ¶ 7.3.

prompt, thorough, and effective investigation into the circumstances of death or torture violates Article 2(3), read alone and in conjunction with Articles 6 and 7.¹³¹

74. Not only has Sri Lanka failed to investigate thoroughly the attacks against Lasantha, it has deliberately obstructed those efforts by manipulating evidence, releasing likely suspects, obstructing witness testimony, and dismissing the assassination as “just another murder.” Over a decade on, Ahimsa is still waiting for justice for her father’s killing, with the best evidence destroyed and the leading suspects released or in the nation’s highest political offices. Sri Lanka breaches the Covenant anew every day that the Government continues to impede its investigations into the attacks against Lasantha.

V. SRI LANKA MUST REMEDY ITS VIOLATIONS

75. Article 2(3)(a) guarantees Lasantha’s and Ahimsa’s rights to an effective remedy for Sri Lanka’s violations of the Covenant. Customary international law further establishes Sri Lanka’s duty to make full reparation for the injury, whether material or moral, caused by its internationally wrongful act.¹³²

76. In line with these obligations and principles, Ahimsa, in her personal capacity and as the representative of Lasantha’s estate, is entitled to remedy for Sri Lanka’s breaches.

77. *First*, Sri Lanka must immediately commence a meaningful investigation of the attacks against Lasantha, including prosecuting those responsible regardless of their public office.¹³³

78. *Second*, Sri Lanka must acknowledge its breaches of the Covenant, apologize to the Wickrematunge family, and provide appropriate compensation—including material and moral damages—to Ahimsa and Lasantha’s estate.¹³⁴

¹³¹ See, e.g., *Zakharenko v. Belarus*, CCPR/C/119/D/2586/2015 (2017), ¶¶ 7.3, 8; *Bolakhe v. Nepal*, CCPR/C/123/D/2658/2015 (2018), ¶ 7.14.

¹³² See International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001) (“ILC Articles”), Article 31; see also General Assembly, Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005), ¶ 18 (providing that victims of gross violations of international human rights law should receive reparation in the form of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition).

¹³³ See, e.g., *Amarasinghe v. Sri Lanka*, CCPR/C/120/D/2209/2012 (2017), ¶ 5.3; ILC Articles, Article 30(a).

¹³⁴ See ILC Articles, Articles 31, 37; see also *Ahmadou Sadio Diallo (Guinea v. Democratic Republic of the Congo)*, Judgment (Compensation), 2012 I.C.J. REP. 324, ¶¶ 14, 21 (applying a presumption of non-pecuniary injury and determining that “the fact that [Mr. Diallo] suffered non-material injury is an inevitable consequence” of the State’s arbitrary detention and

79. *Third*, Sri Lanka must take effective steps to cease its continuing violations of the Covenant and guarantee the non-repetition of its violations—*i.e.*, arbitrary killing, torture, unlawful restrictions on the right to free expression, and failure to provide an effective remedy, including through ongoing impunity for crimes arising out of the civil war.¹³⁵

VI. RELIEF REQUESTED

80. Counsel to Ahimsa respectfully request the Committee's assistance in ensuring that, in accordance with its obligations under the Covenant and other relevant rules of international law, Sri Lanka:

- a. Conduct an exhaustive, independent, and effective investigation of the attacks against Lasantha, including prosecution of those responsible at all levels of Government;
- b. Apologize to the Wickrematunge family for its violations of the Covenant arising out of the attacks on Lasantha and its failure to investigate them;
- c. Give meaningful guarantees of non-repetition of conduct violating the Covenant, including ending the impunity for Sri Lanka's past and ongoing human rights abuses; and
- d. Provide adequate compensation to Ahimsa and Lasantha's estate for Sri Lanka's breaches of the Covenant.

81. Counsel to Ahimsa respectfully request that the Committee continue to monitor the human rights situation in Sri Lanka, particularly the treatment of journalists, including during its forthcoming periodic review.

expulsion); U.N. Compensation Commission, Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US\$100,000 (Category "C" Claims), S/AC.26/1994/3 (21 December 1994), p. 112 (applying a presumption of non-pecuniary injury); *Isaak v. Turkey*, 2008 EUR. CT. H.R., Application No. 44587/98, Judgment (Merits and Just Satisfaction) (24 June 2008), ¶ 139 (determining that the "seriousness of the damage sustained [] cannot be compensated for solely by the finding of a violation" and awarding non-pecuniary damages to the decedents' relatives).

¹³⁵ See ILC Articles, Article 30(b).

Respectfully submitted,



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8 January 2021

**Communication to the Human Rights Committee
Submitted Pursuant to the Optional Protocol to the
International Covenant on Civil and Political Rights**

AHIMSA WICKREMATUNGE

for herself and on behalf of

LASANTHA WICKREMATUNGE

Victims

— v. —

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA,

Respondent

EXHIBIT A

**Declaration of Steven R. Ratner in Support of Plaintiff's Opposition to
Defendant's Motion to Dismiss, *Wickrematunge v. Rajapaksa*, No. 2:19-cv-
02577 (C.D. Cal. 4 April 2019)**

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12 **Counsel continued on next page*

13
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15 *Ahimsa Wickrematunge*

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18

19 AHIMSA WICKREMATUNGE, in her
20 individual capacity and in her capacity
21 as the legal representative of the estate
of LASANTHA WICKREMATUNGE,

22 Plaintiff,

23 v.

24 NANDASENA GOTABAYA RAJAPAKSA,
25 Defendant.
26

Case No. 2:19 CV-02577-R-RAO

**DECLARATION OF
STEVEN R. RATNER IN SUPPORT
OF PLAINTIFF'S OPPOSITION
TO DEFENDANT'S MOTION TO
DISMISS**

Date: September 16, 2019
Time: 10:00 am
Courtroom: 880
Judge: Hon. Manuel L. Real

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1 I, Steven R. Ratner, declare under penalty of perjury of the laws of the United
2 States as follows:

3 **I. QUALIFICATIONS**

4 1. I am the Bruno Simma Collegiate Professor of Law at the University of
5 Michigan, where I teach public international law. Prior to joining the Michigan
6 faculty in 2004, I was the Albert Sidney Burleson Professor in Law at the
7 University of Texas at Austin, and before that I was an Attorney-Adviser in the
8 Office of the Legal Adviser at the U.S. Department of State. I received an A.B.,
9 *magna cum laude*, from Princeton University in 1982, a J.D. from Yale Law School
10 in 1986, and a *diplôme (mention très bien)* from the Institut Universitaire de Hautes
11 Études Internationales (Geneva) in 1993. My CV appears as Exhibit A.

12 2. From 1998 to 2008, I served as a member of the Board of Editors of the
13 *American Journal of International Law*, one of the highest forms of recognition of
14 scholars of international law. Earlier, I received the Society's Certificate of Merit
15 for the best scholarly book published in the field of international law. My
16 appointment to my chair in 2009 is a leading faculty recognition at University of
17 Michigan. In 2009 and again in 2018, the U.S. Department of State appointed me to
18 its Advisory Committee on International Law, a highly select group of academic
19 experts and practitioners who meet with the State Department's Legal Adviser and
20 lawyers to consult on matters of international law. From 2013 to 2017, I served as
21 an Adviser for the American Law Institute's Restatement (Fourth) of the Foreign
22 Relations Law of the United States. This year, the American Society of
23 International Law selected me to serve as a Counsellor, a recognition of long-term
24 contributions to international law.

25 3. My academic career has focused on public international law, with
26 specific expertise in international human rights law, international humanitarian law,
27 international criminal law, international investment law, and related issues. Since I
28

1 began teaching law in fall 1992, I have taught a semester-long course on
 2 international law on human rights most years, as well as a course on the law of
 3 armed conflict that addresses prosecution of war crimes. I am the co-author of one
 4 of the leading textbooks on international law used in the United States,
 5 *International Law: Norms, Actors, Process* (Kluwer, 4th ed. 2015), as well as one
 6 of the leading commentaries on remedies for human rights abuses, *Accountability*
 7 *for Human Rights Atrocities in International Law* (Oxford, 3d ed. 2009). I have
 8 published numerous articles on questions of accountability and have lectured on
 9 this topic at a number of law schools.

10 4. Beyond my academic work, my background in accountability for
 11 human rights abuses includes service as a U.S. government negotiator during the
 12 drafting of the 1991 Cambodia Settlement Agreements; a consultancy to the U.S.
 13 government on bringing the Khmer Rouge to justice under the 1994 Cambodia
 14 Genocide Justice Act; and membership on the United Nations (“U.N.”) Secretary-
 15 General’s three-person Group of Experts for Cambodia, which examined options
 16 for domestic and international trials of Khmer Rouge leaders. Each of these
 17 projects involved careful examination of options for domestic trials, including the
 18 capacity and the independence of the judicial system.

19 5. In 2010, the U.N. Secretary-General appointed me to a Panel of Experts
 20 to examine options for accountability of individuals implicated in various human
 21 rights abuses during the last phases of Sri Lanka’s civil war. The other members of
 22 the Panel were Marzuki Darusman, former Attorney General of Indonesia, and
 23 Yasmin Sooka, former member of the Truth and Reconciliation Commissions of
 24 both South Africa and Sierra Leone. Our panel “advise[d] the Secretary-General on
 25 the modalities, applicable international standards and comparative experience
 26 relevant to the fulfillment” of a commitment by the U.N. Secretary-General and Sri
 27 Lanka’s then-president “to an accountability process, having regard to the nature
 28

1 and the scope of alleged violations.”¹ Our panel, with assistance from U.N. officials
 2 and independent consultants, worked for 10 months to produce a 213-page report
 3 that we submitted to the U.N. Secretary-General in March 2011.

4 6. The Panel of Experts carefully examined allegations of violations of
 5 international human rights law and international humanitarian law by forces of the
 6 Government of Sri Lanka (the “Government”) and of the opposition Liberation
 7 Tigers of Tamil Eelam (the “LTTE”). We also carefully examined the international
 8 standards for a state’s response to alleged human rights violations; the State of Sri
 9 Lanka’s judiciary and public prosecutors in terms of their ability and willingness to
 10 carry out fair investigations and prosecutions that would meet international
 11 standards; the Government’s responses to allegations of abuses during the 30-year-
 12 long civil war; and certain structural factors within the country affecting prospects
 13 for accountability. The Panel’s sources of information included witness statements,
 14 accounts from observers on the ground, statements from members of the public,
 15 and distinguished experts on Sri Lankan history, politics, and law.

16 7. Through my work on the Panel, I developed significant expertise in the
 17 workings of the Sri Lankan judicial system and in the challenges to accountability
 18 for civil war–related abuses. Our detailed findings and conclusions on Sri Lanka’s
 19 approach to accountability occupied approximately 30 single-spaced pages of our
 20 final report. In the end, the Panel proposed a list of recommendations for both the
 21 Government and the U.N. The key recommendation for the Government was to
 22 “commence genuine investigations” into alleged abuses by both sides during the
 23 conflict. The report of the Panel of Experts received strong endorsement from
 24 numerous governments, including the United States and the European Union. This
 25

26 ¹ United Nations, *Report of the Secretary-General’s Panel of Experts on*
 27 *Accountability in Sri Lanka*, Mar. 31, 2011, p. i [hereinafter Panel of Experts
 28 Report].

1 endorsement eventually led the U.N. Human Rights Council to pass a series of
2 resolutions urging Sri Lanka to undertake bona fide investigations. In Resolution
3 25/1 (2014), the Council asked the U.N. Office of the High Commissioner on
4 Human Rights (“OHCHR”) to conduct a comprehensive investigation into the
5 alleged abuses during the war and possibilities for accountability, which it
6 completed in 2015.²

7 8. Since the completion of the Panel’s mandate in 2011, I have continued
8 to work on and follow accountability in Sri Lanka, including through briefings to
9 government delegates to the U.N. Security Council and Human Rights Council,
10 speeches to public and academic fora, and articles. I have also read OHCHR’s
11 periodic reports and various Special Rapporteurs of the Human Rights Council who
12 have visited and written about accountability in Sri Lanka. Based on my personal
13 experience with the U.N. officials who research and write these reports, I consider
14 that these reports are prepared with great care, with due respect to the Sri Lankan
15 Government’s views. They thus represent a highly credible evaluation of events on
16 the ground. I have also examined the reporting of reliable nongovernmental
17 organizations (“NGOs”) regarding developments in Sri Lanka. Because of my
18 long-term work on Sri Lanka, I am able to distinguish between bona fide
19 independent reporting of events there and accounts that appear independent but
20 actually represent advocacy on behalf of the Government or supporters of the
21 former LTTE. The reports that I cite in this report from the U.N, the U.S.
22 Department of State, and NGOs are, in my opinion, worthy of significant weight
23 with respect to their factual findings.

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26
27 ² See Human Rights Council, Resolution 22/1, Promoting Reconciliation and
28 Accountability in Sri Lanka, U.N. Doc. A/HRC/RES/22/1 (Apr. 9, 2013).

1 **II. REPORT**

2 9. Counsel for Plaintiff Ahimsa Wickrematunge has asked me to present
3 the following report, which examines the prospects of accountability in cases like
4 Plaintiff's against Defendant in Sri Lanka. I do not have nor have I had any family,
5 economic, working, or any other connection to Plaintiff or Defendant.

6 10. I have based my report, for which I receive no remuneration, on my
7 own experience and knowledge, as well as independent research. Exhibit B lists the
8 materials I consulted while drafting this report.

9 11. In summary, Sri Lanka is plagued by a lack of accountability and
10 tolerance of impunity for even the most serious human rights abuses committed by
11 high-level and security officials like those involved in Lasantha Wickrematunge's
12 murder. International observers have consistently documented these shortcomings,
13 including no fewer than 10 reports from U.N. bodies and experts. The Human
14 Rights Council has noted with concern that the Government had failed to
15 "adequately address serious allegations of violations of international human rights
16 law and international humanitarian law."³ The U.S. State Department reported that,
17 in 2018, "[i]mpunity for conflict-era abuses also persisted, including military,
18 paramilitary, police, and other security-sector officials implicated in cases
19 involving the alleged targeted killing of parliamentarians, abductions, and
20 suspected killings of journalists and private citizens."⁴ Human rights victims cannot
21 achieve effective civil relief in Sri Lankan courts, especially for crimes committed
22 by one of Sri Lanka's most senior former officials from one of its most powerful
23 families. I conclude that:

24
25
26 ³ Human Rights Council, Resolution 22/1, Promoting Reconciliation and
Accountability in Sri Lanka, U.N. Doc. A/HRC/RES/22/1, pmbl. (Apr. 9, 2013).

27 ⁴ U.S. DEP'T OF STATE, 2018 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—
28 SRI LANKA 6 (2019).

- a. Defendant's report on Sri Lankan law, even if factually correct in many respects, ignores the critical issue before this Court: the gap between the written law and the practice of accountability in Sri Lanka;
- b. As a result of this gap between law and practice, no remedy is available for victims of abuses of the civil war, and to date the Sri Lankan courts and Government have not held those most responsible to account;
- c. The Sri Lankan judicial system is especially inadequate to handle a civil complaint against Defendant given his and his family's political power; and
- d. Human rights litigants and defenders, like Plaintiff, are often the victims of retaliation by security forces or the Government.

I will discuss each of these points in turn.

A. Defendant's Report on Sri Lankan Law Ignores the Gap Between Law and Practice of Accountability in Sri Lanka.

12. Former Chief Justice De Silva's report, which Defendant submitted in support of his Motion to Dismiss ("Defendant's Report on Sri Lankan Law"), does not present a full or accurate picture of the prospects for civil relief in Sri Lankan courts arising out of human rights abuses committed by Government officials. I have no reason to doubt most of the Report's descriptions of specific provisions of Sri Lankan law, though I understand that Professor Suri Ratnapala will respond separately to those conclusions.

13. On its face, Sri Lankan law does provide some safeguards for judicial independence, such as criminalizing attempts to influence or interfere with the administration of justice and making Supreme Court appointments subject to the

1 approval of a nominally independent commission.⁵ Sri Lankan law appears to permit
 2 civil suits against public officials under certain circumstances,⁶ and Defendant's
 3 Report correctly points out that the Attorney General has filed indictments against
 4 some high-ranking public officials, including a criminal corruption case against
 5 Defendant.⁷

6 14. But Defendant's Report is limited to the law and mechanisms on the
 7 books, opining about only theoretical possibilities for accountability under that law
 8 and those mechanisms. It is remarkable, for example, that a report on the state of
 9 possible remedies under Sri Lankan law cites only one court case—from 1937, on
 10 habeas corpus—interpreting Sri Lanka's constitution or statutes.⁸ The Report creates
 11 the illusion that the Sri Lankan judiciary is independent and fully functioning, and
 12 that it offers victims these avenues of recourse. In fact, whatever theoretical
 13 possibilities the law might provide for civil or criminal cases against human rights
 14 violators, no government official has been held legally accountable since the end of
 15 the civil war in 2009. The wide gap between the law and practice of transitional
 16 justice in Sri Lanka has persisted through the end of the civil war and multiple
 17 changes in government. I thus strongly disagree with the Report's assessment of the
 18 impartiality and independence of the Sri Lankan judiciary,⁹ which I understand
 19 Professor Juan Méndez will separately address as a legal matter. In what follows, I
 20 present the reality of accountability in Sri Lanka.

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 23
 24 ⁵ Declaration of Joseph Asoka Nihal De Silva in Support of Defendant's Motion to
 Dismiss, ¶¶ 3.21, 3.41 [hereinafter Defendant's Report on Sri Lankan Law].

25 ⁶ Defendant's Report on Sri Lankan Law, ¶¶ 3.50-3.52.

26 ⁷ Defendant's Report on Sri Lankan Law, ¶¶ 4.10-4.11.

27 ⁸ Cf. Defendant's Report on Sri Lankan Law, ¶ 3.9.

28 ⁹ Defendant's Report on Sri Lankan Law, ¶ 4.7.

**B. No Remedy Is Available for Victims of the Civil War, and
High-Level Perpetrators Have Not Been Held Accountable.**

15. Sri Lanka has a culture of impunity for high-level officials that precludes any effective remedy for Plaintiff. The Panel of Experts of which I was a member noted in 2011 that the Government’s understanding of transitional justice lacked “any notion of accountability for its own conduct in the prosecution of the war, especially during the final stages.”¹⁰ Despite the election of a new Government in 2015, the development of some legal frameworks and institutions, and a willingness of Government officials to engage with various U.N. experts, little has changed in the Government’s actions regarding accountability. OHCHR noted in 2019 that, “[s]ince 2015, virtually no progress has been made in investigating or prosecuting domestically the large number of allegations of war crimes or crimes against humanity collected by OHCHR in its investigation, and particularly those relating to military operations at the end of the war.”¹¹ Transitional justice institutions have still not “produce[d] concrete benefits” such as “the identification of missing persons, the provision of reparations, and the issuance of court verdicts.”¹²

16. President Sirisena and the Government have shielded high-level military officials from accountability.¹³ On January 9, 2019, the president appointed Major General Shavendra Silva as the Chief of Staff of the Sri Lanka Army, even

¹⁰ Panel of Experts Report, ¶ 281.

¹¹ OHCHR, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*, ¶ 29, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019) [hereinafter OHCHR 2019 Report].

¹² OHCHR 2019 Report, ¶ 15.

¹³ Ben Emmerson, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Visit to Sri Lanka*, ¶¶ 50–51, U.N. Doc. A/HRC/40/52/Add.3 (Dec. 14, 2018).

1 though U.N. experts had documented credible allegations of violations of human
 2 rights and humanitarian law by troops under his command.¹⁴ In May 2019, President
 3 Sirisena reinstated the leader of the military intelligence unit implicated in the cases
 4 of Lasantha Wickrematunge and another journalist, Keith Noyahr, as an active
 5 military intelligence officer, even though he had been arrested (and then released on
 6 bail) for Noyahr's attack.¹⁵ The president has sought to undermine accountability
 7 processes by asserting that the LTTE is behind calls to end impunity,¹⁶ even though
 8 the LTTE was completely destroyed as a military and political force at the end of
 9 the civil war.

10 17. Lack of independence in the Sri Lankan judiciary and investigative
 11 mechanisms prevents accountability of high-level officials, particularly in cases
 12 such as Lasantha Wickrematunge's. The International Commission of Jurists noted
 13 this year in a submission to the U.N. Human Rights Council that "the Sri Lankan
 14 justice system has for decades systematically failed to respond independently,
 15 impartially and effectively to violations of international human rights and
 16 humanitarian law perpetrated by security forces."¹⁷ The Government regularly exerts
 17 pressure on such investigations and prosecutions, shifting cases involving military
 18 officials to different jurisdictions, swapping judges presiding over particular cases,

21 _____
 22 ¹⁴ OHCHR 2019 Report, ¶ 57; *Sri Lanka Names War Veteran as Army Chief, U.S.,*
 23 *U.N. Critical of Decision*, REUTERS, Aug. 19, 2019.

24 ¹⁵ *See Sri Lankan Army Reinstates Official Suspected in Lasantha Murder, Other*
 25 *Attacks*, COMM. TO PROJECT JOURNALISTS, May 15, 2019.

26 ¹⁶ *See* INFORM HUMAN RIGHTS DOCUMENTATION CENTRE, REPRESSION OF
 27 DISSENT IN SRI LANKA [JAN-DEC 2017] 31–32 (2018).

28 ¹⁷ Human Rights Council, Written Statement Submitted by International
 Commission of Jurists, *Sri Lanka: A Decade of Inaction and Impunity*, p. 2, U.N.
 Doc. A/HRC/40/NGC/50 (Feb. 14, 2019).

1 or issuing statements assigning responsibility away from defendants—practices
2 which have “effectively sought to preclude impartial criminal investigations.”¹⁸

3 18. The U.S. State Department’s 2018 human rights report, on which
4 Defendant’s Report on Sri Lankan Law relies, only confirms concerns about the
5 lack of independence of the Sri Lankan courts.¹⁹ Defendant’s Report cites to a
6 section of the State Department report related to due process rights of criminal
7 defendants, which is not relevant here. As noted above, the same State Department
8 report elsewhere criticized Sri Lanka’s culture of impunity.²⁰

9 19. Defendant’s Report description of the process of submitting a petition
10 to the Attorney General to investigate criminal allegations also does not reflect
11 reality.²¹ Although the Attorney General has broad power over the investigation and
12 prosecution of criminal offenses, the Panel of Experts on which I sat found reasons
13 to question the independence of the Attorney General’s Department from the
14 presidency.²² We found that the Attorney General’s “[p]ast investigations and
15 prosecutions in Sri Lanka have been highly selective and often involved abuses of
16 power on the part of law enforcement, rather than a fair and even-handed pursuit of
17 justice.”²³ We noted that the U.N. Human Rights Committee had held that a decision
18 of the Attorney General not to initiate criminal proceedings against police officers
19 responsible for a death in custody was so arbitrary as to amount to a denial of
20 justice.²⁴ We also found that investigations by the Attorney General’s office “have

21 ¹⁸ OHCHR, *Report of the OHCHR Investigation on Sri Lanka*, ¶ 1234, U.N. Doc.
22 A/HRC/30/CRP.2 (Sept. 16, 2015) [hereinafter OISL 2015 Report].

23 ¹⁹ Defendant’s Report on Sri Lankan Law, ¶¶ 3.36–3.41.

24 ²⁰ See STATE DEP’T 2018 REPORT at 8.

25 ²¹ Cf. Defendant’s Report on Sri Lankan Law, ¶ 3.72.

26 ²² Panel of Experts Report, ¶ 354.

27 ²³ Panel of Experts Report, ¶ 354.

28 ²⁴ Sathasivam v. Sri Lanka, U.N. Human Rights Committee, U.N. Doc.
CCPR/C/93/D/1436/2005 (July 8, 2008).

1 often taken extraordinary amounts of time, if they are completed at all,”²⁵ that
 2 “[v]ictims making such allegations have routinely been harassed by law
 3 enforcement personnel following filing of a complaint against state officers,”²⁶ and
 4 that “[c]riminal inquiries and indictments have even been used to harass and
 5 intimidate critics of the Government, such as journalists and human rights
 6 defenders.”²⁷

7 20. International NGOs remain concerned about the Attorney General’s
 8 office. Amnesty International has noted “longstanding structural issues that have
 9 impeded or undermined prosecutions,” such as the office’s practice of both
 10 *prosecuting* cases of enforced disappearance and *defending against* writs of habeas
 11 corpus—“without the faintest regard for the glaring conflict of interest at play.”²⁸
 12 International Crisis Group has found that “[k]ey officials in the . . . attorney
 13 general’s office have taken positions or made statements that directly undermine
 14 efforts to reform the institutions responsible for decades of major human rights
 15 violations.”²⁹

16 21. Lasantha Wickrematunge’s case itself is yet another example of the
 17 shortcomings of the Sri Lankan judicial system. Ten years have lapsed and the
 18 killing of Lasantha Wickrematunge in January 2009 is still under investigation, with
 19

20 ²⁵ *Sarma v. Sri Lanka*, U.N. Human Rights Committee, U.N. Doc.
 21 CCPR/C/78/D/950/2000 (July 16, 2003); *Banda v. Sri Lanka*, U.N. Human
 22 Rights Committee, U.N. Doc. CCPR/C/91/D/1462/2005 (Oct. 26, 2007).

23 ²⁶ *Rajapakse v. Sri Lanka*, U.N. Human Rights Committee, U.N. Doc.
 24 CCPR/C/87/D/1250/2004 (July 14, 2006); *Gunaratna v. Sri Lanka*, U.N. Human
 Rights Committee, U.N. Doc. CCPR/C/95/D/1432/2005 (Mar. 17, 2009).

25 ²⁷ *Kankanamge v. Sri Lanka*, U.N. Human Rights Committee, U.N. Doc.
 CCPR/C/81/D/2000 (July 27, 2004).

26 ²⁸ Biraj Patnaik, *Sri Lanka: The Government Cannot Afford to Fail the Office on*
 27 *Missing Persons*, AMNESTY INT’L, Oct. 21, 2018.

28 ²⁹ INT’L CRISIS GRP., *SRI LANKA’S TRANSITION TO NOWHERE* 10 (2017).

1 little progress. The court has released all suspects on bail.³⁰ According to Sri Lankan
 2 press reports, the Criminal Investigation Division updated the court on the status of
 3 the investigation at a hearing on January 17, 2019, reporting that they suspect a
 4 single group was behind the killing of Lasantha Wickrematunge, Noyahr, and
 5 another journalist named Upali Tennakoon—but offering no further details. The
 6 magistrate judge postponed a further, *pro forma* hearing until May 10, 2019.³¹ There
 7 is no reason to believe that an indictment, let alone a trial, will be forthcoming.

8 22. Lasantha Wickrematunge’s case is not isolated. U.N. experts have
 9 noted the Government’s “failure to hold perpetrators accountable for gross human
 10 rights violations, serious violations of humanitarian law and international crimes,”
 11 as well as the “virtual impunity for any abuse committed by the police or the
 12 security forces,” concluding that “[i]mpunity is so widespread that it has become a
 13 normal occurrence, thereby contributing to shattering the public’s confidence in its
 14 judiciary.”³² To my knowledge, since the end of the civil war, no Sri Lankan court
 15 has ever adjudicated a victim’s claim against a Government or security official of
 16 violating humanitarian or human rights law arising out of the civil war.

22 ³⁰ OHCHR 2019 Report, ¶ 45; OHCHR, *Promoting Reconciliation, Accountability*
 23 *and Human Rights in Sri Lanka*, ¶ 37, U.N. Doc. A/HRC/37/23 (Jan. 25, 2018);
 24 OHCHR, *Report on Sri Lanka*, ¶ 39, U.N. Doc. A/HRC/34/20 (Feb. 10, 2017);
 OISL 2015 Report, ¶¶ 266–68.

25 ³¹ *CID Presents Progress Report on Lasantha Murder Investigation*, NEWS 1ST,
 Jan. 17, 2019.

26 ³² Mónica Pinto, Special Rapporteur on the Independence of Judges and Lawyers,
 27 *Mission to Sri Lanka*, ¶ 87, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017); *see*
 28 *also* OHCHR 2019 Report, ¶ 38; OISL 2015 Report, ¶ 1178.

C. The Sri Lankan Justice System Is Especially Inadequate to Handle a Complaint Against Defendant.

23. While it is already nearly impossible for victims or prosecutors to hold any senior official accountable in Sri Lanka, the Sri Lankan justice system is especially inadequate when it comes to a civil claim against a public figure as powerful as Gotabaya Rajapaksa. Defendant comes from one of the most powerful families in Sri Lanka. His brother, Mahinda Rajapaksa, is the former president and current leader of the opposition. In October 2018, President Sirisena dismissed the sitting prime minister and appointed Mahinda Rajapaksa in his place (though he resigned after the Supreme Court ruled his appointment illegal).³³ Defendant himself is a former Secretary of Defence and a leading candidate for the presidency. President Sirisena has shown little interest in pursuing allegations of serious crimes and, in October 2016, criticized an ongoing investigation into credible corruption charges against Defendant.³⁴ International Crisis Group reported that in the following weeks, “courts released on bail all remaining military intelligence personnel held on suspicion of involvement in murder and abduction cases,” including the murder of Lasantha Wickrematunge, and observed that “[t]he speech and the releases cast a cloud over ongoing investigations and deepened doubts about government willingness to pursue cases against the security forces and associates of the former regime in the face of military resistance.”³⁵

24. Defendant has repeatedly leveraged his political connections to shield himself from accountability, and the Government has proven itself vulnerable to such interventions. No member of the Rajapaksa family, including Defendant, has

³³ See Plaintiff’s First Amended Complaint, ¶ 59.

³⁴ See INT’L CRISIS GRP., SRI LANKA’S TRANSITION TO NOWHERE 7, n.17 (2017).

³⁵ INT’L CRISIS GRP., SRI LANKA’S TRANSITION TO NOWHERE 7 (2017).

1 faced prosecution for conflict-era crimes despite numerous credible allegations
2 against them—even made by, among others, the then-U.S. Ambassador.³⁶

3
4 **D. Human Rights Litigants and Defenders, Like Plaintiff, Are**
5 **Often Victims of Retaliation.**

6 25. Litigants, counsel, family members, and human rights defenders in
7 cases meant to hold the Government accountable often are victims of retaliation. In
8 2015, OHCHR observed “a climate of fear and intimidation inside Sri Lanka” and
9 noted that it had “received persistent reports of surveillance, threats, intimidation,
10 harassment, [and] interrogation of grass roots activists, human rights defenders and
11 potential witnesses by security forces inside Sri Lanka.”³⁷ OHCHR reported that the
12 “[s]ecurity forces have sought to pressurise relatives of victims into signing
13 documents admitting that the victims were terrorists, or pressured the authorities to
14 replace Judicial Medical Officers responsible for conducting autopsies.”³⁸

15 26. These concerns have persisted in numerous reliable reports about
16 human rights defenders who seek justice before Sri Lankan courts or in international
17 human rights forums. In 2017, OHCHR noted that “[a]llegations of continued
18 harassment and surveillance of human rights defenders and victims by security and
19 intelligence personnel persist”³⁹ and called on the Government to “order all security

20 ³⁶ AMBASSADOR PATRICIA A. BUTENIS, U.S. DEP’T OF STATE, SRI LANKA WAR-
21 CRIMES ACCOUNTABILITY: THE TAMIL PERSPECTIVE, ¶ 3 (2010)
22 (“[R]esponsibility for many of the alleged crimes rests with the country’s senior
23 civilian and military leadership, including President Rajapaksa and his
24 brothers.”); *see also* Ryan Goodman, *Sri Lanka’s Greatest War Criminal*
25 *(Gotabaya) is a US Citizen: It’s Time to Hold Him Accountable*, JUST SECURITY,
May 19, 2014 (collecting and citing reliable and independent sources); Ryan
26 Goodman, *Helping Sri Lanka’s New Democracy*, N.Y. TIMES, Jan. 19, 2015.

26 ³⁷ OISL 2015 Report, ¶¶ 42–44.

27 ³⁸ OISL 2015 Report, ¶ 1233.

28 ³⁹ OHCHR 2017 Report, ¶ 50.

1 forces to end immediately all forms of surveillance and harassment of and reprisals
 2 against human rights defenders, victims and social actors.”⁴⁰ The State Department
 3 reported in 2017 that “the military and police continued to harass civilians with
 4 impunity. . . . According to civil society, military intelligence operatives conducted
 5 domestic surveillance operations and harassed or intimidated members of civil
 6 society in conjunction with, or independent of, police. In May [2016] police
 7 reportedly harassed a Catholic priest in Mullaitivu following his efforts to
 8 memorialize local family members who died during the armed conflict.”⁴¹ On
 9 July 12, 2017, attorney Amitha Ariyaratne was abducted and attacked, and the
 10 assailants told him it was due “to his appearance in cases against the police.”⁴²

11 27. In 2018, OHCHR expressed “grave[] concern[]” that, “2½ years into a
 12 reconciliation process, [the] Office continues to receive reports of harassment or
 13 surveillance of human rights defenders and victims of human rights violations. . . .
 14 During the period under review, at least two incidents escalated to physical violence
 15 against the activist being threatened or kept under surveillance.”⁴³ OHCHR later
 16 reported “at least two incidents” in 2018 “involving the assault of human rights
 17 defenders by unidentified aggressors, presumably in connection to their advocacy on
 18 cases of disappearance. Other human rights defenders have reported being
 19 questioned by the authorities after having travelled to Geneva to attend sessions of
 20 the Human Rights Council. One Sri Lankan U.N. staff member was visited by
 21
 22
 23

24 ⁴⁰ OHCHR 2017 Report, ¶ 66(a).

25 ⁴¹ U.S. DEP’T OF STATE, 2017 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—
 SRI LANKA 6 (2018).

26 ⁴² See INFORM HUMAN RIGHTS DOCUMENTATION CENTRE, REPRESSION OF
 27 DISSENT IN SRI LANKA [JAN-DEC 2017] 29–30 (2018).

28 ⁴³ OHCHR 2018 Report, ¶ 43.

1 armed men who questioned him about his activities in support of visits by diplomats
2 and United Nations officials.”⁴⁴

3 28. In response to numerous complaints he received against the
4 Government, the U.N. Special Rapporteur on the Situation of Human Rights
5 Defenders noted in 2015 his “serious concern in relation to acts of intimidation and
6 death threats directed against human rights defenders,” as well as further reports of
7 reprisals against human rights defenders following their participation and
8 engagement with the U.N. Human Rights Council.⁴⁵ In August 2018, the
9 Government’s own quasi-independent Office on Missing Persons (“OMP”) noted
10 “with deep concern the multiple forms of harassment experienced by families of the
11 missing and the disappeared” advocating on behalf of their missing family members.
12 OMP cited attacks against women relatives, both in July 2018, and wrote that
13 “[s]uch acts of intimidation or reprisal aimed at complainants, witnesses, relatives of
14 the disappeared person or their defence counsel or persons conducting investigations
15 are a serious threat to justice and undermine public confidence in the State.”⁴⁶

16 **III. CONCLUSION**

17 29. Sri Lanka does not offer an adequate forum in which Plaintiff can
18 pursue a civil action against one of Sri Lanka’s most powerful former public
19 officials for civil war–era crimes committed over a decade ago. Sri Lankan courts
20 are plainly unsatisfactory for such cases; as the record to date makes clear, Sri
21 Lanka has failed to hold even rank-and-file perpetrators to account for human rights
22 violations. Instead, the overall culture of impunity has resulted in a lack of capacity
23 and will of courts and prosecutors, delays in investigations and prosecutions, and

24 ⁴⁴ OHCHR 2019 Report, ¶ 55.

25 ⁴⁵ Michel Forst, *Report of the Special Rapporteur on the Situation of Human Rights*
26 *Defenders*, ¶ 332, U.N. Doc. A/HRC/28/63/Add.1 (Mar. 4, 2015).

27 ⁴⁶ GOV’T OF SRI LANKA, OFFICE ON MISSING PERSONS, INTERIM REPORT, ¶ 19
28 (2018).

1 retribution against plaintiffs, witnesses, and attorneys. Defendant—a Rajapaksa,
2 former Secretary of Defence, and leading presidential candidate—is effectively
3 untouchable.

4
5 * * *

6
7 I hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, and
8 under the laws of the United States, that the above is true and correct to the best of
9 my knowledge and belief.

10
11 Executed on August 26, 2019, in Ann Arbor, Michigan.

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16 Steven R. Ratner
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 26, 2019, I electronically filed the foregoing **DECLARATION OF STEVEN R. RATNER IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** with the Clerk by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Catherine Amirfar

Catherine Amirfar

EXHIBIT A
CURRICULUM VITAE OF STEVEN R. RATNER

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Employment

Currently: Bruno Simma Collegiate Professor of Law, University of Michigan Law School

2008-09: Consultant on International Law, International Committee of the Red Cross, Geneva
Research Fellow, Institut de Hautes Études Internationales et du Développement,
Geneva

2004-09: Professor of Law, University of Michigan Law School

1999-2004: Albert Sidney Burleson Professor in Law, University of Texas School of Law

Fall 2000: Visiting Professor of Law, Columbia Law School

1998-1999: Fulbright Senior Scholar, OSCE Regional Research Program
Asser Research Fellow, T.M.C. Asser Institute, The Hague, Netherlands

1997-1999: Professor of Law, University of Texas School of Law

1993-1997: Assistant Professor of Law, University of Texas School of Law

1992-1993: International Affairs Fellow, Council on Foreign Relations
Professor (Adjunct) of Law, Benjamin N. Cardozo School of Law, Yeshiva University

1986-1993: Attorney-Adviser, Office of the Legal Adviser, United States Department of State
(Special Assistant to the Legal Adviser, Attorney-Adviser for East Asian and
Pacific Affairs and for Economic, Business, and Communications Affairs)

Education

Yale Law School, J.D., 1986
Institut Universitaire de Hautes Études Internationales, Geneva, 1982-83, M.A. (Diplôme, mention
très bien), 1993
Princeton University, A.B., 1982, magna cum laude; Major: Woodrow Wilson School of Public and
International Affairs

Honors and Distinctions

Member, American Law Institute, 2016-present
Member, Advisory Committee on International Law, U.S. Department of State, 2009-present
Counsellor, American Society of International Law, 2019-present
John P. Humphrey Lecturer on Human Rights, McGill University Faculty of Law, 2014
Adviser, American Law Institute Restatement (4th) of the Foreign Relations Law of the United States, 2013-17
Member, Board of Editors, American Journal of International Law, 1998-2008
Fulbright Scholarship, United States Information Agency, 1998-99
Certificate of Merit, American Society of International Law, 1998 (for best academic book)
Finalist, Robert W. Hamilton Annual Authors' Award, University of Texas at Austin, 1997
Francis Deák Prize, American Society of International Law, 1994 (for best article by younger author)
Council on Foreign Relations International Affairs Fellow, 1992-93
Superior Honor Award and Group Superior Honor Award, U.S. Department of State, 1989 and 1991
Daniel M. Sachs Graduating Scholarship, Princeton University, 1982

Academic Expertise and Teaching Interests

International law	Foreign investment
International human rights	International humanitarian law
United Nations and international organizations	Ethnic and territorial conflict
Moral philosophy and international law	International criminal law

Professional Activities

Member, Advisory Committee on International Law, U.S. Department of State, 2009-present

Member, Expert Panel, National Academies of Science, Engineering, and Medicine Project on Exploring the Development of Analytic Frameworks: A Pilot Project for the Office of the Director of National Intelligence, 2017-18

Adviser, American Law Institute Restatement (Fourth) of the Foreign Relations Law of the United States, 2013-17

Member, United Nations Panel of Experts on Accountability in Sri Lanka, 2010-2011

Member, International Working Group on Business and Human Rights Arbitration, 2015-

Member, Drafting Team, Hague Rules on Business and Human Rights Arbitration, 2017-

Arbitrator, Hangzhou Arbitration Commission, Hangzhou International Arbitration Court, 2016-

Member, Academic Forum on Investor-State Dispute Settlement, Geneva Center for International Dispute Settlement, 2018-

Academic expert for UN Office for the Coordination of Humanitarian Affairs to prepare the Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict, 2014-15

Academic expert for the Special Representative of the UN Secretary-General for Business and Human Rights, 2005-09

Member, Board of Editors, Journal of Political Philosophy, 2016-

Member, Board of Editors, American Journal of International Law, 1998-2008

Legal consulting on foreign investment arbitration, Alien Tort Claims Act, territorial status issues

Expert on the Mediation Roster, Mediation Support Unit, United Nations Department of Political Affairs

Academic expert for the Netherlands Ministry of Foreign Affairs and Leiden University project on Counter-terrorism Strategies, Human Rights, and International Law, 2008-2011

Academic expert on the law of occupation and implementation of humanitarian law, International Committee of the Red Cross, Geneva, 2008-2012

Member, Multilateral Issues Team, Barack Obama for President campaign, 2007-2009

Academic advisor, United Nations Secretary-General's Policy Working Group on the United Nations and Terrorism, 2002

Member, United Nations Group of Experts for Cambodia Pursuant to General Assembly Resolution 52/135, 1998-1999

Independent expert for the Organization for Security and Cooperation in Europe for advising the government of Latvia on language issues, 1999

Member, Group of Experts of the Organization for Security and Cooperation in Europe High Commissioner on National Minorities to prepare recommendations on minority participation in public life, 1998-1999

Legal consultant to Organization for Security and Cooperation in Europe High Commissioner on National Minorities, 1998-99

Consultant to United States Department of State on bringing Khmer Rouge leaders to justice (under the Cambodian Genocide Justice Act of 1994), 1995

Guest commentator on PBS News Hour, Fox News O'Reilly Factor, Australian TV's Lateline, Dateline, and PM, Court TV, CNN International, National Public Radio, Public Radio International, BBC Radio, Voice of America, local radio and TV, PolitiFact.com, SRF Radio, Bloomberg Radio

Consultant to editors of The Crimes of War, handbook for news reporters and the public on war crimes, and the Crimes of War Project, on-line resource on international humanitarian law, 1997-2007

Manuscript or proposal referee for Oxford University Press, Cambridge University Press, United States Institute of Peace, Radcliffe College, Carnegie Commission on Preventing Deadly Conflict, Israel Science Foundation, Guggenheim Foundation, Ethics, World Politics, Law and Society Review, Journal of Conflict Resolution, American Journal of Political Science, Global Governance, International Theory, International Organization, British Journal of Political Science, European Journal of International Law, Review of International Studies, Global Policy, Journal of International Dispute Settlement, Philosophy Compass, American Journal of International Law

Member, External Review Team, Jack and Mae Nathanson Centre on Transnational Human Rights, Crime and Security, York University (Toronto), 2014

Visiting Fellow, Australian National University College of Law, 2013, 2015, 2016, 2017

Visiting Professor, Hamad Bin Khalifa University College of Law, 2017-present

Visiting Professor, Università Commerciale Luigi Bocconi, 2013, 2019

Visiting Professor, University of Haifa Faculty of Law, 2010-2011

Visiting Professor, University of Tokyo School of Law, 2006

International Visiting Scholar, University of Melbourne Faculty of Law, 2001, 2005

Member, International Board, Concord Research Center for the Interplay between International Norms and Israeli Law, School of Law, College of Management, Rishon Le Zion, Israel

Member, Executive Council, American Society of International Law, 1998-2001

Founder and Faculty Director, University of Michigan Law School Geneva International Fellows Program, 2007-present

Co-Founder and Director, LL.M. Program in Latin American and International Law, University of Texas School of Law, 1999-2000

Guatemala Legislative Modernization Program Coordinating Committee, University of Texas at Austin, 1997-2001

Editorial Advisory Board and Faculty Advisor, Texas International Law Journal, 1997-2004

Faculty Advisor, University of Texas School of Law internship program at the International Criminal Tribunals for the Former Yugoslavia and for Rwanda, 1996-2004

Executive Committee, Board of Advisors, Daniel Sachs Graduating Scholarship, Princeton University

Board of Trustees, Temple Beth Emeth, Ann Arbor, Michigan, 2007-08, 2009-13

Avocations: skiing, running, hiking, yoga, banjo, trying to learn German

Languages: fluent in French, proficient in Spanish reading

Member, New York State Bar

Publications

BOOKS

The Thin Justice of International Law: A Moral Reckoning of the Law of Nations (Oxford: Oxford University Press, 2015, 496 pp.)

