

## **SRI LANKA**

### **Report on Harassment, Intimidation, Surveillance and Attacks Against Journalists in Sri Lanka**

**Prepared by the Center for Justice and Accountability and the Committee to Protect Journalists**

**Released 9 February 2021**

#### **I. Introduction**

1. The Center for Justice and Accountability,<sup>1</sup> with input from the Committee to Protect Journalists,<sup>2</sup> released this report in advance of the 46th Regular Session of the United Nations Human Rights Council (HRC), 22 February to 23 March 2021.

2. In the upcoming HRC session, the Council will review Sri Lanka's human rights and accountability record under Resolution 30/1 and hold an interactive dialogue on the UN High Commissioner for Human Rights' most recent report on Sri Lanka, which discusses the Government of Sri Lanka's harassment against journalists and ongoing impunity for emblematic cases, including "the assassination of journalist Lasantha Wickrematunge in 2009 [and] the disappearance of journalist Prageeth Eknaligoda in 2010."<sup>3</sup>

3. Sri Lanka's harassment, intimidation, surveillance and attacks on journalists constitute violations of Articles 19, 21, and 22 of the ICCPR, which guarantee rights to freedom of expression, peaceful assembly, and association. Continued impunity for past human rights violations committed against journalists—including kidnapping, torture, and extrajudicial killing—constitutes violations of Articles 2, 6, 7, and 9, which require accountability for serious human rights violations and the right to an effective remedy. This report sets out key concerns related to the continued impunity for past attacks on journalists and a recent alarming resurgence in human

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<sup>1</sup> The Center for Justice and Accountability (CJA) is a San Francisco-based human rights legal organization dedicated to deterring torture, war crimes, crimes against humanity, and other serious human rights abuses around the world through innovative litigation and transitional justice strategies. CJA partners with impacted communities seeking truth, justice, and redress, and has successfully brought cases against high-ranking military and public officials for their participation in atrocity crimes. In 2018, CJA filed a civil suit against Gotabaya Rajapaksa for his alleged involvement in the killing of journalist Lasantha Wickrematunge and the widespread and systematic targeting of journalists perceived to be critical of the Rajapaksa government during the time he served as Sri Lanka's Secretary of Defence. In 2021, CJA filed an individual communication on behalf of Ahimsa Wickrematunge against Sri Lanka at the Human Rights Committee, for the state's role in her father's assassination.

<sup>2</sup> The Committee to Protect Journalists (CPJ) is a New York-based independent, non-profit organization that promotes press freedom worldwide. CPJ defends the right of journalists to report the news safely and without fear of reprisal. CPJ's work is based on its research, which provides a global snapshot of obstructions to a free press worldwide. CPJ's research staff documents hundreds of attacks on the press each year. CPJ has been documenting attacks on the press in Sri Lanka since 1992.

<sup>3</sup> Office of the United Nations High Commissioner for Human Rights, *Promotion of reconciliation, accountability and human rights in Sri Lanka*, ¶¶ 27, 49, 55, U.N. Doc. A/HRC/46/20 (27 January 2021) (hereinafter *Promotion of Reconciliation 2021*).

rights violations against journalists.

4. For decades, journalists have been persecuted in Sri Lanka for reporting on corruption, human rights violations, and other politically sensitive issues. Throughout the presidency of Mahinda Rajapaksa, the government of Sri Lanka failed to adequately investigate violence against journalists, and in many cases, was accused of directing attacks on journalists. Following Mahinda Rajapaksa's presidency, Sri Lanka made some progress towards investigating journalist attacks under President Sirisena. However, the 2019 election of Gotabaya Rajapaksa to Sri Lanka's presidency and installation of former president Mahinda Rajapaksa as Prime Minister has reversed these advances. The new government has actively taken steps to stymie ongoing investigations into past violations, and since the election, Sri Lanka has seen a new wave of attacks on journalists who reported on corruption and human rights violations committed during Mahinda Rajapaksa's presidency and Gotabaya Rajapaksa's tenure as Secretary of Defence.

5. Sri Lanka must immediately cease its harassment and intimidation of journalists and take effective steps to guarantee a free and safe press, including by thoroughly, promptly and independently investigating human rights violations against journalists, prosecuting perpetrators in fair trials, and providing effective remedies to the victims. The HRC should also pass a new resolution that enhances the Office of the High Commissioner for Human Rights' monitoring of the human rights situation in Sri Lanka, establishes a dedicated mechanism to collect and preserve evidence to support future accountability processes, and prioritizes support to civil society initiatives aimed at supporting victims and their families.

## **II. Harassment, Intimidation, Surveillance, and Attacks Against Journalists and Media Workers in Sri Lanka from 2005 to 2015**

6. During the presidency of Mahinda Rajapaksa from 2005 to 2015, the Sri Lankan government launched an extensive assault on the free press, routinely harassing journalists, editors, and other media workers who criticized its actions or made allegations of corruption against high-level government officials. The government limited the right to free expression and the space for critical debate, exemplified by the "relentless harassment and intimidation of human rights defenders, interference with the independence of lawyers and judges, and attacks on journalists and the independent media."<sup>4</sup> During this period, Sri Lanka was ranked among the top ten countries with the highest rates of impunity for killings of journalists.<sup>5</sup>

7. Journalists and media workers who were critical of the government would be publicly identified, threatened by the regime, and subsequently harassed, abducted, beaten, or killed.<sup>6</sup>

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<sup>4</sup> Office of the United Nations High Commissioner for Human Rights ("OHCHR"), *Rep. of the OHCHR Investigation on Sri Lanka (OISL)*, ¶ 101, U.N. Doc. A/HRC/30/CRP.2 (16 September 2015) [hereinafter *OISL Report*].

<sup>5</sup> *The Road to Justice: Breaking the Cycle of Impunity in the Killing of Journalists*, COMM. TO PROTECT JOURNALISTS (October 2014), [https://cpj.org/reports/road\\_to\\_justice2014-english.pdf](https://cpj.org/reports/road_to_justice2014-english.pdf); see also *19 Journalists Killed in Sri Lanka*, COMM. TO PROTECT JOURNALISTS, <https://cpj.org/killed/asia/sri-lanka/> (last visited 13 January 2021).

<sup>6</sup> For instance, on 24 January 2006, journalist Subramaniam Sugitharajah was shot and killed on his way to work. His murder took place just weeks after he published photos of five Tamil students who had been executed by the police, contradicting the government's claims that the students had been killed by a self-detonated grenade. *Subramaniam Sugitharajah*, COMM. TO PROTECT JOURNALISTS, <https://cpj.org/data/people/subramaniam->

Although the Sri Lankan government frequently denied playing any role in this harassment, many attacks were traced back to the security forces. The Ministry of Defence played a crucial role implementing a comprehensive campaign to attack journalists and to undermine the free press. In his capacity as Secretary of Defence, now-President Gotabaya Rajapaksa oversaw the “white van commando,” a team of special operatives that used white vans to kidnap and murder journalists. At least 14 journalists disappeared in this manner.<sup>7</sup>

8. Moreover, the Directorate of Military Intelligence in the Ministry of Defence operated a clandestine unit called the “Tripoli Platoon,” which surveilled and attacked journalists whose reports were critical of the regime. According to court filings made by Sri Lanka’s Criminal Investigation Department (“CID”), the Tripoli Platoon has been linked to at least four attacks on journalists: the assassination of Lasantha Wickrematunge, the abduction of Keith Noyahr, the assault on Upali Tennakoon, and the disappearance of political cartoonist Prageeth Ekmaligoda.<sup>8</sup>

9. In addition, Tamil journalists and media organizations disproportionately faced attacks and harassment throughout the civil war, which have yet to be investigated.<sup>9</sup> For example, Aiyathurai Nadesan received threats after reporting critically on government and security forces. A Sri Lankan army officer summoned Nadesan and threatened the journalist with arrest unless he ceased reporting about the army. One month later, on 31 May 2004, Nadesan was shot dead with a poison bullet.<sup>10</sup>

10. Indeed, the Office of the High Commissioner for Human Rights Investigation into Sri Lanka, whose mandate covered conduct occurring from February 2002 until November 2011,

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[sugitharajah/](#) (last visited 13 January 2021). On 7 March 2008, the Sri Lanka Police’s Terrorist Investigation Division arrested a columnist for *The Sunday Times*, J.S. Tissainayagam, and sentenced him under the Terrorism Act to 20 years of hard labor for articles he wrote in 2006 criticizing the military’s treatment of Tamil civilians in northeastern Sri Lanka. *J.S. Tissainayagam*, PEN AMERICA, <https://pen.org/advocacy-case/j-s-tissainayagam/> (last visited 13 January 2021). On 1 June 2009, Poddala Jayantha, a journalist at *Mihira* newspaper, was abducted by men in a white van and severely beaten. Gotabaya Rajapaksa had personally threatened Jayantha in 2008 after he participated in a free media protest, telling him that criticism of the military leadership would not be tolerated and that if he and his colleagues persisted in their criticism of the government, “people who know how to do it will finish you off.” Several days prior to the attack, a government-run television station had published photos identifying Poddala and other journalists, while the Inspector General of Police referred to them as traitors. See Krishan Francis, *Reporter Seeks Justice for “White Van” Torture in Sri Lanka*, REUTERS (24 June 2017), <https://apnews.com/c3901fa9cd614fdb9b845e48441a1e14/Reporter-seeks-justice-for-‘white-van’-torture-in-Sri-Lanka>. For an extensive list of attacks and murders of journalists in Sri Lanka, see *Sri Lanka*, COMM. TO PROTECT JOURNALISTS, <https://cpj.org/asia/sri-lanka/> (last visited 13 January 2021).

<sup>7</sup> See *Sri Lanka*, REPORTERS WITHOUT BORDERS, <https://rsf.org/en/sri-lanka> (last visited 13 January 2021).

<sup>8</sup> See, e.g., Appendix A, Adrian Nishantha Silva Affidavit, *Kuruppu Achhige Dhammika Amal Karunasekara v. Silva et. al*, S.C.F/R. No. 154/2018, ¶ 16.3 (9 October 2018) (describing involvement of Tripoli Platoon in Noyahr’s killing); *Alleged death squad leader reinstated in special team under Army Chief*, DAILY FT (13 May 2019), <http://www.ft.lk/news/Alleged-death-squad-leader-reinstated-in-special-team-under-Army-Chief/56-678065> (noting that the Tripoli platoon “has been implicated in a string of attacks against journalists”).

<sup>9</sup> See, e.g., *Sri Lanka: Tamil newspapers curtail distribution after threats*, COMM. TO PROTECT JOURNALISTS (31 July 2006), <https://cpj.org/2006/07/sri-lanka-tamil-newspapers-curtail-distribution-af/>; *Tamil journalist bound, shot, during Sri Lankan civil war*, COMM. TO PROTECT JOURNALISTS (20 June 2011), <https://cpj.org/2011/06/tamil-journalist-bound-shot-during-sri-lankan-civi/>.

<sup>10</sup> See Aliya Iftikhar, *Sri Lankan journalists turn to self-censorship under Rajapaksas as hope for justice fades*, COMM. TO PROTECT JOURNALISTS (28 Apr. 2020), <https://cpj.org/2020/04/sri-lankan-journalists-turn-to-self-censorship-und/>.

found that the attacks against journalists in Sri Lanka were “widespread,” occurred “over an extended period of time,” and appeared “systematic” in their repeated targeting of specific organizations known to be critical of the government’s policies and officials.<sup>11</sup>

## **1. Attacks on Journalists by State Agents**

### **a. The Assassination of *The Sunday Leader* Editor Lasantha Wickrematunge**

11. Lasantha Wickrematunge’s assassination on a crowded street in Colombo was one of the most prominent killings of journalists in Sri Lanka. The murder triggered an international outcry and stands, to this day, as a symbol of the brutality and impunity of Sri Lanka under Mahinda and Gotabaya Rajapaksa’s rule.

12. Lasantha Wickrematunge founded and served as editor-in-chief of *The Sunday Leader* from 1994 until his death in 2009. Under his leadership, *The Sunday Leader* published articles exposing, among other things, the Sri Lankan government’s lavish spending, embezzlement of funds in government contracts, and execution of Tamil detainees during the civil war.<sup>12</sup>

13. Prior to his death, Wickrematunge was repeatedly intimidated by government officials and labeled a “terrorist journalist” by then-President Mahinda Rajapaksa.<sup>13</sup> He received numerous death threats, including one stating: “If you write you will be killed.”<sup>14</sup>

14. On the morning of 8 January 2009, Wickrematunge noticed several black-clad men on motorcycles circling around his home, and made phone calls to friends and family members to report that he was being followed. On his way to work, he was swarmed by the black-clad motorcyclists at a busy intersection. The masked assailants smashed his car’s windows and punched a hole in his skull with a sharp instrument, killing him.<sup>15</sup>

15. An investigation by the CID later showed that Wickrematunge’s attackers were members of the Sri Lankan Ministry of Defence’s Tripoli Platoon, and this team had followed Wickrematunge for several weeks.<sup>16</sup>

### **b. The Disappearance of Political Cartoonist Prageeth Eknaligoda**

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<sup>11</sup> *OISL Report*, *supra* note 4, at ¶ 260.

<sup>12</sup> *Id.* 4at ¶ 267.

<sup>13</sup> *Shock and Anger Continue One Year after Lasantha Wickrematunge’s Unpunished Murder*, REPORTERS WITHOUT BORDERS (7 January 2010), <https://rsf.org/en/news/shock-and-anger-continue-one-year-after-lasantha-wickrematunges-unpunished-murder>.

<sup>14</sup> Amelia Gentleman, *If you write you’ll be killed*, THE GUARDIAN (16 January 2009), <https://www.theguardian.com/world/2009/jan/17/lasantha-wickrematunge-assassination>.

<sup>15</sup> See Michael Hardy, *Sri Lanka: Living Dangerously*, THE AM. SCHOLAR (2 March 2011), <https://theamericanscholar.org/sri-lanka-living-dangerously/>.

<sup>16</sup> *Sri Lankan military intelligence officers suspected in journalist’s murder*, COMM. TO PROTECT JOURNALISTS (23 February 2017), <https://cpj.org/2017/02/sri-lankan-military-intelligence-officers-suspecte/>; *Alleged death squad leader reinstated in special team under Army Chief*, *supra* note 8 (“Painstaking investigations by the CID had found [the Tripoli Platoon] was specifically tasked with the surveillance of journalists. ... The Tripoli [P]latoon that Major Bulathwatte led has been implicated in a string of attacks against journalists, including the assassination of The Sunday Leader Editor Lasantha Wickrematunge.”).

16. On 24 January 2010, two days before the presidential election, political cartoonist and journalist Prageeth Eknaligoda disappeared after leaving his office. Eknaligoda had been investigating Gotabaya Rajapaksa, was developing a “family tree” of the dozens of Rajapaksa family members in government offices, and had publicly supported the opposition presidential candidate Sarath Fonseka. CID investigators eventually established that a military intelligence unit had abducted and most likely killed Eknaligoda.<sup>17</sup>

### **c. The Abduction and Torture of Journalist Keith Noyahr**

17. Keith Noyahr, the deputy editor of *The Nation*, is a veteran journalist who wrote independent—and often critical—analyses of Sri Lankan security issues in his column “Military Matters.” In May 2008, Gotabaya Rajapaksa appeared in a television interview and described “those who published reports seen as harmful toward the security forces” as “traitors.”<sup>18</sup>

18. That same month, Noyahr was kidnapped outside his home by unidentified men. He was brought to a military intelligence safe house, where he was stripped, suspended in mid-air, beaten, and interrogated about the sources for his reporting.<sup>19</sup> After pressure from several cabinet members, then-President Mahinda Rajapaksa ordered his release.<sup>20</sup> Noyahr and his family subsequently received death threats, forcing them to flee the country.<sup>21</sup>

19. The CID concluded that his abduction and torture were linked to military intelligence, and arrested Military Intelligence officer Major Prabath Bulathwatte in connection with the attack in 2017.<sup>22</sup>

### **d. The Harassment and Assault of Journalist Upali Tennakoon**

20. Upali Tennakoon was an editor of the newspaper *Rivira*. In striking resemblance to and only weeks after the attack against Lasantha Wickrematunge, an armed gang on motorcycles surrounded Tennakoon’s vehicle on his way to work, smashed the windows, and beat him and

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<sup>17</sup> See Maria Abi-Habib & Sameer Yasir, *Sri Lankan Critics Fear a Crackdown Is Underway, and Some Flee*, N.Y. TIMES (27 November 2019), <https://www.nytimes.com/2019/11/27/world/asia/sri-lanka-rajapaksa-crackdown.html>.

<sup>18</sup> *Sri Lankan Columnist Badly Beaten During Abduction*, COMM. TO PROTECT JOURNALISTS (23 May 2008), <https://cpj.org/2008/05/sri-lankan-columnist-badly-beaten-during-abduction/>.

<sup>19</sup> See *Keith Noyahr Recounts the Harrowing Ordeal of Being Abducted by a White Van*, NEWS FIRST (20 August 2018), <https://www.newsfirst.lk/2018/08/20/keith-noyahr-recounts-the-harrowing-ordeal-of-being-abducted-by-a-white-van/>.

<sup>20</sup> See *Phone Records Lead CID to Big Arrest in Journalist Keith Noyahr Abduction Case*, SRI LANKA BRIEF (22 April 2018), <https://srilankabrief.org/2018/04/phone-records-lead-cid-to-big-arrest-in-journalist-keith-noyahr-abduction-case/>.

<sup>21</sup> See *Sri Lanka Arrests Soldiers over Journalist’s Abduction During War*, REUTERS (18 February 2017), <https://www.reuters.com/article/us-sri-lanka-rights-idUSKBN15X0LS>.

<sup>22</sup> See, e.g., Appendix A, *supra* note 8; see also *CID Closes in on Masterminds of Keith Noyahr Abduction*, SUNDAY OBSERVER (22 April 2018), <https://www.sundayobserver.lk/2018/04/22/news/cid-closes-masterminds-keith-noyahr-abduction> (“According to CID investigations, Noyahr was abducted from his home in Dehiwela and removed to a Military Intelligence safe-house in Dompe in a white van by a platoon led by Major Prabath Bulathwatte.”)

his wife with metal bars.<sup>23</sup> The attack came soon after Tennakoon published an article criticizing then-President Mahinda Rajapaksa's response to Wickrematunge's assassination.<sup>24</sup> Following the attack, his wife received phone calls threatening that Tennakoon would be killed if he continued his work as a journalist.<sup>25</sup>

21. In 2015, Tennakoon identified Premananda Udalgama, a Sergeant Major of the Sri Lankan military, as his attacker in a lineup.<sup>26</sup> Soon after identifying Udalgama, Tennakoon was forced to flee the country following threats to his safety.<sup>27</sup> Mobile phone records reported to Sri Lankan courts also established that Tennakoon was under surveillance by the Tripoli Platoon, and a fingerprint pulled from the crime scene was identified as belonging to Tripoli Platoon Deputy Commander Corporal Lalith Rajapaksa.<sup>28</sup>

### **III. Witness Intimidation, Political Interference, and State Retaliation Have Prevented Any Meaningful Accountability for Attacks on Journalists**

22. To date, none of the above-described attacks have resulted in any meaningful accountability, and efforts to shed light on the abuses have resulted in political interference, witness intimidation, and further retaliation against journalists.

23. Indeed, few cases of extrajudicial killing or gross violations of human rights perpetrated by security forces, including attacks on journalists, have been adequately investigated or

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<sup>23</sup> *Editor Injured in Latest Media Assault*, COMM. TO PROTECT JOURNALISTS (23 January 2009), <https://cpj.org/2009/01/editor-injured-in-latest-media-assault/>.

<sup>24</sup> Yanqi Xu, *Project Exile: Sri Lanka Editor Fled after Attempt on Life*, GLOBAL JOURNALIST (19 January 2018), <https://globaljournalist.org/2018/01/project-exile-sri-lanka-editor-fled-after-attempt-on-life/>.

<sup>25</sup> *Special Report: Journalists in Exile 2009*, COMM. TO PROTECT JOURNALISTS (17 June 2009), <https://cpj.org/reports/2009/06/journalists-in-exile-2009/>.

<sup>26</sup> *Army Intelligence Officer Who Assaulted Editor Upali Tennakoon Identified*, COLOMBO TELEGRAPH (26 August 2016), <https://www.colombotelegraph.com/index.php/army-intelligence-officer-who-assaulted-editor-upali-tennakoon-identified/>.

<sup>27</sup> Xu, *Project Exile*, *supra* note 24.

<sup>28</sup> *Upali Tennakoon assault: Former Intelligence officer arrested*, NEWS FIRST (8 July 2019), <https://www.newsfirst.lk/2019/07/08/upali-tennakoon-assault-former-intelligence-officer-arrested/>.



prosecuted.<sup>29</sup> Where investigations are initiated, they frequently face political interference.<sup>30</sup> Such obstruction is particularly prevalent when suspects are members of security forces.<sup>31</sup> As the Office of the United Nations High Commissioner for Human Rights (OHCHR) has observed, Sri Lanka has “effectively sought to preclude impartial criminal investigations” by interfering with ongoing investigations and influencing investigative bodies.<sup>32</sup> Interference has taken various forms. Cases against the military have been transferred to different units, jurisdictions, or departments, or reassigned to judges more partial to the Government position, all in an effort by the Executive to preclude impartial criminal investigations.<sup>33</sup> For example, the Ministry of Defence and then-President Maithripala Sirisena issued public statements criticizing the CID for

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<sup>29</sup> See Appendix B, Declaration of Steven R. Ratner ¶¶ 11, 15, 22, *Wickrematunge v. Rajapaksa*, No. 2:19-CV-02577-R-RAO (C.D. Cal. Aug. 26, 2019) (Dkt. No. 49-1) [hereinafter Ratner Declaration]; OHCHR, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*, ¶¶ 27, 29, U.N. Doc. A/HRC/40/23 (8 February 2019) [hereinafter *Promoting Reconciliation 2019*] (“Since 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.”); U.S. STATE DEP’T, 2018 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—SRI LANKA 6 (2019) (covering 2018) (“Impunity for conflict-era abuses also persisted, including military, paramilitary, police, and other security-sector officials implicated in cases involving the alleged targeted killing of parliamentarians, abductions, and suspected killings of journalists and private citizens.”); INT’L COMM’N OF JURISTS, SRI LANKA: A DECADE OF INACTION AND IMPUNITY 2 (2019) (noting 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.”); 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*, ¶ 94, U.N. Doc. A/HRC/34/54/Add.2 (22 December 2016) (by Juan Méndez) (noting with “alarm[] that investigations into allegations of torture and ill-treatment are not investigated”); 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*, ¶ 56, U.N. Doc. A/HRC/35/31/Add.1 (23 March 2017) (by Mónica Pinto) [hereinafter Pinto Report] (“According to credible sources, certain cases, in particular those implicating security forces, especially members of the military, and cases related to gross human rights violations and corruption become stalled or are simply not investigated.”); *id.* at ¶ 87 (noting the “failure to hold perpetrators accountable for gross human rights violations, serious violations of humanitarian law and international crimes,” as well as the “virtual impunity for any abuse committed by the police or the security forces.”).

<sup>30</sup> Appendix C, Declaration of Juan E. Méndez, ¶ 18, *Wickrematunge v. Rajapaksa*, No. 2:19-CV-02577-R-RAO (C.D. Cal. Aug. 26, 2019) (Dkt. No. 49-2) [hereinafter Méndez Declaration].