International Law: Norms, Actors, Process, Fourth Edition (New York: Wolters Kluwer, 2015, 958 pp.) (with Jeffrey Dunoff and David Wippman)

Teacher's Manual for International Law: Norms, Actors, Process (New York: Aspen Publishers, 2015, 248 pp.) (with Jeffrey Dunoff and David Wippman)

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Teacher's Manual for International Law: Norms, Actors, Process, Second Edition (New York: Aspen Publishers, 2010, 206 pp.) (with Jeffrey Dunoff and David Wippman)

Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy, Third Edition (Oxford: Oxford University Press, 2009, 536 pp.) (with Jason Abrams and James Bischoff)

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Teacher's Manual for International Law: Norms, Actors, Process, Second Edition (New York: Aspen Publishers, 2006, 213 pp.) (with Jeffrey Dunoff and David Wippman)

International War Crimes Trials: Making a Difference? (Austin: University of Texas School of Law, 2004, 160 pp.) (editor with James Bischoff)

The Methods of International Law (Washington: American Society of International Law, 2004, 271 pp.) (editor with Anne-Marie Slaughter)

International Law: Norms, Actors, Process (New York: Aspen Publishers, 2002, 1018 pp.) (with Jeffrey Dunoff and David Wippman)

Teacher's Manual for International Law: Norms, Actors, Process (New York: Aspen Publishers, 2002, 191 pp.) (with Jeffrey Dunoff and David Wippman)

Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy, Second Edition (Oxford: Oxford University Press, 2001, 480 pp.) (with Jason Abrams)

Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy (Oxford: Clarendon Press, 1997, 400 pp.) (with Jason Abrams)

The New UN Peacekeeping: Building Peace in Lands of Conflict After the Cold War (New York: St. Martin's Press, 1995 and 1996, 335 pp.)

ARTICLES

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Democratizing International Law, 2 **Global Policy** 241-247 (2011) (with Robert E. Goodin)

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Regulatory Takings in Institutional Context: Beyond the Fear of Fragmented International Law, 102 **American Journal of International Law** 475-528 (2008)

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BOOK CHAPTERS

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War/Crimes and the Limits of the Doctrine of Sources, in Samantha Besson and Jean d'Aspremont, eds., **The Oxford Handbook on the Sources of International Law**, at 912-35 (Oxford: Oxford University Press, 2017)

The Role of the ICRC, in Andrew Clapham, Paola Gaeta, and Marco Sassòli, eds., **The 1949 Geneva Conventions: A Commentary**, at 525-47 (Oxford: Oxford University Press, 2015) (with Rotem Giladi)

Behind the Flag of Dunant: Secrecy and the Compliance Mission of the International Committee of the Red Cross, in Andrea Bianchi and Anne Peters, eds., **Transparency and International Law**, at 297-320 (Cambridge: Cambridge University Press, 2013)

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OTHER WORKS

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Peacebuilding and Past Human Rights Abuses: Toward a Strategy of Accountability, 5 **International Peacekeeping** 75-80 (1999)

Current Development: The United Nations Group of Experts for Cambodia, 93 **American Journal of International Law** 948-53 (1999)

Memorandum of Law in Support of Concluding That Apartheid is a Crime Against Humanity Under International Law, reprinted in 20 **Michigan Journal of International Law** 267-300 (1999) (with 20 other law professors)

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The Relationship between the International Criminal Court and the Security Council: An Appraisal of the United States Position, **Cooperazione fra Stati e Giustizia Penale Internazionale** 237-43 (Società Italiana di Diritto Internazionale ed., 1999)

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The End of Sovereignty?, 88 **Proceedings of the American Society of International Law** 71-84 passim (1994) (remarks at roundtable discussion)

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Case Note, International Tin Council v. Amalgamet, 82 **American Journal of International Law** 837-40 (1988)

Speeches, Paper Deliveries, and other Engagements by Invitation

May 15, 2019 – Università Commerciale Luigi Bocconi Public Seminar (Milan, Italy), “The Thin Justice of International Economic Law”

May 8, 2019 – Queen’s University Belfast Guest Lecture (Belfast, Northern Ireland), “The Aggravating Duty of Non-Aggravation in International Law”

April 26, 2019 – University of Michigan Law School Young Scholars Conference (Ann Arbor, MI), “The Jamal Khashoggi Murder and the Limits of International Law”

April 22, 2019 – University of Michigan Center for Southeast Asian Studies Panel on The Philippines Withdraws from the International Criminal Court: Now What? (Ann Arbor, MI) – panelist

April 17, 2019 – Hamad bin Khalifa University School of Law Colloquium (Doha, Qatar), “Arbitrating Business and Human Rights Disputes: A Way Forward?”

April 10, 2019 – European Consortium for Political Research Workshop on Sovereignty, Justice, and International Law (Mons, Belgium), “Global Investment Rules as a Site for Moral Inquiry”

March 7, 2019 – National University of Singapore Faculty of Law Centre for International Law (Singapore), “The Aggravating Duty of Non-Aggravation in International Law”

March 6, 2019 – National University of Singapore Middle East Institute (Singapore), “The Khashoggi Assassination: Does International Law Matter?”

March 5, 2019 – National University of Singapore Faculty of Law Centre for Legal Theory (Singapore), “Global Investment Rules as a Site for Moral Inquiry” (with response by M. Sornorajah)

February 1-2, 2019 – Academic Forum on Investor-State Dispute Settlement Workshop on Reforming International Investment Arbitration (Oslo, Norway) – panelist and presenter

January 30, 2019 – Pluricourts Conference on Reforms of International Investment Arbitration: Philosophical Perspectives (Oslo, Norway), “The Moral Implications of International Investment Law”

January 30, 2019 – Pluricourts Lunch Seminar (Oslo, Norway), “International Law and Political Philosophy: Uncovering New Linkages”

December 3, 2018 – University of Michigan International Institute Round Table on Antisemitism Today (Ann Arbor, MI), “Hate Speech in U.S. Constitutional Law and International Law”

November 30, 2018 – Vanderbilt University Law School International Law Roundtable (Nashville, TN) – “The Aggravating Duty of Non-Aggravation”

October 10, 2018 – Hamad bin Khalifa University College of Law and Public Policy Colloquium on The Order on Provisional Measures of the International Court of Justice in the Case of Qatar v. UAE of 23 July 2018 (Doha, Qatar) – “The Duty of Non-Aggravation in International Law”

September 22, 2018 – University of Michigan Transnational Law Conference on The Role of “Soft Law” in International Insolvency and Commercial Law (Ann Arbor, MI) – chair of panel on issues of political economy

September 17, 2018 – University of Michigan Law School Lunch Talk (Ann Arbor, MI) -- “India’s Decriminalization of Homosexuality: What Next?”

September 1, 2018 – American Political Science Association Annual Meeting panel on International Law (Boston, MA) – “International Investment Law as a Site for Global (In-)Justice?”

April 19, 2018 – Hamad bin Khalifa University College of Law and Public Policy Conference on Comparative and International Investment Law: Prospects for Reform (Doha, Qatar) – “International Investment Law and Domestic Investment Rules: Tracing the Connections”

April 11, 2018 – University of Michigan Law School National Security Law Society (Ann Arbor, MI), “Regulation of Lethal Autonomous Weapons Systems”

April 4, 2018 – European Commission Brainstorming Meeting on the Design of a Multilateral Investment Court (Washington, DC) – invited expert

February 10, 2018 – University of Miami School of Law Festschrift Conference for Allen Buchanan (Miami, FL) – “International Investment Rules as a Site for Global (In-)Justice: An Institutionally-Centric Moral Appraisal”

February 14, 2018 – University of Michigan International Institute Round Table on the Future of International Justice: Lessons from the Yugoslav Tribunal (Ann Arbor, MI) – panelist

January 25-26, 2018 – Hague Rules on Business and Human Rights Arbitration Drafting Team meeting (The Hague, Netherlands) – invited member and acting chairperson

January 23, 2018 – University of Michigan Law School lunch talk on Regulating Human Rights in Corporate Supply Chains (Ann Arbor, MI) – response to remarks of Jolyon Ford

January 19, 2018 – University of Michigan Gerald R. Ford School of Public Policy Research Workshop on the Politics of International Criminal Justice (Ann Arbor, MI) – response to paper by Beth van Schaack and concluding panelist

January 18, 2018 – University of Michigan Law School Cultural Heritage Law Society panel on Rubin v. Islamic Republic of Iran (Ann Arbor, MI) – featured speaker

November 27, 2017 – United Nations Forum on Business and Human Rights (Geneva, Switzerland), panel on Business and Human Rights Remedies Hague Style – invited presenter

November 13-14, 2017 – International Law Commission Expert Workshop on International Organizations and Customary International Law (Ann Arbor, MI) – invited expert

November 2, 2017 – University of Texas School of Law Faculty Colloquium (Austin, Texas) – “The Thin Justice of International Law”

October 28, 2017 – Union Internationale des Avocats 61st Congress (Toronto, Canada) – “Extraterritorial Regulation of Natural Resource Exploitation: The Governmental Perspective”

October 13, 2017 – University of Michigan Law School Tax Law Conference on Perspectives on the Multilateral Instrument (Ann Arbor, MI) – commentator on OECD investment and tax treaties

July 6, 2017 – Australian National University Public Seminar (Canberra, Australia), “An International Investment Court: Necessary and Feasible”

June 10, 2017 – University of Michigan European Alumni Reunion (Rome, Italy), “International Law and the Trump Administration”

June 1-2, 2017 – Regional Consultation for North America and the English Speaking Caribbean on the 2020 Review of the United Nations Treaty Body System (New York, NY), “Human Rights Treaty Bodies and Country-Specific UN Processes”

May 18-19, 2017 -- Workshop on Interdisciplinary Approaches to Global Justice: A Methodological Conversation between International Lawyers and Philosophers (Ann Arbor, MI), convenor and moderator

April 12, 2017 – University of Michigan Law School lunch talk (Ann Arbor, MI), “U.S. Strikes on Syria: International and Constitutional Law Implications,” featured speaker

April 1, 2017 – University of Michigan Law School Young Scholars Conference (Ann Arbor, MI), commentator on panel on International Law

March 30, 2017 -- University of Michigan Symposium on the Tanner Lecture on Human Values (Ann Arbor, MI), commentator on the Tanner Lecture by Radhika Coomaraswamy

March 24, 2017 – University of Michigan Donia Human Rights Center Conference on Changing Models of Minority Integration (Ann Arbor, MI), featured panelist

October 28, 2016 – Jack and Mae Nathanson Centre Seminar on Legal Philosophy Between State and Transnationalism, York University (Toronto, Canada), “The Thin Justice of International Law”

October 6, 2016 – Michigan Conference on Human Rights Theory and Practice (Ann Arbor, MI), “Comparative Human Rights and Theories of Global Justice: Navigating a Dimly Lit (Two-Way) Street”

September 23, 2016 – “The Next” Conference on International Investment and Dispute Resolution (Seoul, Korea), “The Global State of Bilateral Investment Treaties and Investor-State Arbitration”

September 9, 2016 – European Society of International Law Annual Meeting (Riga, Latvia), panel on the Enforcement of International Law in (a) Crisis, featured panelist

June 22, 2016 – University of Michigan World History and Literature Initiative Workshop on Global Human Rights and Human Dignity, “The Evolution of Human Rights Law”

May 27, 2016 – University Living Center (Ann Arbor, MI), “Human Rights in U.S. Foreign Policy”

April 8, 2016 – University of Michigan Law School Young Scholars Conference (Ann Arbor, MI), commentator on panel on International Humanitarian Law

April 2, 2016 – American Philosophical Society Western Pacific Division Meeting (San Francisco, CA) Author Meets Critics panel on The Thin Justice of International Law, featured panelist

March 16, 2016 – Society of Active Retirees speaker series (Farmington Hills, MI), “The Nuremberg Trials and their Legacy After 70 Years”

March 9, 2016 – University of Arizona James Rogers School of Law (Tucson, AZ), “The Thin Justice of International Law”

February 19, 2016 – McGeorge School of Law Symposium on Investment Treaty Dispute Settlement (Sacramento, CA), “Visions of Global Justice in International Investment Law”

January 13, 2016 – Michigan Journal of International Affairs panel on the Increasing Aggression of Russian Foreign Policy (Ann Arbor, MI), featured panelist

October 22, 2015 – University of Nottingham Faculty of Law Regional Seminar Series (Nottingham, UK), “Finding Justice in International Law”

October 21, 2015 – Oxford Martin Programme on Human Rights for Future Generations (Oxford, UK), “The Thin Justice of International Law”

October 20, 2015 – King’s College London Dickson Poon School of Law (London, UK), response to comments at book launch for The Thin Justice of International Law

October 20, 2015 – United Kingdom Foreign and Commonwealth Office Legal Directorate (London, UK) – “Extraterritorial Protection of Human Rights and Global Justice”

September 7, 2015 – Max Planck Institut für Ausländisches Öffentliches Recht und Völkerrecht (Heidelberg, Germany) – “The Thin Justice of International Law”

September 5, 2015 – Université de Fribourg Authors’ Retreat on the Sources of International Law (Fribourg, Switzerland), “War/Crimes and the Limits of the Doctrine of Sources”

July 10, 2015 – Australian National University College of Law (Canberra, Australia), “The Thin Justice of International Law”

July 10, 2015 – Australian National University College of Asia and the Pacific Regulatory Institutions Network (Canberra, Australia), “International Law’s Ban on Torture: Can a Super-Norm Survive Pervasive Violations?”

March 27, 2015 – University of Michigan Law School Young Scholars Conference (Ann Arbor, MI), commentator on panel on Questioning the Laws of War

February 26, 2015 – Juris Conferences Ninth Annual Investment Treaty Arbitration Conference (Washington, D.C.) – commentator on panel “Lawful vs. Unlawful Expropriation: Is This a Distinction Without a Difference?”

February 13, 2015 – Georgetown University Law Center Human Rights Workshop (Washington, D.C.) – “Protecting Human Rights Abroad: International Norms and Thin Global Justice”

January 16, 2015 – University of Toronto Faculty of Law Legal Theory Workshop (Toronto, Canada) – “The Thin Justice of International Investment Law”

January 7, 2015 – Tel Aviv University Buchmann Faculty of Law International Law Seminar (Tel Aviv, Israel) – “Ethics and International Law: Integrating the Global Justice Project(s)”

January 6, 2015 – Hebrew University Faculty of Law International Law Forum (Jerusalem, Israel) – “The Thin Justice of International Law”

January 6, 2015 – Israel Ministry of Foreign Affairs Office of the Legal Adviser (Jerusalem, Israel), presentation to staff attorneys on United Nations fact-finding mechanisms

January 5, 2015 – Tel Aviv University Buchmann Faculty of Law Global Trust Seminar (Tel Aviv, Israel) – “The Thin Justice of International Law”

January 5, 2015 – Israel Defense Forces Military Advocate General International Law Department (Tel Aviv, Israel), presentation to staff attorneys on drone warfare and international law

January 4, 2015 – University of Haifa Faculty of Law (Haifa, Israel) – “The Thin Justice of International Trade Law”

September 17, 2014 – McGill University Faculty of Law Centre for Human Rights and Legal Pluralism, John P. Humphrey Lecture in Human Rights (Montreal, Canada) – “After Atrocity: Optimizing UN Action Toward Accountability for Human Rights Abuses”

July 10-11, 2014 – Legal Experts Meeting on the Law Regulating Humanitarian Relief Operations in Armed Conflict (Oxford, UK), invited expert

March 17, 2014 – Canadian Red Cross International Humanitarian Law Conference on Engaging Non-State Actors (Windsor, Canada) – “Understanding the ICRC’s Strategies of Persuasion”

March 12, 2014 – University of Michigan Center for International and Comparative Law seminar on Upheaval in Ukraine (Ann Arbor, MI), featured speaker

February 28, 2014 – University of Richmond Conference on Normative Theory and International Law (Richmond, Virginia) – “Ethics and International Law: Integrating the Global Justice Project(s)”

February 7, 2014 – Universiteit Leiden Law School colloquium (Leiden, Netherlands), “The Thin Justice of International Law”

February 6, 2014 – Goethe Universität Normative Orders Cluster (Frankfurt, Germany), “The Thin Justice of International Law”

November 2, 2013 – New York University School of Law Center for Human Rights and Global Justice Conference on International Human Rights Fact-Finding in the Twenty-First Century (New York, New York), “International Standards for Accountability: Guidelines in Human Rights Fact-Finding”

October 18, 2013 – University Living Center (Ann Arbor, MI), “Crisis in Syria: Legal and Political Issues About Disarming Assad”

September 11, 2013 – University of Michigan Center for International and Comparative Law and Human Rights Advocates seminar on Attacking Syria: The Key Legal Issues (Ann Arbor, MI), featured speaker

August 2, 2013 – Australian National University College of Law Centre for International and Public Law and Centre for Military and Security Law Public Seminar (Canberra, Australia), “Drone Strikes, US Policy and the Law,” featured speaker

August 1, 2013 – Australian National University College of Law Centre for Military and Security Law Workshop on International Humanitarian Law, Anti-Terrorism Laws and Non-State Actors (Canberra, Australia), Keynote Address

July 31, 2013 – Australian National University College of Law Centre for Military and Security Law (Canberra, Australia), “Accountability and the Sri Lankan Civil War”

July 30, 2013 – Australian National University College of Asia and the Pacific Regulatory Institutions Network (Canberra, Australia), “The Thin Justice of International Law”

June 24, 2013 – State Department Advisory Committee on International Law (Washington, D.C.), commentator on Kiobel case

June 6, 2013 – Fondazione Corriere della Sera “Societas” series (Milan, Italy), “Cyber War and Drones: The Implications of War without Soldiers,” featured speaker

June 5, 2013 -- Università Commerciale Luigi Bocconi Research Division Claudio Dematté Seminar (Milan, Italy), “Modern challenges to investment treaties”

June 5, 2013 – Università Commerciale Luigi Bocconi faculty seminar (Milan, Italy), “The Thin Justice of International Law”

May 23, 2013 – International Judicial Conference on Opportunities and Challenges Facing the Judiciary of the 21st Century (Berlin, Germany), featured speaker

April 4, 2013 – American Society of International Law Annual Meeting panel on the Future of Human Rights Fact-Finding (Washington, D.C.), featured speaker

February 14, 2013 – Jack and Mae Nathanson Centre, Osgoode Hall School of Law panel on Sri Lanka: Challenges: Implementing International Human Rights and Accountability for Human Rights Violations (Toronto, Canada), featured speaker

October 8, 2012 – University of Michigan Law School International Law Workshop (Ann Arbor, MI), “Justice After War Crimes in Sri Lanka: A UN Insider’s Perspective”

October 4, 2012 – New York University School of Law Hauser Colloquium (New York, NY), “The Thin Justice of International Law”

September 11, 2012 – Arizona State University College of Law faculty colloquium (Phoenix, AZ), “The Thin Justice of International Law”

June 12, 2012 -- American Law Institute Expert Meeting on a New Restatement of Foreign Relations Law (Washington, D.C.), invited expert

May 30-June 1, 2012 – International Committee of the Red Cross Expert Meeting on Strengthening Compliance with International Humanitarian Law (Geneva, Switzerland), invited expert

March 30, 2012 – University of Michigan Conference on Law and Human Rights in Global History (Ann Arbor, MI), commentator on panel on “Instruments of Implementation: Courts, Commissions, and Conventions”

March 26, 2012 – John Marshall Law School Faculty Scholarship Roundtable (Chicago, Illinois), “The Justice of International Law”

January 20, 2012 – University of Basel and Graduate Institute of International Studies Authors’ Retreat on Transparency in International Law (Thun, Switzerland), “Behind the Flag of Dunant: Secrecy and the Compliance Mission of the International Committee of the Red Cross”

January 18, 2012 – Geneva Academy of International Humanitarian Law and Human Rights Roundtable discussion on Delivering on the Commitment to Accountability in Sri Lanka (Geneva, Switzerland), featured speaker

October 6, 2011 – Interfaith Council for Peace and Justice panel on U.N. Recognition of Palestinian Statehood (Ann Arbor, MI), featured panelist

September 22, 2011 – Wayne State University Law School panel on the General Assembly Resolution on Palestinian Statehood (Detroit, Michigan), featured panelist

June 6, 2011 – State Department Advisory Committee on International Law (Washington, D.C.), luncheon talk on the UN Secretary-General’s Panel of Experts on Sri Lanka

May 13, 2011 – Temple Law School Workshop on Synthesizing Insights from International Law and International Relations (Philadelphia, Pennsylvania), “Persuading to Comply: On the Deployment and Avoidance of Legal Argumentation”

March 29, 2011 – Yale Law School Seminar on Law and Globalization (New Haven, Connecticut), “Between Minimum and Optimum World Public Order: An Ethical Path for the Future”

December 26, 2010 -- Hebrew University Faculty of Law International Law Year in Review (Jerusalem, Israel), “The Obama Administration and Counter-Terrorism”

June 21, 2010 – State Department Advisory Committee on International Law (Washington, D.C.), commentary on Legal Advisor Koh’s Speech to the American Society of International Law

April 8-10, 2010 – Roundtable on Interdisciplinary Research on Global Justice (Ann Arbor, MI) (co-chair, lead organizer), “International Law and the Cosmopolitan/Nationalist Divide”

November 23, 2009 – University of Michigan Middle East Law Students Association Panel (Ann Arbor, MI), “The Goldstone Report: Gaza, Israel, and International Law”

October 2, 2009 – Temple Law School International Law Roundtable on Does the Constitution Follow the Flag? (Philadelphia, PA), invited participant

September 14, 2009 – University of Michigan Law School International Law Workshop (Ann Arbor, MI), “Detaining Terrorism Suspects Without Trial: Is it Legal Under U.S. and International Law?”

June 11-13, 2009 – Netherlands Ministry of Foreign Affairs and Grotius Center of Leiden University Project on Counter-terrorism Strategies, Human Rights, and International Law,” Working Group on the Use of Force Against Non-State Actors (The Hague, Netherlands), “Self-Defense Against Terrorists: The Meaning of Armed Attack”

March 26, 2009 -- Institut de Hautes Études Internationales et du Développement Law Section public lecture (Geneva, Switzerland), “Toward an Ethical Posture for International Organizations”

March 17, 2009 -- University of Geneva Faculty of Law public lecture (Geneva, Switzerland), “How to Stop Worrying About Fragmented International Law: Lessons from the Law(s) on Investment”

February 27, 2009 -- Institut de Hautes Études Internationales et du Développement Inter-Agency Group Lunch (Geneva, Switzerland), “How to Stop Worrying About Fragmented International Law: Lessons from Foreign Investment”

January 27, 2009 – Institut de Hautes Études Internationales et du Développement Roundtable on Gaza and International Law (Geneva, Switzerland), panelist

December 16, 2008 – International Committee of the Red Cross Expert Meeting on the Law of Occupation (Geneva, Switzerland), “The Law of Occupation and UN Administration of Territory: Mandatory, Desirable, or Irrelevant?”

September 5, 2008 – International Institute of Humanitarian Law Round Table on International Humanitarian Law, Human Rights, and Peace Operations (San Remo, Italy) – “Administration of Territories by the United Nations: Is There Room for IHL?”

May 20, 2008 – State Bar of Michigan Committee on Human Rights Panel on Corporate Responsibility for Human Rights (Dearborn, Michigan), panelist and commentator

May 13, 2008 – Osher Lifelong Learning Institute at the University of Michigan Distinguished Lecture (Ann Arbor, MI), “The War on Terror: The Role of International Law”

January 21, 2008 – University of Michigan Inter-Humanitarians Council lecture (Ann Arbor, MI), “International Law, Human Rights, and the ‘War on Terrorism’”

December 14, 2007 – United Nations Office of the Special Representative for the Prevention of Mass Atrocities policy advisory group meeting on Prevention of Genocide and Mass Atrocities and the Responsibility to Protect (Stellenbosch, South Africa), panelist and commentator

December 7, 2007 – Temple Law School Symposium on Ruling the World? Constitutionalism, International Law, and Global Government (Philadelphia, PA), commentator on paper by Professor Michael Doyle

October 25, 2007 – Northwestern University School of Law and Katholieke Universiteit Leuven Faculty of Law Symposium on Corporate Human Rights Responsibility (Chicago, IL), “Who Has the Duty to Remedy Abuses?: An Academic Perspective”

September 28, 2007 – International Committee of the Red Cross and Washington College of Law Expert Roundtable Meeting on Teaching International Humanitarian Law at US Law Schools (Washington, D.C.), invited participant

June 6, 2007 – Minerva Center for Human Rights Conference on Forty Years after 1967: Reappraising the Role and Limits of the Legal Discourse on Occupation in the Palestinian-Israeli Context (Jerusalem and Tel Aviv, Israel), “Occupation and Territorial Boundaries: Facts -- and Law -- on the Ground”

April 20, 2007 – Georgetown Law School Legal Theory Workshop (Washington, DC), “Do International Organizations Play Favorites?: An Impartialist Account”

March 26, 2007 – Wayne State University School of Law Edward Wise Symposium (Detroit, MI), “Can We Compare Evils?: The Enduring Debate on Genocide and Crimes Against Humanity”

March 10, 2007 – University of Michigan Symposium on the Tanner Lecture on Human Values (Ann Arbor, MI), commentator on the Tanner Lecture by Samantha Power

March 2, 2007 – University of California at Los Angeles School of Law faculty colloquium (Los Angeles, CA), “Do International Organizations Play Favorites?: An Impartialist Account”

February 16, 2007 – University of Fribourg Conference on the Philosophy of International Law (Fribourg, Switzerland), commentator on paper by Professor David Luban

February 10, 2007 – Michigan Journal of International Law Symposium on State Intelligence Gathering and International Law (Ann Arbor, MI), panel moderator on The Desirability, Feasibility, and Methodology of Applying International Law to Intelligence Activities

December 17, 2006 – University of Bern International Symposium on Justice, Legitimacy, and Public International Law (Bern, Switzerland), “Reimagining International Institutions: An Impartialist Account”

November 17, 2006 – New York University Center for Human Rights and Global Justice and Realizing Rights Workshop on Attributing Corporate Responsibility for Human Rights under International Law (New York, NY), participant and commentator

September 29, 2006 – Washington University in St. Louis Conference on Judgment at Nuremberg (St. Louis, MO), “Can We Compare Evils? The Enduring Debate on Genocide and Crimes Against Humanity”

June 22, 2006 -- International Law Society of the University of Tokyo Colloquium (Tokyo, Japan),

“Renditions and Targeted Killings in The Global War on Terror: What Place for International Law?”
April 20, 2006 -- Eastern Michigan University Conference on The Crisis in Darfur: International Response to Genocide in the 21st Century (Ypsilanti, MI), “Responding to Mass Atrocities: Intervention, Prosecution, or Both?”

April 8, 2006 -- University of North Carolina at Greensboro Conference on Philosophical Issues in International Law (Greensboro, NC), “Predator and Prey: Seizing and Killing Suspected Terrorists Abroad”

November 29, 2005 – University of Michigan Center for Southeast Asian Studies Lectures Series Seminar on the Khmer Rouge Genocide Trial (Ann Arbor, MI), featured speaker

November 8, 2005 – University of Michigan Bioethics, Values and Society Faculty Seminar on Physician Involvement in Hostile Interrogations (Ann Arbor, MI), commentator on paper by Professor Fritz Allhoff

October 10, 2005 – University of Michigan Institute for the Humanities Brown Bag Lecture (Ann Arbor, MI), “The War Crimes Tribunals for Yugoslavia: Are Trials after Atrocities Effective?”

September 16, 2005 – University of Michigan International Perspectives on Human Rights Brown Bag Seminar (Ann Arbor, MI), “The Role of Human Rights Law During Military Occupations”

June 3, 2005 – Fundación para las Relaciones Internacionales y el Diálogo Exterior (FRIDE) Roundtable on Building a New Role for the United Nations (Madrid, Spain), “Self-Defense and the World After September 11: Implications for UN Reform”

May 13, 2005 – Tsinghua University School of Law Conference on New Developments for Sino-American Commercial Law (Beijing, China), “The Expropriation Battles – Act II: Regulatory Takings”

April 11, 2005 – University of Michigan Law School Agora on Reading the Torture Memos (Ann Arbor, MI), “The Torture Memos: Making Lite of International Law?”

February 7, 2005 – Michigan State Journal of International Law Symposium on The Relevance of International Criminal Law to the Global War on Terrorism (East Lansing, MI), “Are the Laws of War Applicable to the War on Terrorism?”

January 10, 2005 – University of Windsor Faculty of Law Panel on Torture, Human Rights, and the Search for Global Justice (Windsor, Canada): “Suing Foreign Human Rights Abusers: U.S. and International Practice”

November 1, 2004 – University of Michigan Law School Workshop on U.S. Detentions During the “War on Terrorism”: International Law and American Justice (Ann Arbor, MI): Introduction and remarks on “The Impact of U.S. Detention Policy and Practices on International Law”

October 7, 2004 – Belgrade Centre for Human Rights Workshop (Belgrade, Serbia and Montenegro), “The International Criminal Court and the Limits of Global Tribunals”

October 6, 2004 -- Belgrade Centre for Human Rights Public Lecture (Belgrade, Serbia and Montenegro),

“Participation of Minorities in Public Life: Beyond the Legal Standards”

June 8, 2004 – Concord Research Center Conference on Democracy and Occupation (Rishon Le Zion, Israel), “Occupations by Democracies and by International Organizations: The Challenges of Convergence”

February 12, 2004 – University of Texas Tejas Club (Austin, TX), “Saddam Hussein, Human Rights, and Guantanamo Bay”

November 6-7, 2003 – University of Texas School of Law Conference on International War Crimes Trials: Making a Difference? (Austin, TX), Opening Remarks, panel moderator, Concluding Remarks

October 9, 2003 – University of Georgia School of Law Faculty Colloquium (Athens, GA), “Is International Law Impartial?”

September 12, 2003 -- University of Toronto Faculty of Law (Toronto, Canada), Workshop on Canada and the Use of Force: Caught Between Multilateralism and Unilateralism, invited participant

June 25, 2003 – American Civil Liberties Union Central Texas Chapter (Austin, TX), “The International Criminal Court”

June 20, 2003 -- Texas Exes Alumni College lecture program (Austin, TX), “The United Nations and Iraq”

May 24, 2003 – Stanford University Center for International Security and Cooperation workshop on How to Build a State (Palo Alto, CA), “Rebuilding International Personality: Some Guidance from International Law and Practice”

April 29, 2003 – University of Texas School of Law panel on *Henry V* and the Ways of War: Legal and Ethical Issues (Austin, TX), “*Henry V* and the Law of War”

April 25, 2003 – Vanderbilt University Law School Legal Theory Workshop (Nashville, TN), “Precommitment Theory as a Framework for Self-Restraint by States: Explanation and Examples”

April 17, 2003 – University of California Boalt Hall School of Law Workshop on International Law (Berkeley, CA), “Precommitment Theory as a Framework for Self-Restraint by States: Explanation and Examples”

January 24, 2003 – International Peace Academy conference on The UN Security Council in the Post-Cold War Era (New York, NY), “Does the UN Security Council Create Law?”

December 18, 2002 – Tel Aviv University Faculty of Law international conference on Liberty, Equality, Security (Tel Aviv, Israel), “Overcoming Temptations to Violate Human Dignity in Times of Crisis: On the Possibilities for Meaningful Self-Restraint”

December 17, 2002 – University of Haifa Faculty of Law conference on Democracy versus Terror: Where are the Limits? (Haifa, Israel), “Jus ad Bellum and Jus in Bello After September 11”

October 11, 2002 – University of Houston Law Center Friday Frontier faculty colloquium (Houston, TX), “Jus ad Bellum and Jus in Bello After September 11”

September 20, 2002 – Texas Law Review Symposium on Precommitment, Bioethics, and Constitutional Law (Austin, TX), “Precommitment Theory and International Law: Starting a Conversation”

September 5, 2002 – Texas International Law Journal Symposium on Judicialization and Globalization of the Judiciary (Austin, TX), “The International Criminal Court and the Limits of Global Judicialization”

May 2, 2002 – Columbia University Center on International Organization Roundtable on the United Nations and Terrorism (New York, NY), “Capacity-Building to Fight Terrorism: Finding the UN’s Comparative Advantage”

April 30, 2002 – Amnesty International, University of Texas Chapter (Austin, TX), “The Pitfalls of International Criminal Justice”

October 26, 2001 – University of Göttingen Institute of International Law Symposium on the United States and International Law (Göttingen, Germany), “The United States and the ‘International Community’: The Inevitability of Multiple Visions”

October 12, 2001 – Canadian Department of Foreign Affairs and International Trade’s Canadian Centre for Foreign Policy Development Roundtable on Afghanistan: Governance Scenarios and Canadian Policy Options (Ottawa, Canada), “Failed States and Governance: Lessons Learned”

May 29, 2001 – Australian Red Cross Solferino Lecture (Melbourne, Australia), “Overcoming Impunity?: Not so Fast”

May 23, 2001 – University of Melbourne Faculty of Law International Law Interest Group (Melbourne, Australia), “A Theory of Human Rights Obligations for Corporations”

February 12, 2001 – University of Chicago Law School Workshop on International Law (Chicago, IL), “Corporations and Human Rights: Toward a Theory of International Legal Responsibility”

January 26, 2001 – Autonomous Region of Trentino-Alto Adige Conference on Organising Cohabitation: The Trentino-South Tyrol Experience and Prospects for the Balkans (Trento, Italy), “International Guarantees of Autonomy: Limitations and Warnings”

December 4, 2000 – Columbia Law School Society for Law and Ideas (New York, NY), “Overcoming Impunity for Human Rights Abuses: An Insider’s/Outsider’s Perspective”

November 27, 2000 – New York Law School Conference on The Multinational Enterprise as Global Corporate Citizen (New York, NY), “Corporations and Human Rights in International Law”

November 21, 2000 – Columbia Law School Society for Law and Ideas and Society of International Law (New York, NY), “American Exceptionalism and the Future of International Law and Organization,” respondent to address by Edward Luck

October 20, 2000 – Johns Hopkins University Paul H. Nitze School of Advanced International Studies, Washington Interest in Negotiation Group (Washington, DC), “Intermediaries and International Norms: The Work of the OSCE High Commissioner on National Minorities”

July 28, 2000 -- Centro Para Accion Legal en Derechos Humanos and American University Washington College of Law Conference on Contemporary Perspectives in International Criminal Law (Antigua, Guatemala), “Transitory Transitions and the Problem of Impunity”

May 12, 2000 -- Organization for Security and Cooperation in Europe Seminar to Launch the Lund Recommendations on the Effective Participation of National Minorities in Public Life (Vienna, Austria), “The General Principles of the Lund Recommendations”

February 25, 2000 -- University of Texas Conference on Challenges to Fragile Democracies in the Americas (Austin, TX), “Looking Forward and Looking Back: Democracy, Accountability, and Fragile Governments in the Americas”

January 9, 2000 – First Unitarian Universalist Church (Austin, TX), “Prosecuting and Preventing Crimes Against Humanity”

November 12, 1999 -- University of Texas Center for Russian, East European, and Eurasian Studies (Austin, TX), “Preventing Ethnic Conflict: The Work of Europe's Minorities Commissioner”

October 21, 1999 -- Texas International Law Society Conference on Preventing Ethnic Conflict: Emerging Answers from Kosovo (Austin, TX), “Ethnic Conflict in Europe: An Overview from International Law”

October 16, 1999 – World Federalist Association Fall Assembly (Dallas, Texas), “Cambodia and the U.N.: Bringing the Khmer Rouge to Justice”

July 9, 1999 – International Criminal Tribunal for the Former Yugoslavia (The Hague, Netherlands), “Democracy and Accountability: On a Normative Collision Course?”

May 18, 1999 – T.M.C. Asser Instituut (The Hague, Netherlands), “Accountability of the Khmer Rouge for Human Rights Atrocities: National and International Responses (and Non-Responses)”

March 5, 1999 – Rijks Universiteit Leiden, Faculty of Law (Leiden, Netherlands), “Democracy and Accountability: The Criss-Crossing Paths of Two Emerging Norms”

June 13, 1998 – Italian Society of International Law Annual Meeting (Siena, Italy), “The Relationship between the International Criminal Court and the Security Council: An Appraisal of the United States Position”

June 10-11, 1998 – Training Programme in the Civilian Personnel of Peace-keeping/Humanitarian Operations and Election Monitoring Missions: Volunteers, Officers, Observers (Pisa, Italy), “Coordinating the Actors in Peacekeeping Operations within the United Nations System and Other Organizations”

April 23, 1998 – University of Texas Learning Activities for Mature People (Austin, TX), “Prosecuting Human Rights Atrocities from Nuremberg 1945 to Rome 1998”

April 1, 1998 – American Society of International Law Annual Meeting (Washington, D.C.), “The Genocide Convention After 50 Years”

March 20, 1998 – United Nations Department of Political Affairs retreat on Human Rights in Negotiating Processes (Tarrytown, NY), “Promoting Reconciliation and Combatting Impunity”

January 7, 1998 – Association of American Law Schools Annual Meeting (San Francisco, CA), “The Global Law School: Myths and Reality,” and panelist and discussion leader for day-long workshop on “Staging the Law School of the Future”

September 18, 1997 – Hofstra Law School Symposium on War Crimes and War Crimes Tribunals (Hempstead, NY), “Why Only War Crimes?: Delinking Human Rights Offenses from Armed Conflict”

November 15, 1996 – United Nations Department of Political Affairs retreat on UN mediation and peacekeeping (New York, NY), featured speaker

October 12, 1996 – Admiral Nimitz Museum Conference on Justice in the Aftermath (Fredericksburg, TX), “A Brief History of War Crimes”

August 6, 1996 – Court TV broadcast of trial in the International Tribunal for the Former Yugoslavia (New York, NY), guest commentator

May 30, 1996 – Libera Università Internazionale degli Studi Sociali seminar on international economic law (Rome, Italy), guest lecturer

May 27, 1996 – Università degli Studi di Siena, Facoltà de Giurisprudenza graduate seminar (Siena, Italy), guest lecturer

April 23, 1996 – Austin Council on Foreign Affairs (Austin, TX), “Prosecuting War Crimes in the Former Yugoslavia”

April 20, 1996 – Lee College Conference on War in the 20th Century (Baytown, TX), panelist

March 4, 1996 – Harvard Law School seminar on Lawyers Without Borders (Cambridge, MA), guest lecturer

December 14, 1995 – Yale Law School Schell Center for International Human Rights panel on Rwanda, the Former Yugoslavia, and Other Current Developments in International Criminal Law (New Haven, CT), panelist

November 10-11, 1995 – Cornell Law School Workshop on International Law and Ethnic Conflict (Ithaca, NY), commentator

August 21-22, 1995 – Yale University Cambodian Genocide Program Conference on International Criminal Law in the Cambodian Context (Phnom Penh, Cambodia), featured participant and lecturer

July 7, 1995 – United States Institute of Peace Conference on Accountability for War Crimes and Genocide in Cambodia (Washington, D.C.), featured participant

June 15, 1995 – Travis County Bar Association International Law Section (Austin, TX), “Recent Developments in Foreign Investment Law”

June 10, 1995 – Southwestern Legal Foundation Academy of American and International Law (Austin, TX), “Foreign Investment in the United States and the Exon-Florio Legislation”

March 3, 1995 – University of Texas School of Law Symposium on International Intervention for the Cause of the Human Rights (Austin, TX), moderator

June 21, 1994 – Dallas Bar Association International Law Section (Dallas, TX), “U.S. Bilateral Investment Treaties: A New Source of Law for the U.S. Investor Abroad”

June 2, 1994 – Council on Foreign Relations Annual Seminars Presented by the International Affairs Fellows (Washington, D.C.), “Lessons Learned from Peacekeeping Operations: The Roles of the United States and the United Nations”

May 17, 1994 – U.S.-Japan Conference on UN Peace Efforts and Japan-U.S. Relations (Yokohama, Japan), “UN Peace Efforts: Legal Bases and Recent Experiences”

April 9, 1994 – American Society of International Law Annual Meeting (Washington, D.C.), participation in panel “The End of Sovereignty”

April 7, 1994 – American Society of International Law Annual Meeting (Washington, D.C.), “Controlling the Break-up of States: Towards a United Nations Role”

March 10, 1994 – International Colloquium on New Dimensions of Peace-keeping (Geneva, Switzerland), “The United Nations in Cambodia and the New Peacekeeping”

October 29, 1993 – American Branch of the International Law Society International Law Weekend (New York, NY), “United Nations Conservatorship over Failed States: From Theory to Reality”

EXHIBIT B
MATERIALS CONSULTED

I. U.N. Reports

1. Ben Emmerson, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Visit to Sri Lanka*, U.N. Doc. A/HRC/40/52/Add.3 (Dec. 14, 2018), <https://undocs.org/A/HRC/40/52/Add.3>
2. Michel Forst, *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, U.N. Doc. A/HRC/28/63/Add.1 (Mar. 4, 2015), <https://undocs.org/A/HRC/28/63/Add.1>
3. Mónica Pinto, Special Rapporteur on the Independence of Judges and Lawyers, *Mission to Sri Lanka*, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017), <https://undocs.org/A/HRC/35/31/Add.1>
4. U.N. Human Rights Council, Resolution 22/1, Promoting Reconciliation and Accountability in Sri Lanka, U.N. Doc. A/HRC/RES/22/1 (Apr. 9, 2013), <https://undocs.org/A/HRC/RES/22/1>
5. U.N. Office of the High Comm'r for Human Rights, *Report of the OHCHR Investigation on Sri Lanka (OISL)*, U.N. Doc. A/HRC/30/CRP.2 (Sept. 16, 2015), https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A.HRC.30.CRP.2_E.docx
6. U.N. Office of the High Comm'r for Human Rights, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019), <https://undocs.org/A/HRC/40/23>
7. U.N. Office of the High Comm'r for Human Rights, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*, U.N. Doc. A/HRC/37/23 (Jan. 25, 2018), <https://undocs.org/A/HRC/37/23>
8. U.N. Office of the High Comm'r for Human Rights, *Report on Sri Lanka*, U.N. Doc. A/HRC/34/20 (Feb. 10, 2017), <https://undocs.org/A/HRC/34/20>

9. U.N. Office of the High Comm'r for Human Rights, *Promoting Reconciliation and Accountability in Sri Lanka*, U.N. Doc. A/HRC/25/23 (Feb. 24, 2014), <https://undocs.org/A/HRC/25/23>
10. United Nations, *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, Mar. 31, 2011, <https://www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/Report%20of%20the%20Panel%20of%20Experts%20on%20Accountability%20in%20Sri%20Lanka.pdf>

II. U.S. Government Reports

1. AMBASSADOR PATRICIA A. BUTENIS, U.S. DEP'T OF STATE, SRI LANKA WAR-CRIMES ACCOUNTABILITY: THE TAMIL PERSPECTIVE (2010), https://www.wikileaks.org/plusd/cables/10COLOMBO32_a.html
2. U.S. DEP'T OF STATE, 2018 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—SRI LANKA (2019), <https://www.state.gov/wp-content/uploads/2019/03/SRI-LANKA-2018.pdf>
3. U.S. DEP'T OF STATE, 2017 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—SRI LANKA (2018), <https://www.state.gov/wp-content/uploads/2019/01/Sri-Lanka.pdf>

III. Sri Lankan Government Reports

1. GOV'T OF SRI LANKA, OFFICE OF MISSING PERSONS, INTERIM REPORT (2018), https://www.news.lk/images/Master_Document_Clean_Document_28_August0.pdf

IV. U.N. Human Rights Committee Decisions

1. Banda v. Sri Lanka, U.N. Human Rights Committee, U.N. Doc. CCPR/C/91/D/1462/2005 (Oct. 26, 2007), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhstcNDCvDan1pXU7dsZDBaDXL>

4tyhvmsS9111w5rXvKN%2bcOLyoXL8l2DbqGP2WaLO%2f
uXN3gvC6FPAb5ihIiY0Ug35IfWYpMErs9YQG2JQbwzJsLQ
8waBN0vPrfra0C7joX8gh%2bIfY%2b%2bH3uco8mgk17w4%
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2. Gunaratna v. Sri Lanka, U.N. Human Rights Committee, U.N. Doc. CCPR/C/95/D/1432/2005 (Mar. 17, 2009), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsvpIiwkDHeBnDsduiOrYcq2REt4MGPG8oN2eHRJeRyLyjYn3OTpxWR648kchOfqMULc%2bH8eK06nqDy1vIHunIK9PeDLM7X029heRtPwn00rfc1GEjOICPb6dLQx4waU0Gw%3d%3d>
3. Kankanamge v. Sri Lanka, U.N. Human Rights Committee, U.N. Doc. CCPR/C/81/D/2000 (July 27, 2004), <https://undocs.org/CCPR/C/81/D/927/2000>
4. Rajapakse v. Sri Lanka, U.N. Human Rights Committee, U.N. Doc. CCPR/C/87/D/1250/2004 (July 14, 2006), <https://undocs.org/CCPR/C/87/D/1250/2004>
5. Sathasivam v. Sri Lanka, U.N. Human Rights Committee, U.N. Doc. CCPR/C/93/D/1436/2005 (July 8, 2008), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsuPx7DCNvnzzSMxjTH%2bdDOqWYqVUSFRZW4i6lEdvDLmG4eUIH84KrHhh%2b%2bqrW9B7nzPkHgSXFfa%2fYVa%2f%2fDNY7pG0bQ9tEG4tR2%2f9sb7BDl0BcW88HnX50DvyIWvsCO1vTDQ%3d%3d>
6. Sarma v. Sri Lanka, U.N. Human Rights Committee, U.N. Doc. CCPR/C/78/D/950/2000 (July 16, 2003), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsswSVVnSz50wXLYzs7W9cwHstPAwc1%2f%2bxwsgb7m6H3DilRJSocCZK7x1KeL%2fpy7PBTw2xQsX2HrHp7Di36beClPEl7b6e1Ik4jPtbMtX7FvdjZdSLgqrEusFMoIXEVUIWg%3d%3d>

V. NGO Reports

1. Biraj Patnaik, *Sri Lanka: The Government Cannot Afford to Fail the Office on Missing Persons*, AMNESTY INT'L, Oct. 21,

2018, <https://www.amnesty.org/en/latest/news/2018/10/sri-lanka-the-government-cannot-afford-to-fail-the-office-on-missing-persons>

2. Human Rights Council, Written Statement Submitted by International Commission of Jurists, *Sri Lanka: A Decade of Inaction and Impunity*, U.N. Doc. A/HRC/40/NGC/50 (Feb. 14, 2019)
3. INFORM HUMAN RIGHTS DOCUMENTATION CENTRE, REPRESSION OF DISSENT IN SRI LANKA [JAN-DEC 2017] (2018), <http://www.inform.lk/repression-of-dissent-in-sri-lanka-jan-dec-2017>
4. INT’L CRISIS GRP., SRI LANKA’S TRANSITION TO NOWHERE (2017), <https://d2071andvip0wj.cloudfront.net/286-sri-lanka-s-transition-to-nowhere.pdf>

VI. Press Reports

1. *CID Presents Progress Report on Lasantha Murder Investigation*, NEWS 1ST, Jan. 17, 2019, <https://www.newsfirst.lk/2019/01/17/cid-presents-progress-report-on-lasantha-murder-investigation>
2. Ryan Goodman, Op-Ed, *Helping Sri Lanka’s New Democracy*, N.Y. TIMES, Jan. 19, 2015, https://www.nytimes.com/2015/01/20/opinion/helping-sri-lankas-new-democracy.html?smprod=nytcore-ipad&smid=nytcore-ipad-share&_r=1
3. Ryan Goodman, *Sri Lanka’s Greatest War Criminal (Gotabaya) is a US Citizen: It’s Time to Hold Him Accountable*, JUST SECURITY, May 19, 2014, <https://www.justsecurity.org/10537/sri-lanka-gotabaya-us-citizen-war-crimes-accountability>
4. *Sri Lankan Army Reinstates Official Suspected in Lasantha Murder, Other Attacks*, COMM. TO PROJECT JOURNALISTS, May 15, 2019, <https://cpj.org/2019/05/sri-lankan-army-reinstates-official-suspected-in-l.php>

5. *Sri Lanka Names War Veteran as Army Chief, U.S., U.N. Critical of Decision*, REUTERS, Aug. 19, 2019, <https://www.reuters.com/article/us-sri-lanka-army/sri-lanka-names-war-veteran-as-army-chief-u-s-critical-of-decision-idUSKCN1V918K?il=0>

**Communication to the Human Rights Committee
Submitted Pursuant to the Optional Protocol to the
International Covenant on Civil and Political Rights**

AHIMSA WICKREMATUNGE

for herself and on behalf of

LASANTHA WICKREMATUNGE

Victims

— v. —

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA,

Respondent

EXHIBIT B

**Declaration of Juan E. Méndez in Support of Plaintiff's Opposition to
Defendant's Motion to Dismiss, *Wickrematunge v. Rajapaksa*, No. 2:19-cv-
02577 (C.D. Cal. 4 April 2019)**

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12 *Ahimsa Wickrematunge*

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 AHIMSA WICKREMATUNGE, in her
16 individual capacity and in her capacity
17 as the legal representative of the estate
18 of LASANTHA WICKREMATUNGE,

19 Plaintiff,

20 v.

21 NANDASENA GOTABAYA RAJAPAKSA,
22 Defendant.

Case No. 2:19-cv-02577-R-RAO

23 **DECLARATION OF**
24 **JUAN E. MÉNDEZ IN SUPPORT**
25 **OF PLAINTIFF'S OPPOSITION TO**
26 **DEFENDANT'S MOTION TO**
27 **DISMISS**

28 Date: September 16, 2019
Time: 10:00 AM
Courtroom: 880
Judge: Hon. Manuel L. Real

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13 *Ahimsa Wickrematunge*

1 I, Juan E. Méndez, declare under penalty of perjury of the laws of the United
2 States as follows:

3 **I. QUALIFICATIONS**

4 1. I am an international human rights lawyer and professor, with more
5 than 30 years' experience in transitional justice, prevention of mass atrocities and
6 genocide, and accountability for human rights abuses. I am currently a Professor of
7 Human Rights Law in Residence at the American University – Washington College
8 of Law (WCL), where I serve as the Faculty Director of the Anti-Torture Initiative,
9 a project in the WCL's Center for Human Rights and Humanitarian Law. I am a
10 member of the bars of Mar del Plata and Buenos Aires, Argentina and the District
11 of Columbia, having earned a J.D. from Stella Maris University in Argentina and a
12 certificate from the American University Washington College of Law. I have
13 extensive experience on transitional justice and accountability for international
14 human rights violations, as detailed in my résumé, attached hereto as Exhibit A,
15 including working in or on issues involving Sri Lanka.

16 2. In November 2010, I was appointed to serve as the United Nations
17 (UN) Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading
18 Treatment or Punishment by the UN Human Rights Council. I served in this role
19 for six years. First created in 1985, the Special Rapporteurship is one of more than
20 fifty "Special Procedures" of the United Nations, and one of its longest-standing.
21 Mandate-holders are appointed to serve for up to two consecutive three-year terms,
22 on the basis of their expertise in the subject matter covered by the mandate.

23 3. As part of my mandate as UN Special Rapporteur on Torture, I
24 undertook, sought, received, examined and acted on information from
25 Governments, intergovernmental and civil society organizations, and groups of
26 individuals regarding issues and alleged cases concerning torture or other cruel,
27 inhuman or degrading treatment. I studied trends, developments and challenges in
28

1 relation to combating and preventing torture and other cruel, inhuman or degrading
2 treatment or punishment (CIDT), and made recommendations and observations
3 concerning appropriate measures to prevent and eradicate such practices. In
4 addition, I identified and promoted best practices on measures to prevent, punish
5 and eradicate torture and other CIDT. I wrote thematic reports on various aspects of
6 the international law regarding torture with recommendations to the international
7 community and all UN member States on how to fulfill their obligations that are
8 derived from the absolute prohibition on torture and other CIDT. For example, in
9 September 2014, I submitted a report to the General Assembly on the role of
10 forensic science in the obligation of States to effectively investigate and prosecute
11 allegations of torture and other CIDT. In January 2012, I submitted a report to the
12 Human Rights Council on the role of commissions of inquiry in fulfilling States'
13 obligations to combat impunity and provide effective remedies to victims of past
14 violations for torture and other CIDT, identifying best practices for when such
15 commissions fulfil these obligations most effectively.

16 4. In addition, as part of this mandate, I undertook country visits to advise
17 countries on how to meet their obligations to combat, prevent, punish and eradicate
18 torture and other CIDT and report on their efforts. In 2016, during the final year of
19 my mandate as Special Rapporteur, I undertook a country visit to Sri Lanka jointly
20 with Mónica Pinto, the UN Special Rapporteur on the Independence of Judges and
21 Lawyers, to assess recent developments and identify challenges faced in the
22 eradication of torture and other cruel, inhuman or degrading treatment, while
23 promoting accountability and fulfilling victims' right to reparations. During my
24 visit, I met with representatives of the Ministry of Foreign Affairs; the Ministry of
25 Defense; the Ministry of Law and Order; the Ministry of Prison Reforms,
26 Rehabilitation, Resettlement and Hindu Religious Affairs; the Ministry of Women
27 and Child Affairs; the Ministry of Health; the Office of the Attorney General; the
28

1 National Police Commission; the National Human Rights Commission; the United
2 Nations; the diplomatic community; international organizations; and civil society. I
3 also met the Governor of Eastern Province, and torture survivors and their families.
4 Following my visit to Sri Lanka, I submitted a report to both the government of Sri
5 Lanka and the Human Rights Council. My report was considered by the Human
6 Rights Council during its Thirty-Fourth session in March 2017.¹

7 5. Prior to my appointment as Special Rapporteur, I was a Special
8 Advisor to the Prosecutor, International Criminal Court on the prevention of the
9 crimes under that tribunal's jurisdiction from 2009 to 2011 and Co-Chair of the
10 Human Rights Institute of the International Bar Association in 2010 and 2011.
11 Until May 2009, I was the President of the International Center for Transitional
12 Justice (ICTJ). Concurrent with my duties at ICTJ, the Honorable Kofi Annan
13 named me as his Special Advisor on the Prevention of Genocide, a task I performed
14 from 2004 to 2007. As a member of the Inter-American Commission on Human
15 Rights of the Organization of American States between 2000 and 2003 and as its
16 President in 2002, I had occasion to participate in cases that have contributed to the
17 rich jurisprudence about transitional justice and accountability for mass atrocities
18 and serious violations of human rights. Most notably, I represented the
19 Commission in the landmark litigation that resulted in the decision of the Inter-
20 American Court of Human Rights in *Barrios Altos v. Peru* (2001), which
21 established that certain amnesty laws violate a State's obligations under human
22 rights treaties and required States to deny such laws any legal effect in the domestic
23 jurisdiction. In 2002, I chaired the only country visit of the Commission to
24

25 _____
26 ¹ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
27 punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman*
28 *or degrading treatment or punishment on his mission to Sri Lanka*, U.N. Doc.
A/HRC/34/54/Add.2 (Dec. 22, 2016) (by Juan Méndez).

1 Venezuela, which produced a report that recommended prosecution of serious
2 violations and safeguards for due process of law and fair trial guarantees.

3 6. In early 2017, I was elected Commissioner of the International
4 Commission of Jurists, Geneva, Switzerland. In February 2017, I was named a
5 member of the Selection Committee to appoint magistrates of the Special
6 Jurisdiction for Peace and members of the Truth Commission set up as part of the
7 Colombian Peace Accords.

8 7. I have taught International Law at U.S. and foreign law schools. Since
9 the Fall of 2009, I have been a Professor of Human Rights Law in Residence at
10 American University – Washington College of Law, where I teach International
11 Law and International Human Rights Law. I previously taught at Notre Dame Law
12 School (1999-2004), Georgetown University Law School (1990-93) and the Johns
13 Hopkins School of Advanced International Studies (1994) and teach regularly at
14 the Oxford University's Masters Program (MSt) in International Human Rights
15 Law in the United Kingdom, where I am a Visiting Fellow of Kellogg College. As
16 part of my academic work, I have researched and published extensively on the issue
17 of transitional justice and individual accountability and prevention of international
18 human rights violations and international crimes, such as grave breaches of
19 international humanitarian law and genocide.

20 II. INTRODUCTION

21 8. I have been asked by counsel to Plaintiff Ahimsa Wickrematunge to
22 present this Report, which examines the access to effective remedies for torture and
23 other gross human rights violations in Sri Lanka.

24 9. I do not have, nor have I had, any family, economic, working or any
25 other type of link to the plaintiffs, nor to Defendant, Nandasena Gotabaya
26 Rajapaksa.

1 10. My declaration, for which I am not receiving any remuneration, is
2 based on my personal experience and knowledge, as well as research and my
3 professional experience, especially as the UN Special Rapporteur on Torture and
4 Other Cruel, Inhuman and Degrading Treatment of Punishment. In addition, I have
5 researched and published extensively on the accountability for human rights
6 violations, including in post-conflict situations and relating to torture and
7 extrajudicial killing, and on transitional justice.

8 11. The materials consulted for the drafting of this report are listed in
9 Exhibit B.

10 12. In summary, my conclusions are as follows:

- 11 a. Political interference with the Sri Lankan judiciary and with
12 investigations into civil-war-era human rights violations,
13 including torture and extrajudicial killing, prevents adequate
14 investigations of such cases, thus, inhibiting the right to an
15 effective remedy of victims and their families. Tort remedies,
16 such as assault, battery and wrongful death, even if available
17 under Sri Lankan law are not adequate remedies for gross human
18 rights violations such as torture and extrajudicial killing.
- 19 b. The delays in both criminal and civil court processes in Sri
20 Lanka amount to an effective denial of justice, which prevents
21 victims of human rights abuses from seeking an effective remedy
22 in Sri Lanka.
- 23 c. The lack of an effective witness protection program in Sri Lanka
24 presents serious risks to victims and witnesses of human rights
25 violations, particularly in cases related to civil-war-era abuses
26 involving the government or the security sector of Sri Lanka.
27
28

III. REPORT

A. The Capacity of the Sri Lankan Justice System to Administer Justice in Cases of Serious Human Rights Violations

13. Though the independence and impartiality of the Sri Lankan Judiciary appear to be formally enshrined in the Constitution,² the justice system presents serious problems, which affect its capacity to administer justice, investigate and punish serious human rights violations, including extra-judicial killing and torture, and to protect the rights of victims of these violations. Thus, there are significant failures in protecting victims' rights to justice, truth and proper remedy, including, *inter alia*, reparations. In particular, a lack of independence among the judiciary and investigative mechanisms prevents accountability in human rights cases implicating state officials, and the Sri Lankan justice system suffers from serious delays, amounting to a de facto denial of justice.

1. Lack of Independence of the Sri Lankan Judiciary

14. In a 2019 report to the UN, the International Commission of Jurists noted that "the Sri Lankan justice system has for decades systematically failed to respond independently, impartially and effectively to violations of international human rights and humanitarian law perpetrated by security forces."³ This finding is also reflected in various indices regarding rule of law, corruption, and judicial independence in which the Sri Lankan judiciary scores poorly. While World Bank

² Declaration of J. A. N. De Silva in Support of Defendant's Motion to Dismiss, ¶¶ 3.36-3.41, ECF 42-1 [hereinafter "De Silva Decl."].

³ Int'l Comm'n of Jurists, *Sri Lanka: A Decade of Inaction and Impunity*, U.N. Doc. A/HRC/40/NGO/50 at 2 (Feb. 7, 2019).

1 reports suggested that judicial independence had begun to improve with the
2 election of President Sirisena in 2015, it sharply declined again in 2017.⁴

3 15. The lack of independence has two main structural causes. First, as
4 Special Rapporteur Mónica Pinto observed, though the preamble of the
5 Constitution assures the independence of the judiciary, it does not contain
6 provisions expressly guaranteeing the separation of powers or judicial
7 independence.⁵ Moreover, the Special Rapporteur noted that, during our joint
8 mission, a number of individuals had expressed concern to her regarding the
9 procedure for the selection and appointment of judges, particularly because it
10 lacked transparency and because of “the important role played by the President” of
11 Sri Lanka.⁶ As a result, judicial appointments are open to significant political
12 manipulation and interference. In addition, although a Constitutional Council was
13 established to mitigate the President’s influence over the procedure, the UN Special
14 Rapporteur on the Independence of Judges and Lawyers noted with concern that the
15 majority of this Council’s members are politicians.⁷

17 ⁴ WORLD BANK, JUDICIAL INDEPENDENCE (WEF) (2017)
18 [https://govdata360.worldbank.org/indicators/h5ebaeb47?country=USA&indicator=6](https://govdata360.worldbank.org/indicators/h5ebaeb47?country=USA&indicator=670&countries=LKA&viz=line_chart&years=2007,2017&indicators=367&compareBy=region)
19 [70&countries=LKA&viz=line_chart&years=2007,2017&indicators=367&compare](https://govdata360.worldbank.org/indicators/h5ebaeb47?country=USA&indicator=670&countries=LKA&viz=line_chart&years=2007,2017&indicators=367&compareBy=region)
20 [By=region](https://govdata360.worldbank.org/indicators/h5ebaeb47?country=USA&indicator=670&countries=LKA&viz=line_chart&years=2007,2017&indicators=367&compareBy=region).

21 ⁵ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
22 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
23 *Sri Lanka*, ¶¶ 8, 31, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica
24 Pinto); *contra* De Silva Decl. ¶¶ 3.38-3.41.

25 ⁶ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
26 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
27 *Sri Lanka*, ¶ 35, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).

28 ⁷ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to
Sri Lanka, ¶ 35, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).

16. The procedure for the removal of judges suffers from similar shortcomings. While judges may be removed from office by the President after an impeachment procedure before Parliament, this procedure is not regulated by any ordinary law and, as a result, has been characterized “by a lack of transparency, by a lack of clarity in the proceedings and by a lack of respect for fundamental guarantees of due process and a fair trial, all of which undermine its legitimacy.”⁸ The problematic nature of this process was evident in the impeachment proceedings against Chief Justice Shirani Bandaranayake in 2013, who was removed from office after presiding over two decisions contrary to the Sri Lankan government’s interests.⁹ Moreover, the UN Special Rapporteur on the Independence of Judges and Lawyers found that procedures of the Judicial Service Commission, responsible for the disciplinary control of “judicial officers”¹⁰ were lacking in sufficient guarantees against arbitrary disciplinary measures and promotion

⁸ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to Sri Lanka*, ¶ 48, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto); *contra* De Silva Decl. ¶ 3.36–3.41.

⁹ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to Sri Lanka*, ¶ 48, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto); Press release, U.N. Off. of the High Comm’r for Hum. Rts. (“OHCHR”), Sri Lanka: UN Expert concerned about reprisals against judges urges reconsideration of Chief Justice’s impeachment (Nov. 14, 2012), available at <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12790>; INT’L BAR ASSOC’N HUM. RTS. INST., A CRISIS OF LEGITIMACY: THE IMPEACHMENT OF CHIEF JUSTICE BANDARANAYAKE AND THE EROSION OF THE RULE OF LAW IN SRI LANKA 6–7 (2013); Int’l Comm’n of Jurists, *Sri Lanka: Judges Around the World Condemn Impeachment of Chief Justice Dr. Shirani Bandaranayake* (Jan. 23, 2013), <https://www.icj.org/sri-lanka-judges-around-the-world-condemn-impeachment-of-chief-justice-dr-shirani-bandaranayake/>.

¹⁰ De Silva Decl. ¶ 3.41.

1 decisions. She found that the decisions of the Judicial Service Commission
 2 reportedly have “been used to exercise undue control and to retaliate against judges
 3 refusing to align themselves with the government.”¹¹

4 17. Although former Superior Court Judges may not practice as lawyers
 5 without the written approval of the President,¹² judges are often offered government
 6 or other political offices after retirement.¹³ This gives cause for concern about
 7 possible conflicts of interest and impinges on the independence and impartiality of
 8 judges.¹⁴ Indeed, during our 2016 joint mission to Sri Lanka, the UN Special
 9 Rapporteur on the Independence of Judges and Lawyers received credible reports
 10 of strong pressure being exerted by the executive on judges to influence their
 11 decisions or prevent them from acting independently and impartially.¹⁵

12 **2. Lack of Independence of the Investigative Mechanisms in Sri Lanka**

13 18. In addition, investigations into enforced disappearances and
 14 extrajudicial killings in Sri Lanka have suffered from a lack of independence and
 15 impartiality, such that they cannot guarantee accountability and provide victims
 16

17 ¹¹ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 18 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 19 *Sri Lanka*, ¶¶ 40, 49, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica
 Pinto).

20 ¹² See De Silva Decl. ¶ 3.40.

21 ¹³ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 22 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 23 *Sri Lanka*, ¶ 33, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).

24 ¹⁴ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 25 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 26 *Sri Lanka*, ¶ 33, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).

27 ¹⁵ See Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 28 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
Sri Lanka, ¶ 32, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).

1 with effective remedy. In particular, such investigations have been plagued by
 2 political interference.¹⁶ For example, in some cases the Ministry of Defence has
 3 issued public statements assigning responsibility away from security forces, so as to
 4 effectively preclude impartial criminal investigations.¹⁷ In November 2018, the
 5 officer in charge of a number of investigations into civil-war-era enforced
 6 disappearances, including the death of Lasantha Wickramatunge and the
 7 disappearance of Keith Noyahr, another Sri Lankan journalist, was transferred
 8 away from his investigations.¹⁸ As a result of an outcry from victims and other
 9 stakeholders, he was reinstated a few days later.¹⁹ The UN Office of the High
 10 Commissioner for Human Rights (“OHCHR”) Investigation on Sri Lanka has
 11 found that such political interference and obstruction with investigations is
 12 particularly prevalent when suspects belong to the security forces.²⁰ As a result, in
 13 2019, OHCHR concluded that:

14 Concerns . . . remain regarding the State’s capacity and willingness
 15 to prosecute and punish perpetrators of serious crimes when they are
 16 linked to security forces or other positions of power. The advances
 17 that were made – in the form of arrests or new investigations – were

18 ¹⁶ OHCHR, *Comprehensive Rep. of the Office of the United Nations High*
 19 *Commissioner for Human Rights on Sri Lanka*, ¶ 82, U.N. Doc. A/HRC/30/61 (Sept.
 20 28, 2015); OHCHR, *Promoting Reconciliation, Accountability and Human Rights in*
 21 *Sri Lanka*, ¶¶ 47-49, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019).

22 ¹⁷ OHCHR, *Rep. of the OHCHR Investigation on Sri Lanka (OISL)*, ¶¶ 234-38 U.N.
 Doc. A/HRC/30/CRP.2 (Sept. 16, 2015).

23 ¹⁸ OHCHR, *Promoting Reconciliation, Accountability and Human Rights in Sri*
 24 *Lanka*, ¶¶ 47-49, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019).

25 ¹⁹ OHCHR, *Promoting Reconciliation, Accountability and Human Rights in Sri*
 Lanka, ¶¶ 47-49, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019).

26 ²⁰ OHCHR, *Rep. of the OHCHR Investigation on Sri Lanka (OISL)*, ¶ 1233 U.N.
 27 Doc. A/HRC/30/CRP.2 (Sept. 16, 2015).

possible thanks to the persistence and commitment of individual investigators despite political interference, patronage networks and a generally dysfunctional criminal justice system. The advances made were, however, often stymied or reversed by political interventions[.]²¹

3. Tort Claims Do Not Provide Adequate Remedy for Gross Human Rights Violations

19. Defendant's Expert, Mr. De Silva asserts that "Plaintiff could bring a suit for wrongful death, assault and battery" in Sri Lanka to obtain a remedy for the torture and extrajudicial killing of her father.²² However, as recognized by the OHCHR, such regular tort remedies "fail to recognize the gravity of the crimes committed, their international character, or to duly acknowledge the harm caused to the victims."²³ As a result, compensation resulting from an action in tort does not, as a matter of international law, provide an adequate remedy for human rights violations.

B. Delays in the Sri Lankan Justice System

1. Delays in Investigations and Criminal Cases

20. Delays in cases implicating security forces and cases related to gross violations of human rights persist from the initiation of the investigation through

²¹ OHCHR, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*, ¶ 49, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019).

²² De Silva Decl. ¶ 4.4. *See also* Defendant's Motion to Dismiss the First Amended Complaint, ECF 42 at 9-11.

²³ OHCHR, *Comprehensive Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka*, ¶ 78, U.N. Doc. A/HRC/30/61 (Sept. 28, 2015).

1 proceedings in the Sri Lankan courts. During my mission to Sri Lanka in 2016, I
 2 was “alarmed that investigations into allegations of torture and ill-treatment are not
 3 investigated” and I discerned a worrying lack of will within the Office of the
 4 Attorney General and the judiciary to investigate and prosecute such allegations.²⁴
 5 As Mónica Pinto, the Special Rapporteur on the Independence of Judges and
 6 Lawyers, found during our joint mission to Sri Lanka in 2016, “[a]ccording to
 7 credible sources, certain cases, in particular those implicating security forces,
 8 especially members of the military, and cases related to gross human rights
 9 violations and corruption become stalled or are simply not investigated.”²⁵

10 21. More recent reports show that there has been little progress since 2016.
 11 As recently as February 2019, the OHCHR, in its annual report on Sri Lanka’s
 12 progress in promoting reconciliation, accountability and human rights following the
 13 civil war, expressed concerns about “the State’s capacity and willingness to
 14 prosecute and punish perpetrators of serious crimes when they are linked to security
 15 forces or other positions of power.”²⁶ The report noted that when advances, such as
 16 arrests or new investigations, occurred, they were possible “thanks to the persistence
 17 and commitment of individual investigators despite political interference, patronage
 18 networks and a generally dysfunctional criminal justice system.”²⁷ To date, many
 19

20 ²⁴ Special Rapporteur on Torture and other inhuman or degrading treatment or
 21 punishment, *Report of the Special Rapporteur on Torture and other inhuman or*
 22 *degrading treatment or punishment on his mission to Sri Lanka*, UN Doc.
 A/HRC/34/54/Add.2 ¶ 94 (Dec. 22, 2016) (by Juan Méndez).

23 ²⁵ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 24 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 25 *Sri Lanka*, ¶ 56, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).

26 ²⁶ OHCHR *Promoting Reconciliation, Accountability and Human Rights in Sri*
 26 *Lanka*, ¶ 49, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019).

27 ²⁷ OHCHR, *Promoting Reconciliation, Accountability and Human Rights in Sri*
 28

1 emblematic cases of extrajudicial killing in Sri Lanka, of which the United Nations
2 has taken note, have not yet been investigated or prosecuted.²⁸

3 22. Even if investigations are initiated, investigations and prosecutions of
4 security forces for human rights abuses are often delayed and stalled.²⁹ Open
5 investigations into civil-war-era disappearances and extrajudicial killings have
6 languished for over ten-years with little to no progress.³⁰ As the OHCHR noted in
7 2017, while “[i]n some cases, lack of progress might be attributed to the complex

8
9 _____
10 *Lanka*, ¶ 49, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019).

11 ²⁸ See, e.g., OHCHR, *Rep. of the OHCHR Investigation on Sri Lanka (OISL)*, ¶ 240
12 U.N. Doc. A/HRC/30/CRP.2 (Sept. 16, 2015) (noting that no investigation had been
13 undertaken into the death of six civilians on April 1, 2007); OHCHR, *Rep. of the*
14 *Office of the U.N. High Comm’r for Human Rights on Sri Lanka*, ¶ 33, U.N. Doc.
15 A/HRC/34/20 (Feb. 10, 2017) (noting that no prosecution or disciplinary action had
16 been taken against the perpetrators of a deadly attack on a group of protestors by
17 army personnel at Weliwerya in August 2013).

18 ²⁹ See Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
19 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
20 *Sri Lanka*, ¶ 54, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).
21 (noting that “[t]he low quality, lack of seriousness and slow pace of many
22 investigations were seen as being very problematic and as leading to serious
23 violations of due process principles.”).

24 ³⁰ See, e.g., OHCHR, *Rep. of the Office of the U.N. High Comm’r for Human Rights*
25 *on Sri Lanka*, ¶ 34, U.N. Doc. A/HRC/34/20 (Feb. 10, 2017) (regarding the stalling
26 in the investigations into the killing of five students in Trincomalee in January 2006,
27 and of 17 humanitarian workers of the non-governmental organization “ACF”
28 (Action Contre la Faim) in Muttur in August 2006); OHCHR, *Rep. of the OHCHR*
Investigation on Sri Lanka (OISL), ¶ 239 U.N. Doc. A/HRC/30/CRP.2 (Sept. 16,
2015) (regarding the delays in the investigation of the death of a National Research
Council staff member shot in May 2006); U OHCHR, *Promoting Reconciliation,*
Accountability and Human Rights in Sri Lanka, ¶ 44, U.N. Doc. A/HRC/40/23 (Feb.
8, 2019) (noting that the investigation into the January 2010 disappearance of
journalist Prageeth Eknaligoda has been delayed due to a lack of cooperation by the
army).

1 and cumbersome nature of investigations . . . the general and consistent absence of
 2 progress conveys the impression of a lack of will to effectively investigate,
 3 prosecute and punish serious crimes.”³¹ In many cases involving members of the
 4 security forces accused of human rights abuses and violations, such as torture and
 5 extrajudicial killing, the Attorney General’s office delays issuing indictments for
 6 many years or fails to issue them all together, even once it has received investigation
 7 materials.³² With respect to sensitive cases, in particular those implicating security
 8 forces and cases related to human rights violations and corruption, the Attorney
 9 General’s office has been slow to act.³³

10 23. If prosecutions are instituted, trials are excessively lengthy, sometimes
 11 lasting for decades, and there is a lack of accountability for long judicial delays.³⁴
 12 These delays have been described as “nothing short of dramatic.”³⁵ Even in criminal
 13 cases that are not politically sensitive, proceedings can drag on for 10 to 15 years.³⁶
 14 Indeed in 2017, the Sri Lankan Sectoral Oversight Commission on Legal Affairs

15 ³¹ OHCHR, *Rep. of the Office of the U.N. High Comm’r for Human Rights on Sri*
 16 *Lanka*, ¶ 41, U.N. Doc. A/HRC/34/20 (Feb. 10, 2017).

17 ³² Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 18 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 19 *Sri Lanka*, ¶ 55, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).

20 ³³ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 21 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 22 *Sri Lanka*, ¶ 56, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).

23 ³⁴ Human Rights Council, *Rep. of the Working Group on Arbitrary Detention on Its*
 24 *Visit to Sri Lanka*, ¶ 24, U.N. Doc. A/HRC/39/45/Add.2 (2018).

25 ³⁵ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 26 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 27 *Sri Lanka*, ¶ 72, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).

28 ³⁶ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to
Sri Lanka, ¶ 72, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).

1 found that cases take on average 17 years to come to a conclusion in the Sri Lankan
 2 legal system, recognizing that this amounts to a “serious and shameful delay.”³⁷
 3 There are also examples of civil cases that have been pending for more than 30
 4 years.³⁸

5 24. During my mission to Sri Lanka, I found that the failure to prosecute
 6 the vast number of documented cases of torture and other CIDT and the resulting
 7 impunity, clearly indicated a lack of will on the part of the judiciary.³⁹ Further, I
 8 found that impunity is “directly attributable to the entire criminal justice system, and
 9 particularly to the judiciary.”⁴⁰ In 2018, the UN Working Group on Arbitrary
 10 Detentions made a similar finding:

11 Such delays are reportedly caused by a number of factors, including
 12 the lack of sufficient investigative capacity of the police;
 13 insufficient resources in the Office of the Attorney General and the
 14 courts, both in infrastructure and personnel, to deal diligently with
 15

16 ³⁷ SECTORAL OVERSIGHT COMM. ON LEGAL AFFAIRS (ANTI-CORRUPTION) & MEDIA,
 17 RECOMMENDATIONS PERTAINING TO THE EXPEDITIOUS AND EFFICIENT
 18 ADMINISTRATION OF CRIMINAL JUSTICE 3-4 (2017), available at
 19 <https://www.parliament.lk/uploads/comreports/1510738363068517.pdf> (reporting
 20 that cases take on average 17 years, a “serious and shameful delay”).

21 ³⁸ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 22 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 23 *Sri Lanka*, ¶ 72, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).

24 ³⁹ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment
 25 or Punishment, *Rep. of the Special Rapporteur on Torture and Other Cruel,*
 26 *Inhuman or Degrading Treatment or Punishment on His Mission to Sri Lanka*, ¶ 95,
 27 U.N. Doc. A/HRC/34/54/Add.2 (Dec. 22, 2016) (by Juan E. Méndez).

28 ⁴⁰ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment
 or Punishment, *Rep. of the Special Rapporteur on Torture and Other Cruel,*
Inhuman or Degrading Treatment or Punishment on His Mission to Sri Lanka, ¶ 95,
 U.N. Doc. A/HRC/34/54/Add.2 (Dec. 22, 2016) (by Juan E. Méndez).

1 pending cases; poor case management policies that do not prioritize
 2 consecutive court hearings; legal practices allowing for repeated
 3 postponement of hearings that take little account of the urgency to
 4 end remand; and lack of accountability for long judicial delays.⁴¹

5 This finding has been echoed by the United States Department of State.⁴²

6 25. The lack of progress of the investigation and prosecution of the attack
 7 on and subsequent death of Lasantha Wickrematunge is consistent with the delays
 8 evident in the Sri Lankan criminal justice and judicial system as a whole. As the
 9 UN OHCHR has found, despite the international attention to this case, his death in
 10 2009 remains under investigation ten years later.⁴³ All the suspects remanded in the
 11 case have since been freed on bail.⁴⁴ Moreover, the investigation has been mired by
 12 procedural irregularities causing significant delays, including attempts by members
 13 of the police services to destroy evidence and multiple post mortem reports, with
 14 contradictory findings.⁴⁵

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 17 ⁴¹ Human Rights Council, *Rep. of the Working Group on Arbitrary Detention on Its*
 18 *Visit to Sri Lanka*, ¶ 24, U.N. Doc. A/HRC/39/45/Add.2 (2018); *see also* OHCHR,
 19 *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*, ¶ 50,
 20 U.N. Doc. A/HRC/40/23 (Feb. 8, 2019) (“The regular criminal justice system in Sri
 Lanka continues to suffer from serious structural weaknesses, which are reflected in
 lengthy delays in investigations and in judicial processes in general[.]”).