<sup>31</sup> See OHCHR, *Promoting Reconciliation 2019*, *supra* note 29, at ¶ 49 (expressing concerns about “the State’s capacity and willingness to prosecute and punish perpetrators of serious crimes when they are linked to security forces or other positions of power” and noting that investigations only proceed “thanks to the persistence and commitment of individual investigators despite political interference, patronage networks and a generally dysfunctional criminal justice system.”); Pinto Report, *supra* note 29, at ¶ 54 (noting that “[t]he low quality, lack of seriousness and slow pace of many investigations were seen as being very problematic and as leading to serious violations of due process principles.”); OHCHR, *Rep. of the Office of the U.N. High Comm’r for Human Rights on Sri Lanka*, ¶ 41, U.N. Doc. A/HRC/34/20 (10 February 2017) [hereinafter *OHCHR 2017 Report*] (“In some cases, lack of progress might be attributed to the complex and cumbersome nature of investigations. Nevertheless, the general and consistent absence of progress conveys the impression of a lack of will to effectively investigate, prosecute and punish serious crimes.”); OHCHR, *Comprehensive Rep. of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka*, ¶ 82, U.N. Doc. A/HRC/30/61 (28 September 2015) (noting that investigations into enforced disappearances and extrajudicial killings in Sri Lanka have suffered from a lack of independence and impartiality, such that they cannot guarantee accountability).

<sup>32</sup> OISL Report, *supra* note 4, at ¶¶ 1233-1234; see also CENTER FOR POLICY ALTERNATIVES, THE NEED FOR ACCOUNTABILITY IN SRI LANKA’S CRIMINAL JUSTICE SYSTEM: A GLANCE AT SEVEN EMBLEMATIC CASES 6, 8 (2019), <https://www.cpalanka.org/the-need-for-accountability-in-sri-lankas-criminal-justice-system/> (hereinafter THE NEED FOR ACCOUNTABILITY).

<sup>33</sup> Appendix B, Ratner Declaration, *supra* note 29, at ¶ 17; OISL Report, *supra* note 4, at ¶ 1234.

investigating government actors.<sup>34</sup> The Attorney General's office delays or fails to issue indictments in sensitive cases.<sup>35</sup> The investigative bodies themselves have also been known to tamper with or destroy physical evidence in cases involving military members.<sup>36</sup>

24. Investigators who refuse to quash politically sensitive cases are transferred, threatened, or subject to reprisals. For instance, the Attorney General's office attempted to transfer the Senior State Counsel in the Ekmaligoda case in 2016 following the arrest of seven military intelligence personnel for their connection to the disappearance of the journalist.<sup>37</sup> In 2018, CID Chief Inspector Nishantha de Silva was removed from his position investigating human rights abuses, including the assassination of Lasantha Wickrematunge and the disappearance of Keith Noyahr. He was only reinstated after an uproar against this blatant interference in investigatory independence.<sup>38</sup> After Gotabaya Rajapaksa returned to power, however, de Silva began receiving death threats. Late in 2019, he fled to Switzerland, where he sought asylum.<sup>39</sup> Following his departure, Sri Lanka instituted procedures to prevent officers from leaving the country "without following the proper procedure of obtaining permission for overseas travel."<sup>40</sup> The government of Sri Lanka has also sought an indictment for his arrest.<sup>41</sup>

25. On 25 November 2019, a Sri Lankan employee of the Swiss Embassy in Colombo was abducted by unidentified men. The men forced her to unlock her mobile telephone, which contained sensitive embassy information about Sri Lankans who have applied for asylum in Switzerland, including de Silva, and the names of those who aided them as they fled the country.<sup>42</sup> 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.<sup>43</sup>

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<sup>34</sup> Appendix C, Méndez Declaration, *supra* note 30, at ¶ 8; Appendix B, Ratner Declaration, *supra* note 29, at ¶¶ 17, 23; THE NEED FOR ACCOUNTABILITY, *supra* note 32, 32at 8; OISL Report, *supra* note 4, at 4¶¶ 234-238.

<sup>35</sup> See Appendix C, Méndez Declaration, *supra* note 30, at ¶ 22; Appendix B, Ratner Declaration, *supra* note 29, at ¶¶ 18-20; Pinto Report, *supra* note 29, at ¶ 55; United Nations, *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, ¶ 354 (31 March 2011) (The Attorney General's "[p]ast investigations and prosecutions in Sri Lanka have been highly selective and often involved abuses of power on the part of law enforcement, rather than a fair and even-handed pursuit of justice.").

<sup>36</sup> THE NEED FOR ACCOUNTABILITY, *supra* note 32, at 9.

<sup>37</sup> *Id.* (citing *Confusion over "transfer" of Senior State Counsel on Ekmaligoda case*, DAILY FT (9 February 2016), <http://www.ft.lk/article/524035/Confusion-over-%E2%80%9Ctransfer%E2%80%9D-of-Senior-State-Counsel-on-Ekmaligoda-case>).

<sup>38</sup> OHCHR, *Promoting Reconciliation 2019*, *supra* note 29, at ¶¶ 47-49; THE NEED FOR ACCOUNTABILITY, *supra* note 32, at 10; Appendix C, Méndez Declaration, *supra* note 30, at ¶ 18.

<sup>39</sup> *Swiss condemn 'attack' on Sri Lanka embassy worker*, BBC (27 November 2019), <https://www.bbc.com/news/world-asia-50578481>; *Top Detective Who Investigated High-Profile Cases Flees Sri Lanka*, AL JAZEERA (26 November 2019), <https://www.aljazeera.com/news/2019/11/top-detective-investigated-high-profile-cases-flees-sri-lanka-191126115850448.html>.

<sup>40</sup> *Top Detective Who Investigated High-Profile Cases Flees Sri Lanka*, *supra* note 39.

<sup>41</sup> *CCD Seeks Arrest Warrant for Former CID Sleuth IP Nishantha Silva*, LANKASARA (10 August 2020), <https://lankasara.com/en/news/ccd-seeks-arrest-warrant-for-former-cid-sleuth-ip-nishantha-silva/>.

<sup>42</sup> Abi-Habib & Yasir, *Sri Lankan Critics Fear a Crackdown Is Underway*, *supra* note 17.

<sup>43</sup> See *AG indicts Swiss Embassy's Garnier Francis*, DAILY NEWS (23 October 2020), <http://www.dailynews.lk/2020/10/23/law-order/232193/ag-indicts-swiss-embassy%E2%80%99s-garnier-francis>; see also *Sri Lanka Arrests Swiss Embassy Worker Who Claimed Abduction*, ABC NEWS (16 December 2019), <https://abcnews.go.com/International/wireStory/sri-lanka-arrests-swiss-embassy-worker-claimed-abduction-67755147>.



26. CID Director Shani Abeysekera was removed from his position within days of Gotabaya Rajapaksa's inauguration.<sup>44</sup> Abeysekera was responsible for overseeing, *inter alia*, de Silva's investigations into attacks against journalists allegedly carried out on Rajapaksa's orders as Secretary of Defence. In July 2020, Abeysekera was arrested on charges of fabricating evidence in a 2013 arrest and conviction of Deputy Inspector General of Police Vass Gunewardena, an ally of President Gotabaya Rajapaksa. During his tenure as Defence Secretary, Rajapaksa repeatedly sought to intervene in the CID's investigation to prevent Gunewardena's arrest and trial. Members of the opposition United National Party saw Abeysekera's 2020 arrest as politically motivated and an attempt by the Rajapaksa administration to take revenge.<sup>45</sup> Indeed, since the start of Rajapaksa's administration in November 2019, there have been between 20 and 30 investigations into Abeysekera's conduct.<sup>46</sup> Abeysekera remains in custody, and his wife has written letters to senior officers expressing concern that he may be killed because of his involvement in the investigations into human rights violations committed by State actors.<sup>47</sup>

27. Further, the Executive has used the selection, appointment, discipline, and removal of judges to undermine accountability for misconduct carried out by military officials.<sup>48</sup> Disciplinary proceedings have been used as a tool to "exercise undue control and to retaliate against judges refusing to align themselves with the government."<sup>49</sup> Judges are either subject to pressure, or given incentives, such as political appointments, to sway their independence.<sup>50</sup>

28. Harassment of victims and witnesses is rampant in Sri Lanka.<sup>51</sup> Relatives of victims face

<sup>44</sup> *Gota Strikes: Shani Arrested to Pave Way for Vass Gunawardena, Duminda Silva Pardons*, COLOMBO TELEGRAPH (31 July 2020), <https://www.colombotelegraph.com/index.php/gota-strikes-shani-arrested-to-pave-way-for-vass-gunawardena-duminda-silva-pardons/>.

<sup>45</sup> *Former CID director Shani Abeysekera arrested*, NEWSWIRE (31 July 2020), <http://www.newswire.lk/2020/07/31/former-cid-director-shani/>; *Shani's transfer seen as politically motivated*, COLOMBO GAZETTE (23 November 2019), <https://colombogazette.com/2019/11/23/shanis-transfer-seen-as-politically-motivated/>.

<sup>46</sup> *Gota Strikes: Shani Arrested to Pave Way for Vass Gunawardena, Duminda Silva Pardons*, *supra* note 44.

<sup>47</sup> *Urgent Action: Former Police Investigator Jailed with COVID-19*, AMNESTY INT'L (27 November 2020), [https://www.amnesty.org.uk/files/2020-11/UA16820.pdf?O\\_u7n6HTFbgCZcqzwHe2qxPfUx3ZGfk1](https://www.amnesty.org.uk/files/2020-11/UA16820.pdf?O_u7n6HTFbgCZcqzwHe2qxPfUx3ZGfk1).

<sup>48</sup> Appendix C, Méndez Declaration, *supra* note 30, at ¶¶ 15-16; Pinto Report, *supra* note 29, at ¶¶ 35, 48.

<sup>49</sup> Pinto Report, *supra* note 29, at ¶¶ 40, 49.

<sup>50</sup> Appendix C, Méndez Declaration, *supra* note 30, at ¶ 17; Pinto Report, *supra* note 29, at ¶¶ 32-33.

<sup>51</sup> Appendix C, Méndez Declaration, *supra* note 30, at ¶¶ 28-31; Appendix B, Ratner Declaration, *supra* note 29, at ¶¶ 25-28; OHCHR, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*, ¶ 43, U.N. Doc. A/HRC/37/23 (25 January 2018) [hereinafter *Promoting Reconciliation 2018*] ("The High Commissioner remains gravely concerned that, 2 1/2 years into a reconciliation process his Office continues to receive reports of harassment or surveillance of human rights defenders and victims of human rights violations. ... During the period under review, at least two incidents escalated to physical violence against the activist being threatened or kept under surveillance."); OHCHR, *Promoting Reconciliation 2019*, *supra* note 29, at ¶ 55 (reporting "at least two incidents" in 2018 "involving the assault of human rights defenders by unidentified aggressors, presumably in connection to their advocacy on cases of disappearance. Other human rights defenders have reported being questioned by the authorities after having travelled to Geneva to attend sessions of the Human Rights Council. One Sri Lankan United Nations staff member was visited by armed men who questioned him about his activities in support of visits by diplomats and United Nations officials"); OHCHR 2017 Report, *supra* note 31, 31 at ¶¶ 50, 66(a) (noting that "[a]llegations of continued harassment and surveillance of human rights defenders and victims by security and intelligence personnel persist" and calling on the Government to "order all security forces to end immediately all forms of surveillance and harassment of and reprisals against human rights defenders, victims and social actors").

threats, intimidation, and harassment from police or the military.<sup>52</sup> Lawyers and witnesses in cases involving human rights violations perpetrated by the government and military are also threatened.<sup>53</sup> As noted in paragraphs 18, 21, and 24, those who identify government misconduct have been forced to flee the country to escape serious threats.

29. Instead of facing accountability, military officials implicated in gross human rights violations have been reappointed to positions of power. On 9 January 2019, then-President Maithripala Sirisena appointed Major General Shavendra Silva as the Chief of Staff of the Sri Lanka Army, even though United Nations experts had documented credible reports of violations of international human rights and humanitarian law by troops under his command.<sup>54</sup> In May 2019, then-President Sirisena reinstated as an active military intelligence officer Major Prabath Bulathwatte, the leader of the military intelligence unit implicated in Lasantha Wickrematunge's killing and Keith Noyahr's abduction, even though he had been charged with Noyahr's attack.<sup>55</sup> Since his election, President Gotabaya Rajapaksa has similarly appointed military commanders accused of war crimes to positions of power in his government.<sup>56</sup>

30. In February 2020, the Rajapaksa government announced that it would withdraw from Human Rights Council Resolution 30/1, which committed Sri Lanka to ensuring accountability for violations of international human rights and international humanitarian law committed during its decades-long civil war with the Liberation Tigers of Tamil Eelam.<sup>57</sup> This announcement signaled an abandonment of any attempt to combat impunity.

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<sup>52</sup> OHCHR 2017 Report, *supra* note 31,31 at ¶¶ 4, 66(a); U.S. STATE DEP'T, 2017 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—SRI LANKA 6 (2018) (covering 2017) (“[T]he military and police continued to harass civilians with impunity. ... According to civil society, military intelligence operatives conducted domestic surveillance operations and harassed or intimidated members of civil society in conjunction with, or independent of, police. In May [2016] police reportedly harassed a Catholic priest in Mullaitivu following his efforts to memorialize local family members who died during the armed conflict.”).

<sup>53</sup> See OHCHR, *Promoting Reconciliation 2018*, *supra* note 51, at ¶ 30; Michel Frost, *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 332, U.N. Doc. A/HRC/28/63/Add.1 (4 March 2015) (expressing “serious concern in relation to acts of intimidation and death threats directed against human rights defenders”).

<sup>54</sup> *Promoting Reconciliation 2019*, *supra* note 29, at ¶ 57; *Sri Lanka Names War Veteran as Army Chief, U.S., U.N. Critical of Decision*, REUTERS (19 August 2019), <https://www.reuters.com/article/us-sri-lanka-army/sri-lanka-names-war-veteran-as-army-chief-u-s-critical-of-decision>.

<sup>55</sup> Appendix B, Ratner Declaration, *supra* note 29, at ¶ 16; *Alleged death squad leader reinstated in special team under Army Chief*, *supra* note 8.

<sup>56</sup> Laxmanan Sanjeev, *Is Sri Lanka Becoming A De Facto Junta?*, FOREIGN POLICY (17 July 2020), <https://foreignpolicy.com/2020/07/17/sri-lanka-junta-gotabay-rajapaksa-military/> (“In March, Rajapaksa pardoned and released Sunil Ratnayake, a former Sri Lankan army staff sergeant convicted of the brutal murder of eight Tamil civilians, including three children—one of the very few soldiers to face trial. ... In his eight months in office, he has appointed a series of military commanders who have been accused of serious alleged international crimes during the civil war—commanders who currently hold high-level government positions.”); *Kamal Gunaratne Secretary of Defence Sri Lanka*, INT’L TRUTH AND JUSTICE PROJECT (10 December 2019), <https://itjpsl.com/reports/kamal-gunaratne> (noting that by appointing Major General Kamal Gunaratne as Defence Secretary, Sri Lanka is “intentionally and deliberately promoting ... impunity by appointing alleged war criminals to positions of power”).

<sup>57</sup> *Sri Lanka: Security Agencies Shutting Down Civic Space: Rights Activists, Journalists Facing Surveillance, Threats*, HUMAN RIGHTS WATCH (3 March 2020), <https://www.hrw.org/news/2020/03/03/sri-lanka-security-agencies-shutting-down-civic-space> (hereinafter *Shutting Down Civic Space*).

## 1. Improper State Interference in the Investigation of Lasantha Wickrematunge's Assassination

31. The investigation into Lasantha Wickrematunge's killing is a powerful example of the serious political interference into investigations of human rights violations allegedly committed by the military.<sup>58</sup> While an investigation began shortly after his killing in 2009, the case remains open.<sup>59</sup>

32. From the moment Wickrematunge was killed, government officials and investigators sought to conceal the military's involvement in Wickrematunge's killing. The Judicial Medical Officer issued an autopsy report indicating that Wickrematunge's death was caused by a firearm, even though this was clearly inconsistent with the physical evidence. On the day he was killed, Wickrematunge had written in a notebook the license plate numbers of the vehicles tracking him. Lasantha's notebook disappeared, but a police investigator later admitted to removing pages in the notebook and doctoring police logbook entries mentioning the notebook.<sup>60</sup>

33. After the investigation was launched in January of 2009, no further inquiries took place until December 2009, when family members petitioned the court to reopen the investigation and the matter was transferred to the CID.<sup>61</sup> Shortly thereafter, a household employee of Wickrematunge was abducted and threatened by his captors not to speak of any military involvement in the murder.<sup>62</sup> 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.<sup>63</sup>

34. After CID investigators sought to question a member of the Tripoli Platoon for their suspected role in Wickrematunge's attack, the case was immediately transferred out of their jurisdiction and handed over to the Terrorist Investigation Division ("TID").<sup>64</sup>

35. In February of 2010, the TID took into custody the member of the Tripoli Platoon who had originally been sought for questioning by the CID.<sup>65</sup> While in custody, this suspect was promoted by the military and continued to receive his pay in violation of regulations governing military personnel in police custody. He was eventually released without being charged and

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<sup>58</sup> See THE NEED FOR ACCOUNTABILITY, *supra* note 32, at 44-54.

<sup>59</sup> OHCHR, *Promoting Reconciliation 2019*, *supra* note 29, at ¶ 45; Appendix C, Méndez Declaration, *supra* note 30, at ¶ 25.

<sup>60</sup> See OHCHR, *Promoting Reconciliation 2018*, *supra* note 51, at ¶ 37.

<sup>61</sup> Appendix D, First Amended Complaint, ¶ 48, *Wickrematunge v. Rajapaksa*, No. 2:19-CV-02577-R-RAO (C.D. Cal. July 15, 2019) (Dkt. No. 23) [hereinafter *Wickrematunge Complaint*]; THE NEED FOR ACCOUNTABILITY, *supra* note 32, at 44-45.

<sup>62</sup> *Exclusive: The Inside Story of Lasantha's Driver's Abduction*, COLOMBO TELEGRAPH (28 July 2016), <https://www.colombotelegraph.com/index.php/exclusive-the-inside-story-of-lasanthas-drivers-abduction/>; Ahimsa Wickrematunge, *What they did to my father and why they did it*, DAILY NEWS (10 January 2019), <http://www.dailynews.lk/2019/01/10/features/173827/what-they-did-my-father-and-why-they-did-it>.

<sup>63</sup> *Exclusive: The Inside Story of Lasantha's Driver's Abduction*, *supra* note 62.

<sup>64</sup> THE NEED FOR ACCOUNTABILITY, *supra* note 32, at 45-46; Wickrematunge, *What they did to my father and why they did it*, *supra* note 62; Appendix D, *Wickrematunge Complaint*, *supra* note 61 at ¶ 50.

<sup>65</sup> THE NEED FOR ACCOUNTABILITY, *supra* note 32, at 26.

without thorough questioning, and only after his accuser died in police custody.<sup>66</sup>

36. The case then languished for five years. In 2015, the criminal investigation was reopened by the CID, only after President Mahinda Rajapaksa was defeated in a general election.

37. After the renewed investigation pointed to military involvement, President Sirisena sought to transfer Nishantha de Silva, the main CID officer investigating Wickrematunge's case, to a different department.<sup>67</sup> After public outcry, de Silva continued to work on the case, until he was forced to flee Sri Lanka after Gotabaya Rajapaksa's election, as discussed above.

38. More recently, witnesses suspected of having information relating to Wickrematunge's killing have been the subject of intimidation and harassment. In July 2020, Srilal Priyantha, the editor of the monthly news magazine *Eethalaya*, was interrogated by the CID for several hours over a 2017 report he published on Wickrematunge's murder which linked the killing to Gotabaya Rajapaksa's Ministry of Defence.<sup>68</sup> Throughout the interrogation, the CID repeatedly demanded that Priyantha reveal his sources for the article.

39. Due to political pressures, threats to witnesses, and continued state interference with the investigation, the criminal investigation into Lasantha's killing has stalled. The regular judicial hearing into the progress of the investigations into Lasantha's murder, set for December 2020 before Mount Lavinia Magistrate Udesch 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.<sup>69</sup>

## **2. Improper State Interference in the Investigation of Prageeth Eknaligoda's Enforced Disappearance**

40. The investigation in Prageeth Eknaligoda's case follows a similar pattern of political pressure and witness intimidation. Initially, the police refused to accept Sandhya Eknaligoda's report that her husband was missing. The police only began investigations two weeks after the complaint was filed. Sandhya was then forced to file a petition for writ of habeas corpus in February 2010, demanding that the police produce Eknaligoda before the court after investigations produced no results. However, the police repeatedly called for postponements of the case and failed to produce any updates in court for years. Meanwhile, upon examination by the United Nations Committee Against Torture into Eknaligoda's disappearance, Sri Lanka's Attorney General simply claimed that Eknaligoda was in a different country.<sup>70</sup>

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<sup>66</sup> Vimukthi Yapa, *Military Intelligence Coddles Remanded Murder Suspects*, SUNDAY LEADER (21 August 2016) <http://www.thesundayleader.lk/2016/08/21/military-intelligence-coddles-remanded-murder-suspects/>.

<sup>67</sup> OHCHR, *Promoting Reconciliation 2019*, *supra* note 29, at ¶¶ 47-49; THE NEED FOR ACCOUNTABILITY, *supra* note 32, at 10.

<sup>68</sup> *Journalist Interrogated by CID about 2017 Article on Lasantha Wickrematunge Murder*, COLOMBO TELEGRAPH (15 July 2020), <http://www.colombotelegraph.com/index.php/journalist-interrogated-by-cid-about-2017-article-on-lasantha-wickrematunge-murder/>.

<sup>69</sup> Zulfick Farzan, *Lasantha Wickrematunge Homicide Cases Postponed*, NEWS FIRST (4 December 2020), <https://www.newsfirst.lk/2020/12/04/lasantha-wickrematunge-homicide-cases-postponed>.

<sup>70</sup> See THE NEED FOR ACCOUNTABILITY, *supra* note 32, at 57-59.

41. No progress was made until the case was reopened in 2015. Investigators then learned that Eknaligoda had been detained by the military and interrogated at Girithale Army Camp, then killed in Akkaraipattu. Two military intelligence officers confessed that Gotabaya Rajapaksa had given the command to abduct and kill Prageeth Eknaligoda. Investigators used cell phone records to link members of the military to the killing.<sup>71</sup>

42. Investigators reported destruction of vital evidence and obstruction of justice by the military. In particular, the military refused to disclose to investigators documentation detailing ownership of the cell phones, vehicle movements, and leave registers that could be vital evidence in the investigation. While the CID found that the Sri Lankan army paid for mobile devices linked to Eknaligoda's disappearance and killing, the military refused to disclose to investigators which officers were using the devices, and claimed that the records were either destroyed or withheld for national security reasons.<sup>72</sup>

43. Although a number of suspects have been arrested and released on bail, no one has been prosecuted for Eknaligoda's enforced disappearance and extrajudicial killing. One suspect in the case, Gnanasara Thero, was convicted of contempt of court over his conduct during a hearing on the disappearance of Eknaligoda, but not for his involvement in the disappearance itself. He was sentenced to six years in prison but was pardoned by Gotabaya Rajapaksa in May 2019 and subsequently released that month.<sup>73</sup>

44. Prageeth Eknaligoda's wife Sandhya has also been subject to harassment, intimidation, and death threats.<sup>74</sup> Following Gotabaya Rajapaksa's election, she reported that threats to her and surveillance of her family increased. Sandhya also reports concerns that her sons may be targeted for violence, and at least one of them has been subject to surveillance.<sup>75</sup>

#### **IV. Intensified Harassment and Attacks on Journalists Under Gotabaya Rajapaksa's Presidency**

45. Following the 2019 presidential election which saw the Rajapaksa family return to power, there has been "a rapid closing" of civic space and freedom of expression.<sup>76</sup> Journalists who are perceived as critical of the government have been harassed, threatened with death, intimidated, and forced into exile.<sup>77</sup> In many instances, the perpetrators were suspected

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<sup>71</sup> See *id.* at 63; Dharisha Bastians & Aanya Vipulasena, *Prageeth: "A politically motivated crime"*, SUNDAY OBSERVER (20 January 2019), <http://www.sundayobserver.lk/2019/01/20/news-features/prageeth-%E2%80%9Cpolitically-motivated-crime%E2%80%9D>.