21 ⁴² U.S. DEP’T OF STATE, SRI LANKA 2018 HUMAN RIGHTS REPORT 8 (2018),
 22 available at <https://www.state.gov/documents/organization/289502.pdf> (“lengthy
 legal procedures, judicial inefficiency, and corruption often caused trial delays.”).

23 ⁴³ OHCHR, *Promoting Reconciliation, Accountability and Human Rights in Sri*
 24 *Lanka*, ¶ 45, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019).

25 ⁴⁴ OHCHR, *Promoting Reconciliation, Accountability and Human Rights in Sri*
 Lanka, ¶ 45, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019).

26 ⁴⁵ OHCHR, *Promoting Reconciliation, Accountability and Human Rights in Sri*
 27 *Lanka*, ¶ 37, U.N. Doc. A/HRC/37/23 (Jan. 25, 2018).

1 26. Such significant delays and irregularities in the investigation of this
 2 case amount to a *de facto* denial of justice, which especially negatively effects
 3 victims of human rights abuses, including victims of torture and extrajudicial
 4 killing, their families, and persons deprived of liberty.⁴⁶

5 **2. Delays in Fundamental Rights Petitions Before the Supreme Court**

6 27. As Defendant's expert notes, Sri Lanka's Supreme Court has
 7 jurisdiction over claims seeking remedy for the infringement of any of the
 8 fundamental rights enshrined in the Constitution.⁴⁷ When the Supreme Court finds
 9 such a violation has occurred, the Court can order compensation and make
 10 recommendations. However, during our joint mission in 2016, Mónica Pinto, the
 11 U.N. Special Rapporteur on the Independence of Judges and Lawyers, learnt from
 12 the Sri Lankan Chief Justice that there was a backlog of approximately 3000
 13 fundamental rights petitions.⁴⁸ While this figure appears to have decreased, it is
 14 still significant and results in unacceptable delays. Barriers to justice using the
 15 fundamental rights mechanism include this backlog and its resulting delays, as well
 16 as fears of reprisal for filing these petitions, and the fact that fundamental rights
 17 petitions have a one-month statute of limitations.⁴⁹ These barriers render the
 18 fundamental rights petition an insufficient mechanism for providing victims with an
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20 ⁴⁶ See also Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of*
 21 *the Special Rapporteur on the Independence of Judges and Lawyers on Her Mission*
 22 *to Sri Lanka*, ¶ 72, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica
 Pinto).

23 ⁴⁷ De Silva Decl. ¶ 3.69.

24 ⁴⁸ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 25 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 Sri Lanka, ¶ 82, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).

26 ⁴⁹ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 27 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 Sri Lanka, ¶ 82, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto).

1 effective remedy. Barriers to the Fundamental Rights Petition mechanism
 2 contribute to the generalized lack of accountability for human rights violations.

3 **C. Witness Protection in Sri Lanka**

4 28. Effective accountability and remedy for human rights abuses
 5 requires an environment conducive to open testimony from victims and
 6 witnesses, free from the threat of retaliation and abuse. Instrumental to
 7 creating such an environment is an effective witness protection program. The
 8 lack of such a program was among the concerns raised by the OHCHR in
 9 2015 and one of the reasons it recommended that a hybrid mechanism be
 10 established to provide accountability for civil-war-era violations of human
 11 rights.⁵⁰

12 29. In 2015, Sri Lanka adopted the Assistance to and Protection of
 13 Victims of Crime and Witnesses Act (No. 4 of 2015) (the “Act”). Although a
 14 welcome and necessary advance toward victim and witness protection and
 15 ending impunity in Sri Lanka, the United Nations has frequently raised
 16 concerns that the protections are insufficient and ineffective, falling short of
 17 international standards.⁵¹ In a report published in 2016, the OHCHR pressed
 18 the Government of Sri Lanka to review and amend the Act to ensure “better
 19 safeguards for the independence and effectiveness of the victim and witness
 20 protection program.”⁵² There are three main concerns with Sri Lanka’s

22 ⁵⁰ OHCHR, *Comprehensive Rep. of the Office of the U.N. High Commissioner for*
 23 *Human Rights on Sri Lanka*, ¶¶ 76, 88, U.N. Doc. A/HRC/30/61 (Sept. 28, 2015).

24 ⁵¹ See, e.g., OHCHR, *Oral Update of the High Commissioner for Human Rights on*
 25 *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*, ¶¶ 24-25,
 26 U.N. Doc. A/HRC/27/CRP.2 (Sept. 22, 2014); OHCHR, *Promoting Reconciliation,*
Accountability and Human Rights in Sri Lanka, ¶ 23, U.N. Doc. A/HRC/37/23 (Jan.

27 ⁵² OHCHR, *Promoting Reconciliation, Accountability and Human Rights in Sri*

1 witness protection program as it stands. First, the Act does not clearly provide
 2 criteria to determine whether a victim or witness should be given protection.⁵³
 3 Second, the recommendations of the National Authority for victim or witness
 4 protection, the body which recommends who ought to be protected and how,
 5 are not binding on the agency to whom they are directed: “[t]hus, a person or
 6 agency receiving a protection-related recommendation is not obliged to
 7 implement it, only to take note.”⁵⁴

8 30. Finally, the two bodies established by the Act, the National
 9 Authority for the Protection of Victims of Crime and Witnesses (the National
 10 Authority) and the Witness Protection Division, suffer from a lack of
 11 independence compromising the effectiveness of the witness protection
 12 program.⁵⁵ The National Authority is the body established under the Act to
 13 identify and protect the rights of victims and witnesses of crime, including by
 14 issuing guidelines and supervising their implementation and investigating and
 15 monitoring the infringement of victim and witness rights.⁵⁶ On reviewing the
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17 *Lanka*, ¶ 21, U.N. Doc. A/HRC/32/CRP.4 (June 28, 2016)

18 ⁵³ OHCHR, *Rep. of the OHCHR Investigation on Sri Lanka (OISL)*, ¶ 1186-87, U.N.
 19 Doc. A/HRC/30/CRP.2 (Sept. 16, 2015).

20 ⁵⁴ OHCHR, *Rep of the OHCHR Investigation on Sri Lanka (OISL)*, ¶ 1187, U.N.
 21 Doc. A/HRC/30/CRP.2 (Sept. 16, 2015).

22 ⁵⁵ See OHCHR, *Rep. of the OHCHR Investigation on Sri Lanka (OISL)*, ¶ 1187-88,
 23 U.N. Doc. A/HRC/30/CRP.2 (Sept. 16, 2015); OHCHR, *Rep. of the Office of the*
 24 *United Nations High Commissioner for Human Rights on Sri Lanka*, ¶ 44, U.N.
 25 Doc. A/HRC/34/20 (Feb. 10, 2017); Special Rapporteur on the Independence of
 26 Judges and Lawyers, *Rep. of the Special Rapporteur on the Independence of Judges*
 27 *and Lawyers on Her Mission to Sri Lanka*, ¶ 85, U.N. Doc. A/HRC/35/31/Add.1
 28 (Mar. 23, 2017) (by Mónica Pinto).

⁵⁶ See *National Authority for the Protection of Victims of Crimes and Witnesses*, SRI
 LANKA MINISTRY OF JUSTICE & PRISON REFORMS,

1 draft Act, the OHCHR expressed concern that some appointments to the
 2 National Authority were to be made at the sole discretion of the President,
 3 and emphasized the importance of ensuring “the independence and integrity
 4 of those appointed[.]”⁵⁷ However, when the appointments were made, it was
 5 clear that these strictures were not followed. Civil society raised concerns
 6 regarding at least four of the members of the National Authority because of
 7 the positions they had held during the civil war and the well documented
 8 allegations of human rights abuses against them.⁵⁸ Similarly, the Witness
 9 Protection Division, established by the Act to draw-up and implement the
 10 witness protection program in accordance with the guidelines provided by the
 11 National Authority, lacks independence and impartiality.⁵⁹ In other words, the
 12 Act’s operating body is established within the institutional hierarchy of the Sri
 13 Lankan police force.⁶⁰ This is the case despite the fact that the security forces,
 14 including the police, are likely to be among those investigated for human

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 [https://www.moj.gov.lk/web/index.php?option=com_content&view=article&id=65](https://www.moj.gov.lk/web/index.php?option=com_content&view=article&id=65&Itemid=218&lang=en)
 16 [&Itemid=218&lang=en](https://www.moj.gov.lk/web/index.php?option=com_content&view=article&id=65&Itemid=218&lang=en) (last visited Aug. 5, 2019)).

17 ⁵⁷ OHCHR, *Rep. of the OHCHR Investigation on Sri Lanka (OISL)*, ¶¶ 247, 1187,
 18 U.N. Doc. A/HRC/30/CRP.2 (Sept. 16, 2015).

19 ⁵⁸ See INTERNATIONAL TRANSITIONAL JUSTICE PROGRAM, PUTTING THE WOLF TO
 20 GUARD THE SHEEP: SRI LANKA’S WITNESS PROTECTION AUTHORITY (2017),
 21 available at <http://www.itjpsl.com/assets/Sri-Lanka-Witness-Protection-Report.pdf>;
 22 AMNESTY INT’L, FLICKERING HOPE TRUTH, JUSTICE, REPARATION AND GUARANTEES
 23 OF NON-RECURRENCE IN SRI LANKA 22 (2019), available at
 24 <https://www.amnestyusa.org/wp-content/uploads/2019/01/Flickering-Hope.pdf>.

25 ⁵⁹ OHCHR, *Rep. of the Office of the United Nations High Commissioner for Human*
 26 *Rights on Sri Lanka (OISL)*, ¶ 44, U.N. Doc. A/HRC/34/20 (Feb. 10, 2017).

27 ⁶⁰ See Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 28 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
Sri Lanka, ¶ 85, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto);
 see also OHCHR, *Rep. of the OHCHR Investigation on Sri Lanka (OISL)*, ¶ 1187-
 88, U.N. Doc. A/HRC/30/CRP.2 (Sept. 16, 2015).

1 rights related-crimes, such as torture and extrajudicial killing, and have been
 2 identified as responsible for the harassment and intimidation of witnesses and
 3 victims.⁶¹ Thus, the Witness Protection Division lacks sufficient autonomy
 4 and independence to effectively protect witnesses and victims of human rights
 5 violations.⁶²

6 31. The lack of an effective, independent, and impartial witness
 7 protection system is particularly concerning and likely to prevent adequate
 8 remedy for human rights abuses, such as torture and extrajudicial killing,
 9 given my findings during my 2016 mission to Sri Lanka. These findings,
 10 which highlight the need for a strong and effective witness protection system,
 11 include reports by victims of human rights abuses, including torture, of
 12 threatened retaliation for reporting their abuse and filing complaints,⁶³ and the
 13 continued use of surveillance, intimidation and, reportedly, ‘white van
 14 abductions’ by the military, intelligence and police forces against suspected
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18 ⁶¹ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 19 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 20 *Sri Lanka*, ¶ 85, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto);
 21 *see also* OHCHR, *Rep. of the OHCHR Investigation on Sri Lanka (OISL)*, ¶ 1187-
 22 88, U.N. Doc. A/HRC/30/CRP.2 (Sept. 16, 2015).

23 ⁶² Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 24 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 25 *Sri Lanka*, ¶ 85, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto);
 26 *see also* OHCHR, *Rep. of the OHCHR Investigation on Sri Lanka (OISL)*, ¶ 1187-
 27 88, U.N. Doc. A/HRC/30/CRP.2 (Sept. 16, 2015).

28 ⁶³ Special Rapporteur on Torture and other inhuman or degrading treatment or
 punishment, *Report of the Special Rapporteur on Torture and other inhuman or*
degrading treatment or punishment on his mission to Sri Lanka, UN Doc.
 A/HRC/34/54/Add.2 ¶ 90 (Dec. 22, 2016) (by Juan Méndez).

1 former militants as well as against local community leaders and human rights
2 activists, even after almost a decade since the war ended.⁶⁴

3 **IV. CONCLUSION**


4 32. As a result of the limitations identified herein, including (a) the
5 lack of an adequate witness protection program, (b) delays in court
6 proceedings amounting to a de facto denial of justice, (c) the lack of
7 independence and impartiality in the Sri Lankan judiciary and investigative
8 mechanisms, and (d) the inadequacy of tort remedies for gross human rights
9 violations, including torture and extrajudicial killings, it is my expert opinion
10 that Sri Lankan courts cannot, as yet, provide an adequate remedy for victims
11 of human rights violations, including torture and extrajudicial killing.

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⁶⁴ Special Rapporteur on Torture and other inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on Torture and other inhuman or degrading treatment or punishment on his mission to Sri Lanka*, UN Doc. A/HRC/34/54/Add.2 ¶¶ 23, 42 (Dec. 22, 2016) (by Juan Méndez).

1 I hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, and
2 under the laws of the United States, that the following is true and correct.
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4 Executed on August 26, 2019 in Washington, D.C.
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Juan E. Méndez

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 26, 2019, I electronically filed the foregoing **DECLARATION OF JUAN E. MÉNDEZ IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** with the Clerk by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Catherine Amirfar

Catherine Amirfar

**Exhibit A: Curriculum Vitae and List of
Publications**

Exhibit A: Curriculum Vitae and List of Publications

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Summary

Juan E. Méndez is Professor of Human Rights Law in Residence at the Washington College of Law, The American University and the author – with Marjory Wentworth – of *Taking a Stand: The Evolution of Human Rights* (New York and London: Palgrave MacMillan, 2011). Beginning Nov. 1, 2010 and until October 31, 2016, he served as the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the summer of 2009 he was a Scholar-in-Residence at the Ford Foundation in New York. Between 2004 and 2009 he was President of the International Center for Transitional Justice. Starting in August 2004 and until March 31, 2007, he was also concurrently the Special Advisor to the Secretary General of the UN on the Prevention of Genocide. In 2010 and 2011 he was Co-Chair of the Human Rights Institute of the International Bar Association. A native of Lomas de Zamora, Argentina, Mr. Méndez has dedicated his legal career to the defense of human rights and has a long and distinguished record of advocacy throughout the Americas. As a result of his involvement in representing political prisoners, the Argentinean military dictatorship arrested him and subjected him to torture and administrative detention for a year and a half. During this time, Amnesty International adopted him as a "Prisoner of Conscience." After being expelled from his country in 1977, Mr. Mendez settled in the United States with his family.

For 15 years, he worked with Human Rights Watch, concentrating his efforts on human rights issues in the western hemisphere, and helping to build the organization into one of the most widely respected in the world. In 1994, he became General Counsel of Human Rights Watch, with worldwide duties in support of the organization's mission, including responsibility for the organization's litigation and standard-setting activities. From 1996 to 1999, Mr. Méndez was the Executive Director of the Inter-American Institute of Human Rights in Costa Rica. Between October 1999 and May 2004 he was Professor of Law and Director of the Center for Civil and Human Rights at the University of Notre Dame, Indiana. Between 2000 and 2003 he was a member of the Inter-American Commission on Human Rights of the Organization of American States, and served as President in 2002.

At the Washington College of Law he is Faculty Director of the Anti-Torture Initiative, a project of WCL's Center for Human Rights and Humanitarian Law. He has taught International Human Rights Law at Georgetown Law School and at the Johns Hopkins School of Advanced International Studies, and he teaches regularly at the Oxford Masters Program in International Human Rights Law in the United Kingdom and in the summer

Human Rights Academy at American University in Washington. He holds doctorates *honoris causa* from the University of Quebec in Montreal (UQAM, 2007), the National University of La Plata, Argentina (2012) and the National University of Mar del Plata, Argentina (2015). He is the recipient of several human rights awards, the most recent being the Eclipse Award by the Center for Victims of Torture (2016), the Adlai Stevenson Award of the United Nations Associations of the United States, Princeton-Trenton Chapter (December 2015), the Louis B Sohn Award by the United Nations Association of the National Capital Area (UNA-NCA) in December 2014 and the Letelier-Moffitt Human Rights Award by the Institute for Policy Studies, Washington DC, in October 2014. He has also received the Goler T. Butcher Medal from the American Society of International Law, in 2010; the inaugural “Monsignor Oscar A. Romero Award for Leadership in Service to Human Rights,” by the University of Dayton in April 2000, and the “Jeanne and Joseph Sullivan Award” of the Heartland Alliance, Chicago, in May 2003. Mr. Méndez is a member of the bar of Mar del Plata and Buenos Aires, Argentina and of the District of Columbia, U.S., having earned a J.D. from Stella Maris Catholic University in Argentina and a certificate from the American University, Washington College of Law.

Education

Law Degree: Stella Maris Catholic University, Mar del Plata, Argentina, 1970.

Political Science Studies: Provincial University, Mar del Plata, 1969-1971.

Certificate: The American University, Washington College of Law, Washington, D.C., 1978-1980.

Membership in Professional Organizations

Colegio de Abogados de la Provincia de Buenos Aires, 1970.

Corte Suprema de Justicia de la Nación, Buenos Aires, 1970.

District of Columbia Court of Appeals, 1981.

District of Columbia Bar Association, 1981.

Association of the Bar of the City of New York, International Human Rights Committee, 1994.

International Bar Association, London, 2010.

Amnesty International, 1977 (Member, Board of Directors, AI-USA, 1980-1984, 1989-1990).

Center for Justice and International Law, Washington, D.C. (Founder and Vice-Chair, 1991-1996, 2004 to 2010).

Asociación Gremial de Abogados (Mar del Plata chapter of an organization of human rights lawyers), (Founder and Vice-President, 1971-1974).

Centro de Estudios Legales y Sociales, Buenos Aires (Member, Advisory Council, 1995/2000).

Inter-American Institute on Human Rights, San Jose, Costa Rica (Member, Assembly, 1999 to present).

Helen Kellogg Institute for International Studies, University of Notre Dame (Fellow, 1999-2004).

Joan B. Kroc Institute for Peace Studies, University of Notre Dame (Fellow, 1999-2004).

Kellogg College, Oxford University, United Kingdom (Visiting Fellow, 2002 to present).

Inter-American Commission on Human Rights, Organization of American States (Commissioner, elected for a four-year term 2000-2003: Second Vice President in 2000, First Vice President in 2001, President in 2002).

Leuven Centre for Global Governance Studies (GGS) International Advisory Board, April 2009 to present.

Steering Committee to draft a Convention on Crimes Against Humanity, sponsored by Washington University in St Louis School of Law, 2008 to 2011.

Task force on Terrorism and Human Rights, International Bar Association, London, 2008-2010.

Co-Chair, Human Rights Institute of the International Bar Association, London, 2010-11.

Special Advisor on Crime Prevention to the Prosecutor, International Criminal Court, The Hague, September 2009 to June 2011.

Commissioner, International Commission of Jurists, Geneva, Switzerland, 2017 to present.

Work Experience

1970-1974: Private Practice, Mar del Plata, Argentina.

1973: Acting Dean, School of Economics, Provincial University, Mar del Plata, Argentina.

1974: Legal Counsel, Technological University, Buenos Aires.

1974-1975: Private Practice, Buenos Aires, Argentina.

Between 1970 and 1975, my law practice in Argentina was generally limited to labor law and defense of political prisoners. From August 1975 to February 1977, I was held in administrative detention under the state of siege.

1977-1978: Director, Centro Cristo Rey (Catholic Center for Hispanics), Aurora, Illinois.

1978-1981: Legal Assistant, Staff Attorney, and Acting Director, Alien Rights Law Project, Lawyers' Committee for Civil Rights Under Law, Washington, D.C.

1982-1988: Director, Washington Office of Americas Watch (Now Human Rights Watch)

1989-1994: Executive Director, Americas Watch.

1994-August 1996: General Counsel, Human Rights Watch, New York.

September 1996–October 1999: Executive Director, Inter-American Institute of Human Rights, San Jose, Costa Rica.

October 1999-May 2004: Professor of Law and Director, Center for Civil and Human Rights, University of Notre Dame, Notre Dame, Indiana.

June 2004-June 2009: President, International Center for Transitional Justice, New York.

July 2004-March 2007: Special Advisor to the Secretary General on the Prevention of Genocide, United Nations, New York.

Summer 2009, Scholar in Residence, Ford Foundation, New York.

August 2009-2014, Visiting Professor; 2014 to present, Professor of Human Rights Law in Residence, Washington College of Law, The American University, Washington, DC

November 2010 to October 31, 2016: United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Human Rights Council, Geneva, Switzerland.

Member, Selection Committee to appoint truth commissioners and magistrates of the *Jurisdicción Especial de Paz* created by the Colombian Peace Accords, 2017.

Teaching Experience

Professor of Human Rights Law in Residence, 2014 to present; Visiting Professor, Washington College of Law, The American University, Washington, DC, Fall 2009 to Spring 2014.

Lecturer, Summer Academy on Human Rights, Washington College of Law, The American University, Washington DC; 2008- present.

October 1999-May 2004: Professor of Law, University of Notre Dame Law School (International Human Rights Law and International Humanitarian Law).

July 1997, July 1998, July 2000, and July 2001: Oxford Summer Programme on International Human Rights Law, George Washington University and Oxford University, United Kingdom.

July 2003, July 2004, August 2006, July 2007, July 2008, July 2009, July 2010, July 2012, July 2013, July 2014, July 2016: Oxford University Masters of Law Programme on International Human Rights Law, Oxford Department of Continuing Education, Oxford, United Kingdom.

November-December 2012 and July 2015: Universidad Nacional de Lanus (Argentina), Masters Program on Human Rights;

December 1997: Universidad Internacional de Andalucia, sede La Rabida; Masters Program on Critical Legal Studies.

January-May 1996: Visiting Fellow, Kellogg Institute, and Lecturer, School of Law, University of Notre Dame, Indiana.

January-June 1995: Lecturer in International Relations and International Law, School of Advanced International Studies, Johns Hopkins University, Washington, D.C.

1992-1996: Adjunct Professor of Law, Georgetown University Law Center, Washington, D.C. (Seminar on International Human Rights Protection and Litigation).

1990-1998: Aspen Institute, Wye, Maryland, Seminars on International Law of Human Rights for Judges, directed by Professor Louis Henkin.

1996-1999: Lecturer and Director of three consecutive Annual Inter-Disciplinary Courses on Human Rights, Inter-American Institute on Human Rights, San Jose, Costa Rica.

1971-1974: Associate Professor, Political Science, School of Law, Stella Maris Catholic University, Mar del Plata, Argentina.

Publications

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Awards

Annual Eclipse Award, Center for Victims of Torture, Minneapolis and Washington, June 2016.

Jose Siderman Award, Southwestern Law School, Los Angeles, February 2016

Adlai Stevenson Human Rights Award, UN Association of the USA, Princeton-Trenton Chapter, December 2015.

Doctor Honoris Causa, Universidad Nacional de Mar del Plata, Argentina, 2015

Letelier-Moffitt Human Rights Award, Institute for Policy Studies, Washington, DC, October 2014

Louis B Sohn Human Rights Award, United Nations Association of the National Capital Area (UNA-NCA), Washington, DC, December 2014

Doctorate *Honoris Causa*, Universidad Nacional de La Plata, Argentina, 2013.

“Patrick Rice Human Rights Award, Torture Abolition Survivors’ Support Coalition (TASSC), Washington, DC, June 2013

Rafael Lemkin Award, Auschwitz Institute on Peace and Reconciliation and Government of Argentina, April 2010

Goler T. Butcher Medal, American Society of International Law, Washington DC, March 2010

Skoll Award for Social Entrepreneurship (jointly with Paul van Zyl), Oxford, UK, 2009

Doctorate *Honoris Causa*, Université de Québec a Montreal, 2007.

The Maryland Hispanic Bar Association, September 2003

Harry Blackmun Fellowship, Aspen Institute Seminar on Justice and Society, Aspen, Colorado, August 2003.

Jeanne and Joseph Sullivan Award for “outstanding Midwest, national, and international leadership on behalf of human rights,” Heartland Alliance, Chicago, May 2003.

Inaugural "Monsignor Oscar A. Romero Award for Leadership in Service to Human Rights," University of Dayton, Ohio, April 2000.

“Reverend William M. Lewers, C.S.C. International Award for Distinguished Services in Civil and Human Rights,” Notre Dame University Law School, 1998.

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“Juarez-Lincoln Award,” New York, September 7, 1985, Hispanic National Bar Association.

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1992 Peace Lecture, The Sidwell Friends School, Washington, “Human Rights: The Content of Peace.”

Honorary Membership, Equipo Argentino de Antropología Forense, Buenos Aires, Argentina, 1987.

Servicio de Paz y Justicia para América Latina (SERPAJ), Buenos Aires, Premio en Derechos Humanos, January 1992.

Personal

Born on December 11, 1944 in Lomas de Zamora, Argentina. Married with three children, five grandchildren. Twice imprisoned in Argentina for political and professional activities. Adopted by Amnesty International as a “Prisoner of Conscience” in 1976.

Exhibit B: Documents Considered

Exhibit B: Documents Considered

Case History

1. Declaration of J. A. N. De Silva in Support of Defendant's Motion to Dismiss.
2. Defendant's Motion to Dismiss the First Amended Complaint.

United Nations Office of the High Commissioner for Human Rights Documents

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2. U.N. Office of the High Comm'r for Human Rights, *Comprehensive Rep. of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka*, U.N. Doc. A/HRC/30/61 (Sept. 28, 2015).
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**Communication to the Human Rights Committee
Submitted Pursuant to the Optional Protocol to the
International Covenant on Civil and Political Rights**

AHIMSA WICKREMATUNGE

for herself and on behalf of

LASANTHA WICKREMATUNGE

Victims

— v. —

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA,

Respondent

EXHIBIT C

**Complaint for Damages and Demand for Jury Trial, *Wickrematunge v.
Rajapaksa*, No. 2:19-cv-02577 (C.D. Cal. 4 April 2019)**

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Attorneys for Plaintiff
 AHIMSA WICKREMATUNGE

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

AHIMSA WICKREMATUNGE, in her
 individual capacity and in her capacity as
 the legal representative of the Estate of
 LASANTHA WICKREMATUNGE;

Plaintiff

v.

Nandasena Gotabaya Rajapaksa,

Defendant.

Case No. CV19-2577-R(RAOx)

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

Plaintiff Ahimsa Wickrematunge, in her individual capacity, and in her capacity as
 the legal representative of the estate of Lasantha Wickrematunge, complains and
 alleges as follows:

1 Defendant's targeted attempts to silence him. Defendant ordered Lasantha's arrest
2
3 and filed a defamation suit against him. Intelligence services under the Defendant's
4
5 command began surveilling Lasantha's mobile telephone. Immediately before he was
6
7 due to testify against Defendant regarding an alleged corruption scandal, Lasantha
8
9 was brutally murdered in broad daylight by members of the Tripoli Platoon, a unit of
10
11 Sri Lanka's Directorate of Military Intelligence operating under Defendant's
12
13 command.

14 3 Following the assassination, Defendant and his allies obstructed
15
16 Plaintiff's efforts to seek justice in Sri Lanka by tampering with witnesses and
17
18 engaging in a pattern of coercion and intimidation.

19 4 The acts alleged herein were carried out in the context of a systematic
20
21 crackdown against journalists critical of the government. Lasantha's death was one
22
23 of many attacks against journalists perpetrated under the Rajapaksa regime. Security
24
25 forces under Defendant's command and control engaged in a widespread and/or
26
27 systematic campaign against journalists, marked by a pattern and practice of
28
violations including but not limited to extrajudicial killing; arbitrary detention;
torture; and cruel, inhuman and degrading treatment in an effort to stamp out criticism
of the Rajapaksa government.

1 5 On information and belief, Defendant is a citizen of the United States
2
3 and Sri Lanka and is a former resident of Los Angeles, California.

4 6 Plaintiff seeks compensatory and punitive damages and declaratory and
5
6 injunctive relief for torts in violation of international and domestic law.

7
8 **JURISDICTION AND VENUE**

9 7 This Court has jurisdiction over Plaintiff's claims of extrajudicial killing
10
11 under 28 U.S.C. § 1331, as this action arises under the Torture Victim Protection Act,
12 Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350, note).

13 8 This Court has jurisdiction over Plaintiff's claims for extrajudicial killing
14
15 and crimes against humanity as torts in violation of the law of nations under the Alien
16 Tort Statute, 28 U.S.C. § 1350.

17
18 9 Defendant is a U.S. citizen and resident of Sri Lanka. Defendant was
19
20 served in Los Angeles, California. Venue is proper in the Western Division of the
21 Central District of California pursuant to 28 U.S.C. § 1391(b)(3) and (c)(3).
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PARTIES

Defendant Nandasena Gotabaya Rajapaksa

10 On information and belief, Defendant Nandasena Gotabaya Rajapaksa was born on June 20, 1949 in Sri Lanka. Defendant immigrated to the United States in the early 1990s and became a U.S. citizen in 2003.

11 Defendant returned to Sri Lanka in 2005 and was appointed by his elder brother, then President of Sri Lanka Mahinda Rajapaksa, as Secretary to the Sri Lankan Cabinet Ministry of Defence, Public Security, Law and Order (hereinafter “Secretary of Defense”). This position placed him in overall command of Sri Lanka’s armed forces, intelligence services, and police force. Defendant served as Secretary of Defense from November 2005 to January 2015. Defendant continues to travel frequently to California.

Decedent Lasantha Wickrematunge

12 Lasantha Wickrematunge (“Decedent”) was an acclaimed journalist in Sri Lanka, famous for his political opinion columns and his investigations exposing

1 state corruption and brutality. Lasantha was editor-in-chief of *The Sunday Leader*, an
2 English-language weekly newspaper known for being one of the few media outlets
3 in Sri Lanka reporting on human rights violations and war crimes being committed
4 by both sides in Sri Lanka's decades-long civil war. In recognition of his commitment
5 to a free and independent press, even in times of armed conflict, Lasantha was
6 posthumously awarded the UNESCO World Press Freedom Prize, the Louis Lyons
7 Award for Conscience and Integrity in Journalism by Harvard University's Nieman
8 Foundation, the James Cameron Memorial Trust Award, and the National Press
9 Club's International Freedom of the Press Award, and he was declared the World
10 Press Freedom Hero by the International Press Institute in 2010. His funeral drew
11 mourners from around the country and the world. Statements condemning his
12 assassination were issued by the United States, the United Kingdom, Australia,
13 Canada, the European Union and the United Nations.
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Plaintiff Ahimsa Wickrematunge

23 13 Plaintiff Ahimsa Wickrematunge is the daughter of Lasantha
24 Wickrematunge. In 2002, Ahimsa and her siblings moved to Australia due to ongoing
25 threats of violence against their family in Sri Lanka arising from Lasantha's
26 publications in *The Sunday Leader*. Ahimsa returned to Sri Lanka when she was
27
28

1 sixteen and was living with Lasantha in Colombo when he was killed. She has been
2
3 pursuing justice for her father's killing for the past ten years. Plaintiff is a citizen and
4
5 resident of Australia. She brings this action for extrajudicial killing and crimes
6
7 against humanity in her individual capacity and in her capacity as personal
8
9 representative of her father's estate.

10 **BACKGROUND**

11 14 Lasantha's death occurred in the final months of Sri Lanka's decades-
12
13 long civil war between the Government of Sri Lanka (GSL) and the Liberation Tigers
14
15 of Tamil Eelam (LTTE). The war lasted from 1983 to 2002, when the GSL and the
16
17 LTTE agreed to a ceasefire. However, the two sides again turned to violence in 2006.
18
19 In May 2009, the GSL defeated the LTTE, amidst allegations of international law
20
21 violations committed by the GSL and LTTE during the final months of the war.

22 15 In March 2011, a Panel of Experts commissioned by the U.N. Secretary
23
24 General ("U.N. Panel") released a report documenting international law violations by
25
26 the Sri Lankan government and LTTE. The report found credible sources showing
27
28 that as many as 40,000 civilians died in the final stages of the war and concluded that
these casualties, if proven, calls for criminal liability for army commanders, senior

1 branches of the Sri Lankan military: the Sri Lanka Army (SLA), the Sri Lanka Navy
2 (SLN) and the Sri Lanka Air Force (SLAF). It also includes three civilian bodies: the
3 Sri Lanka Police (SLP), the National Intelligence Bureau (NIB) (currently known as
4 the State Intelligence Service (SIS)), and the Civil Defense Forces (CDF). All six
5 branches were part of the Ministry of Defense until 2013.
6
7

8
9 19 As Secretary of Defense, Defendant consolidated control over all of Sri
10 Lanka's military and civilian intelligence agencies by cementing the position of Chief
11 of National Intelligence. The Chief of National Intelligence served as a direct line of
12 authority between the Secretary of Defense and all of the intelligence units within the
13 Ministry of Defense, including the SLA's Directorate of Military Intelligence.
14
15

16 20 The Secretary of Defense played a key role in coordinating operations
17 between the different agencies within the Ministry of Defense and Defendant played
18 a particularly hands-on role with respect to working with the intelligence services. In
19 media interviews published in April 2009, the Inspector General of the SLP and the
20 Deputy Inspector General of the Criminal Investigation Department ("CID")
21 described weekly meetings of the different intelligence services held by the Secretary
22 of Defense. Interviews with senior officials, including Defendant and his Chief of
23 National Intelligence Kapila Hendawitharana, described the weekly meetings as a
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1 way to share intelligence between the agencies, discuss incidents and investigations,
2
3 and address security concerns outside the main conflict zone in northern Sri Lanka.
4 Defendant reportedly “went down to the nuts and bolts of security issues” and made
5
6 “spot decisions on issues raised by the representatives of the various intelligence
7
8 agencies.”

9 21 In addition, the Secretary of Defense had the power to direct
10 investigations involving “national security” and “terrorism,” which was expansively
11
12 applied to investigate media workers, humanitarian aid workers, human rights
13
14 activists, and individuals perceived to be “Tiger sympathizers” (individuals deemed
15 sympathetic to the LTTE movement). Sri Lanka’s 2005 Emergency Regulations of
16
17 the Public Security Ordinance also granted the Secretary of Defense broad authority
18
19 to order arrests and detention if he “is of opinion” that the arrest is necessary in the
20
21 interest of national security or the maintenance of public order.

22 22 In carrying out its national security mandate, the different agencies of the
23
24 Ministry of Defense acted with a high degree of coordination, engaging in joint
25
26 intelligence activities and information sharing, as well as joint planning. Units from
27
28 both military and civilian security forces worked in concert to carry out arrests linked
to “national security.”

1
2 ***Rajapaksa Regime and Its Widespread and Systematic Attacks on Journalists***

3 23 The Rajapaksa regime was sensitive to criticism of its war effort and
4
5 allegations of corruption. As a result, it also launched an assault on the free press,
6
7 routinely harassing journalists, editors, and other individuals associated with the
8
9 press. Although the Rajapaksa regime frequently denied playing any role in the
10 attacks against journalists – which ranged from veiled threats to abductions, assaults,
11 torture, and killings – many attacks were traced back to government security forces.
12
13 The Rajapaksa regime also arrested, deported, and sued journalists, and attempted to
14 enact laws and regulations limiting free press.

15
16 24 In response to this assault on the media, many journalists fled, and
17
18 independent media outlets shut down. Several independent journalists who remained
19 active in the country and did not exercise “self-censorship” were targeted for attack.
20
21 During the 10-year rule of the Rajapaksa family, at least 17 journalists and media
22 workers were killed, and many others were threatened, assaulted, or abducted. Press
23 freedom organizations such as the Committee to Protect Journalists and Reporters
24
25 Without Borders documented serious threats to media workers throughout the
26 Rajapaksa regime.
27
28

1 25 After the end of the war, a United Nations human rights investigative
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3 body examined allegations of serious violations and abuses of human rights
4 committed by both parties in the Sri Lankan civil war from 2002 to 2011. The
5 investigation concluded that the attacks against journalists were widespread and
6 occurred over an extended period of time; they also appeared to be systematic in
7 targeting media known to be critical of government policies and officials.
8
9

10 26 The Ministry of Defense played a key role in this crackdown on
11 independent journalism. Joint security forces and military intelligence units identified
12 and targeted journalists alleged to pose a threat to national security. Journalists
13 branded as “Tiger sympathizers” would have their names posted on the Ministry of
14 Defense website, and journalists critical of the Rajapaksa regime would find
15 themselves subject to arrest or attack by government security forces.
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20 27 The Directorate of Military Intelligence – which was part of the inter-
21 agency intelligence group that met weekly with Defendant – also operated a
22 clandestine unit known as the “Tripoli Platoon,” which was comprised of elite
23 commandos and members of the Special Forces. The Tripoli Platoon was directly
24 under the control of the Ministry of Defense and was tasked with surveillance of and
25 attacks on journalists who engaged in independent (and sometimes negative)
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1 reporting on the Ministry of Defense, Defendant, or the Rajapaksa regime. According
2
3 to court filings made by the CID, the Tripoli Platoon has been linked to at least three
4 attacks on journalists, including Lasantha's assassination, and the abduction and
5 torture of newspaper editors Keith Noyahr and Upali Tennakoon.
6

7 28 In 2008, Keith Noyahr, deputy editor of *The Nation*, was kidnapped
8
9 outside of his home by unidentified men and taken away in a white van. He was taken
10 to a military intelligence safe house, where he was stripped, suspended in mid-air, and
11 beaten. During this attack he was questioned as to the sources of his news articles. In
12 his search for Noyahr, *The Nation's* CEO, Krishantha Cooray, called Cabinet Minister
13 Karu Jayasuriya for assistance, who in turn called President Mahinda Rajapaksa.
14
15 Jayasuriya threatened to publicly resign from the government along with several other
16 cabinet colleagues if Noyahr was not released. Noyahr was finally released after a
17 series of telephone calls down the chain of command from the Secretary of Defense
18 to the Tripoli Platoon. Noyahr and his family subsequently received death threats and
19 fled the country, ending his reporting in Sri Lanka.
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24 29 In 2009, Upali Tennakoon, editor of the newspaper *Rivira*, was driving
25
26 to his office when four men on motorcycles stopped him, smashed in his car
27 windows, and proceeded to beat him and his wife with metal bars. Following the
28

1 attack, Tennakoon's wife received telephone calls threatening that Tennakoon would
2
3 be killed if he continued to work as a journalist. Mobile telephone records reported
4
5 to Sri Lankan courts establish that Tennakoon was under surveillance by the Tripoli
6 Platoon. Tennakoon identified a senior officer of the Directorate of Military
7 Intelligence in a lineup. Soon after the identification, Tennakoon was forced to flee
8
9 the country following threats to his safety.

10 30 Other examples of attacks on journalists followed a similar pattern:
11
12 journalists critical of the government would be publicly identified and threatened by
13
14 the Rajapaska regime, and would be subsequently abducted, beaten, or killed. On
15 January 24, 2006, journalist Subramaniam Sugitharajah was shot and killed on his
16
17 way to work. His murder occurred just weeks after he had published photos of five
18 Tamil students who had been murdered execution-style by the police, contradicting
19
20 the government's claims that the students had been killed by a self-detonated grenade.
21 On March 7, 2008, a columnist for *The Sunday Times*, J.S. Tissainayagam, was
22
23 arrested by the Sri Lanka Police's Terrorist Investigation Division and sentenced
24
25 under the Terrorism Act to 20 years of hard labor for articles he wrote in 2006
26 criticizing the military's treatment of Tamil civilians in northeastern Sri Lanka. On
27 June 1, 2009, Poddala Jayantha, a journalist at *Mihira* newspaper, was abducted by
28

1 men in a white van and severely beaten. Defendant had personally threatened
2
3 Jayantha in 2008 after he participated in a free media demonstration, telling him that
4 criticism of the military leadership would not be tolerated and that if he and his
5
6 colleagues persisted in their criticism of the government, “people who know how to
7
8 do it will finish you off.” Several days prior to the attack, a government-run television
9
10 station had published photos of Poddala and other journalists, while the Inspector
11
12 General of Police referred to them as traitors. On January 24, 2010, just two days
13
14 before the 2010 election, political cartoonist and journalist Prageeth Eknaligoda
15
16 disappeared after leaving his office in the evening. Eknaligoda had been investigating
17
18 Defendant and had published a “family tree” of the dozens of Defendant’s relatives
19
20 that held government office, and publicly supported the campaign of the opposition
21
22 candidate Sarath Fonseka.
23
24

25 31 While Lasantha’s assassination on a crowded street in Colombo was one
26
27 of the most prominent and visible attacks on independent journalism carried out under
28
the Rajapaksa regime, it was part of a larger pattern of intimidation, persecution, and
violence.