<sup>72</sup> See THE NEED FOR ACCOUNTABILITY, *supra* note 32, at 62; Bastians & Vipulasena, *Prageeth: "A politically motivated crime"*, *supra* note 71.

<sup>73</sup> See CPA Contests President's Decision to Pardon Ven. Gnanasara Thero, DAILY FT (12 July 2019), <http://www.ft.lk/news/CPA-contests-President-s-decision-to-pardon-Ven-Gnanasara-Thero/56-681784>; Amid Pandemic, Sri Lanka Pardons Soldier Convicted of Massacre, AMNESTY INT'L (30 April 2020), <https://www.amnesty.org/download/Documents/ASA3722472020ENGLISH.pdf>.

<sup>74</sup> Sri Lanka: Deplorable Threats Against Human Rights Defender, AMNESTY INT'L (26 June 2018), <https://www.amnesty.org/en/latest/news/2018/06/sri-lanka-deplorable-threats-against-human-rights-defender/>.

<sup>75</sup> See Iftikhar, *Sri Lankan Journalists Turn to Self-Censorship*, *supra* note 10.

<sup>76</sup> *Shutting Down Civic Space*, *supra* note 57.

<sup>77</sup> See Sri Lanka, REPORTERS WITHOUT BORDERS, *supra* note 7.



supporters of the ruling Sri Lanka Podujana Peramuna party.<sup>78</sup> Journalists have also received calls from the Rajapaksa administration's supporters, asking them to refrain from reporting anything that may reflect negatively on the government.<sup>79</sup>

46. These threats have chilled on-the-ground reporting.<sup>80</sup> Journalists report self-censoring stories that criticize Gotabaya Rajapaksa or his family.<sup>81</sup>

47. There has also been a disturbing increase in state surveillance and threats against reporters covering issues linked to Sri Lanka's Tamil minority.<sup>82</sup> Journalists in Tamil-majority regions reported harassment, intimidation, and interference from the government regarding their reporting on sensitive issues. The military has requested copies of photographs, attendee lists at events, and identities of sources. The military also demanded that journalists refrain from reporting on sensitive events, such as Tamil war memorials or land occupation protests.<sup>83</sup>

48. The following are illustrative examples of the perils journalists in Sri Lanka currently face.

49. On 26 November 2019, less than a week after the election, the police raided the offices of *NewsHub*, a Colombo-based news website, and searched the contents of its servers and computers. The warrant obtained by the police had expired almost a year earlier, but the police claimed it was an error and continued its search for all information related to the word "Gota."<sup>84</sup>

50. Journalist Dharisha Bastians has been the target of intimidation and harassment for her reporting on corruption and human rights abuses committed by high-ranking military and government officials. In July 2018, Mahinda Rajapaksa's supporters and family members threatened legal action against her after she co-authored an article linking Chinese investment in southern Sri Lanka and payments made by Chinese companies to Mahinda Rajapaksa's presidential campaign fund.<sup>85</sup> Since December 2019, the CID has targeted Bastians in its investigations into what the Sri Lankan government asserts is a false claim of abduction by an employee at the Swiss embassy, despite Swiss officials' confirmation that the incident took

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<sup>78</sup> *Shutting Down Civic Space*, *supra* note 57; Iftikhar, *Sri Lankan Journalists Turn to Self-Censorship*, *supra* note 10.

<sup>79</sup> U.S. DEP'T OF STATE, *2019 Country Reports On Human Rights Practices—Sri Lanka* 13 (2020) (covering 2019) (hereinafter *2019 U.S. Dep't of State Report*).

<sup>80</sup> Iftikhar, *Sri Lankan Journalists Turn to Self-Censorship*, *supra* note 10.

<sup>81</sup> *2019 U.S. Dep't of State Report*, *supra* note 79, at 13.

<sup>82</sup> See *Sri Lanka*, REPORTERS WITHOUT BORDERS, *supra* note 7; *Shutting Down Civic Space*, *supra* note 57 ("Sri Lankan security agencies are stepping up surveillance, harassment, and threats against human rights and journalists. ... Since November 9, when the government of President Gotabaya Rajapaksa came into office, there has been a rapid closing of civic space and freedom of expression.").

<sup>83</sup> *2019 U.S. Dep't of State Report*, *supra* note 79, at 12.

<sup>84</sup> *Sri Lanka: Harassment of Journalists Surges in First Days of Rajapaksa Presidency*, REPORTERS WITHOUT BORDERS (3 December 2019), <https://rsf.org/en/news/sri-lanka-harassment-journalists-surges-first-days-rajapaksa-presidency>.

<sup>85</sup> *Sri Lankan Authorities Seize Reporter Dharisha Bastians' Laptop in Home Raid*, COMM. TO PROTECT JOURNALISTS (18 June 2020), <https://cpj.org/2020/06/sri-lankan-authorities-seize-reporter-dharisha-bastians-laptop-in-home-raid/>.

place.<sup>86</sup> Pro-government media have attacked Bastians and her family on social media, labeling her a traitor and criminal. On 9 June 2020, the CID raided Bastians' home in Colombo and seized her laptop.<sup>87</sup> Bastians has fled Sri Lanka.

51. Prabakaran Thangarajah, editor of the Tamil daily newspaper *Uthayan*, has received phone calls from the military demanding he reveal his sources. Reporters and freelancers for the *Uthayan* have received threats from unnamed individuals and been told to not file a story. Local vendors have been told not to sell the paper.<sup>88</sup> In 2013, the newspaper was a target of two attacks by unidentified armed men believed to be linked to the Sri Lankan military, following the newspaper's reporting on military takeover of businesses and industries in northern Sri Lanka.<sup>89</sup>

52. In the face of these threats to free expression, Sri Lanka has stated that it has no plans to address press freedom and journalist safety because its priority is to focus on the economy.<sup>90</sup> Rather than taking action to protect free expression, the Sri Lankan government has instead attempted to enact measures to legitimize its attacks on the press.

53. On 4 January 2020, the Ministry of Defence announced that it had drafted a new cybersecurity regulation to prevent publication of “defamatory posts” on social media.<sup>91</sup>

54. Since the start of the COVID-19 pandemic, the Inspector General has ordered the police to arrest anyone—including journalists—who criticizes or exposes shortcomings of officials involved in the pandemic response, or shares “fake” and “malicious” messages about the pandemic on social media.<sup>92</sup>

55. Concerns over further curtailment of free expression in Sri Lanka are intensified by the assignment of the Commander of the Sri Lankan Army, General Shavendra Silva, to lead the country's COVID-19 response. General Silva faces credible allegations of war crimes during the civil war and was recently banned from traveling to the United States because of “his involvement, through command responsibility, in gross violations of human rights,” including extrajudicial killings during the civil war.<sup>93</sup>

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<sup>86</sup> See *supra*, ¶ 25 and note 43; *Sri Lanka: End Persecution of Journalist: Dharisha Bastians Targeted for Reports, Defense of Human Rights*, HUMAN RIGHTS WATCH (24 June 2020), <https://www.hrw.org/news/2020/06/24/sri-lanka-end-persecution-journalist>.

<sup>87</sup> *Sri Lankan Authorities Seize Reporter Dharisha Bastians' Laptop in Home Raid*, *supra* note 85.

<sup>88</sup> Iftikhar, *Sri Lankan Journalists Turn to Self-Censorship*, *supra* note 10.

<sup>89</sup> *Sri Lankan daily attacked again, twice in two weeks*, COMM. TO PROTECT JOURNALISTS (15 April 2013), <https://cpj.org/2013/04/sri-lankan-daily-attacked-again-twice-in-two-weeks/>.

<sup>90</sup> Iftikhar, *Sri Lankan Journalists Turn to Self-Censorship*, *supra* note 10.

<sup>91</sup> *Shutting Down Civic Space*, *supra* note 57.

<sup>92</sup> See Meenakshi Ganguly, *Sri Lanka Uses Pandemic to Curtail Free Expression: Police Ordered to Arrest Critics in Military-Led COVID-19 Response*, HUMAN RIGHTS WATCH (3 April 2020), <https://www.hrw.org/news/2020/04/03/sri-lanka-uses-pandemic-curtail-free-expression>; see also Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19, OHCHR (3 June 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25920&LangID=E>.

<sup>93</sup> Michael Pompeo, *Public Designation, Due to Gross Violations of Human Rights, of Shavendra Silva of Sri Lanka Under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act*, OFFICE OF GLOBAL PUBLIC AFFAIRS (14 February 2020), <https://2017-2021.state.gov/public-designation-due-to-gross-violations-of-human-rights-of-shavendra-silva-of-sri-lanka-under-section-7031c-of-the-department-of-state-foreign-operations-and-related-programs-appropriations-a/index.html>.

56. In April 2020, the Human Rights Commission of Sri Lanka wrote a letter to the Sri Lanka Police, informing them that “any arrest for the mere criticism of public officials or policies would be unconstitutional.”<sup>94</sup> The United Nations High Commissioner for Human Rights, Michelle Bachelet, has also recently expressed concerns about “the clampdown on freedom of expression” in many countries, including Sri Lanka, during the COVID-19 pandemic.<sup>95</sup>

57. In August 2020’s general parliamentary election, Gotabaya Rajapaksa’s party secured a two-thirds majority in the House of Representatives. In October 2020, Parliament passed the Twentieth Amendment to the Sri Lankan Constitution, consolidating the President’s power over the judiciary and the Attorney General and removing the rule-of-law measures implemented under the prior administration.<sup>96</sup> This move will only strengthen Rajapaksa’s grip on power, as he will be able to hold ministries and appoint and dismiss officials, has “sole and unfettered discretion to appoint all judges of the superior courts,” and can dissolve Parliament after two years and six months.<sup>97</sup>

58. Reflecting on the impact of the election, human rights lawyer Bhavani Fonseka stated that “the space for dissent is shrinking.”<sup>98</sup>

## **VI. Applicable Obligations under the International Covenant on Civil and Political Rights**

59. The rights to freedom of expression, peaceful assembly, and association, enshrined in Articles 19, 21, and 22 of the International Covenant on Civil and Political Rights (ICCPR), require the government of Sri Lanka to both refrain from interfering with the activities of the press and take affirmative steps to protect press freedom.

60. In addition, the rights to remedy, to life, to liberty and security of person, and to be free from torture and cruel, inhuman, or degrading treatment or punishment, enshrined in Articles 2, 6, 7, and 9 of the ICCPR, also require Sri Lanka to ensure accountability for killings, assaults, kidnappings, and torture of journalists, and to provide effective remedies for survivors.

## **VII. Conclusion and Recommendations**

61. The High Commissioner for Human Rights concluded in her most recent report that the past decade’s lack of progress toward accountability and the “insurmountable barriers” to access

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<sup>94</sup> Letter from the Human Rights Commission of Sri Lanka to C.D. Wickramaratne, Inspector General of Police, Limiting Freedom of Expression in a Democracy (25 April 2020), <http://www.hrcsl.lk/wp-content/uploads/2020/02/Letter-to-IGP-Freedom-of-Expression.pdf>.

<sup>95</sup> *Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19*, *supra* note 92.

<sup>96</sup> *See Sri Lanka: Newly Adopted 20th Amendment to the Constitution Is Blow to the Rule of Law*, INT’L COMMISSION OF JURISTS (27 October 2020), <https://www.icj.org/sri-lanka-newly-adopted-20th-amendment-to-the-constitution-is-blow-to-the-rule-of-law>.

<sup>97</sup> *Id.*; *see also* Krishan Francis, *Sri Lankan Parliament votes to strengthen presidential power*, ASSOCIATED PRESS (22 October 2020), <https://apnews.com/article/sri-lanka-constitutions-constitutional-amendments-c984676aac7e6005cd7d81395ba8cb78>.

<sup>98</sup> Anbarasan Ethirajan, *Sri Lanka Election: Rajapaksa Brothers Tighten Grip on Power*, BBC (7 August 2020), <https://www.bbc.com/news/world-asia-53694392>.

justice indicate Sri Lanka's "inability and unwillingness ... to prosecute and punish perpetrators of crimes when State agents are the alleged perpetrators."<sup>99</sup>

62. Given the Government of Sri Lanka's refusal to implement its human rights obligations on its own, including its obligation to ensure justice for victims, we respectfully urge the Human Rights Council to implement the following measures in a new resolution in the upcoming 46th Regular Session, as recommended by the High Commissioner for Human Rights.<sup>100</sup>

- a. Enhance the Office of the UN High Commissioner for Human Rights' monitoring of the human rights situation in Sri Lanka, including on progress towards accountability and reconciliation, and have the Office report regularly to the Human Rights Council.
- b. Create an independent mechanism to collect and preserve evidence and other related information to support future accountability processes, to advocate for victims and survivors, and to support relevant judicial proceedings to promote justice for violation of human rights and humanitarian law.
- c. Prioritize support to civil society initiatives, in particular, initiatives assisting victims and their families.

63. We also respectfully urge the Human Rights Council to recommend that the Government of Sri Lanka implement the following measures to address the human rights violations detailed in this report.

- a. Support and cooperate with any new mechanism established by the Human Rights Council to collect and preserve evidence to support accountability for human rights and humanitarian law violations.
- b. Take affirmative steps to prevent violence against journalists.
- c. Immediately cease harassment, surveillance, and attacks on journalists and current and former law enforcement officials investigating crimes against journalists, and promptly release former CID Director Shani Abeysekera.
- d. Give immediate consideration to recommendations concerning strengthening Sri Lanka's compliance with international human rights standards, repealing the Prevention of Terrorism Act, expediting and implementing independent investigations, and ensuring accountability and effective remedy for gross violations of human rights as recommended by United Nations special procedures, including the Special Rapporteur on Human Rights and Counter-

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<sup>99</sup> OHCHR, *Promotion of Reconciliation 2021*, *supra* note 3, at ¶ 51.

<sup>100</sup> *See id.* at ¶¶ 61(a), 61(b), 61(f).

Terrorism,<sup>101</sup> the Working Group on Arbitrary Detention,<sup>102</sup> the Special Rapporteur on the Independence of Judges and Lawyers,<sup>103</sup> and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading treatment or punishment.<sup>104</sup>

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<sup>101</sup> Special Rapporteur on Human Rights and Counter-Terrorism, *Rep. of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, ), ¶¶ 62(a), U.N. Doc A/HRC/40/52/Add.3 (18 December 2018) (by Ben Emmerson) (“Immediately establish a moratorium on the use of the Prevention of Terrorism Act for new arrests until it is off the statute book, and take urgent steps to repeal it”); *id.* at ¶ 62(b) (“Ensure that the new counter-terrorism legislation is fully in line with international human rights law.”); *id.* at ¶ 62(g) (“Establish an independent, effective and accessible mechanism to complain about torture and ill-treatment in all places of detention. Ensure that investigations into allegations of torture are launched ex officio and that complainants are not subject to reprisals.”); *id.* at ¶ 62(k) (“Ensure that the right to habeas corpus is fully reflected in the future legislation, in line with the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.”); *id.* at ¶ 62(o) (“Publicly issue unequivocal instructions to all security forces to immediately end all forms of surveillance and harassment against human rights defenders and victims under the Prevention of Terrorism Act and their families.”).

<sup>102</sup> Working Group on Arbitrary Detention, *Rep. of the Working Group on Arbitrary Detention on its visit to Sri Lanka*, ¶ 82(a), U.N. Doc A/HRC/39/45/Add.2 (23 July 2018) (“Continue efforts to establish a permanent government body to coordinate engagement with international human rights mechanisms, while involving from the outset all the relevant stakeholders, including the Human Rights Commission and civil society actors.”); *id.* at ¶ 82(c) (“Establish, without delay, a truth and reconciliation commission, a reparations programme and a special accountability mechanism, as outlined in Human Rights Council resolution 30/1, with the full involvement and participation of all relevant stakeholders.”); *id.* at ¶ 83(a)(ii) (recommending “[e]xpediting investigations”); *id.* at ¶ 83(c) (“Undertake training for the police in investigative skills, dedicate personnel and infrastructure resources to the Attorney General’s Office and the courts, review case management policies and issue practice directions in the courts to put an end to repeated postponements of hearings.”).

<sup>103</sup> Pinto Report, *supra* note 29, at ¶ 100 (“Urgent measures should be adopted by the authorities to give effect to all the rights protected in international human rights treaties that have been ratified and are therefore in force. The authorities should also enforce the decisions adopted by the United Nations treaty bodies whose jurisdiction it has voluntarily accepted.”); *id.* at ¶ 102 (“The Constitution should clearly and expressly recognize the fundamental principle of the separation of powers, establish checks and balances and guarantee the independence of the judiciary and the courts, as well as of the legal profession.”); 116 (“The legality of investigations should be closely monitored through effective judicial oversight.”); *id.* at ¶ 117 (“The Attorney-General should issue clear and proper guidelines for the investigation of crimes and the prosecution of perpetrators, including victim-oriented protocols that respect women’s and children’s rights. Specific guidelines should be developed for the effective investigation of gross violations of international human rights law and serious violations of international humanitarian law and for the prosecution of perpetrators of such crimes.”); *id.* at ¶ 121 (“Measures to decentralize the work of the Attorney-General’s department should be encouraged and be taken in consultation with all parties involved in criminal prosecutions.”); *id.* at ¶ 124 (“An independent special office should be established to handle the prosecution of State officials.”); *id.* at ¶ 134 (“The Prevention of Terrorism Act should be immediately repealed; any replacing legislation, if at all necessary, should fully respect international human rights law and standards.”); *id.* at ¶ 144 (“Comprehensive measures should be urgently adopted to address impunity. Those measures should not be limited to the transitional justice context but should be aimed at the whole justice chain.”).

<sup>104</sup> Méndez Declaration, *supra* note 30, at ¶ 116(a) (“Immediately repeal the Prevention of Terrorism Act. ... Amend the Police Act to make the police more accountable, effective and trustworthy.”); *id.* at ¶ 117(g) (“Ensure that all arrests are transparent, with the arresting officer showing proper identification, and based on objective evidence.”); *id.* at ¶ 117(h) (“Ensure that all detainees can challenge the lawfulness of detention before an independent court, i.e., through habeas corpus proceedings.”); *id.* at ¶ 117(i) (“Ensure that security sector officials (military, intelligence and police) undergo a rigorous reform programme that includes human rights education and training in effective interrogation techniques and proper use of force.”); *id.* at ¶ 117(k) (“Introduce independent, effective and accessible complaint mechanisms at all places of deprivation of liberty by installing emergency telephone hotlines or confidential complaint boxes that are operational, and ensure that complainants are not subject to reprisals.”); *id.* at ¶ 117(m) (“Authorize and facilitate regular, effective and independent monitoring of places of deprivation of liberty by international and national bodies, including the National Human Rights Commission and civil society



- e. Renew the invitation for an independent investigation by the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, which was originally proposed for late 2018. Extend an invitation for an independent investigation by the Special Rapporteur on the Situation of Human Rights Defenders, who has previously requested a visit.
- f. Repeal legislation criminalizing criticism of the government and renew Sri Lanka's commitments to accountability and human rights, as required under Human Rights Council Resolution 30/1.
- g. Conduct independent and impartial investigations into past and current attacks on journalists and hold perpetrators accountable. In particular, resume and provide resources for the stalled investigations into the death of Lasantha Wickrematunge and Prageeth Eknaligoda.
- h. Design and implement structural changes to facilitate investigations, including, but not limited to: (1) establishing an independent investigatory commission specifically focused on violence against journalists; (2) strengthening parliamentary oversight over security forces; (3) implementing a robust victim and witness protection regime; and (4) establishing procedures to guarantee the independence of the prosecutor, the judiciary, and the CID in cases involving violence against journalists.

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organizations.”); *id.* at ¶ 119(a) (“Establish an effective torture prevention programme by undertaking comprehensive institutional reforms and a vetting process at the higher and lower ranks in the security sector — the army, the intelligence agency and the police — to overhaul these institutions, which continue to function with impunity.”).

**Report on Harassment, Intimidation, Surveillance  
and Attacks Against Journalists in Sri Lanka**

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**APPENDIX A**

**Affidavit of Adrian Nishantha Silva, *Karunasekara v. Silva et al.*, S.C.F/R.  
No. 154/2018 (9 October 2018)**

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IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC

OF SRI LANKA

In the matter of an application under and in  
terms of Articles 17 and 126 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

Kuruppu Achchige Dhammika Amal  
Karunasekara

84/2, Pitipana North,

Homagama

[Presently on bail]

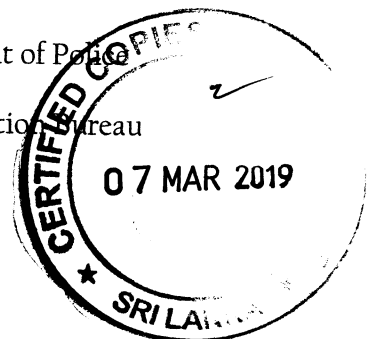
PETITIONER

S.C.F/R No. 154/2018

-Vs-

1. A. Nishantha Silva,  
Inspector Of Police,  
Officer – in Charge,  
Gang Robbery Investigation Bureau,

2. B.S. Tissera  
Assistant Superintendent of Police  
Gang Robbery Investigation Bureau



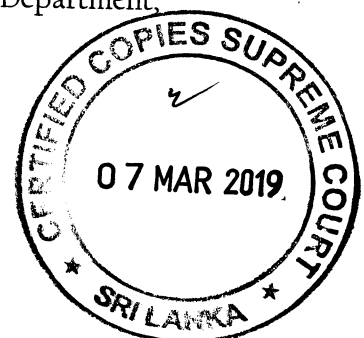
3. G. Shani Abeyssekera  
Superintendent of Police,  
Director
4. D.W.R.B. Seneviratne  
Senior Deputy Inspector General of  
Police

All of the Criminal Investigation  
Department ,  
4<sup>th</sup> Floor,  
New Secretariat Building,  
Colombo 01

5. Pujith Jayasundara  
Inspector General of Police,  
Police Headquarters,  
Church Street ,  
Colombo 01.

6. The Attorney General,  
Attorney General's Department,  
Colombo 12.

RESPONDENTS

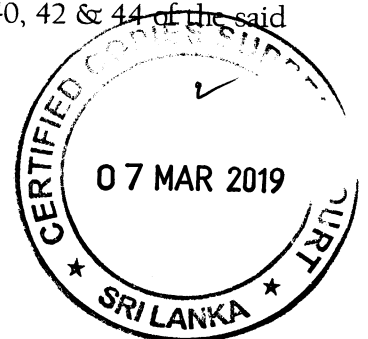


On this 9<sup>th</sup> day of October 2018

TO HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER HONOURABLE JUDGES  
OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI  
LANKA

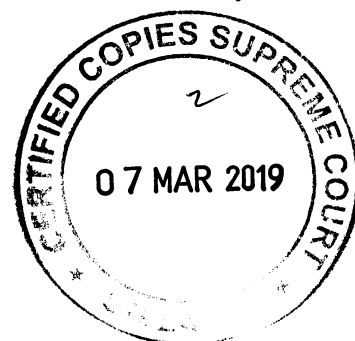
I, Adrian Nishantha Silva, Officer- In- Charge of Gang Robbery Investigation Bureau of the  
Criminal Investigation Department, Colombo, being a Roman Catholic do hereby solemnly,  
sincerely and truly declare and swear as follows:

1. I am the deponent aforementioned and the 1<sup>st</sup> Respondent of the above case.
2. I depose to the following facts from the material gathered in the course of the  
investigations and with recourse to official documents, files and records available for my  
perusal.
3. I have perused the petition and the affidavit filed by the Petitioner and deny all and  
singular the several averments contained therein save and except those that are  
hereinafter specifically admitted by me.
4. I state that all references to the averments in the affidavit of the Petitioner shall mean  
and include a reference to the corresponding averments contained in the Petition.
5. I admit the averments contained in paragraphs 1, 2, 3, 4, 5, 6, 31, 33, 38, 38.1 , 38.2 , and  
38.4 of the affidavit.
6. I deny the several averments contained in paragraphs 29, 32, 34, 40, 42 & 44 of the said  
affidavit.