1 ***Lasantha's Corruption Investigation and Threats Preceding the Assassination***

2 32 *The Sunday Leader* newspaper was an English-language weekly
3
4 publication that was printed from 1994 to 2017 in Sri Lanka. Lasantha founded the
5 paper and served as editor-in-chief from 1994 until his death in 2009.
6

7 33 In 2006, Lasantha's reporting brought him on a collision course with the
8 Defendant. On December 24, 2006, the front-page headline of *The Sunday Leader*
9 read "President to get Rs. 400 million luxury bunker." Under this headline, the
10 newspaper detailed an approximately US \$4 million government construction project
11 to create a bunker for the Sri Lankan elite. Lasantha's accompanying editorial
12 criticized the creation of a Rajapaksa "dynasty". Shortly after publication, Defendant
13 ordered police officers in the CID to arrest Lasantha against their objections,
14 overriding the legal advice of the Solicitor General of Sri Lanka. The Secretary to the
15 President revoked the order minutes before it was to be executed.
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21 34 Between July and September 2007, *The Sunday Leader* published a
22 series of articles alleging that Defendant was involved in embezzling millions of
23 dollars in a 2006 contract to purchase MiG fighter jets from Ukraine. The reporting
24 exposed financial and procedural irregularities in the 2006 procurement of aviation
25 equipment and services by the Sri Lanka Air Force from the Government of Ukraine,
26
27
28

1 identifying Defendant as overseeing the transaction and alleging potential corruption
2
3 in the procurement process led by Defendant. The reporting also indicated that the
4
5 transactions went through a U.S. bank, raising the allegation that the proceeds of the
6
7 crime were being laundered through the U.S. financial system.

8 35 Following the publication of these articles, Defendant stated in an
9
10 interview that the media had freedom in Sri Lanka because “you can tell lies and
11
12 criticize the President, the Defence Secretary and Minister, and after writing these
13
14 things, and you can get into your car and drive around by yourself” while gesturing
15
16 as if holding a steering wheel. It was well known that Lasantha was the only
17
18 prominent government critic who drove his own vehicle without chauffeurs or
19
20 security personnel. In October 2007, Defendant threatened to bring a defamation case
21
22 against *The Sunday Leader* and the Wickrematunge brothers for their reporting on the
23
24 “MiG Deal.”

25 36 On November 21, 2007, black-clad commandos bearing automatic
26
27 weapons stormed the premises of the printing press of *The Sunday Leader*, held staff
28
29 at gunpoint, and set the printing press machinery on fire. This arson attack was never
30
31 investigated by police, who at that time were under the direct control of Defendant.

1 37 In October 2008, President Mahinda Rajapaksa called Lasantha a
2
3 “terrorist journalist” during an interview with Reporters Without Borders.

4 38 On or before September 2008, a few months before Lasantha’s
5
6 assassination, the State Intelligence Service, which was overseen by Defendant,
7
8 began surveilling Lasantha’s mobile phone for reasons of “national security.”

9 39 In November 2008, Defendant filed a defamation action against Lasantha
10
11 and *The Sunday Leader* for its reporting on the “MiG Deal,” demanding 1 billion
12 rupees (approximately US \$10 million) in damages. Lasantha was scheduled to testify
13
14 in this lawsuit shortly after he was killed.

15 40 In the weeks before his death, Lasantha continued to receive threats: on
16
17 separate occasions he received a funeral wreath and a newspaper dipped in red paint
18
19 with the words “If you write, you will be killed.” In the days before his death,
20
21 Lasantha told his family that he was worried that he was being followed.

22 41 Two days before Lasantha’s murder, Maharaja Television, an
23
24 independent station, was stormed by black-clad commandos armed with automatic
25
26 weapons, grenades, and claymore mines. Such weapons could only be lawfully
27
28 obtained and used in Sri Lanka by the armed forces, which were under the direct
 command of Defendant. Lasantha had been working at Maharaja Television as a

1 presenter on a weekly current affairs program. Lasantha made his final television
2 appearance in the immediate aftermath of the attack, on the early morning of January
3 6, 2009, urging viewers in English and Sinhala to remain resolute and unbowed in the
4 face of government attempts to silence the media.
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9 *Assassination of Lasantha Wickrematunge*

10 42 On the morning of January 8, 2009, Lasantha Wickrematunge noticed
11 black-clad men on motorcycles circling around his home in the suburbs of the Sri
12 Lankan capital Colombo. He made several phone calls to friends and family
13 indicating that he believed he was being followed.
14
15

16 43 As Lasantha drove to work that morning, he was swarmed by black-clad
17 plainclothes commandos on motorcycles at a busy intersection in an area secured by
18 military checkpoints. As cell phone tower logs would later show, this group of riders
19 were part of, or worked in concert with, the Directorate of Military Intelligence's
20 Tripoli Platoon, and this team had been following Lasantha for several weeks. The
21 masked riders smashed the car's windows and one of the assassins punched a hole in
22 Lasantha's skull with a sharp instrument. The motorcyclists sped off in the direction
23 of a nearby military checkpoint. The motorcyclists entered a "High Security Zone"
24
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1 policed by the Sri Lanka Air Force, leaving Lasantha gravely wounded. Onlookers
2 quickly rushed Lasantha to Colombo South Teaching Hospital. Lasantha underwent
3 emergency surgery but died several hours later.
4

5
6 44 Three days after Lasantha's death, *The Sunday Leader* published an
7 editorial left on file by Lasantha in the event of his death. Reprinted around the world,
8 Lasantha's "Letter from the grave" became an infamous broadside against the
9 Rajapaksas:
10

11
12
13 Terror, whether perpetrated by terrorists or the state, has become the
14 order of the day. Indeed, murder has become the primary tool whereby
15 the state seeks to control the organs of liberty. Today it is the journalists,
16 tomorrow it will be the judges. For neither group have the risks ever
17 been higher or the stakes lower.

18 ...

19 It is well known that I was on two occasions brutally assaulted, while on
20 another my house was sprayed with machine-gun fire. Despite the
21 government's sanctimonious assurances, there was never a serious police
22 inquiry into the perpetrators of these attacks, and the attackers were
23 never apprehended.

24 In all these cases, I have reason to believe the attacks were inspired by
25 the government. When finally I am killed, it will be the government that
26 kills me.

27 In the wake of my death I know you [President Mahinda Rajapaksa] will
28 make all the usual sanctimonious noises and call upon the police to hold
a swift and thorough inquiry.

But like all the inquiries you have ordered in the past, nothing will come
of this one, too. For truth be told, we both know who will be behind my

1 death, but dare not call his name. Not just my life but yours too depends
2 on it.

3 ...

4 I hope my assassination will be seen not as a defeat of freedom but an
5 inspiration for those who survive to step up their efforts. Indeed, I hope
6 that it will help galvanise forces that will usher in a new era of human
7 liberty in our beloved motherland. I also hope it will open the eyes of
8 your President to the fact that however many are slaughtered in the name
9 of patriotism, the human spirit will endure and flourish. Not all the
10 Rajapaksas combined can kill that.

11 *No Credible Investigation into Lasantha's Killing*

12 45 In the immediate aftermath of Lasantha's murder, Sri Lankan law
13 enforcement agencies – under the control of Defendant – either failed to conduct a
14 credible investigation into the killing, or actively interfered with any attempts to
15 conduct a credible investigation.
16

17 46 First, a falsified autopsy report was issued by the Judicial Medical
18 Officer indicating that Lasantha's death was caused by a firearm, even though this
19 was inconsistent with the evidence at the crime scene and the report of the surgeon
20 who conducted the emergency operation. Second, Lasantha's notebook, in which he
21 had scrawled two license plate numbers on the day of the attack, was collected by
22 police officers at the scene of the crime. This notebook was later discovered to have
23 been tampered with, and the pages with the license plate numbers torn out and
24 replaced with doctored entries.
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1 47 Shortly after Lasantha's murder, Defendant sat for a television interview
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3 with the British Broadcasting Corporation (BBC), in which he was questioned about
4 the assassination. At the time, Defendant was in charge of civilian law enforcement
5
6 in Sri Lanka, including the police force tasked with investigating homicides. During
7 this interview, Defendant stated that the killing of Lasantha was "just another
8
9 murder," insisting that he was "not concerned about that." He asked the interviewer
10 "why are you so worried about one man."

11
12 48 No further inquiries took place in Sri Lanka into Lasantha's murder until
13
14 Plaintiff's attorneys and other family members successfully petitioned the Mount
15 Lavinia Magistrates Court to order that investigations into the murder be conducted
16
17 by the CID of the Sri Lanka Police, in December 2009.

18 49 However, when CID investigators sought to question a member of the
19
20 Tripoli Platoon, the CID was ordered to halt its investigation and hand the case over
21 to the Terrorist Investigation Division ("TID"), a detachment of the Sri Lanka Police.
22
23 At the same time, Defendant issued a letter to the Sri Lankan Ministry of Foreign
24 Affairs, instructing that the commanding officer of the Tripoli Platoon be assigned
25
26 to a non-vacant diplomatic position at the Sri Lankan Embassy in Bangkok, Thailand,
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1 within thirteen days. The letter instructed that the officer who was then present in
2 Thailand be recalled.
3

4 50 After the TID took over the investigation, it halted all inquiries into the
5 involvement of the Tripoli Platoon. In February 2010, the TID arrested seventeen
6 other Military Intelligence officers attached to a different platoon, and detained them
7 on suspicion of the murder of Lasantha and other abductions and assaults on
8 journalists. However, all seventeen individuals were released from custody before
9 being presented to witnesses for lineup identification. No charges were ever filed
10 against any of the seventeen individuals.
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15 51 In February 2010, the TID took into custody the member of the Tripoli
16 Platoon who had originally been sought for questioning by the CID. While in
17 custody, however, this suspect was granted a promotion by the military and continued
18 to receive his pay in violation of regulations governing military personnel in police
19 custody. He was eventually released without being charged and without thorough
20 questioning. No further investigations into the murder of Lasantha were conducted
21 until 2015, when President Mahinda Rajapaksa was defeated in a general election and
22 Defendant was forced to leave public office. Shortly thereafter, the Sri Lanka Police
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1 re-activated its investigation into Lasantha's killing, re-assigning the investigation to
2 the CID.
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4 52 Following the presidential election of 2015, the government of President
5 Maithripala Sirisena announced an ambitious transitional justice plan that included
6 calls for criminal accountability for human rights abuses committed during the
7 Rajapaksa regime. However, the Rajapaksa family has continued to assert influence
8 over the new administration. In the past year, President Sirisena has publicly
9 criticized ongoing investigations into abuses committed by military officers and
10 Defendant during the Rajapaksa regime. Furthermore, on October 26, 2018 President
11 Sirisena dismissed the sitting Prime Minister and appointed Mahinda Rajapaksa as
12 the new Prime Minister, creating political turmoil and prompting international outcry.
13
14 Shortly afterwards, President Sirisena sought to transfer Nishantha Silva, the main
15 CID officer investigating Lasantha's case and other related cases, to a different
16 department. This political situation has made it difficult for witnesses to come
17 forward. Due to these political pressures, threats to witnesses, and continued state
18 interference with the investigation the criminal investigations into Lasantha's killing
19 and other attacks on journalists have stalled.
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GENERAL ALLEGATIONS

53 On information and belief, Plaintiff alleges the following:

54 Defendant, in his capacity as Secretary of Defense, exercised command responsibility over, conspired with, aided and abetted, and/or incited individuals in the Tripoli Platoon, or groups acting in coordination with this unit, to perpetrate the extrajudicial killing of Decedent, whom Defendant viewed as a threat because of his reporting. Cell phone records establish that members of the Directorate of Military Intelligence division known as the “Tripoli Platoon” were involved in the direct perpetration of the attack against Decedent Lasantha Wickrematunge and that they benefited from the assistance of the Sri Lankan security forces to escape the scene of the crime. Defendant and individuals under his command then worked to prevent an effective investigation into Decedent’s killing.

55 Defendant exercised command responsibility over the Tripoli Platoon, which carried out the murder of Decedent as well as attacks against journalists perceived as critical of the Rajapaksa government. The Tripoli Platoon operated under the command of the Chief of National Intelligence, who reported directly to the Defendant, the Secretary of Defense during the relevant time period. Defendant

1 Gotabaya engaged in weekly meetings and closely coordinated with the Directorate
2 of Military Intelligence. Due to this relationship, Defendant knew or should have
3 known about the attack on Lasantha. Furthermore, widespread media coverage of the
4 attack, and of the allegations of security forces involvement, was enough to give
5 Defendant knowledge of the murder after the fact. As the commander of both the
6 armed forces and the police, Defendant had a duty to ensure an effective investigation
7 and to punish those responsible for Lasantha's murder. Rather, the investigation
8 during Defendant's tenure as Secretary of Defense was marked by interference and
9 cover-ups by the investigating authorities, including actions taken by Defendant to
10 actively interfere with any attempt to conduct a credible investigation.
11

12 56 Defendant also conspired with individuals in the military and police to
13 carry out the attack on Lasantha and prevent an effective investigation. Defendant
14 conspired with one or more members of the Directorate of Military Intelligence
15 pursuant to a common plan, design, or scheme to carry out attacks against journalists
16 who were critical of the Rajapaksa government, including the attack against Lasantha.
17 Additionally, Defendant conspired with one or more members of the Sri Lanka Police
18 to ensure that the military officers would not be implicated in Lasantha's murder. In
19 addition to the attack itself, overt acts taken in furtherance of this conspiracy include
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1 tampering with Lasantha's notebook, the order to transfer the investigation from the
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3 CID to the TID after a member of the Tripoli Platoon was implicated in the murder,
4 and the order by Defendant to transfer one of the Tripoli Platoon suspects in
5
6 Lasantha's case to a post at the Sri Lankan Embassy in Bangkok, Thailand,
7 preventing a thorough investigation of the crimes. In addition to being personally
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9 liable for his own actions, Defendant is jointly and severally liable for the actions of
10
11 his co-conspirators, all of which were actions undertaken in furtherance of a common
12
13 plan, design, or scheme to threaten and eliminate journalists and silence critics of the
14 government.

15 57 Defendant also contributed to the commission of the unlawful acts
16
17 alleged herein by a joint criminal enterprise comprised of Defendant and his
18
19 subordinates in the Ministry of Defense, specifically the Directorate of Military
20
21 Intelligence and the Sri Lanka Police. Defendant and the co-participants entered into
22
23 a joint criminal enterprise with a common plan or purpose of waging a widespread
24
25 and systematic campaign to silence and violently repress journalists who were critical
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27 of the Rajapaksa government. Defendant and his co-participants committed the
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29 wrongful acts alleged herein in furtherance of this common plan or purpose.
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31 Defendant provided substantial assistance to the common plan by publicly targeting

1 journalists critical of the government with inflammatory labels and threats, ordering
2 surveillance of journalists, using security forces under his direct command to attack
3 journalists, including the Decedent, and facilitating impunity for these attacks.
4 Defendant and his subordinates in the Ministry of Defense contributed to this joint
5 criminal enterprise at each stage. Defendant also made a substantial contribution to
6 the joint criminal enterprise by participating in the cover-up of the crimes alleged,
7 ensuring that the perpetrators would not be held accountable. This contribution was
8 intentional and made with knowledge of the shared purpose of the group to silence
9 and repress critics.

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15 58 Defendant is also responsible by virtue of having aided and abetted, or
16 otherwise substantially assisted in the commission of the crimes against Lasantha,
17 including through his role in Lasantha's killing by his subordinates and by then
18 covering up the crimes and obstructing an effective investigation into the murder.
19 Defendant was in command of the law enforcement agencies investigating Lasantha's
20 murder and took actions to stall the investigation and ensure that Directorate of
21 Military Intelligence officials were not implicated in the crimes. At all relevant times,
22 Defendant knew and purposefully intended that his actions would aid, abet, or assist
23 in the commission and cover-up of the murder. Defendant is therefore jointly and
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1 severally liable for the wrongful conduct of the persons whom he aided and abetted.

2
3 59 Defendant is further liable for inciting the direct perpetrators of the
4 attack against Lasantha. As described in paragraphs 21 to 26, and 32 to 41, the acts
5 were carried out by Defendant's subordinates in the Ministry of Defense. Defendant
6 encouraged the commission of the attack through veiled threats and public statements
7 suggesting that perpetrators of crimes against journalists would not be held
8 accountable. Defendant made numerous public comments denouncing journalists who
9 criticized the Rajapaksa government as traitors. Defendant's brother specifically
10 labeled Lasantha as a "terrorist journalist." A statement issued by the Ministry of
11 Defense on May 31, 2008 called on "all members of the armed forces to unite and
12 guard against these treacherous media campaign [sic] against them," naming *The*
13 *Sunday Leader* as one of the "treacherous media." Another statement released by the
14 Ministry of Defense on June 4, 2008 referred to journalists as "enemies of the state"
15 who "are doing a job of the enemy." The Defendant personally authorized the release
16 of these statements, and, given the pattern of attacks against journalists, was aware
17 of the substantial likelihood of harm in transmitting these inflammatory messages.
18 None of the perpetrators of the targeted attacks against journalists have been
19 prosecuted or subject to military sanction to date.
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1 60 The domestic investigation of Lasantha's death has been unduly
2
3 prolonged and subject to government interference. As described in paragraphs 45 to
4 52, the investigation into Lasantha's murder has been subject to significant
5 interference and obstruction. While his murder occurred over ten years ago, no
6 criminal prosecutions have proceeded against those responsible. Despite advances
7 made after the 2015 presidential election, the investigation has once again stalled in
8 the current political climate, as described in paragraph 52.
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13 **FIRST CLAIM FOR RELIEF**

14 ***(Extrajudicial Killing of Lasantha Wickrematunge)***

15 61 Plaintiff Ahimsa Wickrematunge, in her individual capacity and as the
16 legal representative of the estate of Lasantha Wickrematunge, re-alleges and
17 incorporates by reference the allegations set forth in paragraphs 1 to 60 as if fully set
18 forth herein.
19
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21 62 On January 8, 2009, Decedent Lasantha Wickrematunge was
22 assassinated in his car while driving to work. The assailants were members of the Sri
23 Lanka Directorate of Military Intelligence and/or individuals working with the
24 security forces of Sri Lanka during the period in which Defendant was Secretary of
25 Defense.
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1 63 The killing of Lasantha Wickrematunge constitutes extrajudicial killing
2
3 in violation of the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73
4 (1992) (codified at 28 U.S.C. § 1350, note).

5
6 64 In addition, the killing constitutes a “tort . . . committed in violation of
7 the law of nations or a Treaty of the United States” under the Alien Tort Statute, 28
8 U.S.C. § 1350, in that it was committed in violation of customary international law
9 prohibiting extrajudicial killing, as widely expressed, clearly defined, and codified
10 in multilateral treaties and other international instruments, international and domestic
11 judicial decisions, and other authorities.

12
13 65 The assassination was committed by or in concert with members of the
14 Directorate of Military Intelligence or the security forces of Sri Lanka and was
15 thereby committed under actual or apparent authority, or color of law, of the
16 government of Sri Lanka.

17
18 66 The extrajudicial killing of Decedent was not authorized by any court
19 judgment, and was unlawful under the laws of Sri Lanka, international law, and under
20 the laws of any foreign nation. Decedent was unarmed and did not pose a real or
21 apparent threat to persons or property that would have justified the use of deadly
22 force against him.

1 67 As detailed in paragraphs 18 to 22, and 54 to 59, Defendant exercised
2
3 command responsibility over, conspired with, aided and abetted, directed and/or
4
5 incited individuals in the Sri Lankan security forces and Directorate of Military
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7 Intelligence, or groups acting in coordination with these units, to perpetrate the
8
9 extrajudicial killing of Decedent.

10 68 As Secretary of Defense, Defendant possessed the legal authority and
11
12 practical ability to exert control over the individuals who carried out the attack.
13
14 Following the highly publicized killing, and the widespread allegations of military
15
16 involvement, Defendant knew, or reasonably should have known, about the actions
17
18 of his subordinates, but failed to take necessary and reasonable measures to punish
19
20 them.

21 69 Prior to his death, Decedent underwent painful emergency surgery as a
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23 result of the puncture in his skull. As a result, Decedent suffered severe physical
24
25 abuse and agony before succumbing to his injuries. Plaintiff, as the daughter of
26
27 Decedent and representative of Decedent's estate, has standing to bring suit in her
28
29 individual capacity and on behalf of her deceased father. The extrajudicial killing of
30
31 Decedent Lasantha Wickrematunge also caused Plaintiff Ahimsa Wickrematunge

1 severe pain and suffering and emotional distress. As a result, Plaintiff has been
2
3 damaged in an amount to be proven at trial.

4 70 In addition, Defendant's acts and omissions were deliberate, willful,
5
6 intentional, wanton, malicious, and oppressive, and should be punished by an award
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8 of punitive damages in an amount to be determined at trial.

9 10 **SECOND CLAIM FOR RELIEF**

11 ***(Crimes Against Humanity)***

12 71 Plaintiff Ahimsa Wickrematunge, in her capacity as the legal
13
14 representative of the estate of Lasantha Wickrematunge, re-alleges and incorporates
15
16 by reference the allegations set forth in paragraphs 1 to 70 as if fully set forth herein.

17 72 While serving as Secretary of Defense, Defendant, his subordinates and
18
19 individuals acting in coordination with government security forces targeted
20
21 journalists and media workers within the civilian population perceived to be critical
22
23 of government policies or officials. Journalists and media workers were
24
25 systematically arrested and detained, and many were tortured and killed, for their
26
27 reporting, including the Decedent.

28 73 This attack against civilian journalists and media workers was
widespread, as found by the United Nations investigation on Sri Lanka, and the

1 crimes were met with persistent impunity. As indicated in paragraph 15, the attack
2
3 against Lasantha was committed in the context of a larger campaign of violence in the
4 final stages of the civil war, during which up to 40,000 civilians may have been
5
6 killed. A report by the Committee to Protect Journalists ranked Sri Lanka among the
7
8 top ten countries with the highest rate of impunity for killings of journalists during
9
10 the relevant time period. The U.S. State Department's annual human rights reporting
11
12 during the relevant period also criticized the government – and in particular, the
13
14 Ministry of Defense – for its harassment of journalists through threats and
15
16 intimidation.

15 74 This attack was also systematic. All of the acts described herein
16
17 deliberately targeted civilian journalists and media workers perceived to be critical
18
19 of government policies or officials, including the Defendant. As detailed in
20
21 paragraphs 23 to 31, many of the attacks, including that against the Decedent,
22
23 exhibited a high degree of planning and coordination.

24 75 The extrajudicial killing of Decedent was committed as part of this
25
26 widespread or systematic attack against a civilian population. Decedent was also
27
28 subject to persecution on the basis of his perceived political opposition to Defendant
and the Rajapaksa government.

1 76 The murder and persecution of Decedent constitute crimes against
2
3 humanity, a “tort . . . committed in violation of the laws of nations or a treaty of the
4 United States” under the Alien Tort Statute, 28 U.S.C. § 1350. The crimes against
5 humanity of extrajudicial killing and of persecution on the basis of political
6 affiliation, committed as part of a widespread or systematic attack against a civilian
7 population, violates customary international law as widely reflected, clearly defined,
8
9 and codified in multilateral treaties and other international instruments, international
10
11 and domestic judicial decisions, and other authorities.

13 77 Defendant possessed the requisite knowledge that his conduct was in
14
15 furtherance of an attack on a civilian population. As alleged in paragraphs 54 to 59,
16
17 Defendant exercised command responsibility over, conspired with, aided and abetted,
18
19 directed and/or incited his subordinates in the Sri Lankan security forces and military
20
21 intelligence, or groups acting in coordination with these units, to engage in
22
23 widespread or systematic targeting of journalists and media workers that were
24
25 perceived to be critical of the government, including the extrajudicial killing and
26
27 persecution of Decedent on political grounds.

28 78 Defendant’s acts described herein, and the acts committed by his
associates, directly and proximately caused Plaintiff and Decedent severe pain and

1 suffering. As a result of these crimes against humanity, Plaintiff, in her individual
2 capacity, and as a representative of the estate of Decedent Lasantha Wickrematunge,
3 has suffered damages in an amount to be determined at trial.
4

5
6 79 In addition, Defendant's acts and omissions were deliberate, willful,
7 intentional, wanton, malicious, and oppressive, and should be punished by an award
8 of punitive damages in an amount to be determined at trial.
9

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs respectfully request the Court to
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14

15 (a) enter judgment in favor of the Plaintiff on all counts of the Complaint
16 according to proof;
17

18 (b) award compensatory and punitive damages according to proof;
19

20 (c) grant reasonable attorneys' fees, costs, and expenses according to proof;
21

22 (d) grant the Plaintiff equitable relief including, but not limited to, an
23 injunction prohibiting Defendant from interfering with any criminal
24 investigations involving the murder of Lasantha Wickrematunge in Sri
25 Lanka; and
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1 (e) such other and further relief as the court may deem just and proper.

2
3 A jury trial is demanded on all issues so triable.

4
5
6 Dated: April 4, 2019

7
8
9
10 *Attorneys for Plaintiff Ahimsa Wickrematunge*

11
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**Communication to the Human Rights Committee
Submitted Pursuant to the Optional Protocol to the
International Covenant on Civil and Political Rights**

AHIMSA WICKREMATUNGE

for herself and on behalf of

LASANTHA WICKREMATUNGE

Victims

— v. —

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA,

Respondent

EXHIBIT D

**Defendant's Notice of Motion and Motion to Dismiss Pursuant to Rules
12(b)(1) and 12(b)(6), *Forum Non Conveniens*, and International Comity,
Wickrematunge v. Rajapaksa, No. 2:19-cv-02577 (C.D. Cal. 4 April 2019)**

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 AHIMSA WICKREMATUNGE, in her individual
14 capacity and in her capacity as the legal
15 representative of the ESTATE OF LASANTHA
16 WICKREMATUNGE,

17 *Plaintiff,*

18 v.

19 NANDASENA GOTABAYA RAJAPAKSA,

20 *Defendant.*

Case No. 2:19-cv-02577-R-RAO

21 **DEFENDANT'S NOTICE OF**
22 **MOTION AND MOTION TO**
23 **DISMISS PURSUANT TO**
24 **RULES 12(b)(1) AND 12(b)(6),**
25 **FORUM NON CONVENIENS,**
26 **AND INTERNATIONAL**
27 **COMITY; MEMORANDUM**
28 **OF POINTS AND**
AUTHORITIES

*[Declaration of Joseph Asoka
Nihal de Silva and Proposed Order
submitted concurrently herewith]*

Date: Monday, August 5, 2019
Time: 10:00 am
Location: Courtroom 880, Roybal
Federal Building and U.S.
Courthouse
Judge: Hon. Manuel L. Real

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on Monday, August 5, 2019 at 10 am, or as soon thereafter as this matter may be heard, in the courtroom of the Honorable Manuel L. Real, Courtroom 880, 8th Floor, Roybal Federal Building and U.S. Courthouse, 255 East Temple Street, Los Angeles, CA 90012, Defendant Nandasena Gotabaya Rajapaksa will and hereby does move the Court, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), *forum non conveniens*, and international comity, for an order dismissing with prejudice Plaintiff Ahimsa Wickrematunge's Complaint in its entirety.

Mr. Rajapaksa's motion is based on this Notice of Motion; the accompanying Memorandum of Points and Authorities; the Declaration of Joseph Asoka Nihal de Silva and exhibits; the complete files and records in this action; and such other argument or evidence as this Court may consider.

Dated: June 27, 2019

ARNOLD & PORTER
KAYE SCHOLER LLP

By: /s/ John C. Ulin
John C. Ulin

Attorney for Defendant
Nandasena Gotabaya Rajapaksa

TABLE OF CONTENTS

1		
2	INTRODUCTION.....	1
3	ALLEGATIONS IN THE COMPLAINT	2
4	ARGUMENT	4
5	I. The Complaint Should Be Dismissed for <i>Forum Non</i>	
6	<i>Conveniens</i>	4
7	A. Sri Lanka Is an Adequate Alternative Forum	5
8	B. Plaintiff’s Choice of Forum Merits Minimal Deference	7
9	C. The Public and Private Interests Strongly Favor	
	Dismissal	8
10	II. The Court Lacks Subject-Matter Jurisdiction Because	
11	Defendant Is Immune Under the Doctrine of Foreign-Official	
12	Immunity	13
13	III. The Complaint Should Be Dismissed Based on Principles of	
14	Comity	19
15	IV. Plaintiff’s Claims Are Barred for Multiple Other Reasons.....	20
16	A. The Statute of Limitations Bars the TVPA and ATS	
17	Claims	20
18	B. The ATS Claims Fail Because They Are Entirely	
19	Extraterritorial	23
20	C. Plaintiff’s Failure to Exhaust Local Remedies Bars Her	
21	TVPA Claims	24
22	CONCLUSION	25
23		
24		
25		
26		
27		
28		

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Page(s)

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2	569 U.S. 108 (2013).....	23
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4	260 F.3d 1100 (9th Cir. 2001)	5
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20	108 F. Supp. 3d 726 (D. Ariz. 2015)	6
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26	136 S. Ct. 2090 (2016).....	12
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6	168 U.S. 250 (1897).....	14
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13	28 U.S.C. § 1350	4, 23
14	28 U.S.C. § 1350 note	<i>passim</i>
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27	<i>2018</i> (2018), https://worldjusticeproject.org/sites/default/files/	
28	documents/WJP-ROLI-2018-June-Online-Edition.pdf	7

INTRODUCTION

Plaintiff, an Australian citizen and resident, has brought this suit in California on behalf of her deceased father, a resident of Sri Lanka, concerning conduct allegedly committed in Sri Lanka more than a decade ago by the then-Sri Lankan Secretary to the Ministry of Defense, Gotabaya Rajapaksa, a citizen and resident of Sri Lanka. The Complaint alleges that Mr. Rajapaksa ordered the assassination of Plaintiff's father, a Sri Lankan journalist. Although these allegations are serious—and Mr. Rajapaksa will, if necessary, disprove them on the merits—this lawsuit has no place in U.S. courts. It should be dismissed, with prejudice, for several reasons.

First, Sri Lanka has a far greater interest than the United States in this litigation, requiring dismissal based on *forum non conveniens*. All the conduct alleged in the Complaint occurred in Sri Lanka. All the allegations point to parties, witnesses, and evidence located in Sri Lanka. That includes Mr. Rajapaksa, who resides in Sri Lanka and is currently running for president there; members of the Sri Lankan military and any other potential witnesses; and evidence gathered by the Sri Lankan government in an ongoing investigation. Nothing whatsoever ties this litigation to the United States.

Second, even if the United States were a convenient forum, the Complaint alleges conduct undertaken solely “in [Mr. Rajapaksa’s] capacity as Secretary of Defense” of Sri Lanka. Compl. ¶ 54. Mr. Rajapaksa therefore is immune from suit under common-law foreign-official immunity, and the Complaint must be dismissed for lack of subject-matter jurisdiction.

Third, for many of the same reasons supporting dismissal for *forum non conveniens*, the Court should dismiss the Complaint as a matter of international comity, out of respect for Sri Lanka’s courts and in recognition that they provide a far better forum for this suit.

Finally, the Complaint fails on multiple other grounds. Plaintiff’s claims, filed more than a decade after the alleged conduct occurred, are time-barred. Further, Plaintiff’s claim under the Alien Tort Statute fails because all alleged conduct occurred

1 abroad and had no connection to the United States. And Plaintiff has failed to exhaust
 2 local remedies in Sri Lanka, as required to assert a claim under the Torture Victim
 3 Protection Act.

4 **ALLEGATIONS IN THE COMPLAINT**

5 Plaintiff Ahimsa Wickrematunge is a citizen and resident of Australia. Compl.
 6 ¶ 13. She brings suit in her individual capacity and on behalf of the estate of her
 7 father, Lasantha Wickrematunge (“Decedent”), a Sri Lankan journalist, who was killed
 8 on January 8, 2009, in Colombo, Sri Lanka. *Id.* ¶¶ 1, 13.¹

9 The Complaint alleges that Defendant Gotabaya Rajapaksa is a dual U.S.-Sri
 10 Lankan citizen and resident of Sri Lanka. *Id.* ¶ 1, 5.² From November 2005 until
 11 January 2015, Mr. Rajapaksa served as Secretary to the Sri Lankan Cabinet Ministry of
 12 Defence, Public Security, Law and Order (hereinafter “Defense Secretary”). *Id.* ¶ 11.
 13 Plaintiff alleges that, as Defense Secretary, Mr. Rajapaksa “instigated and authorized
 14 the extrajudicial killing of [Decedent]; had command responsibility over those who
 15 executed the assassination; and incited, conspired with, or aided and abetted
 16 subordinates” to commit the extrajudicial killing “of Decedent on political grounds.”
 17 *Id.* ¶ 1. Plaintiff further alleges that, following Decedent’s death, Mr. Rajapaksa
 18 engaged in a “cover-up” to “[obstruct] an effective investigation into the murder,” *id.*
 19 ¶¶ 57-58, and that he “failed to take necessary and reasonable measures to punish” the
 20 perpetrators, *id.* ¶ 68. Specifically, Plaintiff alleges that because Mr. Rajapaksa was
 21

22
 23 ¹ For the purposes of this motion only, Mr. Rajapaksa addresses the legal
 24 inadequacy of the Complaint even assuming that the well-pleaded allegations of the
 25 Complaint are true. While this temporary suspension of disbelief is an accepted
 26 feature of U.S. legal procedures, it is alien to Sri Lankan law. As many Sri Lankan
 27 citizens are following this case, Mr. Rajapaksa wishes to make absolutely clear that
 28 *assuming* the truth of the allegations for purposes of this motion in no way *concedes*
 their truth. To the contrary, Mr. Rajapaksa vigorously disputes the allegations.

² In fact, Mr. Rajapaksa relinquished his U.S. citizenship at the U.S. embassy in
 Colombo, Sri Lanka on April 17, 2019.

1 “in overall command of Sri Lanka’s armed forces, intelligence forces, and police
2 force” as Defense Secretary, he “had the power to direct investigations involving
3 ‘national security’ and ‘terrorism.’” *Id.* ¶¶ 11, 21.

4 Plaintiff alleges that, on January 8, 2008, Decedent “was swarmed by black-clad
5 plainclothes commandos on motorcycles at a busy intersection in an area secured by
6 military checkpoints” while he was driving to work. *Id.* ¶ 43. The riders “smashed the
7 car’s windows and one of the assassins punched a hole in [Decedent’s] skull with a
8 sharp instrument.” *Id.* He died at the hospital several hours later. *Id.* Plaintiff alleges
9 that “this group of riders were part of, or worked in concert with, the Directorate of
10 Military Intelligence’s Tripoli Platoon.” *Id.* She alleges that Mr. Rajapaksa exercised
11 command responsibility over the Tripoli Platoon because he “closely coordinated”
12 with the Directorate, and that he “knew or should have known” about the attack. *Id.*
13 ¶ 55.

14 Further, Plaintiff alleges that, as “commander of both the armed forces and the
15 police,” Mr. Rajapaksa “had a duty to ensure an effective investigation and to punish
16 those responsible” for Decedent’s death. *Id.* Plaintiff alleges that instead, Mr.
17 Rajapaksa “obstructed Plaintiff’s efforts to seek justice in Sri Lanka by tampering with
18 witnesses and engaging in a pattern of coercion and intimidation.” *Id.* ¶ 3. Plaintiff
19 alleges that Sri Lanka’s Criminal Investigation Department (CID) opened an
20 investigation only after “Plaintiff’s attorneys and other family members successfully
21 petitioned the Mount Lavinia Magistrates Court” to order them to do so. *Id.* ¶ 48. But
22 Plaintiff claims that Mr. Rajapaksa continued to interfere, *id.* ¶ 49, and that, despite
23 multiple arrests, no charges were filed, *id.* ¶ 51. According to the Complaint, in 2015,
24 following a change in government, the Sri Lanka police “re-activated its
25 investigation.” *Id.* ¶ 51. That investigation is ongoing today.

26 Plaintiff claims that Mr. Rajapaksa should be held liable for Decedent’s death in
27 violation of “international and domestic law.” *Id.* ¶ 6. Specifically, she claims that the
28 death “constitutes extrajudicial killing” in violation of the Torture Victim Protection

Act (TVPA), 28 U.S.C. § 1350 note, and the Alien Tort Statute (ATS), 28 U.S.C. § 1350. *Id.* ¶¶ 63, 76. Plaintiff seeks “compensatory and punitive damages and declaratory and injunctive relief for torts in violation of international and domestic law.” *Id.* ¶ 6. She claims damages for Decedent’s pain and suffering, as well as her own. *Id.* ¶ 69. She also requests that this U.S. Court issue “an injunction prohibiting [Mr. Rajapaksa] from interfering with any criminal investigations” in Sri Lanka involving Decedent’s death. *Id.* at p. 36.

ARGUMENT

I. The Complaint Should Be Dismissed for *Forum Non Conveniens*

The Court should dismiss the Complaint on the basis of *forum non conveniens*. Under the *forum non conveniens* doctrine, courts have discretion to dismiss cases that would be better adjudicated elsewhere. For reasons of convenience and comity, the Court should do so here.

Forum non conveniens is rooted in both “international principles of sovereignty and territoriality” and “constitutional doctrines such as the political question doctrine.” *Mujica v. AirScan Inc.*, 771 F.3d 580, 598 (9th Cir. 2014). To determine whether to dismiss a case under the doctrine, courts must first determine whether an adequate alternative forum exists. *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1142-43 (9th Cir. 2001) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n.22, 257 (1981)). Second, they must weigh “whether the balance of private and public interest factors favors dismissal.” *Id.*

This case passes both tests. First, Sri Lanka is an adequate forum to hear this case. The Sri Lankan courts would have jurisdiction over the types of claims brought by the Plaintiff against Mr. Rajapaksa, and, if properly pleaded, the allegations in the Complaint would constitute the basis for a cause of action recognized by Sri Lankan law. *See de Silva Decl.* ¶ 4.3. Second, both the public and private interest factors favor dismissal. The public interest analysis turns on whether adjudicating the case in the plaintiff’s chosen forum is appropriate in the context of the legal system at large.

1 Because this case involves questions relating to politics and security that go to the
 2 heart of Sri Lanka’s national sovereignty—and because it involves no questions that
 3 directly relate to California—Sri Lanka, not the Central District of California, is the
 4 appropriate forum. The traditional private factors are rooted in reasonableness and
 5 convenience. *Piper Aircraft*, 454 U.S. at 256. In this case, a citizen and resident of
 6 Australia has sued a citizen and resident of Sri Lanka for alleged acts that occurred
 7 exclusively in Sri Lanka. Adjudicating it here is neither reasonable nor convenient.

8 **A. Sri Lanka Is an Adequate Alternative Forum**

9 This case should be dismissed because Sri Lanka provides an adequate
 10 alternative forum. An alternative forum is adequate if “(1) the defendant is amenable
 11 to process there; and (2) the other jurisdiction offers a satisfactory remedy.” *Carijano*
 12 *v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1225 (9th Cir. 2011) (citing *Piper*
 13 *Aircraft*, 454 U.S. at 254 n.22). The moving party bears the burden of proof. *Leetsch*
 14 *v. Freedman*, 260 F.3d 1100, 1103 (9th Cir. 2001).

15 The test’s first prong is satisfied “when defendants are amenable to service of
 16 process in the foreign forum and when the entire case and all parties can come within
 17 the jurisdiction of that forum.” *Gutierrez v. Advanced Med. Optics, Inc.*, 640 F.3d
 18 1025, 1029 (9th Cir. 2011) (quotation marks omitted). That is the case here. *First*,
 19 Mr. Rajapaksa is amenable to service of process in Sri Lanka. *See de Silva Decl.* ¶¶
 20 3.74-3.77, 3.86. *Second*, Sri Lankan courts would have jurisdiction over similar claims
 21 brought in Sri Lanka. *See id.* ¶¶ 4.3-4.6, 4.14-4.15. *Third*, it is not necessary for
 22 Plaintiff to be physically present in Sri Lanka to file a civil action; a plaintiff living
 23 abroad may bring suit from outside the country by granting a power of attorney to a
 24 competent person who is a resident of Sri Lanka or, for claims alleging an
 25 infringement of a fundamental right, by sending a postcard addressed to the Supreme
 26 Court’s Chief Justice. *See id.* ¶¶ 3.70, 3.75, 4.16-4.18.

27 The second prong, whether the alternative jurisdiction offers a satisfactory
 28 remedy, is deliberately “easy to pass.” *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d

1 1163, 1178 (9th Cir. 2006). The Supreme Court has held that a court should find a
 2 forum inadequate only if “the remedy provided by the alternative forum is so clearly
 3 inadequate or unsatisfactory that it is no remedy at all.” *Piper Aircraft*, 454 U.S. at
 4 254 & n.22. “An alternative forum is not inadequate merely because the substantive
 5 law to be applied is less favorable than that of the present forum.” *Petersen v. Boeing*
 6 *Co.*, 108 F. Supp. 3d 726, 731 (D. Ariz. 2015) (citing *Piper Aircraft*, 454 U.S. at 247).
 7 Rather, “[t]he forum need only provide *some potential* avenue for redress.” *Id.*
 8 (quotation marks omitted) (emphasis added). In other words, “a foreign forum will be
 9 deemed adequate unless it offers no practical remedy for plaintiff’s complained of
 10 wrong.” *Lueck*, 236 F.3d at 1144.

11 There are important foreign policy reasons for why finding a forum inadequate
 12 is rare. Under the principle of equal sovereignty, courts are reluctant to pass judgment
 13 on foreign legal systems. *See Bi v. Union Carbide Chems. & Plastics Co.*, 984 F.2d
 14 582, 586 (2d Cir. 1993) (“[W]ere we to pass judgment on the validity of India’s
 15 response to a disaster that occurred within its borders, it would disrupt our relations
 16 with that country and frustrate the efforts of the international community to develop
 17 methods to deal with problems of this magnitude in the future.”). There are also
 18 domestic considerations. “Requiring district courts to interpret the law of foreign
 19 jurisdictions . . . is diametrically opposed to another of the [*forum non conveniens*]
 20 doctrine’s purposes”: to “help courts avoid conducting complex exercises in
 21 comparative law.” *Lueck*, 236 F.3d at 1144 (quoting *Piper Aircraft*, 454 U.S. at 251).

22 Under this standard, Sri Lanka’s remedies provide an adequate alternative
 23 forum. Sri Lanka has a well-established legal system steeped in the English common
 24 law and Roman Dutch Law, among other traditions, as well as a constitutional
 25 structure of government and an independent judiciary. *See de Silva Decl.* ¶¶ 3.1-3.41.
 26 A civil cause of action is available for wrongful death, *id.* ¶¶ 3.63, 3.68, 4.4, and civil
 27 actions may be brought against both sitting and former public officials, *id.* ¶¶ 3.50-
 28 3.52, 3.86. Moreover, Sri Lankan law criminalizes torture. *See id.* ¶ 3.88.

Recent developments bolster the idea that the Sri Lankan judiciary is capable of providing Plaintiff with redress. New reports by international monitoring organizations commend the country's fair and independent judiciary.³ And the U.S. Department of Justice has noted that Sri Lanka "law provides for an independent judiciary, and the government generally respect[s] judicial independence and impartiality."⁴ Sri Lankan courts have recently demonstrated these qualities by permitting criminal cases against former high-ranking public officials to proceed. *See id.* ¶ 4.10. Indeed, Mr. Rajapaksa is currently facing criminal charges in Sri Lanka's High Court based on allegations that he aided and abetted board members of the Land Reclamation and Development Authority in misappropriating public funds to build a memorial. *See id.* ¶ 4.11; *id.*, Ex. 2 (copy of indictment with certified translation). Although Mr. Rajapaksa vigorously disputes these charges, they demonstrate that Sri Lanka is capable of holding high-level government officials accountable for wrongful conduct undertaken while in office.

B. Plaintiff's Choice of Forum Merits Minimal Deference

The Court should dismiss this case because Plaintiff is foreign and her case is precisely the type that the *forum non conveniens* doctrine was designed to address. As the Supreme Court has explained, "[b]ecause the central purpose of any *forum non conveniens* inquiry is to ensure that the trial is convenient, a foreign plaintiff's choice deserves less deference." *Piper Aircraft*, 454 U.S. at 256.

³ See, e.g., Freedom House, *Freedom of the World 2019, Sri Lanka Country Report* (2019), <https://freedomhouse.org/report/freedom-world/2019/sri-lanka> (raising Sri Lanka's judicial independence score from two to three out of four because the Supreme Court and Court of Appeal "demonstrated their independence" during a 2018 constitutional crisis); World Justice Project, *World Justice Project Rule of Law Index 2017-2018*, at 25 (2018), <https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition.pdf> (noting that of an indexed 113 countries, Sri Lanka's rank improved significantly, by nine spots).

⁴ U.S. Dep't of Justice, *Sri Lanka 2018 Human Rights Report* 8, available at <https://www.justice.gov/eoir/page/file/1145711/download>.

1 Implementing this rule, the Ninth Circuit has held that defendants bear a
 2 “reduced” burden to demonstrate inconvenience in suits brought by foreign plaintiffs.
 3 *Lueck*, 236 F.3d at 1145. In these instances, dismissal is proper whenever “the balance
 4 of conveniences suggests that trial in the chosen forum would be unnecessarily
 5 burdensome for the defendant or the court.” *Id.*

6 Here, the “balance of conveniences” clearly tilts to dismissal. Plaintiff is
 7 foreign, and the Complaint provides no valid reason for bringing suit in California
 8 when Mr. Rajapaksa is amenable to suit in Sri Lanka. Plaintiff’s Australian residency
 9 does not affect this calculus because Sri Lanka has procedural mechanisms that allow a
 10 plaintiff to file suit while abroad. *See de Silva Decl.* ¶¶ 3.70, 3.75, 4.16-4.18. In any
 11 event, both Plaintiff and Mr. Rajapaksa are domiciled in foreign jurisdictions, the
 12 alleged conduct occurred in a foreign jurisdiction, and all relevant evidence is located
 13 in a foreign jurisdiction. The only reason Plaintiff was able to sue in this District is
 14 that she managed to obtain “gotcha” jurisdiction by serving Mr. Rajapaksa while he
 15 was visiting California. That is not sufficient reason to proceed here.

16 **C. The Public and Private Interests Strongly Favor Dismissal**

17 When an alternative forum is adequate, *forum non conveniens* is appropriate
 18 where the “‘private interest’ and the ‘public interest’ factors strongly favor trial in a
 19 foreign country.” *Lueck*, 236 F.3d at 1145. That is the case here.

20 **1. The Public Interest Factors Favor Dismissal**

21 The public interest factors strongly favor dismissal. To assess these public
 22 interest factors, courts look to the “(1) local interest of [the] lawsuit; (2) the court’s
 23 familiarity with governing law; (3) burden on local courts and juries; (4) congestion in
 24 the court; and (5) the costs of resolving a dispute unrelated to this forum.” *Lueck*, 236
 25 F.3d at 1147 (citing *Piper Aircraft*, 454 U.S. at 259-61). All five factors weigh in
 26 favor of dismissal here.

27 *First*, there is no local interest in this lawsuit. The alleged acts were taken
 28 exclusively in Sri Lanka by a resident of Sri Lanka against another resident of Sri

1 Lanka. By contrast, Sri Lanka has a strong national interest in adjudicating this
 2 dispute, which arises from facts that are the subject of an ongoing investigation by the
 3 authorities of that country. *See de Silva Decl.* ¶¶ 4.22-4.23.

4 *Second*, while this Court is well equipped to interpret federal law claims, this
 5 case is not limited to federal law. The Court will necessarily need to engage with Sri
 6 Lankan law, particularly as it relates to command responsibility within the Ministry of
 7 Defense—or more aptly, the lack of command responsibility—to fairly adjudicate
 8 Plaintiff’s claims.

9 *Third*, absent a local interest in the adjudication of the dispute, it will unduly
 10 burden the Court and a jury to hear this case. This Court reached an identical
 11 conclusion in a case very similar to this one, *Mujica v. Occidental Petroleum Corp.*,
 12 381 F. Supp. 2d 1134, 1153 (C.D. Cal. 2005). There, the court held that, although
 13 Congress had permitted American juries to review foreign claims arising under the
 14 TVPA, the equities favored dismissal where the alleged acts involved foreign plaintiffs
 15 and occurred abroad. *Id.*

16 *Fourth*, caseloads in the Central District of California are high, and there is no
 17 reason to further burden this Court with a case that has no connection to this District or
 18 the United States more broadly.

19 *Finally*, the costs of this case will significantly outstrip any local interest it may
 20 hold. The facts alleged in the Complaint suggest that all relevant evidence is located
 21 abroad, and some appears to be in the possession of a foreign government. *See, e.g.*,
 22 Compl. ¶ 27 (“court filings made by the CID”); *id.* ¶ 43 (“cell phone tower logs”); *id.*
 23 ¶ 46 (“autopsy report” by the Judicial Medical Officer and Decedent’s notebook
 24 “collected by police officers at the scene of the crime”). The United States will need to
 25 expend substantial resources to request the evidence, and, if it does receive it—which
 26 is far from certain, given the national security implications raised by this litigation—
 27 there may be additional translation costs.
 28

1 There is yet another reason to dismiss this case on public interest grounds. The
 2 Second Circuit famously reaffirmed this rationale in *Bi v. Union Carbide Chemicals &*
 3 *Plastics Co.*, 984 F.2d 582, 583 (2d Cir. 1993). *See also AirScan*, 771 F.3d at 607
 4 (relying on *Bi*). In *Union Carbide*, the district court, against the State of India’s own
 5 request, dismissed a case relating to a gas leak at an American-owned chemical plant
 6 in India because allowing it to proceed would unfairly indict India’s courts and stunt
 7 the development of its judiciary. *In re Union Carbide Corp. Gas Plant Disaster at*
 8 *Bhopal, India in Dec., 1984*, 634 F. Supp. 842, 866-67 (S.D.N.Y. 1986), *aff’d as*
 9 *modified*, 809 F.2d 195 (2d Cir. 1987). The plaintiffs in that case had claimed that “the
 10 Indian justice system ha[d] not yet cast off the burden of colonialism to meet the
 11 emerging needs of a democratic people.” *Id.* at 867. But the court rejected their
 12 argument, holding that,

13 to retain the litigation in this forum . . . would be yet another example of
 14 imperialism, another situation in which an established sovereign inflicted
 15 its rules, its standards and values on a developing nation To deprive
 16 the Indian judiciary of this opportunity to stand tall before the world and to
 17 pass judgment on behalf of its own people would be to revive a history of
 18 subservience and subjugation from which India has emerged.

19 *Id.*

20 So too here, with even greater force. The Sri Lankan courts are well-
 21 established, with deep roots in Sri Lanka’s Commonwealth history and the common-
 22 law tradition. *See de Silva Decl.* ¶¶ 3.1. Moreover, the Sri Lankan Constitution
 23 guarantees judicial independence, and the Sri Lankan courts have recently
 24 demonstrated this quality by permitting prosecutions of former public officials to
 25 proceed. *See id.* ¶¶ 3.36-3.41, 4.10-4.11. Adjudicating this Sri Lankan dispute in
 26 California would deprive the country’s judiciary of the opportunity to “stand tall” and
 27 “pass judgment on behalf of its own people.” *See Union Carbide*, 634 F. Supp. at 867.
 28

2. The Private Interest Factors Favor Dismissal

The doctrine's traditional private interest factors similarly warrant dismissal. When considering whether to dismiss a case, courts will review "(1) the residence of the parties and the witnesses; (2) the forum's convenience to the litigants; (3) access to physical evidence and other sources of proof; (4) whether unwilling witnesses can be compelled to testify; (5) the cost of bringing witnesses to trial; (6) the enforceability of the judgment; and (7) 'all other practical problems that make trial of a case easy, expeditious and inexpensive.'" *Lueck*, 236 F.3d at 1145-46 (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)). No one factor is dispositive; rather, the court "should consider them together in arriving at a balanced conclusion." *Id.* Here, not just some but *all* factors dictate dismissal.

First, as noted, all parties reside abroad, and the facts alleged in the Complaint suggest that any potential witnesses are located in Sri Lanka.

Second, because no party or identified witness to the case resides in California, the forum is inconvenient to everyone involved.

Third, the facts alleged in the Complaint suggest that all or the vast majority of the physical and documentary evidence is located abroad, making it difficult and expensive to obtain. Although Sri Lanka is a signatory to the Hague Convention, conducting cross-border discovery remains inconvenient and time-consuming. *See Sandoval v. Carnival Corp.*, No. 12-cv-5517, 2014 WL 12585803, at *7 (C.D. Cal. Sept. 15, 2014). This is especially so because the Sri Lankan law giving effect to the Hague Convention provides an exception when sharing the information will be, in the judgment of the Sri Lanka Central Authority, "prejudicial to the sovereignty or security of Sri Lanka." *See de Silva Decl.* ¶ 3.78. And beyond the challenges associated with *obtaining* evidence from abroad, courts have acknowledged that "conducting a substantial portion of a trial on deposition testimony precludes the trier of fact from its most important role; evaluating the credibility of the witnesses." *Mujica*, 381 F. Supp. 2d at 1151 (citation omitted). Moreover, as noted, many of the alleged evidentiary

1 documents are in the control of the Sri Lankan government. Courts have recognized
 2 that these circumstances make adjudication particularly difficult because, even under
 3 the Hague Convention and similar international agreements, American courts cannot
 4 compel production from foreign governments. *See Lueck*, 236 F.3d at 1146-47. The
 5 third factor thus weighs very strongly in favor of dismissal.

6 *Fourth*, the most material and important witnesses are abroad and have no
 7 “accessibility and convenience to the forum.” *Lueck*, 236 F.3d at 1146 (citation
 8 omitted). Beyond the usual challenges involved in convincing foreign witnesses to
 9 travel, many of the key witnesses in this case may be unwilling to testify because
 10 doing so could expose them to liability. Plaintiff’s claims rest on theories of command
 11 responsibility, conspiracy, and aiding and abetting, *see* Compl. ¶ 1; as a result, the
 12 witnesses most material to her case—the people who allegedly conspired with Mr.
 13 Rajapaksa and executed his orders—could be named third-party defendants. Where, as
 14 here, a case involves potential third-party defendants whom the court cannot compel to
 15 testify, that factor “clearly support[s] holding the trial” in the foreign forum. *Mujica*,
 16 381 F. Supp. 2d at 1152-53.

17 *Fifth*, this case likely will be extremely costly to try. All alleged acts occurred
 18 abroad; all relevant evidence likely is located abroad; and relevant materials and
 19 testimony may be in a foreign language.

20 *Sixth*, even if Plaintiff were to succeed on the merits, it would be difficult to
 21 enforce the judgment. Mr. Rajapaksa resides in Sri Lanka, where he is running for
 22 president, and he has relinquished his U.S. citizenship.

23 *Finally*, this lawsuit is a classic “foreign-cubed” case—a case “where the
 24 plaintiffs are foreign, the defendants are foreign, and all the relevant conduct occurred
 25 abroad.” *See RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2116 (2016)
 26 (Breyer, J., concurring in part, dissenting in part, and dissenting from the judgment).
 27 These facts suggest that the “practical problems” of this case will make trial in
 28

Plaintiff’s chosen forum anything but “easy, expeditious, [or] inexpensive.”⁵ *Lueck*, 236 F.3d at 1145-46 (quoting *Gulf Oil*, 330 U.S. at 508).

II. The Court Lacks Subject-Matter Jurisdiction Because Defendant Is Immune Under the Doctrine of Foreign-Official Immunity

As the Complaint makes clear in its very first paragraph, “[t]his case arises from the [acts of] the government and security forces of Sri Lanka.” Compl. ¶ 1. Plaintiff’s suit explicitly and directly challenges actions undertaken by Mr. Rajapaksa in his official capacity as Sri Lanka’s Defense Secretary. Specifically, Plaintiff alleges that Mr. Rajapaksa acted pursuant to his mandate to defend Sri Lanka’s “national security”—and pursuant to his “broad authority” to exercise the instrumentalities of the State to “maint[ain] . . . public order.” *Id.* ¶¶ 21-22; *see also id.* ¶¶ 23, 31 (alleging that Mr. Rajapaksa acted on behalf of the “Rajapaksa regime” to further the Sri Lankan government’s “war effort”). For this reason, Mr. Rajapaksa is immune from suit under common-law foreign-official immunity, and this suit must be dismissed for lack of subject-matter jurisdiction. *See Doğan v. Barak*, No. 2:15-cv-8130, 2016 WL 6024416, at *3 (C.D. Cal. Oct. 13, 2016) (concluding that common-law foreign-official immunity “implicates the Court’s jurisdiction over the controversy”); *accord, e.g., Eliahu v. Jewish Agency for Isr.*, 919 F.3d 709, 712 (2d Cir. 2019) (noting that a lawsuit against a “foreign government official[]” for acts undertaken in his “official capacity” must be dismissed for “lack of subject matter jurisdiction”).

Foreign-official immunity has been a part of the federal common law for over two centuries. *See The Schooner Exch. v. McFaddon*, 11 U.S. (7 Cranch) 116, 138 (1812). As Attorney General Charles Lee observed in 1797, “a person acting under a commission from the sovereign of a foreign nation is not amenable for what he does in

⁵ The traditional choice-of-law analysis also does not preclude dismissal. Neither the TVPA nor the ATS requires venue in the United States; in fact, the TVPA has a foreign exhaustion requirement. *See Mujica*, 381 F. Supp. 2d at 1142.

1 pursuance of his commission, to any judicial tribunal in the United States.” *Actions*
 2 *Against Foreigners*, 1 U.S. Op. Atty. Gen. 81 (1797). A century later, in *Underhill v.*
 3 *Hernandez*, 168 U.S. 250 (1897), the Supreme Court held that Venezuelan military
 4 officials were immune from suit for torts committed during a revolt in Venezuela,
 5 explaining that foreign officials are immune “for acts done within their own states, in
 6 the exercise of governmental authority, whether as civil officers or as military
 7 commanders.” *Id.* at 252. These federal common-law principles continue to govern
 8 today. *See Samantar v. Yousef*, 560 U.S. 305, 322 n.17 (2010).

9 At common law, a foreign official could be entitled to either “status-based” or
 10 “conduct-based” immunity. *See Doe I v. Buratai*, 318 F. Supp. 3d 218, 230 (D.D.C.
 11 2018). Individuals who serve as foreign officials at the time of suit are entitled to
 12 “status-based” immunity, which shields them from “legal proceedings ‘by virtue of
 13 [their] current official position, regardless of the substance of the claim.’” *Id.* (quoting
 14 *Lewis v. Mutond*, 258 F. Supp. 3d 168, 171 (D.D.C. 2017)). Former government
 15 officials like Mr. Rajapaksa, by contrast, are entitled to “conduct-based” immunity,
 16 which “shield[s] [them] from legal consequences for acts performed on behalf of the
 17 state during their tenure in office.” *Id.* (quoting *Sikhs for Justice v. Singh*, 64 F. Supp.
 18 3d 190, 193 (D.D.C. 2014)). The “determining factor” in whether a challenged act was
 19 done in a government figure’s official capacity is “whether the act was performed on
 20 behalf of the foreign state and thus attributable to the state.” *Id.* at 232 (quoting
 21 *Rishikof v. Mortada*, 70 F. Supp. 3d 8, 13 (D.D.C. 2014)); *see also Mireskandari v.*
 22 *Mayne*, No. 12-cv-3861, 2016 WL 1165896, at *15 (C.D. Cal. Mar. 23, 2016) (“[A]ny
 23 act performed by the individual as an act of the State enjoys the immunity which the
 24 State enjoys.” (quoting *Yousuf v. Samantar*, 699 F.3d 763, 774 (4th Cir. 2012))).

25 Applying the Supreme Court’s decision in *Samantar*, courts today use a “two-
 26 step procedure” for determining whether a foreign official is entitled to immunity. *See*
 27 *Samantar*, 560 U.S. at 311. First, the foreign official may request a Suggestion of
 28 Immunity from the State Department; “[i]f the request [is] granted, the district court

surrender[s] its jurisdiction.” *Id.* Second, in the absence of such a Suggestion of Immunity, a district court may “decide for itself,” based on the common-law immunity principles outlined above, “whether all the requisites for such immunity existed.” *Id.* (quoting *Ex parte Peru*, 318 U.S. 578, 587 (1943)). The Executive Branch has made clear that it “need not appear in each case in order to assert the immunity of a foreign official,” Brief for the United States at 3, 21 n.*, *Matar v. Dichter*, 563 F.3d 9 (2d Cir. 2009) (No. 07-2579), 2007 WL 6931924; thus, “in the absence of contrary guidance from the Executive Branch, a district court may properly dismiss a suit against a foreign official if the suit challenges acts taken exercising the powers of the official’s office,” Brief for the United States at 14 n.5, *Giraldo v. Drummond Co.*, 493 F. App’x 106 (D.C. Cir. 2012) (No. 11-7118), 2012 WL 3152126. For this reason, both this Court and others have dismissed suits on the grounds of conduct-based immunity even without a formal Suggestion of Immunity from the State Department. *See, e.g.*, *Mireskandari*, 2016 WL 1165896, at *20; *see also Buratai*, 318 F. Supp. 3d at 231; *Moriah v. Bank of China, Ltd.*, 107 F. Supp. 3d 272, 276-80 (S.D.N.Y. 2015).

This suit presents a straightforward case of foreign-official “conduct-based” immunity. It challenges actions allegedly undertaken by Mr. Rajapaksa in his official capacity as Sri Lanka’s Defense Secretary—“the most senior civil servant in the Ministry of Defense, which houses all branches of the Sri Lankan security forces.” Compl. ¶ 18. *Compare, e.g., id.* ¶ 11 (noting that Mr. Rajapaksa’s “position placed him in overall command of Sri Lanka’s armed forces, intelligence services, and police force”), *with Matar*, 563 F.3d at 14 (citing *Heaney v. Gov’t of Spain*, 445 F.2d 501, 504 (2d Cir. 1971), for the proposition that “plaintiff’s concession that defendant was ‘at all relevant times an employee and agent of the defendant Spanish Government’ sufficed to dispose of the claim against the individual defendant”), *and Belhas v. Ya’alon*, 515 F.3d 1279, 1284 (D.C. Cir. 2008) (“The complaint identifies nothing that General Ya’alon is alleged to have done in an individual capacity, or other than as an agent or instrumentality of the state of Israel.”). In addition, Plaintiff alleges that the

1 branch of the Sri Lankan military that allegedly carried out the acts in question “was
 2 directly under the control of the Ministry of Defense,” and the attack “was part of a
 3 larger pattern” of Sri Lanka’s military strategy in a decades-long civil war. Compl.
 4 ¶¶ 17, 23, 27, 31. Thus, it was “*in his capacity as Secretary of Defense*” that Mr.
 5 Rajapaksa allegedly “exercised command responsibility over, conspired with, aided
 6 and abetted, and/or incited individuals in the Tripoli Platoon” to engage in the alleged
 7 attack. *Id.* ¶ 54 (emphasis added). In short, according to the Complaint’s own
 8 allegations, Mr. Rajapaksa acted “as part of [his] official dut[ies]” as Sri Lanka’s
 9 Defense Secretary, and he is therefore entitled to “conduct-based” immunity with
 10 regard to those actions. *Buratai*, 318 F. Supp. 3d at 232.

11 The allegations of this suit make it similar to *Buratai*, where the United States
 12 District Court for the District of Columbia held that Nigerian military officers were
 13 entitled to conduct-based immunity for allegedly ordering and carrying out
 14 extrajudicial killings of government protestors in Nigeria. *See id.*, 318 F. Supp. 3d at
 15 222-25, 230-33. The court recognized that “the defendants’ alleged actions were part
 16 of their official duties within the Nigerian government, military, and police,” and noted
 17 that, according to the plaintiffs’ complaint, “[t]he defendants all ‘exercised effective
 18 command and operational control’ over the Nigerian military and police forces and the
 19 State Security Service, or ‘exercised command authority and control over the
 20 perpetrators’ of the attacks.” *Id.* at 232 (internal citations omitted). “These
 21 allegations,” the court concluded, “do not describe private actions. Rather, as alleged
 22 by the complaint, the defendants *acted within the structure of the Nigerian government*
 23 *and military, drawing on official powers and duties and relying on the governmental*
 24 *and military chains-of-command*—i.e., within their official capacities.” *Id.* (emphasis
 25 added). Mr. Rajapaksa is entitled to conduct-based immunity for precisely the same
 26 reasons: he committed the alleged wrongdoing while acting *within the structure* of the
 27 Sri Lankan government, drawing on his official power as Defense Secretary.

1 The allegation that Mr. Rajapaksa acted in derogation of a *jus cogens* norm
 2 against extrajudicial killing does not change this analysis.⁶ This Court in *Doğan*
 3 expressly declined to recognize a *jus cogens* exception to common-law foreign-official
 4 immunity. *See* 2016 WL 6024416, at *10; *see also Matar*, 563 F.3d at 15 (“A claim
 5 premised on the violation of *jus cogens* does not withstand [common-law] foreign
 6 sovereign immunity.”); *Buratai*, 318 F. Supp. 3d at 236 (similar). The *Doğan* Court
 7 explained that recognizing a *jus cogens* exception “would effectively eviscerate the
 8 immunity for *all* foreign officials,” because an inquiry into whether a *jus cogens*
 9 violation occurred “is inextricably intertwined with the merits of the underlying
 10 claim.” 2016 WL 6024416, at *10.

11 This evisceration would occur in two respects. First, the *Doğan* Court held, “[i]f
 12 a court had to reach the merits to resolve the immunity question, there would
 13 effectively be no immunity,” because “foreign official immunity is not just a defense
 14 to liability” but also “an immunity from trial and the attendant burdens of litigation.”
 15 *Id.* (quotation source and brackets omitted). The court found this inversion of the
 16 normal procedure “particularly problematic in lawsuits arising from military
 17 operations, as any death resulting from such operations could give rise to a plausible
 18 allegation that *jus cogens* norms were violated.” *Id.* Second, the court held that
 19 “merging the question of immunity with the merits also undermines the original
 20 purpose of foreign official immunity: to avoid affronting the sovereignty of a foreign
 21 nation by passing judgment on their official government acts, which would inevitably
 22 happen if courts had to reach the merits to resolve immunity.” *Id.* Finally, “the
 23

24
 25 ⁶ “A *jus cogens* norm, also known as a ‘peremptory norm of general international law,’
 26 can be defined as ‘a norm accepted and recognized by the international community of
 27 States as a whole as a norm from which no derogation is permitted and which can be
 28 modified only by a subsequent norm of general international law having the same
 character.” *Doğan*, 2016 WL 6024416, at *10 n.18 (quoting *Yousuf v. Samantar*, 699
 F.3d 763, 775 (4th Cir. 2012)).

Executive has made clear that it does not recognize a *jus cogens* exception to immunity,” and “[b]ecause the common law immunity inquiry centers on what conduct the Executive has seen fit to immunize, courts are not free to carve out such an exception on their own.” *Id.* (internal citation omitted); *see also Republic of Mexico v. Hoffman*, 324 U.S. 30, 35 (1945) (“It is . . . not for the courts to deny an immunity which our government has seen fit to allow”); *Buratai*, 318 F. Supp. 3d at 235 (“[T]he executive branch has not recognized a blanket *jus cogens* exception.”).

Nor does the analysis change simply because Plaintiff is suing under the TVPA. The *Doğan* Court expressly rejected the notion that “the TVPA . . . abrogate[d] common law foreign official immunity for former officials,” substantiating its claim with a thorough analysis of the TVPA’s text and legislative history. 2016 WL 6024416, at *11-12. The *Doğan* Court also concluded that “[i]f immunity did not extend to officials whose governments acknowledge that their acts were officially authorized, it would open a Pandora’s box of liability for foreign military officials”: “any military operation that results in injury or death could be characterized at the pleading stage as torture or an extra-judicial killing,” and “[w]ithout common law foreign official immunity, former military officials from other nations would find themselves subject to TVPA lawsuits every time they visit the United States.” *Id.* at *12. In recent filings in *Doğan*, the U.S. government reiterated its view that the TVPA does not abrogate common-law immunity. *See, e.g.*, Brief for the United States at 15, *Doğan v. Barak*, No. 16-56704 (9th Cir. July 26, 2017), ECF No. 41 (“The TVPA does not address, let alone abrogate, the common-law immunity of foreign officials.”). Indeed, to treat the TVPA as abrogating sovereign immunity would in many cases effectively nullify the Supreme Court’s ruling in *Samantar* deeming the State Department’s determination of common-law immunity dispositive. *See* 560 U.S. at 311.

As in *Doğan*, this Court should decline to open “Pandora’s Box” and correctly recognize Mr. Rajapaksa’s immunity.

III. The Complaint Should Be Dismissed Based on Principles of Comity

Alternatively, the Court should dismiss this case as a matter of international comity. Comity is a prudential abstention doctrine intended “to promote cooperation and reciprocity with foreign lands.” *AirScan*, 771 F.3d at 597 (quotation marks omitted). It is “the golden rule among nations [that] compels [courts] to give the respect to the laws, policies, and interests of others that [they] would have others give to [their] own in the same or similar circumstances.” *Id.* at 608 (quotation marks omitted). Comity “counsels voluntary forbearance when a sovereign which has a legitimate claim to jurisdiction concludes that a second sovereign also has a legitimate claim to jurisdiction under principles of international law.” *Id.* (citation omitted).

International comity traditionally encompasses two distinct doctrines. The first, legislative, or prescriptive, comity, “guides domestic courts as they decide the extraterritorial reach of federal statutes.” *AirScan*, 771 F.3d at 598-99 (quotation marks omitted). The second, adjudicatory comity, or comity among courts, “arises in two contexts: (i) determining the preclusive effect or enforceability of a foreign ruling or judgment; or (ii) evaluating whether to stay or dismiss an action in a domestic court in favor of either a pending or future proceeding in a foreign forum.” *Id.* at 621 (Zilly, J., concurring in part and dissenting in part).

The Ninth Circuit recently applied adjudicatory comity in *AirScan*, 771 F.3d 580, to dismiss claims against an American corporate defendant for its alleged involvement in a bombing of a Colombian village. Although the court had jurisdiction to hear the case, it deferred because the plaintiffs had already successfully brought related claims against different defendants in Colombia. To reach its decision, the court applied the three-part analysis introduced in *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1238 (11th Cir. 2004), under which a court “evaluate[s] several factors, including [1] the strength of the United States’ interest in using a foreign forum, [2] the strength of the foreign governments’ interests, and [3] the adequacy of the alternative forum.” *AirScan*, 771 F.3d at 603. The court held that, “because of the

1 strength of the U.S. government’s interest in respecting Colombia’s judicial process,
 2 the weakness of California’s interest in the case, the strength of Colombia’s interests in
 3 serving as an exclusive forum, and the adequacy of the Colombian courts[.]” the
 4 plaintiffs’ claims were nonjusticiable under the doctrine of international comity. *Id.*

5 This Court should abstain here for the reasons articulated by the Ninth Circuit in
 6 *AirScan*. First, the U.S. interest factors point toward dismissal. As the court in
 7 *AirScan* explained, “[t]he (nonexclusive) factors we should consider when assessing
 8 U.S. interests include (1) the location of the conduct in question, (2) the nationality of
 9 the parties, (3) the character of the conduct in question, (4) the foreign policy interests
 10 of the United States, and (5) any public policy interests.” 771 F.3d at 604. For the
 11 reasons discussed above in the context of *forum non conveniens*, all of these factors
 12 favor dismissal. Second, because Sri Lanka’s interest in the case is as strong as the
 13 interests of the United States and California are weak, this case should be dismissed in
 14 favor of adjudication in Sri Lanka, out of respect for Sri Lanka’s courts and in
 15 recognition that they provide a far better forum for this suit. *See id.* at 607 (the foreign
 16 forum analysis “essentially mirrors the consideration of U.S. interests”). Finally, for
 17 the reasons stated above, Sri Lanka provides an adequate alternative forum.

18 **IV. Plaintiff’s Claims Are Barred for Multiple Other Reasons**

19 **A. The Statute of Limitations Bars the TVPA and ATS Claims**

20 The Court should dismiss the TVPA and ATS claims as time-barred. The
 21 statute of limitations for both the TVPA and the ATS is ten years. *See* 28 U.S.C.
 22 § 1350 note; *Papa v. United States*, 281 F.3d 1004, 1012-13 (9th Cir. 2002). Because
 23 Plaintiff filed the Complaint on April 7, 2019, more than ten years after January 8,
 24 2009, the date the alleged acts occurred, they should be dismissed as untimely.

25 Plaintiff’s claims are not subject to equitable tolling. While equitable tolling
 26 applies to the TVPA and the ATS, it is limited to situations in which the plaintiff was
 27 meaningfully prevented from bringing a claim before the limitations statute expired.
 28 Specifically, in the context of the TVPA, the statute of limitations is tolled only when

1 either “(1) defendant’s wrongful conduct prevented plaintiff from asserting the claim;
 2 or (2) extraordinary circumstances outside the plaintiff’s control made it impossible to
 3 timely assert the claim.” *Doe v. Rafael Saravia*, 348 F. Supp. 2d 1112, 1146 (E.D. Cal.
 4 2004) (quotation marks omitted).

5 Courts have emphasized that, in the first instance, “wrongful conduct” is limited
 6 to “active conduct by a defendant, *above and beyond* the wrongdoing upon which the
 7 plaintiff’s claim is filed to prevent the plaintiff from suing in time.” *He Nam You v.*
 8 *Japan*, 150 F. Supp. 3d 1140, 1147 (N.D. Cal. 2015) (emphasis added) (citing
 9 *Guerrero v. Gates*, 442 F.3d 697, 706-07 (9th Cir. 2003)). Further, plaintiffs must
 10 establish proximate cause between a defendant’s wrongful conduct and the plaintiff’s
 11 failure to timely file. *Id.* As for the second instance, courts have applied
 12 “extraordinary circumstances” sparingly. For example, courts have permitted tolling
 13 when “the *regime responsible* for the heinous acts for which these statutes provide
 14 redress remains in power,” *Hassen v. Nahyan*, No. 09-cv-1106, 2010 WL 9538408, at
 15 *17 (C.D. Cal. Sept. 17, 2010) (quoting *In re S. African Apartheid Litig.*, 617
 16 F.Supp.2d 228, 289 (S.D.N.Y.2009)), or when the judges who would oversee the
 17 claims themselves face personal danger for doing so, *see Rafael Saravia*, 348 F. Supp.
 18 2d at 1134 (“During the civil war, judges were murdered at a high rate. As the Truth
 19 Commission concluded, ‘In the 1980s, it was dangerous to be a judge in El
 20 Salvador.’”).

21 Neither basis for equitable tolling applies here. *First*, the Complaint fails to
 22 sufficiently allege that Mr. Rajapaksa acted wrongfully, above and beyond the
 23 underlying claims, to prevent Plaintiff from timely filing suit in Sri Lanka. Although
 24 the Complaint condemns Mr. Rajapaksa’s alleged posture toward journalists, Compl.
 25 ¶ 23, and accuses him of failing to adequately investigate Decedent’s death, *id.* ¶¶ 3,
 26 57-58, nowhere does it articulate whether and how Mr. Rajapaksa took additional steps
 27 to prevent Plaintiff from seeking legal redress, nor whether and how those steps
 28 proximately caused a filing delay.

1 *Second*, Plaintiff fails to sufficiently allege that extraordinary circumstances
 2 prevented her from filing in Sri Lanka before the limitations period had run. While
 3 Plaintiff references the general political situation in Sri Lanka under the Rajapaksa
 4 regime, *see* Compl. ¶¶ 14-41, she does not allege how that situation prevented her from
 5 bringing a lawsuit. Further, Plaintiff is a citizen and resident of Australia. *See* Compl.
 6 ¶ 13. Even if she could allege that extraordinary circumstances in Sri Lanka precluded
 7 her from suing Mr. Rajapaksa, Sri Lanka has procedural mechanisms that allow a
 8 plaintiff to file suit while abroad. *See* de Silva Decl. ¶¶ 3.70, 3.75, 4.16-4.18.
 9 Similarly, she does explain what prevented her from bringing this case exactly as she
 10 did now, through service directly on Mr. Rajapaksa, when he was previously in
 11 California. *See* Compl. ¶ 11 (stating that “Defendant continues to travel frequently to
 12 California”).

13 *Third*, Plaintiff herself admits that her attorneys and other family members
 14 “successfully petitioned the Mount Lavinia Magistrates Court to order that
 15 investigations into the murder be conducted by the CID of the Sri Lanka Police, in
 16 December 2009.” *Id.* ¶ 48. If Plaintiff could successfully petition a Sri Lankan court
 17 to order an investigation into the claims, it is unclear what concurrent circumstances
 18 prevented her from filing this suit.

19 *Fourth*, Sri Lankan law provides for suits against both sitting and former public
 20 officials. *See* de Silva Decl. ¶¶ 3.50-3.52, 3.86. But even if Plaintiff could have, and
 21 had, made a case that extraordinary circumstances prevented her from suing Mr.
 22 Rajapaksa while he remained part of the government, Mr. Rajapaksa has not been a
 23 government official since 2015. And despite Plaintiff’s claims that Mr. Rajapaksa
 24 continues to assert unspecified “influence over the new administration,” *id.* ¶ 52, he is
 25 currently facing criminal charges for misappropriation of public funds, *see id.* ¶ 4.11;
 26 *id.*, Ex. 2.

27 Because the Complaint is untimely and Plaintiff fails to allege any basis for
 28 equitable tolling, it should be dismissed.

B. The ATS Claims Fail Because They Are Entirely Extraterritorial

The ATS provides district courts with jurisdiction over “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” 28 U.S.C. § 1350. In *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013), the Supreme Court explained that “the presumption against extraterritoriality applies to claims under the ATS,” and thus a court must dismiss any ATS suit in which “all the relevant conduct took place outside the United States.” *Id.* at 124; *see also id.* at 124-25 (explaining that even when some relevant conduct took place domestically—and thus the claim “touch[es] and concern[s] the territory of the United States”—the domestic conduct must be sufficient “to displace the presumption against extraterritorial application”). Thus, “[i]f all the relevant conduct” for an ATS claim “occurred abroad, that is simply the end of the matter under *Kiobel*” and the claim must be dismissed. *AirScan*, 771 F.3d at 594 (quoting *Balintulo v. Daimler AG*, 727 F.3d 174, 190 (2d Cir. 2013)); *see also id.* at 592 (dismissing an ATS claim because “[t]he allegations that form the basis of Plaintiffs’ claims exclusively concern conduct that occurred in Colombia”).

Here, the Complaint contains not a single allegation of domestic conduct. While living *in Sri Lanka*, Mr. Rajapaksa allegedly ordered the killing of the decedent *in Sri Lanka*, and then allegedly obstructed a legitimate investigation *in Sri Lanka*. Although Mr. Rajapaksa—now a resident of Sri Lanka—briefly lived in the United States, there is no allegation that he conspired with any individual in this country during that time, nor, indeed, that he committed *any* relevant conduct here.

The above analysis would not change even if, as the Complaint alleges, Mr. Rajapaksa were still a United States citizen, or even if he “continues to travel frequently to California.” Compl. ¶ 11. As the Ninth Circuit made clear in *AirScan*, “the Supreme Court has never suggested that a plaintiff can bring an action based solely on extraterritorial conduct *merely because* the defendant is a U.S. national. To the contrary, the Court has repeatedly applied the presumption against

extraterritoriality to bar suits meeting that description.” *AirScan*, 771 F.3d at 594 (emphasis in original). Indeed, “in all of the post-*Kiobel* cases in which courts have permitted ATS claims against U.S. defendants to go forward, the plaintiffs have alleged that *at least some* of the conduct relevant to their claims occurred in the United States.” *Id.* at 595 (emphasis added). There is no such relevant conduct alleged in the Complaint. The ATS claims are therefore barred.

C. Plaintiff’s Failure to Exhaust Local Remedies Bars Her TVPA Claims

The Court should dismiss Plaintiff’s TVPA claims because Plaintiff failed to exhaust adequate and available Sri Lankan remedies. The TVPA expressly states that “[a] court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.” 28 U.S.C. § 1350 note.

As this Court has previously explained, “Congress included the exhaustion requirement to promote comity, avoid unnecessary burdens on American courts, and encourage the development of foreign legal systems.” *Hassen v. Nahyan*, No. 09-cv-1106, 2010 WL 9538408, at *18 (C.D. Cal. Sept. 17, 2010) (citing H.R. Rep. No. 102-367, at 5 (1991)). While the “ultimate burden of proof and persuasion . . . lies with the defendant,” “[o]nce the defendant makes a showing of remedies abroad which have not been exhausted, the burden shifts to the plaintiff to rebut by showing that the local remedies were ineffective, unobtainable, unduly prolonged, inadequate, or obviously futile.” *Hilao v. Estate of Marcos*, 103 F.3d 767, 778 n.5 (9th Cir. 1996).