7. I am unaware of the averments contained in paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 36, 37, 38.3, 39, 41, 43 and 45 of the said affidavit and therefore deny the same.
8. With reference to the averments contained in paragraph 27 of the affidavit, I only admit that a further report was filed under my hand on 1/4/2018 and that the learned Magistrate re-activated the travel ban on the Petitioner and the Commissioner General of Immigration & Emigration was informed of the same and deny the rest of the averments that are incompatible herewith.
9. With reference to the averments contained in paragraph 28 of the affidavit, I only admit that the Petitioner had legal representation in the Magistrate's Court on 2/4/2018, the Court's re-imposition of the travel ban on the Petitioner and that he was required to be present at the Criminal Investigation Department [referred to as the CID hereinafter] on 5/4/2018 and state that I am unaware of the rest of the averments therein and therefore deny the same.
10. With reference to the averments contained in paragraph 30 of the affidavit, I state that I received P20 on 5/4/2018 and deny the rest of the averments therein as am unaware of the same.
11. With reference to the averments contained in paragraph 35 of the affidavit, whilst denying any violation of the fundamental rights of the Petitioner I state that the learned Magistrate of Colombo [Court No 3] visited personally the Petitioner at the Army



Hospital on 5/4/2018 and lawfully made the order for his transfer to the Remand Hospital.

12. I respectfully state the following based on the investigation conducted into the abduction of Mr. Keith Noyah.

### 13. BACKGROUND TO THE INVESTIGATION

13.(a) On 25/2/2015, then Inspector General of Police directed the 4<sup>th</sup> Respondent above named to take over the investigation into the assassination of the journalist Mr. Lasantha Wickramathunga

(A true copy of the said written order marked **IR1** attached hereto, is pleaded as part and parcel hereof)

13.(b) In the course of the said investigation, I observed certain similarities in the strategy applied by the perpetrators in launching the attacks on two other journalists namely Messrs. Upali Thennakoon and Keith Noyah. It was evident in particular that, as per the telephone details that one or more persons who had followed the journalist Lasantha Wickramathunga prior to his assassination, also had followed the journalist Upali Thenkoon prior to his attack on 23/1/2009.

13.(c) In view of the above revelation, in order to identify the assassins of late Mr. Lasantha Wickramatunga, I requested then Director of the CID to re-open the investigations relating to the abductions of the journalists Messrs. Upali Tennakoon and Keith Knoyer.

(A true copy of my above written request dated 16/3/2016 to the Director marked **IR2** attached herewith, is pleaded as part and parcel hereof)



13.(d) Consequent to the said request, then Director CID SSP Sudath Nagahamulla directed the relevant files of investigation to be handed over to me.

(A true copy of the said order of then Director dated 06.04.2016 marked IR3 appended hereto is pleaded as part and parcel hereof)

#### 14 REVELATION OF SUPPRESSION OF MATERIAL & UNSUCCESSFUL INVESTIGATIONS INTO THE ABDUCTION OF KEITH NOYAH

##### 14.1 Investigation by the Dehiwela police

14.1 (a) Upon re- commencement of the investigation into the abduction of the journalist Keith Noyah it was observed that the initial investigation had been conducted by the Dehiwela police. They had reported facts to the Magistrate's Court of Mt. Lavinia under case No B 1535/2008 and the number of reports filed in court had been confined simply to two.

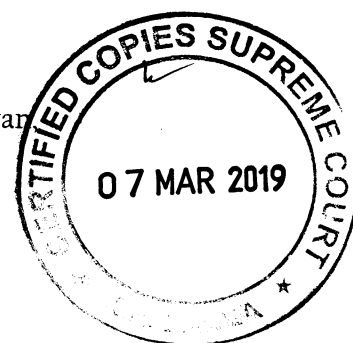
14.1 (b) By the first report filed on 26/5/2008 CI Kottahachchi of Dehiwala Police had informed the Magistrate's Court of the complaint made by Mr. Lalith Alahakoon, Editor-in-Chief of *The Nation* newspaper of the abduction of its Deputy Editor Mr. Noyah in the night of 22.05.2008.

14.1 (c) The second report filed on 09.08.2008, was for the case to lay by, which application had been allowed by the Magistrate.

(Certified copies of reports dated 26.05.2008 and 09.08.2008 marked IR4 and IR5 respectively attached hereto are pleaded as part and parcel hereof).

14.1(d) Upon perusal of the notes of investigation by the Dehiwela police and their two reports filed in court, it was evident that the material facts such as ;

(i) The abductors of Mr. Noyah had come in a white van



- (ii) Mr. Noyah had been reluctant to make a complete statement to the police on the abduction as he feared for his safety and the safety of his wife and children,
- (iii) the reluctance of Mr. Noyah to describe the happenings consequent to his abduction, had been withheld from the Magistrate.

(A true Copy of Mr. Noyah's statement recorded by CI Kottahachchi on 23/05/2008 marked IR6 annexed hereto is pleaded as part and parcel hereof)

#### 14.2 Investigation by the Colombo Crimes Division[CCD]

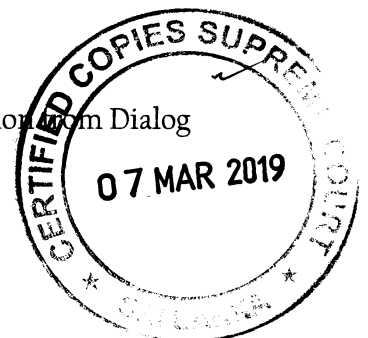
14.2(a) In the course of the investigation it was also observed that in addition to Dehiwela police, the CCD also had conducted an investigation into the abduction of journalist Mr. Keith Noyah.

14.2(b) In a telephone conversation Mr. Alahakoon Editor of Daily News had with then President Mr. Mahinda Rajapakse in the night of 22/5/2008, the said President had informed Mr. Alahakoon that then Director of the CCD, SSP Anura Senanayake would be sent for the investigation.

14.2(c) Sequel to the above conversation, SSP Anura Senanayake had arrived at the house of Keith Noyah and had informed Mr. Alahkoon who was there that they need not be worried as the SSP was positive that Keith Noyah would come home within another two hours' time.

[A true copy of Mr. Alahakoon's statement dated 18/3/2016 marked IR7 annexed hereto is pleaded as part and parcel hereof].

14.2(d) As disclosed in annexure IR18 upon receipt of information from Dialog



GSM for the abductee's mobile number 077-3688908 to be operative in Dompe area, ASP Wedsinghe and his team initiated the investigation by going to Dompe in the same night of the abduction in search of Mr.Noyah.

14.2(e) Along with the CCD team another team from the CID led by ASP Kumarasinghe also went in search of the journalist to Dompe area.

However, both teams returned to Colombo upon learning that Mr. Keith Noyah had come home and was hospitalized thereafter.

14.2(f) Having returned to Colombo, ASP Wedasinghe proceeded to record a statement from Mr. Noyah who was in the hospital. The CCD team also obtained tower details of fixed and mobile telephones of Mr. Keith Noyah .

14.2(g) However, it was observed that the CCD had neither reported on their investigation to the Magistrate nor had analyzed the telephone calls so obtained. They also had not collected the investigative material gathered by the Dehiwala police.

14.2(h) On 26.08.2008, ASP Nuwan Wedasinghe had informed SSP Anura

Senanayake that it was difficult to conduct further investigations as the whereabouts of Mr. Keith Noyah were not known .

(A certified copy of the letter dated 26.08.2008 written to the Director CCD by ASP Nuwan Wedasinghe marked IR8 attached hereto pleaded as part and parcel hereof)





#### 14.3 Investigation by the CID

14.3(a) By 23 .11.2009 then IGP, had directed the CID to carry out further investigations into the abduction of Mr. Keith Noyah along with the other investigations relating to the attack on Upali Tennakoon and the assassination of Lasantha Wickrematunga. .

#### 14.4 Investigation by the Terrorist Investigation Department [TID]

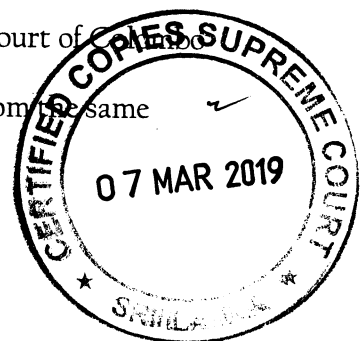
14.4(a) In the meantime, as per then IGP's order the investigations relating to the assassination of Mr. Lasantha Wickrematunga, abduction of Mr. Noyah and the attack on Mr. & Mrs. Upali Tennakoon were handed over to the TID.

[a true copy of the letter issued by then SDIG Gajanayake to SSP Wakishta indicating the above change dated 8/2/2010 marked IR9 attached hereto is pleaded as part and parcel hereof]

14.4(b) Consequent to the aforesaid directions, OIC TID Chief Inspector Prasanna de Alwis had commenced the investigation into the three incidents referred to them under the supervision of then Director TID Deputy Inspector General Chandra Wakishta.

14.4(c) Accordingly, on 26.02.2010 and 28.02.2010 TID had arrested 17 army officers of the military Intelligence platoon. The reason for the said arrest as per the reports dated 05.03.2010 and 16.03.2010 was *'abduction and attacks launched on the aforementioned three journalists.'*

14.4(d) The said Reports had been filed at the Magistrate's Court of Colombo under case number 4855/8/10. It was also revealed from the same



reports that due to inadequacy of material all of them had been released on police bail.

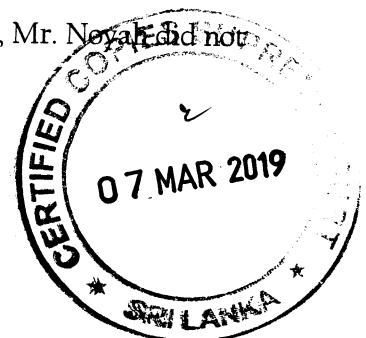
( True copies of these reports dated 05.03.2010 and 16.03.2010 marked IR10 and IR 11 attached hereto are pleaded as part and parcel hereof)

14.5. Re direction of then IGP once again for the CID to take over the investigation on the assassination of Mr. Lasantha Wickrematunga

Your Lordships' kind attention is invited to paragraph 13 above, where I have already stated the relevant facts.

## 15. THE RE-COMMENCED INVESTIGATION INTO THE ABDUCTION OF KEITH NOYAH

- 15.1 Further investigation conducted by the Gang Robbery Unit under my supervision into the abduction of Mr. Noyah included the recording of statements from several witnesses including Mr. Noyah who is now residing in Australia and obtaining telephone tower records from the telephone service providers for the period of 20/05/ 2008 –23/05/2008, inter alia.
- 15.2 From 01/12/2016, the Gang Robbery Unit of the CID commenced informing the Magistrate's Court of Mt. Lavinia on a regular basis of the progress of the investigation by filing periodical reports.
- 15.3 These further investigations revealed that ;
  - 15.3(a) Having felt him being followed by somebody, Mr. Noyah did not



go to his office for few weeks prior to the abduction,

15.3(b) However, on 22/5/2008 he went to the Nation's Office to prepare for the Anniversary of the News paper.

15.3(c) By this time Mr. Noyah had relaxed taking precautions of his security

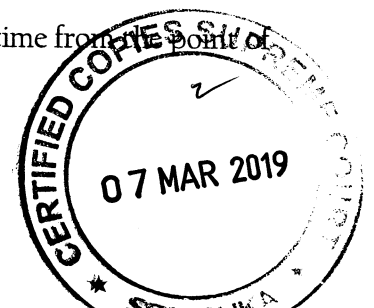
15.3(d) On 22/5/2008 after office, Mr. Noyah had gone to the Arts Faculty, University of Colombo to attend lectures in connection with his graduate studies.

15.3(e) Having attended a funeral at Jayaratne Funeral parlour in Borella, Mr. Noyah joined Messrs. Lalith Alahakoon and Chrishantha Cooray at Queens Café to have dinner and further discussions regarding the anniversary of their news paper.

15.3(f) After the meal, Mr. Noyah had gone to Laugfs gas super market at Wellawatte and thereafter proceeded home at Waidya Road, Dehiwela.

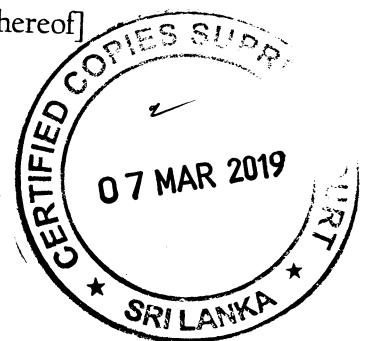
15.3(g) It was when he alighted from the car to open the gate, that few persons who came in a white van abducted him. In order to control Mr. Noyah fighting back, one of the abductors had hit him with a pistol.

15.3(h) Mr. Noyah had been assaulted from time to time from the point of



his abduction. Consequent to the abduction, for few hours he had been taken in the vehicle and then into a building having tied his limbs to a pole. Inside the building too he had been assaulted whilst being questioned.

- 15.3(i) Mr. Noyah under the pseudonym 'Senpathi' had been the author of the security column of 'The Nation' news paper. The questioning had started from the time of his abduction. He had been questioned inter alia of the source of information for his articles.
- 15.3(j) Consequent to the phone call received by one of the Persons in that group, the beating stopped. Thereafter, Mr. Noyah was instructed to clean himself with the water given. Having put into a vehicle thereafter, he had been dropped off near his jogging path.
- 15.3(k) Soon after the abduction Mr. Noyah was blindfolded and it remained until he was dropped off near the jogging path.
- 15.3(l) The wallet and the mobile phone taken by the abductors were never returned but the disfigured wedding ring was given back.
- [Certified copies of Mr. Noyah 's statements recorded on 08/12/2016 and on 09/12/2016 respectively marked IR12 & IR13 annexed hereto are pleaded as part and parcel hereof]



16. THE ARREST OF OTHER SUSPECTS PRIOR TO THE ARREST OF THE PETITIONER

16.1 The analysis of the telephone calls of 22/5/2008 prior to Mr. Noyah's abduction revealed that the movements of telephone numbers 0773501951, 0773794133, 0773186436, 0714162174, 0775903180, 0771313837, 0773635028, 0773794131 and 0773369535 had been in the same area as that of the telephone of the victim Mr. Noyah.

16.2 A detail investigation revealed the identity of the users of these 9 telephones as described in annexes IR18, IR 19, IR20, & IR 21;

16.2.(a) the mobile telephone numbers 0773501951, 0773794133 and

0773186436 had been used by Major SBD Bulathwatta (hereinafter referred to as the 1<sup>st</sup> suspect),

16.2(b) the number 0773635028 had been used by Corporal SHP Perera

(hereinafter referred to as the 2<sup>nd</sup> suspect),

16.2(c) mobile number 0771313837 had been used by Sargent UPD

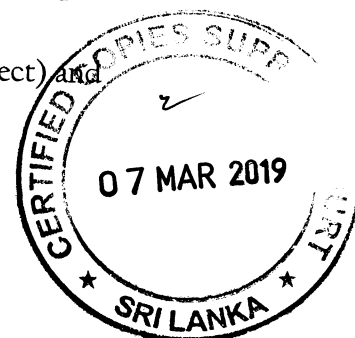
Weeraratne. (hereinafter referred to as the 3<sup>rd</sup> suspect),

16.2(d) mobile telephone number 0714162174 had been used by Sargent

AHAL Wimalaweera (hereinafter referred to as the 4<sup>th</sup> suspect)

16.2(e) the mobile number 0775903180 had been used by Corporal SH

Jayathilake (hereinafter referred to as the 5<sup>th</sup> suspect) and



16.2(f) mobile number 0773794131 had been used by soldier MP Nishantha

Kumara .(hereinafter referred to as the 6<sup>th</sup> suspect).

16.2(g)mobile number 0773369535 had been used by Corporal

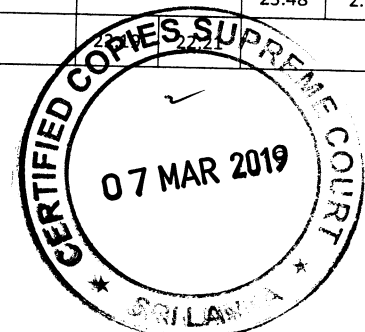
Chandrabhaya Jayasuriya ( hereinafter referred to as the 7<sup>th</sup> suspect)

16.3 It further revealed that the 1<sup>st</sup> to 6<sup>th</sup> suspects at the time of Mr. Noyah's abduction, were members of a military intelligence platoon of the Sri Lanka Army based at Tripoli, Maradana. The 1<sup>st</sup> suspect was the commanding officer of the said platoon.

The 7<sup>th</sup> suspect was a non-commissioned officer who had served in the aforesaid platoon.

16.4 The analysis of the telephone tower details of the victim Mr. Noyah's and that of the seven suspects clearly demonstrated the movements and availability of both parties in the same area. After the abduction of Mr. Noyah, mobile numbers used by the 1<sup>st</sup> suspect had even been active in Dompe area on 22/5/2008 in the following manner;

Suspected User	Number	The Nation Office		Colombo University Faculty of Arts		Jayaratne Funeral Home		Queen's Café, Bambalapitiya		Wellawatte		Dehiwela / Kohuwela		Ranala / Dekatana / Malwana / Dompe	
		First	Last	First	Last	First	Last	First	Last	First	Last	First	Last	First	Last
Keith Noyah	773688908	12:28	16:19	16:48	17:21	18:53	18:54	21:44		21:54	22:05				
Maj Bulathwatte 1 <sup>st</sup> suspect	773501951	19:14		17:50		18:54	19:09	20:56	21:50	21:57	22:04	22:07	22:30	22:56	23:47
	773794133							21:22	21:31			22:16	22:16	23:04	23:25
	773186436													23:48	2:16
W1 Wimalaweera	714162174	14:24		18:31		19:27	19:54	21:12	21:33						



4 <sup>th</sup> suspect												
Cpl Jayatillake		14:32		19:13	21:20	21:29	22:03	22:04	22:10	22:18		
5 <sup>th</sup> suspect	775903180											
Sgt Weeraratne			18:09		21:08	21:18	21:55		22:09			
3 <sup>rd</sup> suspect	771313837											
Sgt Perera				19:12	19:17	21:21	21:48	21:53				
2 <sup>nd</sup> suspect	773635028											
Cpl N. Kumara			17:08	18:49	18:56	19:10	20:51	22:00	22:03	22:07	22:15	
6 <sup>th</sup> suspect	773794131											
Cpl Jayasuriya			17:05			21:06	21:50	21:53				
7 <sup>th</sup> suspect	773369535											

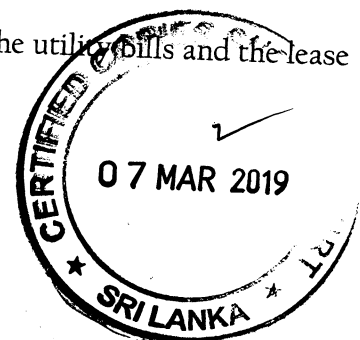
## 16.5 REVELATION OF THE SAFE HOUSE

16.5(a) Investigations stemming from the analysis of telephone calls revealed the availability of a residential property named "Baduwatte Wallauwe" in Dompe area. From 14.03.2008 - 14.03.2009, Mr. S.M.J.D.A. Seneviratne the lessor of the property in issue had leased it out to one Priyantha Kumara Somasuriya Corporal of the Army who was a member of the military intelligence platoon commanded by the 1<sup>st</sup> suspect.

(A certified Copy of the Lease Agreement marked IR14 appended is pleaded as part and parcel hereof).

16.5(b) Attorney-at-Law & Notary Public Mr. Senaka de Silva had executed the aforesaid Lease Agreement No 1869. The execution had been witnessed by "Godellawatte Arachchige Chamika Sumith" and "Kumbalathura Arachchige Sumithra Diyagala"

16.5(c) The lease agreement for the 'Baduwatte Walawwa' had been signed on the instructions of the 1<sup>st</sup> suspect and the money to pay the utility bills and the lease was provided by Board of military intelligence.





[Certified copies of the statements of Corporal Somasuriya dated 18.02.2017 and 20.02.2017 marked IR15 and IR16 are annexed hereto are pleaded as part and parcel hereof.]

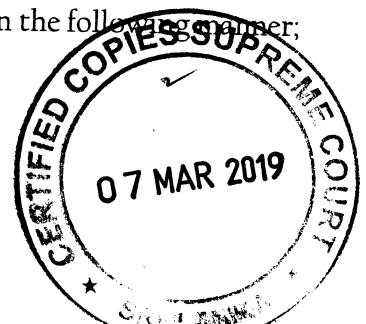
16.5(d) Corporal Chamika Sumith, yet another subordinate of the 1<sup>st</sup> suspect had been an attesting witness to the lease agreement on the direction of the 1<sup>st</sup> suspect. He had handed over Rs 60 000/= to Corporal Somasuriya which money had been given to him by the 1<sup>st</sup> suspect to pay the lease. Corporal Sumith and Corporal Somasuriya had been stationed at Baduwatte Walawwa as the caretakers and frequent updates of the status of official duties at the said premises were provided by them to the 1<sup>st</sup> suspect.

[A certified copy of the statement of Corporal Sumith dated 26.04.2018 marked IR17 attached herewith is pleaded as part and parcel of this statement] .

16.5(e) In addition to the aforesaid discovery it was also discovered that Corporal Somasuriya to be one of the caretakers at Baduwatte Walawwa in the night the when the victim was brought in the white van used by their platoon. By the 1<sup>st</sup>, 2<sup>nd</sup> 4<sup>th</sup> and the 5<sup>th</sup> suspects. The person brought had been blindfolded and his hands and legs were tied on to the opposite ends of a metal pole. Having taken him to the living area of the house, the said suspects had assaulted him with clubs, and bear arms. The suspects had been armed with pistols at that time.

16.5(f) Whilst the assault was on, the 1<sup>st</sup> suspect had taken a phone call using the mobile of Corporal Somasuriya whose number is 774167054.

16.5(f) The above 7 suspects have been arrested and bailed out in the following manner;



SUSPECT	ARRESTED ON	FACTS REPORTED TO COURT ON	BAILED OUT ON
1 <sup>st</sup> suspect	17/2/2017	18/2/2017	21/6/2017
2 <sup>nd</sup> suspect	17/2/2017	18/2/2017	21/6/2017
3 <sup>rd</sup> suspect	17/2/2017	18/2/2017	21/6/2017
4 <sup>th</sup> suspect	19/2/2017	19/2/2017	21/6/2017
5 <sup>th</sup> suspect	19/2/2017	19/2/2017	21/6/2017
6 <sup>th</sup> suspect	20/3/2017	21/3/2017	21/6/2017
7 <sup>th</sup> suspect	04/4/2017	04/4/2017	21/6/2017

(Certified copies of the further reports filed on 18/2/2017 marked IR18, filed on 19/2/2017 marked IR19, filed on 21/3/2017 marked IR20 & filed on 4/4/2017 marked IR21 attached herewith are pleaded as part and parcel hereof.)

## 17 OF THE PETITIONER

17.1 In view of the aforesaid evidence it was mandatory to record a statement from the Petitioner as the Director Military Intelligence, under whose direction the military platoon led by the 1<sup>st</sup> suspect had operated at the time of abduction of Mr. Noyah. Accordingly, on 16.02.2017 a statement was recorded from the Petitioner.

17.2 As described in annexure IR36, he was found to be using 077-3613496 during the time of the abduction.



of Mr. Keith Noyah. Analysis of this phone details revealed the frequent contacts between the 1<sup>st</sup> suspect and the Petitioner on the date of abduction .

- 17.3 The analysis of the telephone contacts between mobile number 0773501951 of the 1<sup>st</sup> suspect and the mobile number 0773613496 of the Petitioner are as follows;

Date	Call Originated from	Call Time	Call received by	Duration(seconds)
2018-05-21	0773613496 Petitioner	09:05:43	0773501951 1 <sup>st</sup> suspect	128
2018-05-21	0773501951 1 <sup>st</sup> suspect	10:24:28	0773613496 Petitioner	45
2018-05-21	0773613496 Petitioner	13:09:03	0773501951 1 <sup>st</sup> suspect	68
2018-05-21	0773613496 Petitioner	19:18:11	0773501951 1 <sup>st</sup> suspect	293
2008-05-22	0773613496 Petitioner	09:49:36	0773501951 1 <sup>st</sup> suspect	74
2008-05-22	0773613496 Petitioner	12:09:19	0773501951 1 <sup>st</sup> suspect	36
2008-05-22	0773501951 1 <sup>st</sup> suspect	14:13:56	0773613496 Petitioner	07
2008-05-22	0773613496 Petitioner	20:17:11	0773501951 1 <sup>st</sup> suspect	122
2008-05-22	0773613496 Petitioner	23:47:46	0773501951 1 <sup>st</sup> suspect	20
2008-05-23	0773613496 Petitioner	10:30:03	0773501951 1 <sup>st</sup> suspect	11
2008-05-23	0773613496 Petitioner	11:43:36	0773501951 1 <sup>st</sup> suspect	3



From the above contacts, as stated above, Corporal Somasuriya had revealed of his mobile number 077-4167054 to have been used by the 1<sup>st</sup> suspect at Baduwatta Walawwa in the night of the abduction.

The analysis of the Petitioner's call details of mobile number 077-3613496 revealed for him to have received a call at 23.39hrs on 22/5/2008 from number 077-4167054.

- 17.5 The following is a sequence of the exchange of telephone calls revealed up to

**Report on Harassment, Intimidation, Surveillance  
and Attacks Against Journalists in Sri Lanka**

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**APPENDIX B**

**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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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.

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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6 *Attorneys for Plaintiff*  
7 *Ahimsa Wickrematunge*  
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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.”<sup>1</sup> 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

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26 <sup>1</sup> 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.<sup>2</sup>

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.

24  
25  
26  
27 <sup>2</sup> 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).

## II. REPORT

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

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

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

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<sup>3</sup> 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).

<sup>4</sup> U.S. DEP'T OF STATE, 2018 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—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.<sup>5</sup> Sri Lankan law appears to permit  
 2 civil suits against public officials under certain circumstances,<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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,<sup>9</sup> 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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 24 <sup>5</sup> 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 <sup>6</sup> Defendant's Report on Sri Lankan Law, ¶¶ 3.50-3.52.

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

27 <sup>8</sup> Cf. Defendant's Report on Sri Lankan Law, ¶ 3.9.

28 <sup>9</sup> 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.”<sup>10</sup> 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.”<sup>11</sup> 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.”<sup>12</sup>

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

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<sup>10</sup> Panel of Experts Report, ¶ 281.

<sup>11</sup> 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].

<sup>12</sup> OHCHR 2019 Report, ¶ 15.

<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> The president has sought to undermine accountability  
 7 processes by asserting that the LTTE is behind calls to end impunity,<sup>16</sup> 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."<sup>17</sup> 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 <sup>14</sup> 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 <sup>15</sup> *See Sri Lankan Army Reinstates Official Suspected in Lasantha Murder, Other*  
 25 *Attacks*, COMM. TO PROJECT JOURNALISTS, May 15, 2019.

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

28 <sup>17</sup> 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.”<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup> 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.”<sup>23</sup> 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.<sup>24</sup> We also found that investigations by the Attorney General’s office “have

21 <sup>18</sup> 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 <sup>19</sup> Defendant’s Report on Sri Lankan Law, ¶¶ 3.36–3.41.

24 <sup>20</sup> See STATE DEP’T 2018 REPORT at 8.

25 <sup>21</sup> Cf. Defendant’s Report on Sri Lankan Law, ¶ 3.72.

26 <sup>22</sup> Panel of Experts Report, ¶ 354.

27 <sup>23</sup> Panel of Experts Report, ¶ 354.

28 <sup>24</sup> 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,”<sup>25</sup> that  
 2 “[v]ictims making such allegations have routinely been harassed by law  
 3 enforcement personnel following filing of a complaint against state officers,”<sup>26</sup> 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.”<sup>27</sup>

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.”<sup>28</sup>  
 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.”<sup>29</sup>

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

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20 <sup>25</sup> *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 <sup>26</sup> *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 <sup>27</sup> *Kankanamge v. Sri Lanka*, U.N. Human Rights Committee, U.N. Doc.  
 CCPR/C/81/D/2000 (July 27, 2004).

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

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

1 little progress. The court has released all suspects on bail.<sup>30</sup> 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.<sup>31</sup> 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.”<sup>32</sup> 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.

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22 <sup>30</sup> 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 <sup>31</sup> *CID Presents Progress Report on Lasantha Murder Investigation*, NEWS 1ST,  
 Jan. 17, 2019.

26 <sup>32</sup> 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).<sup>33</sup> 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.<sup>34</sup> 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.”<sup>35</sup>

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

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<sup>33</sup> See Plaintiff’s First Amended Complaint, ¶ 59.

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

<sup>35</sup> 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.<sup>36</sup>

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.”<sup>37</sup> 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.”<sup>38</sup>

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”<sup>39</sup> and called on the Government to “order all security

20 <sup>36</sup> 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 <sup>37</sup> OISL 2015 Report, ¶¶ 42–44.

27 <sup>38</sup> OISL 2015 Report, ¶ 1233.

28 <sup>39</sup> 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.”<sup>40</sup> 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.”<sup>41</sup> 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.”<sup>42</sup>

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.”<sup>43</sup> 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 <sup>40</sup> OHCHR 2017 Report, ¶ 66(a).

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

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

28 <sup>43</sup> OHCHR 2018 Report, ¶ 43.

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

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.<sup>45</sup> 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.”<sup>46</sup>

### 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

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24 <sup>44</sup> OHCHR 2019 Report, ¶ 55.

25 <sup>45</sup> 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 <sup>46</sup> 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**

**STEVEN RICHARD 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 (4<sup>th</sup>) 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)

**International Law: Norms, Actors, Process, Third Edition** (New York: Aspen Publishers, 2010, 1044 pp.) (with Jeffrey Dunoff and David Wippman)

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

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**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.)

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Why Only War Crimes?: Delinking Human Rights Offenses From Armed Conflict, 4 **Hofstra Law and Policy Symposium** 75-90 (1999)

Judging the Past: State Practice and the Law of Accountability, 9 **European Journal of International Law** 412-20 (1998) (reviewing Neil J. Kritz, ed., **Transitional Justice** (1995))

The Schizophrenias of International Criminal Law, 33 **Texas International Law Journal** 237-57 (1998)

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Drawing a Better Line: Uti Possidetis and the Borders of New States, 90 **American Journal of International Law** 590-624 (1996)

Image and Reality in the UN's Peaceful Settlement of Disputes, 6 **European Journal of International Law** 426-44 (1995)

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Saving Failed States, **Foreign Policy**, Winter 1992-93, at 3-20 (with Gerald Helman)

The Gulf of Sidra Incident of 1981: The Lawfulness of Peacetime Aerial Engagements, 10 **Yale Journal of International Law** 54-77 (1984) (also in W. Michael Reisman & Andrew Willard, eds., **International Incidents: The Law that Counts in World Politics** (Princeton: Princeton University Press, 1988), at 181-201)

## BOOK CHAPTERS

International Law, in Thom Brooks ed., **The Oxford Handbook of Global Justice** (Oxford: Oxford University Press, forthcoming 2019)

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)

Persuading to Comply: On the Deployment and Avoidance of Legal Argumentation, in Jeffrey Dunoff and Mark Pollack, eds., **Interdisciplinary Perspectives on International Law and International Relations: The State of the Art**, at 569-90 (Cambridge: Cambridge University Press, 2013)

Self-Defense Against Terrorists: The Meaning of Armed Attack, in Larissa van den Herik and Nico Schrijver, eds., **Counter-terrorism Strategies in a Fragmented International Legal Order: Meeting the Challenges**, at 334-55 (Cambridge: Cambridge University Press, 2013)

The Law of Occupation and UN Administration of Territory: Mandatory, Desirable, or Irrelevant?, in **Occupation and Other Forms of Administration of Foreign Territory** (Geneva: International Committee of the Red Cross, 2012), at 96-104

From Enlightened Positivism to Cosmopolitan Justice: Obstacles and Opportunities, in Ulrich Fastenrath et al eds., **From Bilateralism to Community Interest: Essays in Honor of Bruno Simma** (Oxford: Oxford University Press, 2011), at 155-171

Between Minimum and Optimum World Public Order: An Ethical Path for the Future, in Jacob Cogan ed., **Looking to the Future: Essays on International Law in Honor of W. Michael Reisman** (Leiden: Brill, 2010), at 195-216

Do International Organizations Play Favorites?: An Impartialist Account, in Lukas Meyer ed., **Legitimacy, Justice, and Public International Law** (Cambridge: Cambridge University Press, 2009), at 123-62

Justice for the Khmer Rouge? Sir Ninian Stephen and the United Nations Group of Experts for Cambodia, in Timothy McCormack ed., **A Remarkable Public Life: Essays in Honour of Sir Ninian Stephen** (Melbourne: Melbourne University Publishing, 2007), at 206-19

Business, in Daniel Bodansky, Jutta Brunnée, and Ellen Hey eds., **Oxford Handbook of International Environmental Law** (Oxford: Oxford University Press, 2007), at 807-28

The Security Council and International Law, in David Malone ed., **The UN Security Council: From the Cold War to the 21st Century** (Denver: Lynne Rienner Publishers, 2004), at 591-605

Comments on Chapters 1 and 2, in Michael Byers and Georg Nolte, eds., **United States Hegemony and the Foundations of International Law** (Cambridge: Cambridge University Press, 2003), at 101-08

Accountability for the Khmer Rouge: A (Lack of) Progress Report, in M. Cherif Bassiouni, ed., **Post-Conflict Justice** (Ardsey: Transnational Publishers, 2002), at 613-21

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Ethnic Conflict and Territorial Claims: Where Do We Draw a Line?, in David Wippman, ed., **International Law and Ethnic Conflict** (Ithaca: Cornell University Press, 1998), at 112-27

Peacemaking, Peacekeeping, and Peace Enforcement: Conceptual and Legal Underpinnings of the U.N. Role, in Selig S. Harrison and Masashi Nishihara, eds., **UN Peacekeeping: Japanese and American Perspectives** (Washington, D.C.: Carnegie Endowment for International Peace, 1995), at 17-30

The United Nations in Cambodia and the New Peacekeeping, in Daniel Warner, ed., **New Dimensions of Peacekeeping** (Dordrecht: Martinus Nijhoff, 1995), at 41-67

The United Nations in Cambodia: A Model for Resolution of Internal Conflicts?, in Lori F. Damrosch, ed., **Enforcing Restraint: Collective Intervention in Internal Conflicts** (New York: Council on Foreign Relations Press, 1993), at 241-73

## OTHER WORKS

Arbitrating Business and Human Rights Disputes: Public Consultation on the Draft Hague Rules on Business and Human Rights Arbitration, **Kluwer Arbitration Blog**, June 27, 2019 (with Martin Doe and Katerina Yiannibas)

Lack of Independence and Impartiality of Arbitrators, Concept Paper for the Academic Forum on Investor-State Dispute Settlement, March 2019 (with six others)

Time for the U.N. Secretary-General to Open His Own Khashoggi Investigation, **Washington Post**, January 14, 2019

Extraterritorial Regulation of Natural Resource Exploitation: Opportunities for Governments, in Xavier Favre-Bulle ed., **Natural Resources Exploitation: Business and Human Rights** (LexisNexis Publications, 2018), at 15-23

The Khashoggi Murder: How Mohammed Bin Salman Underestimated International Law, **Lawfare** Website, October 22, 2018

Gaza and Israel: What Do Calls for “Restraint” Really Mean?, **Just Security** Website, May 17, 2018

Appraising Transitional Justice Through the Just War Theory Analogue, **James Stewart Ethics** Website, December 31, 2017

International Arbitration of Business and Human Rights: A Step Forward, **Kluwer Arbitration** Website, November 16, 2017 (with five others)

Book Review, Compliant Rebels: Rebel Groups and International Law in World Politics (by Hyeran Jo, 2015), 111 **American Journal of International Law** 550-54 (2017)

Corporations Suing in Defense of Human Rights? Lessons from Arkansas, **EJILTalk!** Website, June 13, 2017

The Promise and Limits of Thin Justice: A Response to the Contributors, **James Stewart Ethics** Website, December 6, 2016

Ecuador’s Disconnect of Assange: Politics or Principle?, **Opinio Juris** Website, October 23, 2016

International Law’s Impartiality -- Myth and Reality, **EJILTalk!** Website, October 26, 2015

Introducing *The Thin Justice of International Law* and A Response to the Discussants, **EJILTalk!** Website and **Ethics and International Affairs Online** Website discussion of *The Thin Justice of International Law*, June 1 and June 5, 2015

Is International Law Just?, **Oxford University Press** blog, December 15, 2014

From the ATS to Corporate Accountability under ICL – Mind the Gap, **Opinio Juris** Website, November 25, 2014

Why a UN probe of Sri Lanka would spark new hope for reconciliation, **The Globe and Mail** (Toronto), March 25, 2014 (with Marzuki Darusman and Yasmin Sooka)

Should ICRC Reports on Detainee Visits be Turned Over to Military Commission Defense Counsel?, **Just Security** Website, November 12, 2013

Beyond Courtroom Arguments: Why International Lawyers Need to Focus More on Persuasion, **EJILTalk!** Website, September 10-11, 2013 (in two parts)

Book Review, Targeted Killings: Law and Morality in an Asymmetrical World (edited by Finkelstein, Ohlin and Altman, 2012), 107 **American Journal of International Law** 274-78 (2013)

Revisiting Sri Lanka’s Bloody War, **International Herald Tribune**, March 2-3, 2012, at 6 (with Marzuki Darusman and Yasmin Sooka)

**Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka** (2011) (report to United Nations Secretary-General) (with Marzuki Darusman and Yasmin Sooka)

The Law of Occupation and UN Administration of Territory: Mandatory, Desirable, or Irrelevant?, background paper prepared for International Committee of the Red Cross expert meeting on Occupation and other forms of Administration of Foreign Territory, December 2008

Administration of territories by the United Nations: Is there room for international humanitarian law?, in **International Humanitarian Law, Human Rights, and Peace Operations** (San Remo: International Institute of Humanitarian Law Roundtable Proceedings, 2008), at 169-74

Book Review, Lawless World (by Philippe Sands, 2005), 100 **American Journal of International Law** 746-51 (2006)

Memo to lawmakers: Consider our values, **The Christian Science Monitor**, August 8, 2006, at 9

Self-Defense and the World After September 11: Implications for UN Reform, in **Building a New Role for the United Nations: The Responsibility to Protect** (Madrid: Fundación para las Relaciones Internacionales y el Diálogo Exterior Working Paper, 2005), at 6-8

Book Review, Human Rights: Between Idealism and Realism (by Christian Tomuschat, 2003), 115 **Ethics** 633-38 (2005)

Introductory Remarks on Empirical Work in Human Rights, 98 **Proceedings of the American Society of International Law** 197-98 (2004)

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Understanding and Following the Rules of War, **The Austin American-Statesman**, June 19, 2004, A13

Make Iraq A Global Citizen Again, **International Herald Tribune**, May 20, 2003, at 9

**International Law: Norms, Actors, Process** coursebook web site, <http://sitemaker.umich.edu/drwcsebook/home> (updated periodically) (with Jeffrey Dunoff and David Wippman)

Without better proof, U.S. will lack allies in Iraq war, **Dallas Morning News**, September 6, 2002, at 21A

**Capacity-Building to Fight Terrorism: Finding the UN's Comparative Advantage** (2002), study submitted to the UN Secretary-General's Policy Working Group on the United Nations and Terrorism

Symposium, The Multinational Enterprise as Global Corporate Citizen, 21 **New York Law School Journal of International and Comparative Law** 1 (2001) (with others)

Book Review, Unspeakable Truths: Confronting State Terror and Atrocity (by Priscilla B. Hayner, 2001), 95 **American Journal of International Law** 994-97 (2001)



U.N. can't impose a new government on Afghanistan, **Dallas Morning News**, October 24, 2001, at 21A

Terrorism and the Laws of War – September 11 and its Aftermath: Expert Analysis, **Crimes of War Project** web site, [www.crimesofwar.org](http://www.crimesofwar.org). (2001)

The Bob Kerrey Case: Interpreting the Rules of Engagement in Vietnam: Expert Analysis, **Crimes of War Project** web site, [www.crimesofwar.org](http://www.crimesofwar.org). (2001)

Challenges to Fragile Democracies in the Americas: Legitimacy and Accountability, 36 **Texas International Law Journal** 359-63 (2001)

The Israeli-Arab Conflict and the Laws of War: Expert Analysis, **Crimes of War Project** web site, [www.crimesofwar.org](http://www.crimesofwar.org) (2000)

The Pinochet Precedent: Who Could be Arrested Next?: Expert Analysis, **Crimes of War Project** web site, [www.crimesofwar.org](http://www.crimesofwar.org) (2000)

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)

Quietly preventing conflict, **The Christian Science Monitor**, Aug. 18, 1999, at 9

Categories of War Crimes, Crimes Against Peace, Aggression, Apartheid, and Internal vs. International Conflict, in Roy Gutman and David Rieff, eds., **The Crimes of War: What the Public Should Know** (New York: W.W. Norton, 1999)

**Report of the Group of Experts for Cambodia pursuant to General Assembly Resolution 52/135** (1999) (report to United Nations Secretary-General) (with Ninian Stephen and Rajsoomer Lallah), UN Document No. A/53/850

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)

Book Review, Possession Contestée et Souveraineté Territoriale (by Marcelo G. Kohen, 1997), 92 **American Journal of International Law** 782-84 (1998)

The Genocide Convention After Fifty Years, 92 **Proceedings of the American Society of International Law** 1-3 (1998)



Evaluating Peacekeeping Missions, 41 **Mershon International Studies Review** 151-65 (1997) (with Paul Diehl, Robert Johansen, William Durch, and A. Betts Fetherston)

Book Notice, International Rules: Approaches from International Law and Relations (Robert Beck et al. eds. 1996), 91 **American Journal of International Law** 220-21 (1997)

The Attempt to bring the Perpetrators of the Cambodian Genocide to Trial, in Albert J. Jongman ed., **Contemporary Genocides: Causes, Cases, Consequences** (Leiden: PIOOM, 1996) (with Jason S. Abrams)

Criminal Accountability for Human Rights Abuses, **Townes Hall Notes**, Spring 1996, at 50-51

**Striving for Justice: Accountability and the Crimes of the Khmer Rouge** (1995) (consultants' study for U.S. Department of State) (with Jason S. Abrams)

If Peace is to Work, Peacekeepers are Crucial, **The Christian Science Monitor**, November 16, 1995, at 19

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

Controlling the Breakup of States: Toward a United Nations Role, 88 **Proceedings of the American Society of International Law** 42-46 (1994)

Clinton Administration Gets Some Lessons in UN Protocol, **The Christian Science Monitor**, November 1, 1993, at 18

Case Note, Land, Island and Maritime Frontier Dispute, Application to Intervene, 85 **American Journal of International Law** 680-86 (1991) (also in P.H.F. Bekker, ed., **Commentaries on World Court Decisions** (The Hague: Martinus Nijhoff, 1997))

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 61<sup>st</sup> 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 21<sup>st</sup> 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 20<sup>th</sup> 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](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](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](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>

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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%2bH8eK06nqDy1vlHunIK9PeDLM7X029heRtPwn00rfc1GEjOICPb6dLQx4waU0Gw%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%2bxwsgb7m6H3DilRJSoxCZK7x1KeL%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](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>

**Report on Harassment, Intimidation, Surveillance  
and Attacks Against Journalists in Sri Lanka**

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**APPENDIX C**

**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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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.<sup>1</sup>

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 <sup>1</sup> 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,<sup>2</sup> 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."<sup>3</sup> 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

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<sup>2</sup> 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."].

<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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17 <sup>4</sup> 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&compare)  
 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&compare)  
 20 [By=region.](https://govdata360.worldbank.org/indicators/h5ebaeb47?country=USA&indicator=670&countries=LKA&viz=line_chart&years=2007,2017&indicators=367&compare)

21 <sup>5</sup> 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 <sup>6</sup> 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 <sup>7</sup> 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.”<sup>8</sup> 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.<sup>9</sup> 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”<sup>10</sup> were lacking in sufficient guarantees against arbitrary disciplinary measures and promotion

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<sup>8</sup> 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.

<sup>9</sup> 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/>.

<sup>10</sup> 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.”<sup>11</sup>

4 17. Although former Superior Court Judges may not practice as lawyers  
 5 without the written approval of the President,<sup>12</sup> judges are often offered government  
 6 or other political offices after retirement.<sup>13</sup> This gives cause for concern about  
 7 possible conflicts of interest and impinges on the independence and impartiality of  
 8 judges.<sup>14</sup> 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.<sup>15</sup>

## 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  
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17 <sup>11</sup> 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 <sup>12</sup> See De Silva Decl. ¶ 3.40.

21 <sup>13</sup> 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 <sup>14</sup> 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 <sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> As a result of an outcry from victims and other  
 9 stakeholders, he was reinstated a few days later.<sup>19</sup> 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.<sup>20</sup> 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

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

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

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

26 <sup>20</sup> 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[.]<sup>21</sup>

### **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.<sup>22</sup> 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."<sup>23</sup> 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

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

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

<sup>23</sup> 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.<sup>24</sup>  
 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.”<sup>25</sup>

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.”<sup>26</sup> 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.”<sup>27</sup> To date, many  
 19

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20 <sup>24</sup> 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 <sup>25</sup> 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 <sup>26</sup> OHCHR *Promoting Reconciliation, Accountability and Human Rights in Sri*  
 26 *Lanka*, ¶ 49, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019).

27 <sup>27</sup> 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.<sup>28</sup>

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

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

11 <sup>28</sup> 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 <sup>29</sup> 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 <sup>30</sup> 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.”<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup>

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.<sup>34</sup>  
 12 These delays have been described as “nothing short of dramatic.”<sup>35</sup> Even in criminal  
 13 cases that are not politically sensitive, proceedings can drag on for 10 to 15 years.<sup>36</sup>  
 14 Indeed in 2017, the Sri Lankan Sectoral Oversight Commission on Legal Affairs

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15 <sup>31</sup> 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 <sup>32</sup> 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 <sup>33</sup> 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 <sup>34</sup> 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 <sup>35</sup> 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 <sup>36</sup> 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.”<sup>37</sup>  
 3 There are also examples of civil cases that have been pending for more than 30  
 4 years.<sup>38</sup>

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.<sup>39</sup> Further, I  
 8 found that impunity is “directly attributable to the entire criminal justice system, and  
 9 particularly to the judiciary.”<sup>40</sup> 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  
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16 <sup>37</sup> 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 <sup>38</sup> 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 <sup>39</sup> 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 <sup>40</sup> 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.<sup>41</sup>

5 This finding has been echoed by the United States Department of State.<sup>42</sup>

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.<sup>43</sup> All the suspects remanded in the  
 11 case have since been freed on bail.<sup>44</sup> 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.<sup>45</sup>

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

21 <sup>42</sup> 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 <sup>43</sup> OHCHR, *Promoting Reconciliation, Accountability and Human Rights in Sri*  
 24 *Lanka*, ¶ 45, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019).