The Ninth Circuit has interpreted “adequate and available remedies” for purposes of the TVPA to accord with the *forum non conveniens* standard articulated in *Piper Aircraft*, 454 U.S. 235. *See Corrie v. Caterpillar, Inc.*, 403 F. Supp. 2d 1019, 1025-26 (W.D. Wash. 2005), *aff’d*, 503 F.3d 974 (9th Cir. 2007) (holding that Israeli law provided adequate remedies and therefore that the exhaustion requirement applied). For the same reasons that Sri Lanka constitutes an adequate forum for

1 purposes of *forum non conveniens*, it provides adequate and available remedies under
2 the statute.

3 **CONCLUSION**

4 This case—brought against a former Sri Lankan Defense Secretary and current
5 presidential candidate just before elections there—has no place in a U.S. court.
6 Everything about this case is centered in Sri Lanka; nothing connects it to this District.
7 The Defendant is immune from suit for his official conduct. And the Complaint is
8 barred because it is untimely, because all the alleged conduct occurred abroad, and
9 because Plaintiff failed to exhaust Sri Lankan remedies. The Court should dismiss the
10 Complaint in its entirety and with prejudice.

11
12 Dated: June 27, 2019

ARNOLD & PORTER
KAYE SCHOLER LLP

13
14
15 By: /s/ John C. Ulin
John C. Ulin

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17 *Attorney for Defendant*
18 *Nandasena Gotabaya Rajapaksa*
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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2019, I electronically filed the foregoing
**DEFENDANT'S NOTICE OF MOTION AND MOTION TO DISMISS
PURSUANT TO RULES 12(b)(1) AND 12(b)(6), *FORUM NON CONVENIENS*,
AND INTERNATIONAL COMITY; MEMORANDUM OF POINTS AND
AUTHORITIES** with the Clerk by using the CM/ECF system. I certify that all
participants in the case are registered CM/ECF users and that service will be
accomplished by the CM/ECF system.

s/ *Vicky Apodaca*
Vicky Apodaca

**Communication to the Human Rights Committee
Submitted Pursuant to the Optional Protocol to the
International Covenant on Civil and Political Rights**

AHIMSA WICKREMATUNGE

for herself and on behalf of

LASANTHA WICKREMATUNGE

Victims

— v. —

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA,

Respondent

EXHIBIT E

**Order Granting Appellant's Motion to Dismiss, *Wickrematunge v. Rajapaksa*,
No. 19-56312 (9th Cir. 27 February 2020)**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 27 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

AHIMSA WICKREMATUNGE, in her
individual capacity and in her capacity as the
legal representative of the Estate of Lasantha
Wickrematunge,

Plaintiff-Appellant,

v.

NANDASENA GOTABAYA
RAJAPAKSA,

Defendant-Appellee.

No. 19-56312

D.C. No.

2:19-cv-02577-R-RAO

Central District of California,
Los Angeles

ORDER

Before: CANBY, GOULD, and WATFORD, Circuit Judges.

Appellant's motion to dismiss this appeal as moot (Docket Entry No. 10) is granted. *See Serv. Employees Int'l Union v. Nat'l Union of Healthcare Workers*, 598 F.3d 1061, 1068 (9th Cir. 2010) ("The test for mootness of an appeal is whether the appellate court can give the appellant any effective relief in the event that it decides the matter on the merits in his favor.") (internal quotation marks and citation omitted).

We remand to the district court with instructions to vacate its order entered October 21, 2019, and to dismiss the case without prejudice. *See United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950).

DISMISSED and REMANDED with instructions.

**Communication to the Human Rights Committee
Submitted Pursuant to the Optional Protocol to the
International Covenant on Civil and Political Rights**

AHIMSA WICKREMATUNGE

for herself and on behalf of

LASANTHA WICKREMATUNGE

Victims

— v. —

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA,

Respondent

EXHIBIT F

**Declaration of Suri Ratnapala in Support of Plaintiff's Opposition to
Defendant's Motion to Dismiss, *Wickrematunge v. Rajapaksa*, No. 2:19-cv-
02577 (C.D. Cal. 4 April 2019)**

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12 *Ahimsa Wickrematunge*

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 AHIMSA WICKREMATUNGE, in her
16 individual capacity and in her capacity
17 as the legal representative of the estate
18 of LASANTHA WICKREMATUNGE,

19 Plaintiff,

20 v.

21 NANDASENA GOTABAYA RAJAPAKSA,
22 Defendant.

Case No. 2:19-cv-02577-R-RAO

**DECLARATION OF
SURI RATNAPALA IN SUPPORT
OF PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO
DISMISS**

Date: September 16, 2019
Time: 10:00 AM
Courtroom: 880
Judge: Hon. Manuel L. Real

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1 I, Anura Surindra Ratnapala, also known as Suri Ratnapala, declare under
2 penalty of perjury of the laws of the United States as follows:

3 1. This declaration is based on my personal knowledge and research into
4 Sri Lankan law, comparative constitutional law and judiciaries around the world,
5 including the judiciary of Sri Lanka. I submit this declaration in my capacity as an
6 academic and expert in these fields. In the event that my testimony as to the contents
7 of this declaration is necessary, I will testify to the same, also under oath.

8 2. In preparation for this declaration, I have reviewed the relevant
9 documents in this case, including the First Amended Complaint and the Declaration
10 of Joseph Asoka Nihal de Silva in Support of Defendant's Motion to Dismiss. In
11 addition, I have reviewed Sri Lankan statutes, cases and academic articles, a list of
12 the documents I have reviewed is attached hereto as Exhibit B. The following
13 declaration is based on my legal knowledge and professional experience, and what I
14 believe to be true given the facts of the case and current Sri Lankan law.

15 3. I do not have nor have I had, any family, economic, working or any
16 other type of link to the plaintiffs, nor to the defendant Nandasena Gotabaya
17 Rajapaksa.

18 4. I have been contracted by the attorneys representing Plaintiff Ahimsa
19 Wickrematunge to provide information and my opinion on Sri Lankan Law and
20 procedure, and the state of the Sri Lankan judicial system.

21 5. This Declaration for which I am receiving no remuneration is based on
22 my personal knowledge and research into Sri Lankan law. I submit this document in
23 my capacity as a legal academic, jurist, and former practicing attorney in Sri Lanka.

24 6. In summary, based on the reasons laid out below, it is my expert
25 opinion that Sri Lanka is not currently an available jurisdiction to hear the claims
26 brought by the Plaintiff in this case. First, Sri Lanka does not have a civil remedy
27 akin to the Torture Victim Protection and Alien Tort Statute. Second, any civil
28

1 claims or administrative claims based on the Plaintiff's allegations in this case
2 would be barred by the statute of limitations in Sri Lankan law. Finally, the judicial
3 system in Sri Lanka has not fully recovered from the decades-long conflict.
4 Problems with rule of law and judicial independence persist to this day.

5 **I. PERSONAL BACKGROUND AND EXPERTISE**

6 7. I am a lawyer trained in Sri Lanka and Australia, and a law professor
7 with more than 50 years' experience in Sri Lankan and comparative constitutional
8 law, as detailed in my CV attached hereto as Exhibit A. I am the Emeritus
9 Professor of Public Law of the T.C. Beirne School of Law, University of
10 Queensland and Fellow of the Australian Academy of Law. I received my Bachelor
11 of Laws in 1970, from the University of Colombo, Sri Lanka, my Master of Laws
12 from Macquarie University, Sydney in 1986 and my Doctor of Philosophy (Law)
13 from the University of Queensland in 1994. I have taught and published widely in
14 the fields of constitutional law, legal philosophy and constitutional political
15 economy and am author or co-author of thirteen books and over sixty published
16 papers.

17 8. Following my graduation from the University of Colombo in 1970, I
18 worked as a Research Officer at the Ministry of Justice in Sri Lanka. In 1974, I was
19 admitted to the bar by the Supreme Court of Sri Lanka and joined the Attorney-
20 General's Department as a Senior State Counsel. In this position, I appeared on
21 behalf of the State in criminal and civil matters. I remained in this position until
22 1983.

23 9. After graduating from Macquarie University, I began my academic
24 career. I taught courses in the fields of constitutional law, legal philosophy, and
25 constitutional political economy at Macquarie University (1986 – 1987) and the
26 University of Queensland (1988 – present). I have also conducted graduate seminars
27 at other universities including New York University, George Mason University,
28

1 Virginia, the Bowling Green State University, Ohio, the University of Buckingham,
 2 England, the University of Turin, Italy, the University of Economics, Prague, Czech
 3 Republic and the Max Planck Institute of Jena, Germany.

4 10. From 1997 to 1998, I served as the Dean of the School of Law at
 5 University of Queensland, while also serving as the Deputy Director of Studies at
 6 the Faculty of Business Economics and Law from 1997 to 2002. In 2001, I also
 7 became the Professor of Public Law at the University of Queensland.

8 11. I have received fellowships at George Mason University, the Social
 9 Philosophy and Policy Centre, the Bowling Green State University, the International
 10 Centre for Economic Research, the University of Torino in Italy, and the University
 11 of Economics in Prague, the Czech Republic. I have also been a consultant for
 12 USAID, AusAid, the World Bank, and the Asian Development Bank on institutional
 13 capacity building projects in Asia focused on judicial training.

14 12. In 2003, I was awarded the Centenary of Federation Medal for my
 15 contribution to Australian society through research in law and economics. In 2012, I
 16 was elected as a Fellow of the Australian Academy of Law. In 2015, the Attorney-
 17 General appointed me to be a Commissioner of the Australian Law Reform
 18 Commission.

19 13. I am also a member of the Advisory Council of the Centre for
 20 Independent Studies, the Mont Perelin Society, and the Research Trust of the
 21 Institute of Public Affairs.

22 **II. There are no civil causes of action for torture, extrajudicial killing, and**
 23 **crimes against humanity in Sri Lanka.**

24 14. Plaintiff's claims for remedy for torture, extrajudicial killing, and
 25 crimes against humanity—allegations involving civil remedies for violations of
 26 international law—do not have an analogous statutory tort in Sri Lanka. The
 27 Plaintiff instead will have to seek civil remedies under the Sri Lankan law of
 28

delictual liability or by recourse to the fundamental rights jurisdiction of the Supreme Court under the Constitution of Sri Lanka.

A. Civil Remedies

15. The law of Sri Lanka does not recognize specific causes of action for civil wrongs as in the case of the English common law of torts. Civil liability is determined by the law of delict consisting of the rules and principles of the Roman-Dutch law as interpreted and developed by Sri Lankan courts and as modified by Sri Lanka's statute law.¹ This body of law does not recognize specific civil causes of action for torture, extrajudicial killing or crimes against humanity although these acts are punishable under the criminal law. The crime of torture is also specifically criminalized by the Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment Act No. 22 of 1994 (the "CAT Act"). However, the CAT Act makes no provision for civil remedies.

16. As previously stated, in Sri Lanka, civil wrongs for abuses alleged in this matter would be adjudicated under the rules and principles of the Roman Dutch law as judicially and legislatively developed. The Roman Dutch Law provides two remedies for civil wrongs: (i) the Aquilian Action based on the Roman *Lex Aquilia* and (ii) the *Actio Injuriarum*. The most appropriate civil remedy for the kinds of harm alleged in this matter is the Aquilian Action. However, I will also consider the plaintiff's prospects under the *Actio Injuriarum*.

17. Under Sri Lanka law, damages for physical injury resulting from assault, battery, or wrongful death may be claimed under the Roman Dutch law Aquilian Action. A claimant in an Aquilian Action, to be successful, must prove pecuniary loss caused by harm to person or property by the willful (*dolus*) or negligent (*culpa*) conduct of the defendant. The remedy does not extend to the

¹ L. J. Mark Cooray, *Common Law in England and Sri Lanka*, 24 INT'L & COMP. L. Q. 553 (1975).

1 recovery of damages for emotional harm or the loss of comfort and society of the
 2 deceased person.² Where death is caused by a wrongful act, omission, negligence or
 3 default, the spouse, a relative or guardian of the deceased person may claim
 4 damages under the Recovery of Damages for the Death of a Person Act, No. 2 of
 5 2019. The Act is not made expressly retrospective in effect. In any event, the
 6 Plaintiff is barred from claiming damages by section 9 of the Prescription Ordinance
 7 (the local Statute of Limitations).³

8 18. The second form of action under the Roman Dutch law as received in
 9 Sri Lanka is the *Actio Injuriarum*. The remedy is available for harm to the person
 10 (*corpus*), reputation (*fama*), or dignity (*dignitas*). The action must be based on
 11 actual intention to harm (*animus injuriandi*) and is available to the person who
 12 suffers indignity against the person who caused it. The *Actio Injuriarum* might be
 13 used in a case of harassment. The *Actio Injuriarum* may be applicable in cases of
 14 persecution if there is proof of an infringement of interest connected with person,
 15 dignity, or reputation, either committed intentionally or with *animus injuriandi*. This
 16 action, by its nature does not lend itself to the relief sought in this matter and in any
 17 case is not transmissible to the estate of the deceased victim and hence cannot be
 18 instituted by the Plaintiff in this case.⁴

19 19. There is no civil remedy in Sri Lanka analogous to Plaintiff's claim of
 20 crimes against humanity under the Alien Tort Statute. Under Sri Lankan law, the
 21 only civil remedies available to a person for actions that amount to crimes against
 22

23 ² See the leading authority, *Professor Priyani v. Rienzie Arasakularatne*, 2 Sri. L.R.
 24 293, 303-304 (2001).

25 ³ Ordinance No. 22 (1871), as amended by Act No. 5 of 2016; Ordinance No. 2
 (1889), as amended by Act No. 5 of 2016.

26 ⁴ Harry Dondorp, '*Actiones Heriditariae*': *Claims in Favour of and against Heirs in*
 27 *Medieval Ius Commune*, in *SUCCESSION LAW, PRACTICE AND SOCIETY IN EUROPE*
 ACROSS THE CENTURIES 77, 87-88 (Maria Gigliola di Renzo ed., 2018).

1 humanity are the Aquilian Action and an action under the Recovery of Damages for
 2 the Death of a Person Act, No. 2 of 2019. If the harms that are alleged amount to a
 3 violation of one or more fundamental rights guaranteed by the Constitution of Sri
 4 Lanka, then the aggrieved person may seek relief in proceedings under Article 126
 5 of the Constitution as discussed in paragraphs 23–28, below.

6 20. In Sri Lankan law, the crime of assault is very different to the crime of
 7 torture. “Assault” as defined by section 342 of the Penal Code concerns gestures and
 8 actions that cause apprehension of the use of criminal force. So, the more relevant
 9 distinction is between “criminal force” and “torture”. Criminal force occurs,
 10 according to section 341 of the Penal Code, when a person “intentionally uses
 11 force to any person, without that person’s consent, in order to the committing
 12 of any offence, or intending illegally by the use of such force to cause, or
 13 knowing it to be likely that by the use of such force he will illegally cause
 14 injury, fear, or annoyance to the person to whom the force is used.” The maximum
 15 punishment for the crime of “criminal force” is 3 months of imprisonment. Acts that
 16 amount to torture may also be punishable as the offence of causing of grievous hurt.
 17 The maximum punishment for causing grievous hurt is 7 years, and 10 years if the
 18 offence is aggravated by other causes. (See sections 310 to 325 of the Penal Code).
 19 Torture is a more serious and specific crime under the CAT Act. Torture which is
 20 defined in section 12 of the CAT Act carries a punishment of between 7 and 10
 21 years. The crime of torture is distinguished from similar Penal Code offences by the
 22 elements of intensity, purpose and the agency of the state. Specifically, torture
 23 differs in the following ways: (i) Torture is an act that causes severe psychological
 24 or physical pain – fear of harm is insufficient. (ii) The infliction of pain is for
 25 specific purposes, namely, obtaining information or confessions from the victim or
 26 other person; punishing the victim or other person extra-judicially; intimidating or
 27 coercing the victim or other person; or the purpose of discrimination. (iii) The act

1 must be done by or at the initiation of, or with the consent or acquiescence of a
2 public servant or other person acting in an official capacity.

3 21. Although torture is a criminal offence, punishable under the CAT Act,
4 the Plaintiff has no civil remedy with respect to torture. Plaintiff cannot recover
5 damages under the law of Sri Lanka except by recourse to the Aquilian Action for
6 patrimonial loss resulting from willful causing of death or by an action under Act
7 No. 2 of 2019. There are, however, serious doubts whether this Act has any
8 retrospective effect.

9 22. No civil remedy exists in Sri Lankan law for “extrajudicial killing”
10 except to the extent that damages are recoverable by the Aquilian Action or as
11 provided by the Recovery of Damages for the Death of a Person Act of 2019.

12 **B. Fundamental Rights Petitions**

13 23. Chapter III of the Constitution of Sri Lanka in Articles 10 to 15 sets out
14 the fundamental rights of persons. Article 17 states: Every person shall be entitled to
15 apply to the Supreme Court, as provided by Article 126, in respect of the
16 infringement or imminent infringement, by executive or administrative action, of a
17 fundamental right to which such person is entitled under the provisions of this
18 Chapter.

19 24. Article 126(1) of the Constitution of Sri Lanka confers on the Supreme
20 Court “sole and exclusive jurisdiction to hear and determine any question relating to
21 the infringement or imminent infringement by executive or administrative action of
22 any fundamental right or language right declared and recognized by Chapter III or
23 Chapter IV.” Where the Court of Appeal in the course of hearing an application for
24 a writ of *habeas corpus*, *certiorari*, *prohibition*, *procedendo*, *mandamus* or *quo*
25 *warranto*, finds prima facie evidence of an infringement of a fundamental right or
26 language right, the Court must refer the issue to the Supreme Court. This means that
27 other courts cannot entertain an action for civil remedies for wrongs that are

1 infringements of fundamental rights. However, they may entertain civil claims based
2 on general laws of civil liability.

3 25. Article 11 of the Constitution grants freedom from torture or cruel,
4 inhuman, or degrading treatment or punishment. In *W.M.K. de Silva v. Chairman,*
5 *Ceylon Fertilizer Corporation*, S.C. App. No. 7/88, 2 Sri L.R. 393, 403 (1989), the
6 Supreme Court held that a victim could invoke the fundamental rights jurisdiction of
7 the Supreme Court against a public official for torture even if that official was acting
8 in the discharge of his executive or administrative duties or under color of law.

9 26. Article 13 grants freedom from arbitrary arrest, detention, or
10 punishment. The Supreme Court in *Siryani Silva v. Iddamalgoda*, S.C. App.
11 471/2000, 2 Sri L.R. 63, 75-77 (2003) held that there is an implied right to life in the
12 Constitution, as interpreted through Articles 11 and 13. Thus, a fundamental rights
13 petition could likely be filed premised on allegations of extrajudicial killing or
14 enforced disappearances.

15 27. Domestic law does not recognize crimes against humanity as an
16 actionable claim for a fundamental rights petition.

17 28. The remedies available under Article 126 in respect of the infringement
18 of fundamental rights are subject to significant limitations. They include the
19 following.

20 (i) An application for relief under Article 126 must be made within one
21 month whereas section 9 of the Prescription Ordinance allows a period of
22 2 years.

23 (ii) Article 126(5) requires Supreme Court to “hear and finally dispose of any
24 petition or reference under this Article within two months of the filing of
25 such petition or the making of such reference.” This period may be
26 extended where the Supreme Court refers a matter to the Human Rights
27
28

Commission for inquiry and report. There is no such limitation in the general law with respect to civil or criminal proceedings.

(iii) An application under Article 126 can only be made with leave of the Court, a discretion not granted to courts of first instance.

(iv) The procedure that governs the hearing and disposal of cases under Article 126 is governed by rules of court made by the Supreme Court. These provisions displace the provisions of the Civil Procedure Code that embody the requirements of procedural fairness with respect to notice to parties, discovery, trial, interlocutory decrees, and other time-honored safeguards.

(v) The evidence in an Article 126 proceeding is by way of affidavit (sworn declaration) and certified documents. There is no scope for examining witnesses. The Supreme Court may refer a matter to the Human Rights Commission for inquiry and report.⁵

(vi) The Supreme Court has a wide discretion as to the relief it may grant. However, with respect to the quantum of damages the Court is not governed by the principles that guide the assessment of compensation in general civil litigation.

(vii) There is no appeal from a judgment given under Article 126 whereas the judgement of a court of first instance is subject to at least two appeals.

C. Human Rights Commission

29. Victims of human rights abuses may also seek administrative remedies through the Human Rights Commission of Sri Lanka (HRC), as established by the Human Rights Commission of Sri Lanka Act of 1996. Under sections 10 and 14 of the HRC Act, the HRC has the power to investigate human rights violations.

⁵ Human Rights Commission of Sri Lanka Act No. 21, §12(1) (1996).

30. Upon a finding of an infringement of a fundamental right by executive or administrative action, the HRC may recommend the matter for conciliation. When conciliation does not seem appropriate, the HRC may refer the case for administrative disciplinary action or to the attorney general for prosecution, or both. The HRC may also refer the matter to a court having jurisdiction to hear and determine the matter and make a recommendation to the appropriate authorities for financial compensation for victims. However, the “HRC does not have the power to directly enforce its orders. It has to rely on the governmental institution concerned to adopt its recommendation or bring the matter before a court at its own initiative.”⁶

31. Pursuant to section 11(g) of the HRC Act, the HRC may, in its absolute discretion, make an award for costs incurred in bringing the action. This is the only monetary award the HRC can make. The HRC does not have the power to award victims monetary damages directly, but instead it may refer the matter to the appropriate authority.

III. The Prescription Ordinance (Statute of Limitations) in Sri Lanka and the Defense of Laches would bar claims arising in 2009

32. Plaintiff’s claims, which arise from conduct that occurred in 2009, are time barred, which prevents her from pursuing any of the remedies described in Part II of this declaration.

A. Civil Remedies

33. Section 9 of the Prescription Ordinance⁷ clearly states that an action for loss, injury, or damage must be brought within two years from the time when the

⁶ Mario Gomez, *Sri Lanka’s New Human Rights Commission*, 20 HUM. RTS. Q. 281, 289 (1998).

⁷ Ordinance No. 22 (1871), as amended by Act No. 5 of 2016; Ordinance No. 2 (1889), as amended by Act No. 5 of 2016.

1 cause of action arose. Ordinarily, the cause of action arises when an aggrieved party
 2 becomes aware or should have become aware of the circumstances that establish a
 3 violation.⁸ This two-year statute of limitations applies to both Aquilian Actions and
 4 the *Actio Injuriarum*.

5 34. The Prescription Ordinance contains no provisions for exceptions to the
 6 two-year limitation period for actions under section 9 (for loss, injury or damage).⁹

7 35. The two-year limitation also applies to actions brought pursuant to the
 8 Recovery of Damages for the Death of a Person Act, No. 2 of 2019 and other
 9 statutory civil remedies, unless otherwise provided.

10 36. The courts have no power to extend this two-year limitation period.

11 **B. Fundamental Rights Petitions**

12 37. Article 126 of the Sri Lankan Constitution requires the petitioner to file
 13 a fundamental rights petition within one month of the violation.

14 38. The time limit is considered mandatory and there are only a few narrow
 15 exceptions to the one-month limitations period. One such exception is when the
 16

17 ⁸ II CHRISTOPHER WEERAMANTRY, LAW OF CONTRACTS 865 (1967); *Meezan v.*
 18 *Sumanasekera et al.*, SC App. No. 4/2011, 7 (2012) (Sup. Ct. Sri Lanka) (finding
 19 that the fact that plaintiff was unaware of the registered owner of the vehicle was
 “no excuse” for instituting an action against the owner five years after the accident).

20 ⁹ In section 14, the Prescription Ordinance provides specific reasons for exceptions
 21 to limitations periods only for causes of action in sections 5, 7, 8, 10, and 11 of the
 Ordinance. These causes of action are mortgage debt or bond (s. 5), promissory
 22 notes and partnership deeds (s. 6), recovery of goods, rent or money without a
 written security (s. 7), debt for goods, shop bills, work and labor (s. 8), other actions
 23 not mentioned in the Ordinance (s.10), reconvention or counterclaims (s.11).
 24 Section 13 provides reasons for exception to limitations with regard to claims for
 recovery of land or immovable property. Per the plain language of sections 13 and
 25 14 of the Prescription Ordinance, these exceptions do not apply to section 9, which
 26 pertains to prescription for actions for loss, injury or damage, and which controls the
 statute of limitations for the causes of action that could be brought by the Plaintiff in
 27 this case.

petitioner is unaware of the violation, and then files within one month of discovering such violation.¹⁰ Another exception is if the petitioner is physically incapable of filing a petition.¹¹ None of these exceptions apply in this instance.

39. An additional exception exists where a petitioner has made a complaint to the Human Rights Commission within one month of the infringement. If that is the case, the period within which the inquiry is pending in the Commission will not be taken into account in computing the period of one month mandated in Article 126.¹²

40. The Supreme Court has been unwilling to find further exceptions to the constitutionally-mandated limitations period.

C. Human Rights Commission

41. Complaints of infringement or imminent infringement of a fundamental right may be made to the Human Rights Commission of Sri Lanka within a reasonable time.

* * *

42. Any claim by the Plaintiff relating to the death of Lasantha Wickrematunge would have accrued on the date of his death on January 8, 2009.

¹⁰ See *Demuni Sriyani de Soyza et al. v. Dharmasena Dissanayake*, S.C. App. 206/2008, 10 (2016) (Sup. Ct. Sri Lanka).

¹¹ *Id.* at 10 (noting that “most of the decisions” on the issue of exceptions to the time limit refer to situations of hospitalization after torture while in custody, or being held incommunicado. Those situations have, in prior cases, been considered sufficiently beyond the control of the petitioner to warrant an extension of time). The court in *de Soyza et al.* observed that additional exceptions could, in theory, be accepted, but emphasized that they would need to be of comparable gravity and demonstrate that the delay of the petitioner was beyond his control, for example due to “the act of a third party, or some natural or man-made disaster.” *Id.* at 11-12. Moreover, the extension of time would only apply until the moment when the petitioner’s “disability could be reasonably held to have seized.” *Id.* at 11.

¹² Human Rights Commission of Sri Lanka Act No. 21 § 13(1) (1996).

1 Any civil action for damages would have been time barred in January 2011. Any
 2 fundamental rights petition would have been time barred by February 9, 2009. Any
 3 complaint to the HRC would have been time barred after what it may deem a
 4 reasonable period. Thus, there are no longer any remedies available to Plaintiff
 5 under Sri Lankan law.

6 43. Courts have no discretion or power to extend the limitation periods
 7 prescribed in legislation and thereby remove this bar from the Plaintiff's claims. To
 8 my knowledge, there are no instances in which otherwise time barred actions have
 9 been permitted to proceed and efforts to create legislative exceptions have not
 10 succeeded. For example, following the conclusion of the Civil War in 2009, the Sri
 11 Lanka Law Commission proposed an amendment to the Prescription Ordinance to
 12 give relief to persons who were displaced or disadvantaged by the war. The
 13 proposed amendment would have tolled the limitation period for actions to recover
 14 immovable property for the period of their displacement or disadvantage. This
 15 reform was, however, not enacted.

16 **IV. Judicial Independence in Sri Lanka May Also Affect the Fair** 17 **Adjudication of Victims' Claims in Sri Lanka**

18 44. Sri Lanka's judiciary, once internationally acclaimed for its
 19 independence, impartiality and competence, has been under great stress in the past
 20 several decades. Institutional weakening and politicization have been the major
 21 causes of this judicial decline. The judiciary's international reputation has been
 22 badly damaged as reflected in reports of the International Crisis Group¹³, and the
 23 International Bar Association.¹⁴ The state of the rule of law in the country and the
 24 abuses of political office were central issues in the Presidential and Parliamentary
 25

26 ¹³ INT'L CRISIS GRP., SRI LANKA'S JUDICIARY: POLITICISED COURTS, COMPROMISED
 RIGHTS (2009)

27 ¹⁴ INT'L BAR ASS'N, A CRISIS OF LEGITIMACY: THE IMPEACHMENT OF CHIEF JUSTICE
 28 BANDARANAYAKE AND THE EROSION OF THE RULE OF LAW IN SRI LANKA (2013).

1 General Elections held in 2015 that led to the election of the present government to
 2 replace the government led by Mr. Mahinda Rajapaksa, the brother of the defendant
 3 who was the Secretary of the Ministry of Defence in that Administration.

4 45. The Nineteenth Amendment enacted in 2015 made far reaching and
 5 positive changes to the Constitution. With respect to the judiciary, the critical
 6 change was the removal of the President's power to appoint superior court judges,
 7 members of the Judicial Service Commission, the Police Commission and other high
 8 officials. They must now be recommended for appointment by a Constitutional
 9 Council composed of members nominated by different political groups. This
 10 constitutional arrangement had shown early promise as demonstrated by the
 11 Supreme Court's decision to annul the unconstitutional dissolution of Parliament by
 12 the President. In a recent published paper, I expressed my cautious optimism but
 13 concluded that "[t]he efficacy of the Nineteenth Amendment, or indeed of a future
 14 constitution, however well crafted, to arrest and reverse this trend depends on the
 15 commitment of the political actors, the vigilance of civil society groups and the
 16 pressures of public opinion. The law has no life beyond the opinions and actions of
 17 the people."¹⁵

18 46. Current political trends have diminished my initial optimism. The
 19 president Mr. Sirisena, who co-authored the Nineteenth Amendment, has said
 20 publicly that he now opposes the constitutional Amendment. The leader of the main
 21 opposition party, the Sri Lanka Podujana Peramuna (SLPP), Mr. Mahinda
 22 Rajapaksa also opposes the Amendment. The party's candidate for President at the
 23 coming election is the defendant. These developments do not augur well for the
 24 Plaintiff's prospects of gaining relief within the Sri Lankan judicial system.

26 ¹⁵ Suri Ratnapala, *Decline and Fall of Sri Lanka's Judiciary and Prospects for*
 27 *Resurrection*, in ASIA PACIFIC JUDICIARIES: INDEPENDENCE, IMPARTIALITY AND
 28 INTEGRITY 305, 329 (H.P. Lee & Marilyn Pittard, eds. 2018).

1 47. As a report from the International Crisis Group observed, “[f]ixing
2 institutions and reforming laws will therefore only have a limited effect until
3 political actors, and especially the presidency, feel the political cost of ignoring or
4 infringing on judicial independence. Absent a concerted effort by the bench and bar,
5 the political costs of interfering with the judiciary will remain minimal. So long as
6 that remains the case, Sri Lankans of all ethnicities will continue to lack access to a
7 reliable forum for the adjudication of state violations of their basic constitutional
8 and human rights—and a unique opportunity to forge a lasting peace may be lost.”¹⁶
9 This conclusion is worth heeding today.

10 **V. Conclusion**

11 48. As set forth in this report, it is my expert opinion that the Plaintiff in
12 this case will have no access to remedies in Sri Lanka. First, the potential civil
13 remedies that could be available are inadequate with regard to the specific claims of
14 torture, extrajudicial killing and crimes against humanity that the Plaintiff in this
15 case brings. Second, all the potential remedies that could have been available to the
16 Plaintiff—civil remedies, Fundamental Rights petition, or a complaint before the
17 Human Rights Counsel—are time-barred. Third, due to significant challenges to the
18 judicial independence of Sri Lanka, which have been ongoing for decades and
19 which have failed to abate despite recent reforms, it is unlikely that Sri Lankan
20 courts can, at this juncture, be a reliable forum for the adjudication of state-based
21 violations of the basic constitutional and human rights of Plaintiff and her father.
22
23
24
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26

27 ¹⁶ INT’L CRISIS GRP., SRI LANKA’S JUDICIARY: POLITICISED COURTS, COMPROMISED
28 RIGHTS (2009).

1 I hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, and
2 under the laws of the United States, that the following is true and correct.
3

4
5 Executed on August 26, 2019 in Queensland, Australia.
6

7 
8 _____
9 Anura Surindra Ratnapala
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 26, 2019, I electronically filed the foregoing **DECLARATION OF SURI RATNAPALA IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** with the Clerk by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Catherine Amirfar

Catherine Amirfar

**Exhibit A: Curriculum Vitae and List of
Publications**

Exhibit A: Curriculum Vitae and List of Publications

Emeritus Professor Suri Ratnapala

EXECUTIVE SUMMARY

Suri Ratnapala is Emeritus Professor of Public Law of the T C Beirne School of Law, University of Queensland and Fellow of the Australian Academy of Law. He holds the degrees of LLB (Colombo); LLM (Macquarie) and PhD (Qld). He has taught and published widely in the fields of constitutional law, legal philosophy and constitutional political economy and is the author or co-author of thirteen books and many published papers. He has received fellowships at George Mason University, Virginia, the Social Philosophy and Policy Centre, the Bowling Green State University, the International Centre for Economic Research, the University of Torino, Italy and the University of Economics in Prague. In 2003 he was awarded a Centenary of Australian Federation Medal for his contribution to Australian society through research in law and economics. In 2012 he was elected as a Fellow of the Australian Academy of Law. Professor Ratnapala has been a consultant with USAID, AusAid, the World Bank and the Asian Development Bank in institutional capacity building projects in Asia focused on judicial training. He is an Attorney-at-law of Sri Lanka and has served as a Senior State Counsel in the Attorney-General's Department of Sri Lanka.

QUALIFICATIONS

- Doctor of Philosophy (University of Queensland) (1994)
- Master of Laws (Macquarie University) (1986)
- Bachelor of Laws (University of Colombo) (1970)
- Attorney at Law (Supreme Court of Sri Lanka) (1974)

MEMBERSHIPS

- Fellow of the Australian Academy of Law
- Member of the Mont Pelerin Society
- Member of the Advisory Council of the Centre for Independent Studies
- Member, Society for Evolutionary Analysis of Law
- Member of the Research Trust, Institute of Public Affairs

POSITIONS HELD

2015 Commissioner of the Australian Law Reform Commission

2001-2014 Professor of Public Law, School of Law, University of Queensland

1997-2002 Deputy Director of Studies, Faculty of Business Economics and Law

1997-1998 Dean of the School of Law, University of Queensland

1996-1997 Deputy Dean, Faculty of Law, University of Queensland

1997-2000 Reader in Law, University of Queensland

1993-1996 Senior Lecturer in Law, University of Queensland

1988-1992 Lecturer in Law, University of Queensland

1986-1987 Tutor in Law, Macquarie University

1983-1985 Research Assistant, Macquarie University

1975-1983 Senior State Counsel, Attorney-General's Department, Sri Lanka

1972-1975 Research Officer, Ministry of Justice, Sri Lanka

1970-1972 Reporter, *Ceylon Daily News*

1969-1970 Lecturer in Law, University of Colombo

PROFESSIONAL EXPERIENCE

- Legal adviser in the Ministry of Justice of Sri Lanka.
- Senior State Counsel in the Attorney-General's Department of Sri Lanka engaged in a full range of professional practice.
- Consultancies with World Bank, USAID, AusAid and the Asian Development Bank projects in the legal and judicial sectors.

LIST OF PUBLICATIONS

Books

Jurisprudence, 3rd ed, Cambridge, Cambridge University Press, 2017

Jurisprudence, 2nd ed, Cambridge, Cambridge University Press, 2013

Australian Constitutional Law: Foundations and Theory, 3rd ed with Jonathon Crowe, Melbourne, Oxford University Press, 2012

Jurisprudence of Liberty 2nd ed, (eds Ratnapala and Moens), Sydney, LexisNexis Butterworths, 2011

Jurisprudence, Cambridge, Cambridge University Press, 2009

Australian Constitutional Law: Commentary and Cases, Oxford University Press, Melbourne, 2007 (with Cornelia Koch, Vanitha Karean and Thomas John)

Australian Constitutional Law: Foundations and Theory 2nd ed, Oxford University Press, Melbourne, 2007

Environmentalism versus Constitutionalism: A Contest without Winners, New Zealand Business Roundtable, Wellington, 2006

Jurisprudence of Liberty, Butterworths, Sydney, 1996 (co-edited with Gabriel Moens)

Mabo: A Judicial Revolution? University of Queensland Press, St. Lucia, 1993 (co-edited with Margaret Stephenson)

Restoring the True Republic, Centre for Independent Studies, Sydney, 1993 (co-authored with Geoffrey de Q Walker and Wolfgang Kasper)

The Illusions of Comparable Worth, Centre for Independent Studies, Sydney, 1992 (co-authored with Gabriel Moens)

Welfare State or Constitutional State? Centre for Independent Studies, Sydney, 1990

Monograph

The Role of Government in a Liberal Society, Centre for Independent Studies, Sydney, 2009

Articles and Book Chapters

- Austin Pullé and Suri Ratnapala, 'Sri Lanka's Quest for a Reformed Constitution: Lessons from a Lost Opportunity', to be published in September 2019 in *The Chinese Journal of Comparative Law*.
- Suri Ratnapala, 'Defending Liberal Democracy and Liberal Peace in the Time of Rising Populism and Fascism', Analysis Paper No 3, Sydney: Centre for Independent Studies, 2019, 16-23.
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Exhibit B: Documents Considered

Exhibit B: Documents Considered

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**Communication to the Human Rights Committee
Submitted Pursuant to the Optional Protocol to the
International Covenant on Civil and Political Rights**

AHIMSA WICKREMATUNGE

for herself and on behalf of

LASANTHA WICKREMATUNGE

Victims

— v. —

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA,

Respondent

EXHIBIT G

**Plaintiff's Memorandum of Points and Authorities in Opposition to
Defendant's Motion to Dismiss, *Wickrematunge v. Rajapaksa*, No. 2:19-cv-
02577 (C.D. Cal. 4 April 2019)**

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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17

18 AHIMSA WICKREMATUNGE, in her
19 individual capacity and in her capacity
20 as the legal representative of the estate
of LASANTHA WICKREMATUNGE,

21 Plaintiff,

22 v.

23 NANDASENA GOTABAYA RAJAPAKSA,
24 Defendant.
25

Case No. 2:19 CV-02577-R-RAO

**PLAINTIFF'S MEMORANDUM
OF POINTS AND AUTHORITIES
IN OPPOSITION TO
DEFENDANT'S MOTION TO
DISMISS**

*Declarations of Steven R. Ratner, Juan
E. Méndez, and Suri Ratnapala
submitted concurrently herewith*

Date: September 16, 2019
Time: 10:00 am
Courtroom: 880
Judge: Hon. Manuel L. Real

26
27
28
**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION
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TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	2
STANDARD OF REVIEW	3
ARGUMENT	3
I. Defendant Is Not Entitled to Foreign-Official Immunity.	3
II. Defendant’s <i>Forum Non Conveniens</i> Argument Should Be Rejected.....	6
III. The Court Should Deny Defendant’s Motion to Dismiss Based on Principles of Comity.....	12
IV. The Court Has Jurisdiction over Plaintiff’s ATS Claims.	13
V. The Court Should Deny Defendant’s Motion to Dismiss Plaintiff’s TVPA Claims for Failure to Exhaust Local Remedies.	17
VI. Plaintiff Has Standing to Bring TVPA Claims for Torture.	18
CONCLUSION	19

TABLE OF AUTHORITIES

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11	Cir. 1992)	5
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13	Cir. 1994)	5, 11
14	<i>Jesner v. Arab Bank, PLC</i> , 138 S. Ct. 1386 (2018).....	14, 15, 16
15	<i>Kiobel v. Royal Dutch Petroleum Co.</i> , 569 U.S. 108 (2013).....	2, 13, 14, 15
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17	<i>Lewis v. Mutond</i> , 918 F.3d 142 (4 th Cir. 2019).....	6
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26	288 (S.D.N.Y. 2003)	7
27		
28		

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2	<i>mem.</i> , 767 F.2d 908 (2d Cir.1985).....	8
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8	2002)	19
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STATUTES

14	Alien Tort Statute (ATS), 28 U.S.C. § 1350.....	2, 13
15	Torture Victim Protection Act (TVPA), 28 U.S.C. § 1350 note	2, 19
16	F.R.C.P 12(b)(1)	1, 3,20
17	F.R.C.P 12(b)(6).....	1, 3,20

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26	H.R. REP. NO. 102-367 (1991)	19
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1	S. Rep. No. 249, 102d Cong., 1st Sess. (1991).....	17
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6	REV. 2071, 2079 (2015).....	13

7 **TREATISES**

8	Restatement (Second) of Foreign Relations Law § 66(f) (1965)	4
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INTRODUCTION

Plaintiff Ahimsa Wickrematunge (“Plaintiff”) respectfully submits this memorandum of law in opposition to Defendant Nandasena Gotabaya Rajapaksa’s (“Defendant”) motion to dismiss the First Amended Complaint (“FAC”) pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) on several grounds. For the reasons stated herein, Defendant’s arguments are without merit, and his motion to dismiss (“MTD”) should be denied.

First, with no suggestion of immunity from the U.S. Department of State and no suggestion that Sri Lanka has authorized or ratified Defendant’s conduct, Defendant has no support for his claim to common-law immunity.