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

26 <sup>45</sup> 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.<sup>46</sup>

## 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.<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup> These barriers render the  
 18 fundamental rights petition an insufficient mechanism for providing victims with an  
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20 <sup>46</sup> 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 <sup>47</sup> De Silva Decl. ¶ 3.69.

24 <sup>48</sup> 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 <sup>49</sup> 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*  
 28 *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.<sup>50</sup>

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.<sup>51</sup> 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.”<sup>52</sup> There are three main concerns with Sri Lanka’s

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22 <sup>50</sup> 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 <sup>51</sup> 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 <sup>52</sup> 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.<sup>53</sup>  
 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.”<sup>54</sup>

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.<sup>55</sup> 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.<sup>56</sup> On reviewing the  
 16

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17 *Lanka*, ¶ 21, U.N. Doc. A/HRC/32/CRP.4 (June 28, 2016)

18 <sup>53</sup> 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 <sup>54</sup> OHCHR, *Rep of the OHCHR Investigation on Sri Lanka (OISL)*, ¶ 1187, U.N.  
 21 Doc. A/HRC/30/CRP.2 (Sept. 16, 2015).

22 <sup>55</sup> 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).

<sup>56</sup> 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[.]”<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup> In other words, the  
 12 Act’s operating body is established within the institutional hierarchy of the Sri  
 13 Lankan police force.<sup>60</sup> 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 <sup>57</sup> 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 <sup>58</sup> 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 <sup>59</sup> 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 <sup>60</sup> 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.<sup>61</sup> Thus, the Witness Protection Division lacks sufficient autonomy  
 4 and independence to effectively protect witnesses and victims of human rights  
 5 violations.<sup>62</sup>

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,<sup>63</sup> 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 <sup>61</sup> 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 <sup>62</sup> 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 <sup>63</sup> 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.<sup>64</sup>

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.

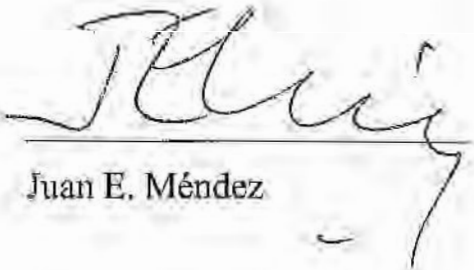
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<sup>64</sup> Special Rapporteur on Torture and other inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on Torture and other inhuman or degrading treatment or punishment on his mission to Sri Lanka*, UN Doc. A/HRC/34/54/Add.2 ¶¶ 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.

3  
4 Executed on August 26, 2019 in Washington, D.C.

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9 Juan E. Méndez  
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**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**

### **Juan E. Méndez**

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Washington DC 20007  
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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

*Taking a Stand: The Evolution of Human Rights* (with Marjory Wentworth), preface by Ian Martin, New York: Palgrave MacMillan, 2011. (Version in Spanish and updated, by Fondo de Cultura Economica, forthcoming 2019).

*Right to a Healthy Prison Environment: Health Care in Custody Under the Prism of Torture*, *Notre Dame Journal of International & Comparative Law*: Vol. 9: Iss. 1 (2019), Article 4. Available at: <https://scholarship.law.nd.edu/ndjicl/vol9/iss1/4>

*Crisis de Seguridad y Crisis de Derechos Humanos*, in *Ibero*, Revista de la Universidad Iberoamericana (Ciudad de México), Año X, Nro. 57, Agosto-Septiembre 2018.

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*Evolving Standards for Torture in International Law* (with Andra Nicolescu) in Torture and Its Definition in International Law: An Interdisciplinary Approach, Metin Basoglu, ed., Oxford: OUP, 2017.

*Introduction and Annex: Torture and Ill-Treatment of Children Deprived of their Liberty* (thematic report of UN Special Rapporteur on Torture, A/HRC/28/68), in Protecting Children Against Torture in Detention: Global Solutions for Global Problems, Washington: Center for Human Rights and Humanitarian Law-Anti Torture Initiative, 2017.

*Preface*, in Transitional Justice in Sri Lanka, Bhavani Fonseka, editor, Colombo: Centre for Policy Alternatives, 2017.

*Tortura en México en AportesDPLF*, Revista de Due Process of Law Foundation, Washington DC, Nro. 21, año 9, enero 2017.

*Prefacio* in La Muerte del Verdugo, Sévane Garibian, ed., Buenos Aires: Miño y Dávila Editores, 2016 (English version forthcoming).

*How International Law can Eradicate Torture: A Response to Cynics* (The Jose Siderman Human Rights Lecture), Southwestern J. of Int'l L., Vol. XXII, Number 2, 2016.

Guest editor, special issue of International Journal of Transitional Justice, Vol. 10, Issue 1, March 2016; Oxford: OUP, 2016.

*Victims as Protagonists in Transitional Justice* (editorial), Int'l.J.Trans.Justice, Vol. 10, Issue 1, March 2016; Oxford: OUP, 2016.

*Prólogo*, in La Tortura en México: Una Mirada desde los Organismos del Sistema de Naciones Unidas, London: IBA HRI, and México: OHCHR, 2016.

*Justicia Transicional, Jurisdicción Universal y Genocidio*, in Diez Años, Fundación Luisa Hairabedian: Buenos Aires, 2016.

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*Peacemaking, Justice and the ICC* (with Jeremy Kelley), in Contested Justice: The Politics and Practice of International Criminal Court Interventions, Christian de Vos, Sara Kendall and Carsten Stahn, eds., Cambridge: CUP, 2015.

*Afterword*, in Hell is a Very Small Place: Voices from Solitary Confinement, Jean Casella, James Ridgeway and Sarah Shourd, eds., New York and London: The New Press, 2016.

*La tortura en el Derecho Internacional*, en La Verdad Nos Hace Libres, volumen de homenaje a Salomón Lerner; Miguel Giusti, Gustavo Gutiérrez y Elizabeth Salmon, compiladores; Lima: Fondo Editorial PUCP, 2015.



*Obligaciones Internacionales del Estado en Materia de Tortura* (conferencia inaugural), en Prevenir y Sancionar la Tortura en Argentina a 200 Años de su Prohibición, Buenos Aires: Ministerio Público de la Defensa, 2014

*Introducción and Informe de Seguimiento del Relator Especial sobre la Tortura*, in Próximos Pasos Hacia una Política Penitenciaria de Derechos Humanos en Uruguay, WCL-CHRHL, 2014

*Prefacio a edición en español*, Sharon Shalev, Libro de Referencia sobre Aislamiento Solitario, on line, 2014.

*Introduction, Response to Joint Statement by APA and WPA, and 2013 Report to UN Human Rights Council*, in Torture in Health Care Settings: Reflections on the Special Rapporteur on Torture's 2013 Thematic Report, Washington: WCL, 2014.

*Transitional Justice* (with Catherine Cone) in Routledge Handbook of International Human Rights Law; Scott Sheeran and Sir Nigel Rodley, editors; Abingdon and New York: Routledge, 2013

*Human Rights Make a Difference: Lessons from Latin America* (with Catherine Cone) in The Oxford Handbook of International Human Rights Law; Dinah Shelton, editor; Oxford: OUP, 2013.

*The Importance of Justice to Securing Peace*, in The Rise of International Justice: A Collection of Essays & Reminiscences Dedicated to Aryeh Neier, New York: Open Society Foundations, 2013

*Justicia de Transición*, in Desapariciones Forzadas, Represión Política y Crímenes del Franquismo, Rafael Escudero Alday and Carmen Pérez González, eds., Madrid: Trotta, 2013

*The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment*, WCL Human Rights Brief, Vol. 20, Issue 1, Fall 2012

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*Constitutionalism and Transitional Justice*, in The Oxford Handbook of Comparative Constitutional Law, Michel Rosenfeld and Andras Sajó, eds., Oxford: OUP, 2012.

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*Foreword* in Amnesty in the Age of Human Rights Accountability, Francesca Lessa and Leigh A. Payne, editors, Cambridge: Cambridge U.P., 2012

Forthcoming 2012: entry (with Catherine Cone) on *Transitional Justice* in Routledge Handbook on International Human Rights Law, Sir Nigel Rodley and Scott Sheeran, editors;



*Segredo de Estado, Política Externa* (Brazil), Vol. 20, No. 3, Dec. 2011/Jan-Feb. 2012

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*Keynote Address: Symposium 2008 The United Nations and the Genocide Convention: A 60th Anniversary Commemoration*, Rutgers L.Rev., Vol. 61 Number 1 Fall 2008.

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*Remarks on Intervention*, Case Western Reserve J. of Int'l L., Vol. 40, Nos. 1 & 2, 2008

*Preventing, Implementing and Enforcing International Humanitarian Law*, in Proceedings of the First International Humanitarian Law Dialogs, Elizabeth Andersen and David M. Crane, eds., Washington, DC: The American Society of International Law, 2008

*The View from Outside the Government* (transcript of panel discussion) in Legal Standards and the Interrogation of Prisoners in the War on Terror, Cynthia Arnson and Philippa Strum, eds., Washington: Woodrow Wilson International Center for Scholars, December 2007.

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*Los medios y los fines en la política internacional*, in Res Diplomática (Foreign Service Institute, Argentina), 2d Era, No. 2, December 2007.

*The United Nations and the Prevention of Genocide*, in The Criminal Law of Genocide: International, Comparative and Contextual Aspects, Ralph Henham and Paul Behrens, eds., Aldershot, UK: Ashgate, 2007.

*Lou Henkin, Transitional Justice and the Prevention of Genocide*, in Columbia H.R.L.Rev., Vol. 38, No. 3, Spring 2007

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*Peace, Justice and Prevention: Dilemmas and False Dilemmas*, in Dealing with the Past and Transitional Justice: Creating Conditions for Peace, Human Rights and the Rule of Law, Mo Bleeker, ed., Swiss Federal Dept of Foreign Affairs, Berne, 2006.

*Prólogo*, in Reparaciones en la Transición Peruana: Memorias de un proceso inacabado, Julie Guillerot and Lisa Magarrell, eds., APRODEH, ICTJ and Oxfam, Lima, 2006.

*Retrouver la Vérité sur la “Sale Guerre” en Argentine: Le role des témoignages militaires*, in Le Croquant, No 49-50, Lyon, 2006.

*The Human Right to Truth: Lessons Learned from Latin American Experiences with Truth-Telling*, in Telling the Truths, Tristan Anne Borer, ed., U of Notre Dame Press, Notre Dame (IN), 2006; also published in *Historizar el pasado vivo*, Anne Perotin-Dumont, Project Coordinator, electronic book by Universidad Alberto Hurtado, Santiago, Chile, 2007, <http://etica.uahurtado.cl/historizarelpasadovivo>

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*Torture in Latin America*, in Torture: Does It Make Us Safer? Is it Ever OK?: A Human Rights Perspective, Kenneth Roth, Minky Worden, Amy D. Bernstein, eds., The New Press and Human Rights Watch, New York, 2005

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*Review of David Cole's "Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism"* in J. of College and University L. (Notre Dame Law School), Vol. 30, No. 2, 2004.

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*Migrant Workers and International Law principles of Non-Discrimination and Due Process* (with Helena Olea and Andreas Feldmann) in Human Rights and Refugees, Internally Displaced Persons and Migrant Workers, a volume in honor of Professor Joan Fitzpatrick and Arthur Helton, Anne F. Bayefsky, ed., Martinus Nijhoff, Leiden-Boston, 2006

*Perspectivas para el trabajo en derechos humanos en América del Sur después del 11-IX-01*, (with Javier Mariezcurrena) in Temas de Derechos Humanos en Debate, Jose Zalaquett, ed., Grupo de Reflexión Regional, Lima, Peru, IDL; Santiago, Centro de Derechos Humanos – Universidad de Chile, 2004.

*Los Trabajadores Migratorios y la No Discriminación en Derechos Laborales* (with Helena Olea and Andreas Feldmann) in a volume in honor of Antonio Augusto Cancado Trindade, Brazil, (forthcoming).

Co-editor (with Guillermo O'Donnell and Paulo Sergio Pinheiro), La (in)efectividad de la ley y la exclusion en America Latina, Paidós, Buenos Aires, 2002.

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Co-editor (with Martín Abregú and Javier Mariezcurrena), Verdad y Justicia, volume in tribute to Emilio F. Mignone, by IIHR and CELS, San Jose and Buenos Aires, 2001. In that volume: *La justicia penal internacional, la paz y la reconciliación nacional*.

**Comentario Académico (note) on In Re Pinochet, Iudicium et Vita, special edition, IIDH, San Jose, Costa Rica, No. 7, December 2000.**

*Ethical and Humanitarian Concerns Add a New Dimension to International Security in the Post-Cold War World*, Notre Dame J. Law, Ethics & Public Policy, Vol. 15, No. 2, 2000.

*National Reconciliation, Transitional Justice and the International Criminal Court*, in Ethics & International Affairs (Review of the Carnegie Council on International Affairs), Vol. 15, Number 1, 2001.

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*Sistema Interamericano, Impunidad y Jurisdicción Universal: El Caso Pinochet* (with Javier Mariezcurrena), ¿Más Derecho?, Año 1, No. 1, November 2000, Di Placido, Buenos Aires.

*Comments on "From Minors to Citizens"*, in The Child in Latin America: Health, Development and Rights, Ernest Bartell, CSC and Alejandro O'Donnell, eds., University of Notre Dame Press, Notre Dame, 2001.

*International Human Rights Law, International Humanitarian Law, and International Criminal Law and Procedure: New Relationships*, in International Crimes, Peace, and Human Rights: The Role of the International Criminal Court, Dinah Shelton, ed., Transnational, Ardsley, NY, 2000.

*Latin American Experiences of Accountability*, in The Politics of Memory: Truth, Healing and Social Justice, Ifi Amadiume and Abdullahi An-Na'im, eds., Zed Books, London and New York, 2000.

*Derechos y Deberes Civiles y Políticos* (with Helena M. Olea), entry in Diccionario Electoral, IIDH, San Jose, Costa Rica, 2000.

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*No Relativizar los Derechos Humanos* (with Gastón Chillier), in Hechos y Derechos, The Journal of the Argentine Ministry of Justice and Human Rights, Buenos Aires, No. 7, Fall 2000.

*Reconciling Amnesties with Universal Jurisdiction* (with Garth Meintjes), in International Law Forum, The Review of the International Law Association, The Hague, Kluwer, Vol. 2, No. 2, 2000.

*La Cláusula Democrática y el Derecho Interamericano* (with Gastón Chillier), in Apuntes de Derecho (Law Review of the School of Law, Universidad Diego Portales, Santiago, Chile), VI, Autumn 2000.

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Co-editor (with Denis Racicot and Javier Mariezcurrena), special issue of Revue Québécoise de Droit International, with the Inter-American Institute on Human Rights, on the 50<sup>th</sup> Anniversary of the American Declaration on the Rights and Duties of Man, Vol. 11.1, 1998.

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Co-Editor (with Francisco J. Cox), El Futuro del Sistema Interamericano de Protección de los Derechos Humanos, IIHR, San Jose, 1998, 2<sup>nd</sup> edition, 1999. In that volume: *Una aproximación crítica a la interpretación vigente de los Arts. 50 y 51 de la Convención*.

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Truth and Partial Justice in Argentina, Second Edition with An Update, Human Rights Watch, New York, May 1991. (Spanish version by CELS, Buenos Aires, 1991).

### **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**

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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.

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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).
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**Report on Harassment, Intimidation, Surveillance  
and Attacks Against Journalists in Sri Lanka**

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**APPENDIX D**

**First Amended Complaint, *Wickrematunge v. Rajapaksa*, No. 2:19-cv-  
02577 (C.D. Cal. 4 April 2019)**

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CENTER FOR JUSTICE & ACCOUNTABILITY

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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. 2:19 CV-02577-R-RAO

**FIRST AMENDED COMPLAINT**

(1) EXTRAJUDICIAL KILLING  
PURSUANT TO 28 U.S.C.  
§ 1350, NOTE AND 28 U.S.C.  
§ 1350

(2) CRIMES AGAINST  
HUMANITY PURSUANT TO  
28 U.S.C. § 1350

(3) TORTURE PURSUANT TO 28  
U.S.C. § 1350, NOTE AND 28  
U.S.C. § 1350

**JURY TRIAL DEMANDED**

1 DEBEVOISE & PLIMPTON LLP

2 Catherine Amirfar (*pro hac vice* pending)

3 Natalie L. Reid (*pro hac vice* pending)

4 Matthew D. Forbes (application for admission to C.D. Cal. pending)

5 919 Third Avenue

6 New York, NY 10022

7 (212) 909-6000

8 SCHONBRUN SEPLOW

9 HARRIS & HOFFMAN LLP

10 Paul Hoffman, SBN 071244

11 200 Pier Avenue #226

12 Hermosa Beach, California 90254

13 (310) 396-0731

14 *Attorneys for Plaintiff*

15 *Ahimsa Wickrematunge*



1 Plaintiff Ahimsa Wickrematunge, in her individual capacity, and in her  
2 capacity as the legal representative of the estate of Lasantha Wickrematunge,  
3 complains and alleges as follows:  
4

5  
6 **PRELIMINARY STATEMENT**

7 1. This case arises from the brutal killing and persecution of journalists  
8 by the government and security forces of Sri Lanka. On the morning of January 8,  
9 2009, Lasantha Wickrematunge (“Decedent”, or “Lasantha”), editor of *The Sunday*  
10 *Leader* newspaper and outspoken critic of the corruption and human rights abuses  
11 of the Sri Lankan government under President Mahinda Rajapaksa, was  
12 assassinated in the Sri Lankan capital of Colombo. This action alleges that  
13 Nandasena Gotabaya Rajapaksa (“Defendant”), a United States citizen and Sri  
14 Lanka’s then Secretary of Defense, instigated and authorized the torture and  
15 extrajudicial killing of Lasantha; had command responsibility over those who  
16 carried out the torture and assassination; and incited, conspired with, or aided and  
17 abetted subordinates in the Sri Lankan security forces and military intelligence, or  
18 groups acting in coordination with these units, to engage in a widespread and  
19 systematic targeting of journalists and media workers who were perceived to be  
20 critical of the government, including the torture, extrajudicial killing and  
21 persecution of Decedent on political grounds.  
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28 2. On numerous occasions, Lasantha and his newspaper exposed

1 allegations of corruption and abuses by the Defendant in his capacity as Secretary  
2 of Defense. Lasantha's reporting, which was widely followed in Sri Lanka, led to  
3 Defendant's targeted attempts to silence him. Defendant ordered Lasantha's arrest  
4 and filed a defamation suit against him. Intelligence services under the Defendant's  
5 command began surveilling Lasantha's mobile telephone. Before he was due to  
6 testify against Defendant regarding an alleged corruption scandal, Lasantha was  
7 brutally attacked and murdered in broad daylight by members of the Tripoli  
8 Platoon, a unit of Sri Lanka's Directorate of Military Intelligence operating under  
9 Defendant's command.  
10  
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12

13 3. Following the assassination, Defendant and his allies obstructed  
14 Plaintiff's efforts to seek justice in Sri Lanka by tampering with evidence and  
15 engaging in a pattern of coercion and intimidation.  
16  
17

18 4. The acts alleged herein were carried out in the context of a systematic  
19 crackdown against journalists critical of the government. Lasantha's attack and  
20 subsequent death was one of many attacks against journalists perpetrated under the  
21 Rajapaksa regime. Security forces under Defendant's command and control  
22 engaged in a widespread and/or systematic campaign against journalists, marked  
23 by a pattern and practice of violations including but not limited to extrajudicial  
24 killing; arbitrary detention; torture; and cruel, inhuman and degrading treatment in  
25 an effort to stamp out criticism of the Rajapaksa government.  
26  
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1           10. On information and belief, Defendant Nandasena Gotabaya Rajapaksa  
2 was born on June 20, 1949 in Sri Lanka. Defendant immigrated to the United  
3 States in the early 1990s and became a U.S. citizen in 2003.  
4

5           11. Defendant returned to Sri Lanka in 2005 and was appointed by his  
6 elder brother, then President of Sri Lanka Mahinda Rajapaksa, as Secretary to the  
7 Sri Lankan Cabinet Ministry of Defence, Public Security, Law and Order  
8 (hereinafter “Secretary of Defense”). This position placed him in overall command  
9 of Sri Lanka’s armed forces, intelligence services, and police force. Defendant  
10 served as Secretary of Defense from November 2005 to January 2015. Defendant  
11 returned to the United States multiple times in 2008 and 2009 while serving as  
12 Secretary of Defense and overseeing Sri Lankan military and intelligence  
13 operations. Defendant continues to travel frequently to California to this day.  
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18                           ***Decedent Lasantha Wickrematunge***  
19

20           12. Lasantha Wickrematunge (“Decedent”) was an acclaimed journalist in  
21 Sri Lanka, famous for his political opinion columns and his investigations  
22 exposing state corruption and brutality. Lasantha was editor-in-chief of *The Sunday*  
23 *Leader*, an English-language weekly newspaper known for being one of the few  
24 media outlets in Sri Lanka reporting on human rights violations and war crimes  
25 being committed by both sides in Sri Lanka’s decades-long civil war. In  
26 recognition of his commitment to a free and independent press, even in times of  
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1 armed conflict, Lasantha was posthumously awarded the UNESCO World Press  
2 Freedom Prize, the Louis Lyons Award for Conscience and Integrity in Journalism  
3 by Harvard University's Nieman Foundation, the James Cameron Memorial Trust  
4 Award, and the National Press Club's International Freedom of the Press Award,  
5 and he was declared the World Press Freedom Hero by the International Press  
6 Institute in 2010. His funeral drew mourners from around the country and the  
7 world. Statements condemning his assassination were issued by the United States,  
8 the United Kingdom, Australia, Canada, the European Union and the United  
9 Nations.  
10  
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14 ***Plaintiff Ahimsa Wickrematunge***

15 13. Plaintiff Ahimsa Wickrematunge is the daughter of Lasantha  
16 Wickrematunge. In 2002, Ahimsa and her siblings moved to Australia due to  
17 ongoing threats of violence against their family in Sri Lanka arising from  
18 Lasantha's publications in *The Sunday Leader*. Ahimsa returned to Sri Lanka when  
19 she was sixteen and was living with Lasantha in Colombo when he was killed. She  
20 has been pursuing justice for her father's killing for the past ten years. Plaintiff is a  
21 citizen and resident of Australia. She brings this action for extrajudicial killing,  
22 torture, and crimes against humanity in her individual capacity and in her capacity  
23 as personal representative of her father's estate.  
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## BACKGROUND

14. The attack on Lasantha that led to his death occurred in the final months of Sri Lanka's decades-long civil war between the Government of Sri Lanka (GSL) and the Liberation Tigers of Tamil Eelam (LTTE). The war lasted from 1983 to 2002, when the GSL and the LTTE agreed to a ceasefire. However, the two sides again turned to violence in 2006. In May 2009, the GSL defeated the LTTE, amidst allegations of international law violations committed by the GSL and LTTE during the final months of the war.

15. In March 2011, a Panel of Experts commissioned by the U.N. Secretary General ("U.N. Panel") released a report documenting international law violations by the Sri Lankan government and LTTE. The report found credible sources showing that as many as 40,000 civilians died in the final stages of the war and concluded that these casualties, if proven, call for criminal liability for army commanders, senior government officials, and LTTE leaders. As Secretary of Defense from November 2005 to January 2015, Gotabaya was a chief architect of this violent campaign.

16. Mahinda Rajapaksa served as Sri Lanka's President from November 2005 to January 2015, and presided over the conclusion of the civil war. His regime participated in three major campaigns during this period: the destruction of

1 Tamil separatism, the liquidation of media critics and political opponents, and the  
2 enrichment of the Rajapaksa family's inner circle through corruption.

3  
4 17. To ensure a cohesive political and military leadership, President  
5 Mahinda Rajapaksa appointed his brother, Defendant Gotabaya Rajapaksa, as his  
6 Secretary of Defense. The Rajapaksas further consolidated power by appointing  
7 another brother, Basil Rajapaksa, first as his senior presidential advisor, and later  
8 as the Minister of Economic Development. Yet another brother, Chamal  
9 Rajapaksa, held the position of Speaker of Parliament.  
10  
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12  
13 ***Defendant's Role as Secretary of Defense and Consolidation of Intelligence***  
14 ***Agencies***

15 18. Defendant served as Secretary of Defense from 2005 to 2015. The  
16 Secretary of Defense is the most senior civil servant in the Ministry of Defense,  
17 which houses all branches of the Sri Lankan security forces. This includes the three  
18 branches of the Sri Lankan military: the Sri Lanka Army (SLA), the Sri Lanka  
19 Navy (SLN) and the Sri Lanka Air Force (SLAF). It also includes three civilian  
20 bodies: the Sri Lanka Police (SLP), the National Intelligence Bureau (NIB)  
21 (currently known as the State Intelligence Service (SIS)), and the Civil Defense  
22 Forces (CDF). All six branches were part of the Ministry of Defense until 2013.  
23  
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26 19. As Secretary of Defense, Defendant consolidated control over all of  
27 Sri Lanka's military and civilian intelligence agencies by cementing the position of  
28

1 Chief of National Intelligence. The Chief of National Intelligence served as a direct  
2 line of authority between the Secretary of Defense and all of the intelligence units  
3 within the Ministry of Defense, including the SLA's Directorate of Military  
4 Intelligence.  
5

6 20. The Secretary of Defense played a key role in coordinating operations  
7 between the different agencies within the Ministry of Defense and Defendant  
8 played a particularly hands-on role with respect to working with the intelligence  
9 services. In media interviews published in April 2009, the Inspector General of the  
10 SLP and the Deputy Inspector General of the Criminal Investigation Department  
11 ("CID") described weekly meetings of the different intelligence services held by  
12 the Secretary of Defense. Interviews with senior officials, including Defendant and  
13 his Chief of National Intelligence Kapila Hendawitharana, described the weekly  
14 meetings as a way to share intelligence between the agencies, discuss incidents and  
15 investigations, and address security concerns outside the main conflict zone in  
16 northern Sri Lanka. Defendant reportedly "went down to the nuts and bolts of  
17 security issues" and made "spot decisions on issues raised by the representatives of  
18 the various intelligence agencies."  
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25 21. In addition, the Secretary of Defense had the power to direct  
26 investigations involving "national security" and "terrorism," which was  
27 expansively applied to investigate media workers, humanitarian aid workers,  
28



1 human rights activists, and individuals perceived to be “Tiger sympathizers”  
2 (individuals deemed sympathetic to the LTTE movement). A number of wartime  
3 measures, including the Prevention of Terrorism Act and the 2006 Emergency  
4 Regulations under the Public Security Ordinance, gave sweeping powers to the  
5 Secretary of Defense to order arrests and detention at his discretion, if he “is of  
6 [the] opinion” that the individual is acting “in any manner prejudicial to the  
7 national security or to the maintenance of public order.” These laws criminalized a  
8 broad set of conduct, such as any act causing “communal disharmony or feelings  
9 of ill-will” between different communities. The government used the broad terms  
10 of these laws to target journalists critical of the Rajapaksa administration or the  
11 war effort. In addition, government officials enjoyed broad immunity for actions  
12 undertaken “in good faith” for the protection of national security under the  
13 Prevention of Terrorism Act. Although the civil war ended in May 2009, the  
14 Emergency Regulations were not repealed until August 2011, and the Prevention  
15 of Terrorism Act remains in place to this day.

22 22. In carrying out its national security mandate, the different agencies of  
23 the Ministry of Defense, all under the command of Defendant in his capacity as  
24 Secretary of Defense, acted with a high degree of coordination, engaging in joint  
25 intelligence activities and information sharing, as well as joint planning. Units  
26 from both military and civilian security forces worked in concert to carry out  
27  
28

1 arrests of numerous individuals, including human rights defenders and journalists,  
2 under the pretext of protecting “national security.”  
3

4 ***Rajapaksa Regime and Its Widespread and Systematic Attacks on Journalists***  
5

6 23. The Rajapaksa regime was sensitive to criticism of its war effort and  
7 allegations of corruption. As a result, it launched an assault on the free press,  
8 routinely harassing journalists, editors, and other individuals associated with the  
9 press. Although the Rajapaksa regime frequently denied playing any role in the  
10 attacks against journalists – which ranged from veiled threats to abductions,  
11 assaults, torture, and killings – many attacks were traced back to government  
12 security forces. The Rajapaksa regime also arrested, deported, and sued journalists,  
13 and attempted to enact laws and regulations limiting free press.  
14  
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17 24. In response to this assault on the media, many journalists fled, and  
18 independent media outlets shut down. Several independent journalists who  
19 remained active in the country and did not exercise “self-censorship” were targeted  
20 for attack. During the 10-year rule of the Rajapaksa family, violence against  
21 journalists spiked, with at least sixteen journalists and media workers killed, and  
22 many others threatened, assaulted, or abducted. Press freedom organizations such  
23 as the Committee to Protect Journalists and Reporters Without Borders  
24 documented serious threats to media workers throughout the Rajapaksa regime.  
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1           25. After the end of the war, a United Nations human rights investigative  
2 body examined allegations of serious violations and abuses of human rights  
3 committed by both parties in the Sri Lankan civil war from 2002 to 2011. The  
4 investigation concluded that the attacks against journalists were widespread and  
5 occurred over an extended period of time; they also appeared to be systematic in  
6 targeting media known to be critical of government policies and officials.  
7

8  
9           26. The Ministry of Defense played a key role in this crackdown on  
10 independent journalism. Joint security forces and military intelligence units  
11 identified and targeted journalists alleged to pose a threat to national security.  
12 Some journalists critical of the Rajapaksa regime were branded as “Tiger  
13 sympathizers” by the government, and the Ministry of Defense posted their names  
14 on its official website. As a result, these journalists found themselves subject to  
15 arrest or attack by government security forces.  
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19           27. The Directorate of Military Intelligence (MID) was part of the inter-  
20 agency intelligence group that met weekly with Defendant. The MID also operated  
21 a clandestine unit known as the “Tripoli Platoon,” which was comprised of elite  
22 commandos and members of the Special Forces. The Tripoli Platoon was directly  
23 under the control of the Ministry of Defense and was tasked with surveillance of  
24 and attacks on journalists who engaged in independent (and sometimes negative)  
25 reporting on the Ministry of Defense, Defendant, or the Rajapaksa regime.  
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1 According to court filings made by the CID, the Tripoli Platoon has been linked to  
2 at least three attacks on journalists, including Lasantha's attack, torture, and  
3 assassination; the abduction and torture of newspaper editors Keith Noyahr; and  
4 the assault on Upali Tennakoon.  
5

6 28. In 2008, Keith Noyahr, deputy editor of *The Nation*, was kidnapped  
7 outside of his home by unidentified men and taken away in a white van. He was  
8 taken to a military intelligence safe house, where he was stripped, suspended in  
9 mid-air, and beaten. During this attack he was questioned as to the sources of his  
10 news articles. In his search for Noyahr, *The Nation's* CEO, Krishantha Cooray,  
11 called Cabinet Minister Karu Jayasuriya for assistance, who in turn called  
12 President Mahinda Rajapaksa. Jayasuriya threatened to make a public statement  
13 and resign from the government along with several other cabinet colleagues if  
14 Noyahr was not released. Noyahr was finally released after a series of telephone  
15 calls down the chain of command from the Defendant to the Major in charge of the  
16 Tripoli Platoon. Noyahr and his family subsequently received death threats and  
17 fled the country, ending his reporting in Sri Lanka.  
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23 29. On January 23, 2009, Upali Tennakoon, editor of the newspaper  
24 *Rivira*, was driving to his office when four men on motorcycles stopped him,  
25 smashed in his car windows, and proceeded to beat him and his wife with metal  
26 bars. Following the attack, Tennakoon's wife received telephone calls threatening  
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1 that Tennakoon would be killed if he continued to work as a journalist. Mobile  
2 telephone records establish that Tennakoon was under surveillance by the Tripoli  
3 Platoon in the weeks prior to his attack. In 2016, Tennakoon identified a senior  
4 officer of the Directorate of Military Intelligence in a lineup. Soon after the  
5 identification, Tennakoon was forced to flee the country following threats to his  
6 safety.  
7

8  
9 30. Other examples of attacks on journalists followed a similar pattern:  
10 journalists critical of the government were publicly identified and threatened by the  
11 Rajapaska regime, and were subsequently abducted, beaten, or killed. On January  
12 24, 2006, journalist Subramaniam Sugitharajah was shot and killed on his way to  
13 work. His murder occurred just weeks after he had published photos of five Tamil  
14 students who had been murdered execution-style by the police, contradicting the  
15 government's claims that the students had been killed by a self-detonated grenade.  
16 On March 7, 2008, a columnist for *The Sunday Times*, J.S. Tissainayagam, was  
17 arrested by the Sri Lanka Police's Terrorist Investigation Division and sentenced  
18 under the Prevention of Terrorism Act to 20 years of hard labor for articles he  
19 wrote in 2006 criticizing the military's treatment of Tamil civilians in northeastern  
20 Sri Lanka. On June 1, 2009, Poddala Jayantha, a journalist at *Mihira* newspaper,  
21 was abducted by men in a white van and severely beaten. Defendant had  
22 personally threatened Jayantha in 2008 after he participated in a free media  
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1 demonstration, telling him that criticism of the military leadership would not be  
2 tolerated and that if he and his colleagues persisted in their criticism of the  
3 government, “people who know how to do it will finish you off.” Several days  
4 prior to the attack, a government-run television station had published photos of  
5 Poddala Jayantha and other journalists, while the Inspector General of Police  
6 referred to them as traitors. In May 2009, Defendant also confronted and  
7 intimidated a Channel 4 news reporter covering reports of sexual violence and  
8 other abuses allegedly perpetrated by the Sri Lankan military in government  
9 internment camps in northern Sri Lanka. The Rajapaksa government viewed these  
10 reports as anti-government propaganda, and Defendant personally telephoned the  
11 journalist to tell him he was being deported because of his reporting. The journalist  
12 was detained and questioned by Sri Lankan police, while his vehicle and  
13 equipment were searched, prior to his deportation. On January 24, 2010, two days  
14 before the 2010 election, political cartoonist and journalist Prageeth Eknaligoda  
15 disappeared after leaving his office in the evening. Eknaligoda had been  
16 investigating Defendant and had published a “family tree” of the dozens of  
17 Defendant’s relatives that held government office, and publicly supported the  
18 campaign of the opposition candidate Sarath Fonseka.

26 31. While Lasantha’s attack and assassination on a crowded street in  
27 Colombo was one of the most prominent and visible attacks on independent  
28

1 journalists carried out under the Rajapaksa regime, it was part of a larger pattern of  
2 intimidation, persecution, and violence.

3  
4 ***Lasantha's Corruption Investigation and Threats Preceding the Assassination***

5  
6 32. *The Sunday Leader* newspaper was an English-language weekly  
7 publication that was printed from 1994 to 2017 in Sri Lanka. Lasantha co-founded  
8 the paper and served as editor-in-chief from 1994 until his death in 2009.

9  
10 33. In 2006, Lasantha's reporting brought him on a collision course with  
11 the Defendant. On December 24, 2006, the front-page headline of *The Sunday*  
12 *Leader* read "President to get Rs. 400 million luxury bunker." Under this headline,  
13 the newspaper detailed an approximately US \$4 million government construction  
14 project to create a bunker for the Sri Lankan elite. Lasantha's accompanying  
15 editorial criticized the creation of a Rajapaksa "dynasty." Shortly after publication,  
16 Defendant ordered police officers in the CID to arrest Lasantha against their  
17 objections, overriding the legal advice of the Solicitor General and Attorney  
18 General of Sri Lanka. The Secretary to the President revoked the order minutes  
19 before it was to be executed.

20  
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  
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28

1 equipment and services by the Sri Lanka Air Force from the Government of  
2 Ukraine, identifying Defendant as overseeing the transaction and alleging potential  
3 corruption in the procurement process led by Defendant. The reporting also  
4 indicated that the transactions went through a U.S. bank, raising the allegation that  
5 the proceeds of the crime were being laundered through the U.S. financial system.  
6

7  
8 35. Following the publication of these articles, Defendant stated in an  
9 interview that the media had freedom in Sri Lanka because “you can tell lies and  
10 criticize the President, the Defence Secretary and Ministers, and after writing these  
11 things, and you can get into your car and drive around freely” while gesturing as if  
12 holding a steering wheel. It was well known that Lasantha was the only prominent  
13 government critic who drove his own vehicle without chauffeurs or security  
14 personnel. In October 2007, Defendant threatened to bring a defamation case  
15 against *The Sunday Leader* and Lasantha, for his reporting on the “MiG Deal.”  
16  
17

18  
19 36. On November 21, 2007, black-clad commandos bearing automatic  
20 weapons stormed the premises of the printing press of *The Sunday Leader*, held  
21 staff at gunpoint, and set the printing press machinery on fire. This arson attack  
22 was never investigated by police, who at that time were under the direct control of  
23 Defendant.  
24  
25

26 37. In October 2008, President Mahinda Rajapaksa called Lasantha a  
27 “terrorist journalist” during an interview with Reporters Without Borders.  
28



1           38. On or before September 2008, a few months before Lasantha's  
2 assassination, the State Intelligence Service, which was overseen by Defendant,  
3 began surveilling Lasantha's mobile phone for reasons of "national security."

4  
5           39. In November 2008, Defendant filed a defamation action against  
6 Lasantha and *The Sunday Leader* for its reporting on the "MiG Deal," demanding  
7  
8 1 billion rupees (approximately US \$10 million) in damages. Lasantha was  
9 scheduled to testify in this lawsuit, but was killed before he could present his  
10 testimony.  
11

12           40. In the weeks before his death, Lasantha continued to receive threats:  
13 on separate occasions he received a funeral wreath and a newspaper dipped in red  
14 paint with the words "If you write, you will be killed." In the days before his  
15 death, Lasantha told his family that he was worried that he was being followed.  
16  
17

18           41. Two days before Lasantha's murder, MTV/MBC Media Network, Sri  
19 Lanka's largest private and independent broadcasting company and broadcaster of  
20 the popular TV channel "Sirasa TV," was stormed by black-clad commandos  
21 armed with automatic weapons, grenades, and claymore mines. Such weapons  
22 could only be lawfully obtained and used in Sri Lanka by the armed forces, which  
23 were under the direct command of Defendant. Lasantha had been working at  
24 MTV/MBC Media Network as a presenter on a weekly current affairs program.  
25  
26 Lasantha made his final television appearance in the immediate aftermath of the  
27  
28

1 attack, on the early morning of January 6, 2009, urging viewers in English and  
2 Sinhala to remain resolute and unbowed in the face of government attempts to  
3 silence the media.  
4

5  
6 ***Attack, Torture, and Assassination of Lasantha Wickrematunge***

7 42. On the morning of January 8, 2009, Lasantha Wickrematunge noticed  
8 black-clad men on motorcycles circling around his home in the suburbs of the Sri  
9 Lankan capital Colombo. He made several phone calls to friends and family  
10 indicating that he believed he was being followed.  
11

12 43. As Lasantha drove to work that morning, he was swarmed by black-  
13 clad plainclothes commandos on motorcycles at a busy intersection in an area  
14 secured by military checkpoints. As mobile telephone tower logs would later show,  
15 this group of riders was part of, or worked in concert with, the Directorate of  
16 Military Intelligence's Tripoli Platoon, and this team had been following Lasantha  
17 for several weeks. The masked riders smashed the car's windows and one of the  
18 attackers punched a hole in Lasantha's skull with a sharp instrument. In addition to  
19 the injury to his skull, Lasantha also suffered a number of lacerations and abrasions  
20 on his chest, arms, neck, and face during the attack. The motorcyclists sped off in  
21 the direction of a nearby military checkpoint. The motorcyclists entered a "High  
22 Security Zone" policed by the Sri Lanka Air Force, leaving Lasantha gravely  
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1 wounded. Onlookers quickly rushed Lasantha to Colombo South Teaching  
2 Hospital. Lasantha underwent emergency surgery but died several hours later.

3  
4 44. Three days after Lasantha's death, *The Sunday Leader* published an  
5 editorial left on file by Lasantha in the event of his death. Reprinted around the  
6 world, Lasantha's "Letter from the grave" became an infamous broadside against  
7 the Rajapaksas:  
8

9 Terror, whether perpetrated by terrorists or the state, has become the  
10 order of the day. Indeed, murder has become the primary tool  
11 whereby the state seeks to control the organs of liberty. Today it is the  
12 journalists, tomorrow it will be the judges. For neither group have the  
13 risks ever been higher or the stakes lower.

14 ...  
15 It is well known that I was on two occasions brutally assaulted, while  
16 on another my house was sprayed with machine-gun fire. Despite the  
17 government's sanctimonious assurances, there was never a serious  
18 police inquiry into the perpetrators of these attacks, and the attackers  
19 were never apprehended.

20 In all these cases, I have reason to believe the attacks were inspired by  
21 the government. When finally I am killed, it will be the government  
22 that kills me.

23 In the wake of my death I know you [President Mahinda Rajapaksa]  
24 will make all the usual sanctimonious noises and call upon the police  
25 to hold a swift and thorough inquiry.

26 But like all the inquiries you have ordered in the past, nothing will  
27 come of this one, too. For truth be told, we both know who will be  
28 behind my death, but dare not call his name. Not just my life but yours  
too depends on it.

...  
I hope my assassination will be seen not as a defeat of freedom but an

1 inspiration for those who survive to step up their efforts. Indeed, I  
2 hope that it will help galvanise forces that will usher in a new era of  
3 human liberty in our beloved motherland. I also hope it will open the  
4 eyes of your President to the fact that however many are slaughtered  
5 in the name of patriotism, the human spirit will endure and flourish.  
6 Not all the Rajapaksas combined can kill that.

7 ***No Credible Investigation into Lasantha's Attack and Killing***

8 45. In the immediate aftermath of Lasantha's attack, torture, and murder,  
9 Sri Lankan law enforcement agencies – under the control of Defendant – either  
10 failed to conduct a credible investigation into the killing, or actively interfered with  
11 any attempts to conduct a credible investigation.

12 46. First, a false autopsy report was issued by the Judicial Medical Officer  
13 indicating that Lasantha's death was caused by a firearm, even though this was  
14 inconsistent with the evidence at the crime scene and the notes of the surgeon who  
15 conducted the emergency operation. Second, Lasantha's notebook, in which he had  
16 scrawled two license plate numbers on the day of the attack, was collected by  
17 police officers at the scene of the crime. This notebook then disappeared, and the  
18 officer on the case later admitted to removing pages of the notebook and doctoring  
19 police logbook entries mentioning the notebook at the order of his superiors.  
20  
21  
22  
23

24 47. Shortly after Lasantha's murder, Defendant sat for a television  
25 interview with the British Broadcasting Corporation (BBC), in which he was  
26 questioned about the assassination. At the time, Defendant was in charge of  
27 civilian law enforcement in Sri Lanka, including the police force tasked with  
28

1 investigating homicides. During this interview, Defendant stated that the killing of  
2 Lasantha was “just another murder,” insisting that he was “not concerned about  
3 that.” He asked the interviewer “why are you so worried about one man.”  
4

5 48. The police investigating Lasantha’s murder failed to make any  
6 progress in the months following the killing, prompting Plaintiff’s attorneys and  
7 other family members to successfully petition the Mount Lavinia Magistrates  
8 Court to order in December 2009 that investigations into the murder be conducted  
9 by the CID of the Sri Lanka Police.  
10  
11

12 49. Also in December 2009, one of Lasantha’s household employees was  
13 abducted by a Military Intelligence officer and threatened in relation to Lasantha’s  
14 case. This individual then went into hiding for a number of years. In 2016, this  
15 employee identified his abductor as the same officer who had attacked Upali  
16 Tennakoon.  
17  
18

19 50. In 2010, CID investigators sought to question a member of the Tripoli  
20 Platoon, whom they had identified through cell phone records. However, shortly  
21 after this identification was made, the Inspector General of Police ordered the CID  
22 to halt its investigation and hand the case over to the Terrorist Investigation  
23 Division (“TID”), a detachment of the Sri Lanka Police. Around the same time,  
24 Defendant issued a letter to the Sri Lankan Ministry of Foreign Affairs, instructing  
25 that the commanding officer of the Tripoli Platoon be assigned to a non-vacant  
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1 diplomatic position at the Sri Lankan Embassy in Bangkok, Thailand, within  
2 thirteen days. The letter instructed that the officer who was then holding that  
3 position in Thailand be recalled.  
4

5 51. In February 2010, the TID arrested seventeen other Military  
6 Intelligence officers attached to a different platoon, and detained them on suspicion  
7 of the murder of Lasantha and other abductions and assaults on journalists.  
8 However, all seventeen individuals were released from custody before being  
9 presented to witnesses for lineup identification. No charges were ever filed against  
10 any of the seventeen individuals.  
11  
12

13 52. That same month, the TID also took into custody the member of the  
14 Tripoli Platoon who had originally been sought for questioning by the CID. While  
15 in custody, however, this suspect was granted a promotion by the military and  
16 continued to receive his pay in violation of regulations governing military  
17 personnel in police custody. He was eventually released without being charged and  
18 without thorough questioning. No further investigations into the murder of  
19 Lasantha were conducted until 2015, when President Mahinda Rajapaksa was  
20 defeated in a general election and Defendant was forced to leave public office.  
21 Shortly thereafter, the Sri Lanka Police re-activated its investigation into  
22 Lasantha's killing, re-assigning the investigation to the CID.  
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***Continued Attacks on Journalists During the Rajapaksa Administration***

53. Although Sri Lanka's civil war ended in May 2009, the Rajapaksa administration's harassment of journalists perceived to be critical of the government continued with impunity throughout the remainder of Defendant's tenure as the Secretary of Defense.

54. In the years following Lasantha's death, *The Sunday Leader* employees continued to face threats and attacks. In October 2009, editors Frederica Jansz and Munza Mushtaq received death threats in the mail similar to those sent to Lasantha three weeks before his death. In July 2012, Defendant personally threatened Jansz over the phone in response to her investigation into a story critical of the government. These threats forced Jansz to flee Sri Lanka and seek asylum in the United States. In 2013, *The Sunday Leader* reporter Faraz Shauketally was shot in his home. Later that year, *The Sunday Leader* associate editor Mandana Ismail Abeywickrema was assaulted and threatened in her home by assailants who searched through her files. Mandana fled the country in fear for her life.

55. In addition to threats and attacks on journalists, the Rajapaksa administration also targeted lawyers who represented journalists in suits against the government, or who otherwise attempted to expose human rights abuses. For example, the lawyers who defended *The Sunday Leader* in the defamation suit brought by Defendant, (*see supra* ¶ 39), were labeled as "traitors" on the Ministry

1 of Defense's official website. The lawyer defending J.S. Tissainayagam received  
2 anonymous threats. Additionally, the office of human rights lawyer Amitha  
3 Ariyaratne, who represented individuals accusing the government of torture, was  
4 burned down, and he received death threats from the police. Similarly, the home of  
5 prominent human rights lawyer J.C. Weliamuna was attacked with grenades. To  
6 date, no individuals have been charged or prosecuted for these attacks.  
7  
8

### 9 10 *Ongoing Impunity*

11 56. The conditions in Sri Lanka recounted below demonstrate that there  
12 are no adequate and available remedies in Sri Lanka by which Plaintiff can obtain  
13 redress against Defendant. These conditions also constitute extraordinary  
14 circumstances that warrant equitable tolling of the statute of limitations.  
15  
16

17 57. From 2006 to 2015, the Rajapaksa government ensured impunity for  
18 abuses committed by the regime by enacting laws and policies aimed at protecting  
19 government officials and exerting executive control over the judiciary. In  
20 September 2010, Sri Lanka's Constitution was amended to grant the President the  
21 power to appoint judges to the Supreme Court, Court of Appeal, and Judicial  
22 Service Commission without Parliament's approval. This amendment remained in  
23 place through the remainder of Mahinda's presidency. The Rajapakas' power over  
24 the judiciary was further demonstrated when the Chief Justice of the Supreme  
25 Court was impeached in 2013 after issuing a series of decisions against the  
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1 government. Her impeachment by Parliament – led by Chamal Rajapaksa as  
2 Speaker – was confirmed by the President, Mahinda Rajapaksa. The President then  
3  
4 appointed the Attorney-General, Mohan Peiris, a close ally of the Rajapaksas, as  
5 the new Chief Justice of the Supreme Court. The International Bar Association  
6  
7 found serious procedural shortcomings in the impeachment proceedings and stated  
8 that the events undermined confidence in Sri Lanka’s already fragile rule of law.