Second, Defendant cannot meet the heavy burden of demonstrating Sri Lanka as an adequate and available forum to warrant dismissal under the doctrine of *forum non conveniens*. This suit cannot be litigated in a Sri Lankan court: as the reports submitted by Plaintiff’s experts, Professors Juan Méndez, Steven Ratner, and Suri Ratnapala demonstrate, Sri Lankan law offers no adequate civil remedy to Plaintiff, and litigation in Sri Lanka would be so fraught with corruption, delay, and danger to litigants and witnesses, as to render any effort at redress futile and meaningless. Plaintiff’s FAC likewise alleges facts establishing the futility of exhausting any domestic remedies in Sri Lanka.

Third, Defendant’s “alternative” argument on international comity, which relies on the same faulty assertions regarding the independence and adequacy of the Sri Lankan judicial system, fails for the same reasons. Nor could any concern about comity outweigh the significant U.S. interest in this matter: namely, regulating the conduct of its citizens, including Defendant, for egregious violations of international law prohibiting extrajudicial killing and torture.

Fourth, Defendant’s U.S. citizenship is sufficient to rebut the *Kiobel* presumption against extraterritoriality for claims filed under the Alien Tort Statute

1 (“ATS”). At a minimum, Defendant’s travel to the United States during the period
 2 of the alleged conspiracy warrants jurisdictional discovery regarding conduct that
 3 may further touch and concern the United States.

4 *Finally*, the Torture Victim Protection Act (“TVPA”) creates a civil action
 5 for recovery that plainly encompasses damages for both torture and extrajudicial
 6 killing and permits Plaintiff to bring claims on her and her father’s behalf.

7 **BACKGROUND¹**

8 On April 4, 2019, Plaintiff brought this action for torture, extrajudicial
 9 killing, and crimes against humanity in violation of international law under the
 10 TVPA (28 U.S.C. § 1350 note) and the ATS (28 U.S.C. § 1350), for the torture and
 11 assassination of her father, Lasantha Wickrematunge (“Lasantha” or “Decedent”),
 12 a prominent journalist and defender of human rights in Sri Lanka. FAC ¶¶ 2, 42-
 13 43. The FAC alleges that the attack against Decedent was carried out by members
 14 of the Sri Lankan Directorate of Military Intelligence under the command and
 15 control of Defendant, then Secretary of Defense, and that the attack was part of a
 16 larger pattern of persecution and extrajudicial killing targeting independent
 17 journalists during Defendant’s time in office from 2005 to 2015. *Id.* ¶¶ 23-31, 34-
 18 39.

19 The initial Sri Lankan investigation into Decedent’s assassination faced
 20 numerous obstructions, including a flawed autopsy report, evidence tampering,
 21 witness unavailability, and multiple transfers between departments under
 22 Defendant’s command. *Id.* ¶¶ 45-52. Defendant’s and his family’s political
 23 influence further impeded any real possibility of domestic accountability. *Id.* ¶ 57.

24 Although a new government reopened the investigation into Decedent’s
 25 death in 2015, the case—like nearly all cases against military officials for human
 26

27 ¹ Plaintiff submits this memorandum in compliance with the standing order of
 28 Judge Manuel Real, who remains the assigned judge on the docket.

rights abuses—has stalled due to political pressures and witness intimidation. *Id.* ¶ 58. Defendant maintains powerful political influence: Defendant’s brother is the leader of the opposition party and indeed, Defendant is a presidential candidate in the upcoming Sri Lankan election. *Id.* ¶ 59, MTD 17. The current President has also promised to shield members of the former military command from prosecution. FAC ¶ 59. In addition, fear of reprisals in politically sensitive cases like this one has dissuaded witnesses from participating in investigations into Decedent’s death, and Sri Lanka’s ineffective witness protection program has done little to assuage these fears. *Id.* ¶ 61.

Due to the futility of seeking any remedy in Sri Lanka, Plaintiff initiated the present action in the Central District of California, while Defendant, a dual U.S. and Sri Lankan citizen, was physically present in the forum. Plaintiff filed the First Amended Complaint on July 15, 2019.

STANDARD OF REVIEW

In considering a motion to dismiss under Rule 12(b)(6), the Court must “accept [Plaintiff’s] allegations as true and construe them in the light most favorable to plaintiff[.]” *Curry v. Yelp Inc.*, 875 F.3d 1219, 1224–25 (9th Cir. 2017). The same standard applies to Rule 12(b)(1) motions to dismiss for lack of subject-matter jurisdiction where, as here, the defendant asserts that the “allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction.” *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004).

ARGUMENT

I. Defendant Is Not Entitled to Foreign-Official Immunity.

Defendant is not entitled to foreign-official immunity for the attack, torture, and murder of Lasantha, a civilian journalist. Under common law, U.S. courts determine conduct-based foreign-official immunity with a “two-step procedure” that considers: (1) whether “the diplomatic representative of the sovereign []

request[s] a ‘suggestion of immunity’ from the State Department”; and (2) absent a suggestion of immunity (“SOI”), “whether the ground of immunity is one which it is the established policy of the State Department to recognize.” *Samantar v. Yousuf*, 560 U.S. 305, 311-312 (2010).

Defendant plainly fails the first step. Unlike the facts of the Ninth Circuit’s recent *Doğan v. Barak* (“Doğan II”) decision,² on which Defendant heavily relies, the State Department has not filed an SOI in this case. Nor has Defendant offered any proof that Sri Lanka even made any such request.

As for the second step, the asserted “ground of immunity” extends to “acts performed in [a foreign official’s] official capacity if the effect of exercising jurisdiction would be to enforce a rule of law against the state[.]” MTD 4; *Doğan II* at *5 (quoting Restatement (Second) of Foreign Relations Law § 66(f) (1965)). Defendant relies on *Doğan II* to argue that the attack on Lasantha constitutes this requisite “official” act because Defendant was Secretary of Defense and used government and security forces to commit his crimes. MTD 5-6. In doing so, Defendant disregards the key facts that “form the basis” of the *Doğan II* Court’s finding of “official” conduct that necessitated “enforc[ing] a rule of law against the state”: there, unlike here, Israel *authorized and ratified* the defendant’s military conduct. *Doğan II* at *5, 8.³

² Israel confirmed that the defendant’s actions “were performed exclusively in his official capacity as Israel’s Minister of Defense,” and that the lawsuit concerned only “authorized military action taken by the State of Israel.” *Doğan v. Barak* (*Doğan I*), No. 2:15-cv-8130, 2016 WL 6024416 at *12 (C.D. Cal. Oct. 13, 2016) *aff’d* *Doğan II*, No. 16-56704, 2019 WL 3520606 (9th Cir. Aug. 2, 2019). Israel then asked the State Department to file an SOI, and the State Department did so, concluding that Barak’s actions were “official” government acts “authorized by Israel.” *Id.* at *3; *Doğan II* at *3.

³ Specifically, the defendant purportedly was “instructed by the Prime Minister to conduct” the military operation, *Doğan II* at *5, and “the sovereign state officially acknowledge[d] and embrace[d]” his actions after the fact. *Doğan I* at *12.

1 The Ninth Circuit distinguished its ruling from previous cases where, as
 2 here, the foreign state had not authorized or ratified the defendant's conduct.
 3 Addressing the *Marcos* cases, the *Doğan II* Court explained that: "Marcos was not
 4 entitled to immunity because the Philippines did not ratify his conduct." *Doğan II*
 5 at *7 n. 7 (citing *In re Estate of Ferdinand Marcos Human Rights Litig.*, 25 F.3d
 6 1467 (9th Cir. 1994); *In re Estate of Ferdinand E. Marcos Human Rights Litig.*,
 7 978 F.2d 493 (9th Cir. 1992)).⁴ The *Doğan II* Court similarly distinguished the
 8 Fourth Circuit's decision in the *Yousuf* case because, in that case, the State
 9 Department had issued a suggestion of non-immunity, there was no recognized
 10 foreign government to request immunity on defendant's behalf, and "he was a U.S.
 11 legal permanent resident, enjoying 'the protections of U.S. law,' and thus 'should
 12 be subject to the jurisdiction of the courts.'" *Doğan II* at *8 (referring to *Yousuf v.*
 13 *Samantar*, 699 F.3d 763, 773 (4th Cir. 2012)). Therefore, the *Doğan II* Court
 14 concluded that "as in the *Marcos* cases, the [*Yousuf*] defendant was never given
 15 immunity in the first place." *Id.*

16 Here, Sri Lanka has neither authorized nor ratified Defendant's conduct. To
 17 the contrary, Sri Lankan law enforcement agencies have, albeit ineffectively,
 18 purported to investigate the attack, torture, and murder of Lasantha as a criminal
 19 act. FAC ¶¶ 45-52. In a public interview shortly after Lasantha's murder,
 20 Defendant himself did not pretend that Lasantha's killing was related to any
 21 purported military operation, instead calling the attack "just another murder." FAC
 22 ¶ 47. Moreover, Defendant is (and was at all relevant times) a U.S. citizen,
 23 "enjoying the protections of U.S. law, and thus should be subject to the jurisdiction
 24 of the courts." *Doğan II* at *8 (internal quotation marks omitted). Defendant has
 25 thus failed to show that Lasantha's murder was an authorized or ratified state act;

26 ⁴ *Cf. Doe I v. Buratai*, 318 F.Supp.3d 218, 233 (D.D.C. 2018) ("Nigeria's
 27 authorization and ratification establishes that the defendants acted in their official
 28 capacities.").

1 he is thereby not entitled to immunity.⁵

2 **II. Defendant's *Forum Non Conveniens* Argument Should Be Rejected.**

3 *Forum non conveniens* (FNC) is “an exceptional tool to be employed
4 sparingly.” *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1224 (9th Cir.
5 2011). Defendant bears the burden of demonstrating “an adequate alternative
6 forum, and that the balance of private and public interest factors favors dismissal.”
7 *Dole Food Co. v. Watts*, 303 F.3d 1104, 1118 (9th Cir. 2002). For the reasons set
8 out below, Defendant fails to meet this heavy burden.

9 **A. Sri Lanka Is Not an Adequate Alternative Forum.**

10 An alternative forum is not adequate if it “does not permit litigation of the
11 subject matter of the dispute” and “the remedy provided [would be] so clearly
12 inadequate or unsatisfactory that it is no remedy at all.” *Piper Aircraft v. Reyno*,
13 454 U.S. 235, 254 & n.22 (1981). Here, Sri Lanka cannot be considered an
14 adequate forum for at least five reasons, each of which is independently sufficient
15 to deny Defendant's FNC motion.

16 *First*, the remedies that Defendant identifies in Sri Lanka (MTD 9-10; de
17 Silva Decl. ¶¶ 4.3-4.6), are time-barred and as such, unavailable. *Carijano*, 643
18 F.3d at 1235 (alternative forum is inadequate if statute of limitations bars the
19 claims). Civil claims for wrongful death, assault and battery have a two-year

20 ⁵ Nor would the effect of exercising jurisdiction in the present case be to enforce a
21 rule of law against Sri Lanka. *See e.g., Lewis v. Mutond*, 918 F.3d 142, 147 (4th
22 Cir. 2019) (finding that exercising jurisdiction does not enforce a rule of law
23 against the foreign state when defendants are sued in their individual capacities).
24 Further, because Defendant is not entitled to foreign-official immunity in the first
25 place, there is no reason for the Court to consider whether an exception to such
26 immunity applies, either because Defendant acted in violation of a *jus cogens*
27 norm or because the TVPA abrogates foreign official immunity under these
28 circumstances. MTD 6-7, n. 4. *See Doğan II*, at *8 (declining to “carve[] out an
exception to foreign official immunity *under the circumstances presented here*”) (emphasis added). Even if the Court were to consider this question, the very different circumstances noted here would warrant such an exception.

1 statute of limitations, and a Fundamental Rights Petition must be filed within one
 2 month. Ratnapala Decl. ¶¶ 33, 35, 37. Defendant’s expert asserts that equitable
 3 tolling may be available (de Silva Decl. ¶ 4.21), but identifies no circumstances
 4 upon which tolling is granted. In fact, Sri Lankan courts have no discretion to toll
 5 the limitation period related to the civil claims purportedly available to Plaintiff,
 6 and the Sri Lankan Supreme Court has only extended the limitation period for
 7 Fundamental Rights Petitions in extremely narrow situations, such as when the
 8 petitioner was held incommunicado or hospitalized due to torture while in
 9 custody—none of which apply here. Ratnapala Decl. ¶¶ 34-40, 43, n. 11.

10 *Second*, and in any event, Sri Lankan law does not recognize civil claims for
 11 extrajudicial killing, crimes against humanity, or torture—“the subject matter of
 12 the dispute.” *See Lockman Found. v. Evangelical Alliance Mission*, 930 F.2d 764,
 13 768 (9th Cir. 1991); Ratnapala Decl. ¶¶ 5, 19, 21-22. Defendant argues that a civil
 14 action for wrongful death, assault, or battery is available. MTD 10. But because
 15 these causes of action fail to reflect the “gravity” and “universally-condemned
 16 nature” of the alleged offenses—which are “more than the sum of their parts”—
 17 they are inadequate. *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244
 18 F. Supp. 2d 289, 337-38 (S.D.N.Y. 2003); *see also Adhikari v. Daoud & Partners*,
 19 Civ. Act. No. 09-cv-1237, 2011 WL 13261998, at *17 (S.D. Tex. Dec. 12, 2011)
 20 (finding Jordan to be an inadequate forum where defendant identified tort claims
 21 generally but failed to identify causes of action akin to those under ATS and
 22 Trafficking Victims Protection Act). Defendant’s citation of Sri Lanka’s
 23 criminalization of torture cannot overcome this inadequacy of Sri Lankan law.⁶ *See*

24 ⁶ Defendant’s expert also cites to Fundamental Rights Petitions in Sri Lanka, which
 25 provide remedy for constitutional violations. De Silva Decl. ¶ 4.5. The
 26 Fundamental Rights Petition does not include redress for crimes against humanity,
 27 a violation of international law alleged here (Ratnapala Decl. ¶ 27), and is therefore
 28 inadequate to establish the sufficiency of Sri Lanka as a forum for the subject
 matter of the dispute.

1 *City of Almaty v. Khrapunov*, 685 F. App'x 634, 635 (9th Cir. 2017) (finding the
 2 existence of possible criminal charges insufficient to establish adequacy of Swiss
 3 forum for civil claims); Méndez Decl. ¶ 19 (UN report finding Sri Lanka's tort
 4 claims inadequate to reflect the gravity, international character, and harm to
 5 victims of human rights violations such as torture and extrajudicial killing).

6 *Third*, the risk of reprisal in Sri Lanka for Plaintiff, witnesses, and lawyers,
 7 further heightened by the political influence of the Rajapaksa family (FAC, ¶¶ 2,
 8 28-30, 49, 53-59, 61-63; Méndez Decl. ¶ 28-31), preclude finding that Sri Lanka is
 9 an adequate alternative forum. *Hassen v. Nahyan*, No. CV 09-01106 DMG
 10 MANX, 2010 WL 9538408 at *21 (C.D. Cal. Sept. 17, 2010) (denying dismissal
 11 based on FNC because of risk of reprisal in United Arab Emirates); *see also Doe v.*
 12 *Exxon Mobil Corp.*, 393 F. Supp. 2d 20, 29 (D.D.C. 2005) (same in Indonesia);
 13 *Rasoulzadeh v. Associated Press*, 574 F. Supp. 854, 861 (S.D.N.Y. 1983) (same in
 14 Iran), *aff'd mem.*, 767 F.2d 908 (2d Cir.1985). The nominal existence of legal
 15 protections—including the purported ability to file a case *in absentia* and present
 16 anonymous testimony “in appropriate circumstances” (MTD 5, 11)—does not
 17 mitigate these dangers. Witness, victim, and investigator intimidation, retaliation,
 18 and surveillance remain rampant. Méndez Decl. ¶¶ 12.c, 31; Ratner Decl. ¶¶ 25-28.
 19 Due to the risks of reprisal and targeted obstruction, Plaintiff could not receive “a
 20 fair or even a safe trial” if she filed this complaint in Sri Lanka. *Hassen*, 2010 WL
 21 9538408 at *21.

22 *Fourth* despite Defendant's claims concerning the independence of Sri
 23 Lanka's courts (MTD 10; de Silva Decl. ¶¶ 3.36-3.41), international experts have
 24 documented the Sri Lankan judiciary's lack of judicial independence and
 25 susceptibility to political interference, including by Defendant and his family,
 26 especially in in human rights claims against officials in the security sector. FAC
 27

¶¶ 57–59; Ratnapala Decl. ¶¶ 44-47; Méndez Decl. ¶¶ 14-17; Ratner Decl. ¶¶ 14, 17-24; *Hassen*, 2010 WL 9538408 at *13, 21 (denying FNC motion “[i]n light of the less-than-clear-cut separation between the political and judicial branches of the UAE government, questions raised regarding the independence of the UAE judiciary, and ... the high political positions held by Defendants”).

Fifth, Plaintiff has presented expert testimony showing that cases such as hers, seeking to hold government officials accountable for human rights violations, face significant delays of up to 30 years (Méndez Decl. ¶¶ 20-26, *cf.* Ratner Decl. ¶¶ 21-22, 29)—amounting to a denial of justice and rendering “meaningless a putative remedy.”⁷ *Bhatnagar v. Surrendra Overseas Ltd.*, 52 F.3d 1220, 1227 (3d Cir. 1995).

Each of the foregoing factors alone is sufficient to establish that Sri Lanka is an inadequate forum. Taken together, it is evident that any purported remedy in Sri Lanka is “so clearly inadequate or unsatisfactory, that it is no remedy at all.” *Carijano*, 643 F.3d at 1225-1226.

B. Plaintiff’s Choice of Forum Is Entitled to Deference.

Contrary to Defendant’s assertions that Plaintiff’s choice of forum “merits minimal deference” because the “central purpose” of the FNC inquiry is convenience (MTD 12), Plaintiff’s forum choice is entitled to more deference. “[T]he more it appears that a *domestic or foreign plaintiff’s* choice of forum has been dictated by reasons that the law recognizes as valid, the greater the deference will be given to the plaintiff’s forum choice.” *Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1134, 1141 (C.D. Cal. 2005) (internal citation omitted) (emphasis added). The situation presented here—where Plaintiff’s choice of forum

⁷ Defendant’s reliance on *Harp* and *Tuazon* is misplaced. MTD 11. Unlike in those cases, which turned on the generalized and anecdotal nature of the evidence of judicial delay, Plaintiff presents specific evidence demonstrating significant delays of up to 30 years. Méndez Decl. ¶¶ 20-26, Ratner Decl. ¶¶ 21-22, 29.

1 was necessary to obtain jurisdiction over Defendant, as recognized by law—is
2 precisely one where greater deference is warranted.

3 **C. Private and Public Interest Factors Do Not Strongly Favor**
4 **Dismissal.**

5 Defendant further fails to show that the private and public interest factors
6 “*strongly favor* trial in the foreign country.” *Dole Food*, 303 F.3d at 1118
7 (emphasis added); *see also City of Almaty*, 685 F. App’x at 636. In fact, these
8 factors actually favor Plaintiff’s choice of forum.

9 *First*, the private interest factors (MTD 15) favor this forum. When
10 balancing the seven traditional factors, the “court should keep in mind that the
11 increased speed and ease of travel and communication makes, especially when a
12 key issue is the location of witnesses, no forum as inconvenient today as it was in
13 1947.” *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1336 (9th Cir. 1984)
14 (internal quotations omitted).

15 Here, while neither party resides in this forum (factor 1), the well-
16 documented risk of reprisal against Plaintiff, witnesses, and attorneys more than
17 countervails any purported inconvenience to Defendant (factor 2). *See* FAC ¶¶ 2,
18 28-30, 49, 53–54, 61, 63; Ratner Decl. ¶¶ 25-28. Defendant resides in Sri Lanka,
19 but faces no similar fears in either forum and indeed frequently travels to this
20 forum. FAC ¶ 11. Due to the evidence tampering and other efforts to impede the
21 investigation of Lasantha’s murder in Sri Lanka, access to evidence (factor 3) will
22 prove equally challenging in either forum, and once obtained, evidence will be
23 easier to present in this forum. Defendant’s claim that unwilling witnesses can be
24 compelled to testify in Sri Lanka (factor 4) (de Silva Decl. ¶ 3.82), fails to account
25 for the reprisal risks that will prevent witnesses from testifying regardless of the
26 forum. FAC ¶ 61; Ratner Decl. ¶¶ 25-28. Further, witnesses who may be willing to
27 testify are less likely to face such risks if they present testimony in this forum. The
28

1 remaining factors of cost (factor 5), enforceability (factor 6), and other practical
 2 problems (factor 7), are in equipoise, and, if anything, favor this forum:
 3 Defendant’s arguments regarding these factors, particularly his possible
 4 contestation of enforceability in this forum (MTD 17), simply confirm that
 5 Plaintiff seeks redress from a powerful and well-resourced politician from Sri
 6 Lanka—a fact that will not change regardless of the forum.

7 *Second*, the public factors related to the interests of the forums, MTD 13,
 8 strongly weigh in favor of Plaintiff. The United States has a “strong public
 9 interest” (factor 1) “in favoring the receptivity of United States courts to [torture
 10 and extrajudicial killing] claims” (*Hassen*, 2010 WL 9538408 at *21). California,
 11 as “the nation’s largest resettlement destination for torture survivors” (S. Rules
 12 Comm., S. Floor Analyses, S. J. Res. 6, Ch. 45 (Ca. 2011)) has a specifically
 13 “strong, localized interest” in subjecting U.S. citizens who may be responsible for
 14 acts of torture to the jurisdiction of its courts. *See Deirmenjian v. Deutsche Bank,*
 15 *A.G.*, No. CV 06-00774 MMM CWX, 2006 WL 4749756, at *17 (C.D. Cal. Sept.
 16 25, 2006).

17 The remaining public interest factors also support this forum. This Court is
 18 well-versed in the governing U.S. law, the ATS and TVPA (factor 2). *See, e.g., In*
 19 *re Marcos*, 25 F.3d at 1475; *Mujica*, 381 F. Supp. 2d at 1139. In contrast, Sri
 20 Lankan law does not even recognize equivalent causes of action. *Supra*, at 7. The
 21 potential burden on local courts (factor 3) is countervailed by the local interest in
 22 the litigation (*Mujica*, 381 F. Supp. 2d at 1153) which for the aforementioned
 23 reasons, strongly weighs in favor of Plaintiff. The issue of court congestion (factor
 24 4) also favors this forum, since “the real issue is not whether a dismissal will
 25 reduce a court’s congestion but whether a trial may be speedier in another court
 26 because of its less crowded docket” (*Gates Learjet*, 743 F.2d at 1337), and trial in
 27 Sri Lankan courts would face significant delays of up to 30 years. *See supra* at 9.
 28

1 Lastly, the costs of this litigation (factor 5), including translation costs, will be the
 2 responsibility of the parties, not the Court as Defendant suggests. MTD 14. This
 3 factor does not weigh in favor of either party.

4 **D. The Balance of Factors Weighs Against Dismissal.**

5 Accordingly, the balance of factors weighs against dismissal for FNC. This
 6 suit simply cannot be litigated in a Sri Lankan court: as indicated above, the risks
 7 posed to participants in any proceeding involving human rights abuses are well
 8 documented; no equivalent causes of action are available to Plaintiff in Sri Lanka;
 9 and the Sri Lankan judiciary is burdened with unreasonable delays and a grave lack
 10 of independence. Plaintiff has brought her case in this forum—where Defendant
 11 holds citizenship, was a long-time resident, and was present in the jurisdiction—
 12 out of necessity. Defendant, on the other hand, has offered little to support his
 13 contention that this case is more conveniently litigated in Sri Lanka. Nor has
 14 Defendant made “a clear showing of facts which ... establish such oppression and
 15 vexation of a defendant as to be out of proportion to plaintiff’s convenience, which
 16 may be shown to be slight or nonexistent.” *Dole Food Co.*, 303 F.3d at 1118. The
 17 Court should deny Defendant’s FNC argument.

18 **III. The Court Should Deny Defendant’s Motion to Dismiss Based on** 19 **Principles of Comity.**

20 Defendant asks the Court, “[a]lternatively”, to dismiss this case “as a matter
 21 of international comity.” MTD 18. Having failed to offer *alternative* grounds for
 22 dismissal—instead relying solely on the arguments set forth in his FNC motion
 23 (MTD 19)—Defendant has not met his burden. *See Sarei v. Rio Tinto, PLC*, 221 F.
 24 Supp. 2d 1116, 1200 (C.D. Cal. 2002).

25 The “international comity” test invoked by the Defendant is the most
 26 nebulous comity doctrine, having “never been well-defined.” *Mujica v. AirScan*
 27
 28

1 *Inc.*, 771 F.3d 580, 608 (9th Cir. 2014).⁸ Notwithstanding this uncertainty, the test
 2 invoked by Defendant considers an undefined number of factors, including (1)
 3 U.S. interest in adjudicating the case; (2) the foreign jurisdiction's interest in the
 4 same; and (3) the adequacy of the foreign jurisdiction. *Id.* at 603, 604. Instead of
 5 engaging with this test, Defendant relies entirely on the arguments he made in the
 6 FNC context. MTD 19. These same arguments fail in the FNC context, and fail
 7 here for the same reasons.

8 In addition, among other shortcomings, Defendant fails to address the key
 9 elements identified in *AirScan* as pertinent to the first factor of U.S. interest: the
 10 relevance of his U.S. citizenship; the "interest in upholding international human
 11 rights norms"; and the failure of the U.S. executive to express any interest in
 12 adjudicating this case in Sri Lanka. *Airscan*, 771 F.3d at 605, 609. Defendant's
 13 motion to dismiss on the alternative basis of comity must therefore be denied.

14 **IV. The Court Has Jurisdiction over Plaintiff's ATS Claims.**

15 Defendant's U.S. citizenship is sufficient to establish jurisdiction under the
 16 ATS and to displace the presumption against extraterritoriality.⁹ *Contra* MTD 23.
 17 To trigger ATS jurisdiction, generally a claim must "touch and concern the
 18 territory of the United States." *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108,
 19 124-125 (2013). The *Kiobel* Court was deliberately "careful to leave open a
 20 number of significant questions," including, as relevant here, how the ATS applies
 21 to natural-person U.S. citizens accused of international law violations committed
 22

23 ⁸ Commentators classify foreign official immunity as a form of executive comity,
 24 FNC as a form of adjudicative comity, and the presumption against
 25 extraterritoriality as a form of prescriptive comity. *Id.* at 598-599; William S.
 26 Dodge, *International Comity in American Law*, 115 COLUM. L. REV. 2071, 2079
 (2015).

27 ⁹ The ATS provides, "The district courts shall have original jurisdiction of any
 28 civil action by an alien for a tort only, committed in violation of the law of nations
 or a treaty of the United States." 28 U.S.C. § 1350.

1 abroad. *See id.* at 123-125 (Kennedy, J., concurring) (recounting the Court’s
 2 “proper disposition,” including the majority’s decision not to “adopt” a “definitive
 3 reading” on this issue).

4 A close review of the origin and purpose of the ATS demonstrates that its
 5 reach extends to cases against natural-person U.S. citizens, regardless of whether
 6 the relevant conduct is extraterritorial. *See id.* at 1674 (Breyer, J., concurring)
 7 (applying ATS jurisdiction when defendant is a U.S. national, as “[n]ations have
 8 long been obliged not to provide safe harbors for their own nationals who commit
 9 such serious crimes abroad.”). In 1794, the second Attorney General of the United
 10 States, William Bradford, concluded there was “no doubt” that ATS jurisdiction
 11 existed over civil claims involving extraterritorial destruction of property by two
 12 U.S. citizens in the city of Freetown, Sierra Leone. *Breach of Neutrality*, 1 Op.
 13 Att’y Gen. 57, 59 (1795)¹⁰; Curtis A. Bradley, *Attorney General Bradford’s*
 14 *Opinion and the Alien Tort Statute*, 106 AMER. J. INT’L L. 10 (2012).¹¹ The earliest
 15 federal courts to consider the ATS further support this proposition. *See, e.g.,*
 16

17 ¹⁰ The Bradford Opinion is the “authority most on point” for questions about the
 18 extension of the ATS to extraterritorial conduct. *Doe v. Exxon Mobil Corp.*, 654
 19 F.3d 11, 23 (D.C. Cir. 2011), *judgment vacated on other grounds in light of*
 20 *Kiobel*, 527 F. App’x 7 (D.C. Cir. 2013); *see also* Brief of United States at 11,
 21 *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386 (2018) (No. 16-499) (finding the
 22 Bradford Opinion persuasive).

23 ¹¹ *AirScan*, on which Defendant’s entire analysis hinges, relies on the *Kiobel*
 24 misinterpretation of the Bradford Opinion, which resulted from an incomplete
 25 historical record. *AirScan*, 771 F.3d at 596. In *Kiobel*, the Supreme Court
 26 determined that the Bradford Opinion meant only that ATS jurisdiction exists
 27 where a U.S. citizen engages in conduct taking place “both on the high seas and
 28 on a foreign shore.” *Kiobel*, 569 U.S. at 123 (emphases added). Subsequent to
Kiobel, however, diplomatic documents underlying the Bradford Opinion were
 uncovered showing the at-issue conduct likely took place entirely on land, not on
 the high seas. Bradley, *supra*, at 13. The subsequent research thus indicates that
 Bradford used his opinion to “endors[e] extraterritorial application” of the ATS to
 U.S. citizen conduct abroad. *Id.*

1 *M’Grath v. Candalero*, 16 F. Cas. 128, 128 (D.S.C. 1794) (No. 8,810) (“If an alien
 2 sue [sic] here for a tort under the law of nations or a treaty of the United States,
 3 against a citizen of the United States, the suit will be sustained”); *see also Rose v.*
 4 *Himely*, 8 U.S. (4 Cranch) 241, 279 (1807) (“[T]he legislation of every country is
 5 territorial; that beyond its own territory, *it can only affect its own subjects or*
 6 *citizens.*”) (emphasis added).

7 Courts post-*Kiobel* have recognized this key purpose of the ATS—to ensure
 8 accountability when a U.S. citizen engages in international torts in other nations’
 9 territory. *See, e.g., Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1416 (2018)
 10 (Gorsuch, J., concurring) (stating that, at the founding, a nation’s “fail[ure] to
 11 redress injuries by its citizens upon the citizens of another nation” resulted in a
 12 violation of the latter’s “perfect rights”) (internal citation omitted); *Ali Shafi v.*
 13 *Palestinian Auth.*, 642 F.3d 1088, 1099 (D.C. Cir. 2011) (Williams, J., concurring)
 14 (“The concern was that U.S. citizens might engage in incidents that could embroil
 15 the young nation in war and jeopardize its status or welfare”). Such liability of U.S.
 16 citizens in this manner remains consistent with the foreign policy concerns
 17 animating *Kiobel* because it does not involve “bringing foreign nationals into
 18 United States courts” to defend themselves. *Al Shimari v. CACI Premier*
 19 *Technology, Inc.*, 758 F.3d 516, 530 (4th Cir. 2014).

20 At best, Defendant’s argument merely serves to confirm that jurisdictional
 21 discovery, not dismissal, is warranted. Such discovery is appropriate when “more
 22 facts are needed” to determine whether there is a basis for subject-matter
 23 jurisdiction. *Laub v. U.S. Dep’t of the Interior*, 342 F.3d 1080, 1093 (9th Cir.
 24 2003). Here, the Court should permit jurisdictional discovery to determine whether
 25 Defendant’s conduct in the United States during the relevant time period included
 26 acts in furtherance of the conspiracy. Defendant traveled to the United States in
 27 2008 and 2009, which was during the time of his participation in the conspiracy to
 28

1 suppress journalists, out of which the killing of Lasantha arose. FAC ¶ 11. It is
 2 likely that Defendant performed acts in furtherance of the conspiracy while in the
 3 United States, such as sending emails or text messages and making phone calls to
 4 co-conspirators, which—distinct from “mere presence” (MTD 28)—would be
 5 sufficient to trigger ATS jurisdiction either independently or as a factor in
 6 conjunction with Defendant’s U.S. citizenship. *See Doe v. Nestle, S.A.*, 929 F.3d
 7 623, 641 (9th Cir. 2018) (en banc); *AirScan*, 771 F.3d at 594.

8 In any event, Defendant misconstrues the case law. While Defendant relies
 9 on *AirScan* to contend that U.S. citizenship is insufficient for ATS jurisdiction
 10 (MTD 20), the relevance of natural-person citizenship was not at issue in that case,
 11 which concerned U.S.-headquartered corporations. *AirScan*, 771 F.3d at 584.
 12 Notably, the Ninth Circuit has yet to squarely address whether U.S. citizenship is
 13 sufficient to create ATS jurisdiction. Defendant’s attempt to rely on *dicta* in
 14 *AirScan* fails to account for the key “distinction in international law between
 15 corporations and natural persons.” *Jesner*, 138 S. Ct. at 1402 (Kennedy, J.,
 16 plurality opinion). Here, Defendant is a natural person and a U.S. citizen, was a
 17 U.S. citizen at the time of the alleged acts and also on the date of service,¹² and

18 ¹² Defendant’s assertion that he recently revoked his U.S. citizenship (MTD 2) is
 19 immaterial for at least four reasons: (1) “[T]he jurisdiction of the court depends
 20 upon the state of things at the time of the action brought” (*Grupo Dataflux v. Atlas*
 21 *Global Grp., L.P.*, 541 U.S. 567, 571 (2004) (internal citation omitted)), and there
 22 is no dispute that Defendant was a citizen at the commencement of this action; (2)
 23 Defendant put forward no evidence of revocation or U.S. Government recognition
 24 of revocation; (3) the Secretary of the Treasury received no information indicating
 25 Defendant revoked as of June 30, 2019 (Dep’t of Treas., *Quarterly Publication of*
 26 *Individuals, Who Have Chosen To Expatriate, As Required By Section 6039G*, 84
 27 Fed. Reg. 158 (Aug. 15, 2019)); and (4) even if Defendant validly revoked, he did
 28 so with the specific intent to destroy the Court’s subject-matter jurisdiction and
 therefore jurisdiction remains (*see Attorneys Tr. v. Videotape Computer Prod.,*
Inc., 93 F.3d 593, 598 (9th Cir. 1996) (holding that subject-matter jurisdiction
 remains even after a transaction destroying diversity where an “improper[] or
 collusive[]” motive stood behind the transaction)).

1 therefore, consistent with the origin and purpose of the ATS, the Court has
2 jurisdiction over this case under the ATS.

3 **V. The Court Should Deny Defendant’s Motion to Dismiss Plaintiff’s**
4 **TVPA Claims for Failure to Exhaust Local Remedies.**

5 Defendant’s motion to dismiss the TVPA claims on the theory that Plaintiff
6 failed to exhaust local remedies fails for two reasons: Defendant has not met the
7 substantial burden of demonstrating adequate and available local remedies, and
8 Plaintiff has alleged sufficient evidence that any remedy in Sri Lanka would be
9 unobtainable.

10 *First*, Defendant has failed to meet the substantial burden to show that local
11 remedies are available to Plaintiff. As Defendant conceded, the TVPA exhaustion
12 requirement is an affirmative defense for which the “ultimate burden of proof and
13 persuasion ... lies with the defendant.” MTD 21 (citing *Hilao v. Marcos*, 103 F.3d
14 767, 778, n.5 (9th Cir. 1996)). The presumption in favor of plaintiffs is so high that
15 “in most instances the initiation of litigation under [the TVPA] will be virtually
16 prima facie evidence that the claimant has exhausted [local] remedies.” *Hilao*, 103
17 F.3d at 778 n.5 (quoting S. Rep. No. 249, 102d Cong., 1st Sess. at 9-10 (1991)).

18 Defendant’s conclusory analysis cannot overcome this presumption.
19 Defendant’s focus on the Sri Lankan judiciary’s *general capabilities* as a matter of
20 law sidesteps the vital question whether remedies are *specifically and practically*
21 *available* to Plaintiff. As established in Section II.A., *supra*, there are no civil
22 remedies in Sri Lanka that address the alleged offenses in the FAC, and even if
23 such remedies did exist, they are barred by the statute of limitations. The mere
24 existence of cases against high-ranking public officials, including an ongoing
25 lawsuit against Defendant, is insufficient to establish adequate remedies for
26 Plaintiff, especially where the proceedings have stalled repeatedly and involve
27 entirely different causes of action. *See Dacer v. Estrada*, 2011 WL 6099381 at *3
28

(N.D. Cal. Dec. 7, 2011) (finding ongoing proceedings with the same defendant and plaintiff inadequate due to extensive delays); *Bowoto v. Chevron Corp.*, 557 F. Supp. 2d 1080, 1097 (N.D. Cal. 2008) (deeming judgments against comparable defendants insufficient as they did not involve the same “specific cause of action”).

Second, Plaintiff has pleaded sufficient evidence to conclude that any purported Sri Lankan remedy is “ineffective, unobtainable, unduly prolonged, inadequate, or obviously futile.” MTD 21. Where, as here, Defendant and his co-conspirators enjoy “positions of great power” and maintain deep political influence over ongoing accountability efforts (FAC ¶ 59; Ratner Decl. ¶¶ 23-24), a local remedy becomes effectively “unobtainable.” *Hassen*, 2010 WL 9538408 at *20. Even if Defendant did not wield outsized political influence, local redress remains “unobtainable” due to the Sri Lankan government’s lack of political will to investigate cases like Plaintiff’s. Ratner Decl. ¶¶ 12-22. Further, Plaintiff’s well-founded “fear of reprisal” constitutes an independent basis for denying the non-exhaustion defense. *Doe v. Rafael Saravia*, 348 F. Supp. 2d 1112, 1151 (E.D. Cal. 2004).

To the extent that the inadequacy of Plaintiff’s local remedies is disputed as a matter of fact, such disputes “are not properly considered here, at the motion to dismiss stage.” *In re Chiquita Brands Int’l, Inc.*, 190 F. Supp. 3d 1100, 1115 (S.D. Fla. 2017). The Court should therefore deny Defendant’s motion to dismiss Plaintiff’s TVPA claims for failure to exhaust local remedies.

VI. Plaintiff Has Standing to Bring TVPA Claims for Torture.

Defendant asserts that Plaintiff may not bring a claim for torture on her father’s behalf. MTD 22-23. But the TVPA does not allow defendants to escape liability for torture by killing the torture victim. This perverse outcome is foreclosed by the TVPA’s text, purpose, and legislative history.

The TVPA stipulates two causes of action for torture: for torture victims

1 who are alive and for legal representatives of torture victims who have been
 2 unlawfully killed. *Doe v. Qi*, 349 F. Supp. 2d 1258, 1313 (N.D. Cal. 2004). The
 3 TVPA creates a civil action for recovery that plainly encompasses damages for
 4 both causes, without limitation. 28 U.S.C. § 1350 note, § 2(a)(2). *See also Wiwa v.*
 5 *Royal Dutch Petroleum Co.*, 2002 WL 319887, at *16 (S.D.N.Y. Feb. 28, 2002).¹³
 6 Recovery for *each* cause of action is consistent with the TVPA's legislative
 7 history, which confirms that Congress intended to hold perpetrators of torture
 8 accountable, including when they kill their victims. The House Report indicates
 9 that the TVPA created "a clear and specific remedy, not limited to aliens, for
 10 torture *and* extrajudicial killing." H.R. REP. NO. 102-367, at 4 (1991) (emphasis
 11 added). Further, the TVPA was enacted to enshrine the principles of the
 12 Convention Against Torture, which calls for a remedy for torture when a torture
 13 victim is killed. Convention Against Torture and Other Cruel, Inhuman, or
 14 Degrading Treatment or Punishment, Art. 14, Dec. 10, 1984, S. Treaty Doc. No.
 15 100-20 (1988), 1465 U.N.T.S. 85.

16 In order to fully remediate the harms caused by Defendant's conduct,
 17 Plaintiff may therefore bring claims both on her and her father's behalf under the
 18 TVPA. *See Baloco ex rel. Tapia v. Drummond Co.*, 640 F.3d 1338, 1347 (11th
 19 Cir. 2011) (permitting concurrent wrongful death and survival claims in one
 20 action); *Rufo v. Simpson*, 86 Cal. App. 4th 573, 581 (Cal. Ct. App. 2001) (same,
 21 under the California Code of Civil Procedure).

22 CONCLUSION

23 For the foregoing reasons, Plaintiff respectfully requests that this Court deny
 24 Defendant's motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6), *forum non*
 25 *conveniens*, and international comity.

26 ¹³ *Xuncax v. Gramajo*, 886 F. Supp. 162, 192 (D. Mass. 1995), on which
 27 Defendant relies, is inapposite because the plaintiffs did not assert legal
 28 representative status.

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2 Dated: August 26, 2019

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 26, 2019, I electronically filed the foregoing **PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** with the Clerk by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/Catherine Amirfar

Catherine Amirfar