9  
10 58. Following the presidential election of 2015, the government of  
11 President Maithripala Sirisena announced an ambitious transitional justice plan that  
12 included calls for criminal accountability for human rights abuses committed  
13 during the Rajapaksa regime. However, despite some apparent advances in a few  
14 human rights cases, nearly all of the cases against military officials or Defendant  
15 for human rights abuses have since stalled due to political pressures and witness  
16 intimidation.  
17  
18

19 59. The Rajapaksa family continues to hold political power and has  
20 asserted influence over the current government. A new political party, the Sri  
21 Lanka Podujana Peramuna (SLPP), formed in 2016 under the banner of Mahinda  
22 Rajapaksa and won the highest percentage of seats in the 2018 Sri Lankan local  
23 elections. On October 26, 2018 President Sirisena dismissed the sitting Prime  
24 Minister and appointed Mahinda Rajapaksa as the new Prime Minister, creating  
25 political turmoil and prompting international outcry. Shortly afterwards, President  
26  
27  
28

1 Sirisena sought to transfer Nishantha Silva, the main CID officer investigating  
2 Lasantha's case and other related cases, to a different department. Over the past  
3 year, President Sirisena has publicly criticized ongoing investigations into abuses  
4 committed by military officers and Defendant during the Rajapaksa regime, and  
5 stated that he will shield them from prosecution. This political situation has  
6 impaired the progress of human rights cases against former government officials.  
7

8  
9 60. Additionally, judicial delays are extreme, with criminal proceedings  
10 dragging on for 10 to 15 years and some civil cases pending for more than 30  
11 years. These delays persist even in cases that are not politically sensitive. Even  
12 before a case reaches the courts, delays in initiating the prosecution by the  
13 Attorney General's office are also extreme. It often takes many years for the  
14 Attorney General to issue an indictment after receiving the investigation materials,  
15 and politically sensitive cases, such as those implicating security forces in human  
16 rights abuses, are often stalled or simply not investigated.  
17  
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19

20 61. Witnesses are also reluctant to come forward in politically sensitive  
21 cases because they fear reprisals. During the Rajapaksa regime, victims, witnesses,  
22 and lawyers were frequently intimidated or attacked. Due to Sri Lanka's failure to  
23 implement an adequate victim and witness protection system, witnesses continue to  
24 face intimidation to this day. Although a new witness protection law was enacted  
25 in 2015, it only applies to witnesses in criminal cases and has been widely  
26  
27  
28

1 criticized as unsuitable for protecting witnesses in cases against public officials.  
2 The lack of an effective witness protection mechanism has contributed to a high  
3 level of impunity, and has limited progress in the CID's investigation into  
4 Lasantha's killing. The possibility that Defendant will become Sri Lanka's next  
5 president has further dissuaded witnesses from participating in the investigation  
6 related to Lasantha's killing, as well as other investigations relating to the  
7 Defendant.  
8  
9

10 The aforementioned facts constitute extraordinary circumstances that  
11 prevented Plaintiff from bringing this action and accordingly toll any applicable  
12 statute of limitations. The armed conflict in Sri Lanka continued until May 2009.  
13 Even after the end of the armed conflict, Defendant was shielded by and acted with  
14 impunity during the Rajapaksa regime, which lasted through 2015. The Rajapaksa  
15 administration exerted executive control over the judiciary and enacted emergency  
16 regulations, some of which are still currently in effect, to limit the ability for  
17 individuals to seek remedy against state officials, as noted in paragraph 21.  
18  
19  
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21

22 62. During this time, the investigation into Lasantha's assassination was  
23 marred by obstruction and delay.  
24

25 63. The Rajapaksa family continues to exercise ongoing influence in the  
26 current government. Following 2015, the new government administration  
27 announced an ambitious plan that called for criminal accountability for human  
28

1 rights abuses committed during the Rajapaksa regime, thus providing a reasonable  
2 expectation that domestic investigations would continue without interference.  
3  
4 However, to date, none of the recommendations on accountability were put in  
5 place, and Sri Lanka continues to be criticized for the continued impunity for past  
6 human rights abuses of the Rajapaksa administration. Moreover, pervasive witness  
7 intimidation and judicial delay further amplify the effect of Defendant's impunity  
8 and ongoing political influence. The danger to witnesses and victims seeking  
9 accountability for human rights violations continues to this day.  
10  
11

## 12 **GENERAL ALLEGATIONS**

13  
14 64. On information and belief, Plaintiff alleges the following:

15  
16 65. Defendant, in his capacity as Secretary of Defense, exercised  
17 command responsibility over, conspired with, aided and abetted, and/or incited  
18 individuals in the Tripoli Platoon, or groups acting in coordination with this unit, to  
19 perpetrate the extrajudicial killing of Decedent, whom Defendant viewed as a  
20 threat because of his reporting. Mobile telephone records establish that members of  
21 the Directorate of Military Intelligence division known as the "Tripoli Platoon"  
22 were involved in the direct perpetration of the attack against Decedent Lasantha  
23 Wickrematunge and that they benefited from the assistance of the Sri Lankan  
24 security forces to escape the scene of the crime. Defendant and individuals under  
25  
26  
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1 his command then worked to prevent an effective investigation into Decedent's  
2 killing.

3  
4 66. Defendant exercised command responsibility over the Tripoli Platoon,  
5 which carried out the attack, torture, and murder of Decedent as well as attacks  
6 against journalists perceived as critical of the Rajapaksa government. The Tripoli  
7 Platoon operated under the command of the Chief of National Intelligence, who  
8 reported directly to the Defendant, the Secretary of Defense during the relevant  
9 time period. Defendant Gotabaya engaged in weekly meetings and closely  
10 coordinated with the Directorate of Military Intelligence. Due to this relationship,  
11 Defendant knew or should have known about the attack on Lasantha. Furthermore,  
12 widespread media coverage of the attack, and of the allegations of security forces  
13 involvement, was enough to give Defendant knowledge of the murder after the  
14 fact. As the commander of both the armed forces and the police, Defendant had a  
15 duty to ensure an effective investigation and to punish those responsible for  
16 Lasantha's attack, torture, and murder. Rather, the investigation during  
17 Defendant's tenure as Secretary of Defense was marked by interference and cover-  
18 ups by the investigating authorities, including actions taken by Defendant to  
19 actively interfere with any attempt to conduct a credible investigation.  
20  
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26 67. Defendant also conspired with individuals in the military and police to  
27 carry out the attack on Lasantha and prevent an effective investigation. Defendant  
28

1 entered an agreement, common plan, design, or scheme with one or more members  
2 of the Directorate of Military Intelligence to threaten, assault and murder  
3 journalists who were critical of the Rajapaksa government, including Lasantha.  
4 Numerous overt acts were carried out in furtherance of this conspiracy, both by  
5 Defendant and by others in the conspiracy. The attack on Lasantha itself was an  
6 act in furtherance of the conspiracy, as were numerous acts to cover up the facts of  
7 the attack to ensure that the military officers would not be implicated in Lasantha's  
8 murder. The cover-up acts in furtherance of the conspiracy included conspirators  
9 tampering with Lasantha's notebook, the Inspector General of Police's order to  
10 transfer the investigation from the CID to the TID after a member of the Tripoli  
11 Platoon was implicated in the murder, and Defendant's order to transfer one of the  
12 Tripoli Platoon suspects in Lasantha's case to a post at the Sri Lankan Embassy in  
13 Bangkok, Thailand, preventing a thorough investigation of the crimes. In addition  
14 to being personally liable for his own actions, Defendant is jointly and severally  
15 liable for the actions of his co-conspirators, all of which were actions undertaken in  
16 furtherance of a common plan, design, or scheme to threaten and eliminate  
17 journalists and silence critics of the government.

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25 68. Defendant also contributed to the commission of the unlawful acts  
26 alleged herein by a joint criminal enterprise comprised of Defendant and his  
27 subordinates in the Ministry of Defense, specifically the Directorate of Military  
28

1 Intelligence and the Sri Lanka Police. Defendant and the co-participants entered  
2 into a joint criminal enterprise with a common plan or purpose of waging a  
3 widespread and systematic campaign to silence and violently repress journalists  
4 who were critical of the Rajapaksa government. Defendant and his co-participants  
5 committed the wrongful acts alleged herein in furtherance of this common plan or  
6 purpose. Defendant provided substantial assistance to the common plan by publicly  
7 targeting journalists critical of the government with inflammatory labels and  
8 threats, ordering surveillance of journalists, using security forces under his direct  
9 command to attack journalists, including the Decedent, and facilitating impunity  
10 for these attacks. Defendant and his subordinates in the Ministry of Defense  
11 contributed to this joint criminal enterprise at each stage. Defendant also made a  
12 substantial contribution to the joint criminal enterprise by participating in the  
13 cover-up of the crimes alleged, ensuring that the perpetrators would not be held  
14 accountable. This contribution was intentional and made with knowledge of the  
15 shared purpose of the group to silence and repress critics.  
16  
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22 69. Defendant is also responsible by virtue of having aided and abetted, or  
23 otherwise substantially assisted in the commission of the crimes against Lasantha,  
24 including through his role in Lasantha's killing by his subordinates and by then  
25 covering up the crimes and obstructing an effective investigation into the murder.  
26 Defendant was in command of the law enforcement agencies investigating  
27  
28

1 Lasantha's murder and took actions to stall the investigation and ensure that  
2 Directorate of Military Intelligence officials were not implicated in the crimes. At  
3 all relevant times, Defendant knew and purposefully intended that his actions  
4 would aid, abet, or assist in the commission and cover-up of the murder. Defendant  
5 is therefore jointly and severally liable for the wrongful conduct of the persons  
6 whom he aided and abetted.  
7

8  
9 70. Defendant is further liable for inciting the direct perpetrators of the  
10 attack against Lasantha. As described in paragraphs 26 to 31, and 32 to 44, the acts  
11 were carried out by Defendant's subordinates in the Ministry of Defense.  
12 Defendant encouraged the commission of the attack through veiled threats and  
13 public statements suggesting that perpetrators of crimes against journalists would  
14 not be held accountable. Defendant made numerous public comments denouncing  
15 journalists who criticized the Rajapaksa government as traitors. Defendant's  
16 brother specifically labeled Lasantha as a "terrorist journalist." A statement issued  
17 by the Ministry of Defense on May 31, 2008 called on "all members of the armed  
18 forces to unite and guard against these treacherous media campaign [sic] against  
19 them," naming *The Sunday Leader* as one of the "treacherous media." Another  
20 statement released by the Ministry of Defense on June 4, 2008 referred to  
21 journalists as "enemies of the state" who "are doing a job of the enemy." The  
22 Defendant personally authorized the release of these statements, and, given the  
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1 pattern of attacks against journalists, was aware of the substantial likelihood of  
2 harm in transmitting these inflammatory messages. None of the perpetrators of the  
3 targeted attacks against journalists have been prosecuted or subject to military  
4 sanction to date.  
5

## 6 7 **FIRST CLAIM FOR RELIEF**

### 8 *(Extrajudicial Killing of Lasantha Wickrematunge)*

9  
10 71. Plaintiff Ahimsa Wickrematunge, in her individual capacity and as the  
11 legal representative of the estate of Lasantha Wickrematunge, re-alleges and  
12 incorporates by reference the allegations set forth in paragraphs 1 to 70 as if fully  
13 set forth herein.  
14

15 72. On January 8, 2009, Decedent Lasantha Wickrematunge was attacked  
16 and assassinated in his car while driving to work. The assailants were members of  
17 the Sri Lanka Directorate of Military Intelligence and/or individuals working with  
18 the security forces of Sri Lanka during the period in which Defendant was  
19 Secretary of Defense.  
20

21  
22 73. The killing of Lasantha Wickrematunge constitutes extrajudicial  
23 killing in violation of the Torture Victim Protection Act, Pub. L. No. 102-256, 106  
24 Stat. 73 (1992) (codified at 28 U.S.C. § 1350, note).  
25

26 74. In addition, the killing constitutes a “tort . . . committed in violation of  
27 the law of nations or a Treaty of the United States” under the Alien Tort Statute, 28  
28

1 U.S.C. § 1350, in that it was committed in violation of customary international law  
2 prohibiting extrajudicial killing, as widely expressed, clearly defined, and codified  
3 in multilateral treaties and other international instruments, international and  
4 domestic judicial decisions, and other authorities.  
5

6 75. The assassination was committed by or in concert with members of  
7 the Directorate of Military Intelligence or the security forces of Sri Lanka and was  
8 thereby committed under actual or apparent authority, or color of law, of the  
9 government of Sri Lanka.  
10  
11

12 76. The extrajudicial killing of Decedent was not authorized by any court  
13 judgment, and was unlawful under the laws of Sri Lanka, international law, and  
14 under the laws of any foreign nation. Decedent was unarmed and did not pose a  
15 real or apparent threat to persons or property that would have justified the use of  
16 deadly force against him.  
17  
18

19 77. As detailed in paragraphs 18 to 22, and 65 to 70, Defendant exercised  
20 command responsibility over, conspired with, aided and abetted, directed and/or  
21 incited individuals in the Sri Lankan security forces and Directorate of Military  
22 Intelligence, or groups acting in coordination with these units, to perpetrate the  
23 extrajudicial killing of Decedent.  
24  
25

26 78. As Secretary of Defense, Defendant possessed the legal authority and  
27 practical ability to exert control over the individuals who carried out the attack.  
28

1 Following the highly publicized killing, and the widespread allegations of military  
2 involvement, Defendant knew, or reasonably should have known, about the actions  
3 of his subordinates, but failed to take necessary and reasonable measures to punish  
4 them.  
5

6 79. Prior to his death, Decedent underwent painful emergency surgery as  
7 a result of the puncture in his skull. As a result, Decedent suffered severe physical  
8 abuse and agony before succumbing to his injuries. Plaintiff, as the daughter of  
9 Decedent and representative of Decedent's estate, has standing to bring suit in her  
10 individual capacity and on behalf of her deceased father. The extrajudicial killing  
11 of Decedent Lasantha Wickrematunge also caused Plaintiff Ahimsa  
12 Wickrematunge severe pain and suffering and emotional distress. As a result,  
13 Plaintiff has been damaged in an amount to be proven at trial.  
14  
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18 80. In addition, Defendant's acts and omissions were deliberate, willful,  
19 intentional, wanton, malicious, and oppressive, and should be punished by an  
20 award of punitive damages in an amount to be determined at trial.  
21

## 22 **SECOND CLAIM FOR RELIEF**

### 23 ***(Crimes Against Humanity)***

24 81. Plaintiff Ahimsa Wickrematunge, in her capacity as the legal  
25 representative of the estate of Lasantha Wickrematunge, re-alleges and  
26  
27  
28

1 incorporates by reference the allegations set forth in paragraphs 1 to 80 as if fully  
2 set forth herein.

3  
4 82. While serving as Secretary of Defense, Defendant, his subordinates  
5 and individuals acting in coordination with government security forces targeted  
6 journalists and media workers within the civilian population perceived to be  
7 critical of government policies or officials. Journalists and media workers were  
8 systematically arrested and detained, and many were tortured and killed, for their  
9 reporting, including the Decedent.  
10  
11

12 83. This attack against civilian journalists and media workers was  
13 widespread, as found by the United Nations investigation on Sri Lanka, and the  
14 crimes were met with persistent impunity. As indicated in paragraphs 14 to 15, the  
15 attack against Lasantha was committed in the context of a larger campaign of  
16 violence in the final stages of the civil war, during which up to 40,000 civilians  
17 may have been killed. A report by the Committee to Protect Journalists ranked Sri  
18 Lanka among the top ten countries with the highest rate of impunity for killings of  
19 journalists during the relevant time period. The U.S. State Department's annual  
20 human rights reporting during the relevant period also criticized the government –  
21 and in particular, the Ministry of Defense – for its harassment of journalists  
22 through threats and intimidation.  
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1           84. This attack was also systematic. All of the acts described herein  
2 deliberately targeted civilian journalists and media workers perceived to be critical  
3 of government policies or officials, including the Defendant. As detailed in  
4 paragraphs 23 to 31, many of the attacks, including that against the Decedent,  
5 exhibited a high degree of planning and coordination.  
6

7  
8           85. The extrajudicial killing of Decedent was committed as part of this  
9 widespread or systematic attack against a civilian population. Decedent was also  
10 subject to persecution on the basis of his perceived political opposition to  
11 Defendant and the Rajapaksa government.  
12

13           86. The murder and persecution of Decedent constitute crimes against  
14 humanity, a “tort . . . committed in violation of the laws of nations or a treaty of the  
15 United States” under the Alien Tort Statute, 28 U.S.C. § 1350. The crimes against  
16 humanity of extrajudicial killing and of persecution on the basis of political  
17 affiliation, committed as part of a widespread or systematic attack against a civilian  
18 population, violates customary international law as widely reflected, clearly  
19 defined, and codified in multilateral treaties and other international instruments,  
20 international and domestic judicial decisions, and other authorities.  
21

22           87. Defendant possessed the requisite knowledge that his conduct was in  
23 furtherance of an attack on a civilian population. As alleged in paragraphs 65 to 70,  
24 Defendant exercised command responsibility over, conspired with, aided and  
25  
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1 abetted, directed and/or incited his subordinates in the Sri Lankan security forces  
2 and military intelligence, or groups acting in coordination with these units, to  
3 engage in widespread or systematic targeting of journalists and media workers that  
4 were perceived to be critical of the government, including the extrajudicial killing  
5 and persecution of Decedent on political grounds.  
6  
7

8 88. Defendant's acts described herein, and the acts committed by his  
9 associates, directly and proximately caused Plaintiff and Decedent severe pain and  
10 suffering. As a result of these crimes against humanity, Plaintiff, in her individual  
11 capacity, and as a representative of the estate of Decedent Lasantha  
12 Wickrematunge, has suffered damages in an amount to be determined at trial.  
13  
14

15 89. In addition, Defendant's acts and omissions were deliberate, willful,  
16 intentional, wanton, malicious, and oppressive, and should be punished by an  
17 award of punitive damages in an amount to be determined at trial.  
18  
19

### 20 **THIRD CLAIM FOR RELIEF**

#### 21 *(Torture of Lasantha Wickrematunge)*

22 90. Plaintiff Ahimsa Wickrematunge, in her capacity as the legal  
23 representative of the estate of Lasantha Wickrematunge, re-alleges and  
24 incorporates by reference the allegations set forth in paragraphs 1 to 89 as if fully  
25 set forth herein.  
26  
27  
28

1           91. On January 8, 2009, Decedent Lasantha Wickrematunge was attacked  
2 in his car while driving to work and suffered excruciatingly painful injuries that led  
3 to his death hours after the attack. The assailants were members of the Sri Lanka  
4 Directorate of Military Intelligence and/or individuals working with the security  
5 forces of Sri Lanka during the period in which Defendant was Secretary of  
6 Defense.  
7

8  
9           92. The attack on Lasantha and the injuries inflicted on him constitute  
10 torture in violation of the Torture Victim Protection Act, Pub. L. No. 102-256, 106  
11 Stat. 73 (1992) (codified at 28 U.S.C. § 1350, note).  
12

13  
14           93. In addition, the attack on Lasantha and the injuries inflicted on him  
15 constitute a “tort . . . committed in violation of the law of nations or a Treaty of the  
16 United States” under the Alien Tort Statute, 28 U.S.C. § 1350, in that it was  
17 committed in violation of customary international law prohibiting torture, as  
18 widely expressed, clearly defined, and codified in multilateral treaties and other  
19 international instruments, international and domestic judicial decisions, and other  
20 authorities.  
21

22  
23           94. The acts described herein caused Decedent Lasantha severe physical  
24 and mental suffering. In the moments before receiving a deadly injury to his skull,  
25 Lasantha was surrounded by black-clad attackers in motorcycles, unable to move  
26 his car and under the control of his attackers, and only able to scrawl down license  
27  
28

1 plates of some of his attackers; he endured fear for his physical integrity and life,  
2 causing him severe mental suffering. When his attackers broke the windows of his  
3 car and inflicted injuries on him, including a blow with a sharp instrument that  
4 punctured his skull, Decedent Lasantha suffered excruciating pain and agony, both  
5 physical and mental. Lasantha suffered additional agony in the hours after his  
6 attack, as he lay injured, and was rushed to a hospital and underwent painful  
7 surgery until he finally succumbed to his injuries.  
8  
9  
10

11 95. At all times during the infliction of severe pain caused by a sharp  
12 instrument piercing his skull, Lasantha was under the custody or physical control  
13 of his attackers.  
14

15 96. At all times during the infliction of severe emotional and mental  
16 suffering described herein, he was under the custody or physical control of his  
17 attackers.  
18

19 97. Lasantha's attack and torture were inflicted deliberately with the  
20 intention of punishing Lasantha for reporting on issues perceived as critical of  
21 Defendant or the Rajapaksa government. As detailed in paragraphs 32 to 41,  
22 Lasantha endured public and private threats, including death threats, surveillance  
23 by government forces under Defendant's command and control, and persecution,  
24 including being branded a "terrorist journalist," for his reporting on the Rajapaksa  
25 government.  
26  
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1           98. Lasantha's attack and torture were inflicted with the intention to  
2 intimidate Lasantha and other journalists so that they would desist from reporting  
3 on issues that did not reflect well on the Rajapaksa government. As detailed in  
4 paragraphs 23 to 31, the Rajapaksa government engaged in a pattern and practice  
5 of intimidation and retaliation of journalists whose reporting was perceived as  
6 critical to the Rajapaksa government. As part of this pattern and as detailed in  
7 paragraphs 32 to 41, Lasantha endured targeting and threats for his journalistic  
8 reporting.  
9  
10  
11

12           99. Lasantha's attack and torture did not arise from and was not inherent  
13 in, nor incidental to, any lawful sanctions.  
14

15           100. The attack and torture described herein were committed by or in  
16 concert with members of the Directorate of Military Intelligence or the security  
17 forces of Sri Lanka and were thereby committed under actual or apparent authority,  
18 or color of law, of the government of Sri Lanka.  
19

20           101. As detailed in paragraphs 18 to 22, and 65 to 70, Defendant exercised  
21 command responsibility over, conspired with, aided and abetted, directed and/or  
22 incited individuals in the Sri Lankan security forces and Directorate of Military  
23 Intelligence, or groups acting in coordination with these units, to perpetrate the  
24 attack and torture of Decedent Lasantha.  
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- 1 (c) grant reasonable attorneys' fees, costs, and expenses according to  
2 proof;  
3  
4 (d) grant the Plaintiff equitable relief including, but not limited to, an  
5 injunction prohibiting Defendant from interfering with any criminal  
6 investigations involving the murder of Lasantha Wickrematunge in Sri  
7 Lanka; and  
8  
9 (e) such other and further relief as the court may deem just and proper.

10 A jury trial is demanded on all issues so triable.  
11

12  
13 Dated: 15 June 2019  
14

15 *Attorneys for Plaintiff Ahimsa*  
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## CERTIFICATE OF SERVICE

*s/Nushin Sarkarati*  
Nushin Sarkarati