I. Introduction

1. The Center for Justice and Accountability,\(^1\) with input from the Committee to Protect Journalists,\(^2\) 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.”\(^3\)

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

\(^1\) 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.

\(^2\) 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.

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.”4 During this period, Sri Lanka was ranked among the top ten countries with the highest rates of impunity for killings of journalists.5

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.6

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6 For instance, on 24 January 2006, journalist Subramaniyam 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-detoned grenade. Subramaniyam Sugitharajah, COMM. TO PROTECT JOURNALISTS, https://cpj.org/data/people/subramaniyam-
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.7

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 Eknaligoda.8

In addition, Tamil journalists and media organizations disproportionately faced attacks and harassment throughout the civil war, which have yet to be investigated.9 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.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,


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.\(^\text{11}\)

### 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.\(^\text{12}\)

13. Prior to his death, Wickrematunge was repeatedly intimidated by government officials and labeled a “terrorist journalist” by then-President Mahinda Rajapaksa.\(^\text{13}\) He received numerous death threats, including one stating: “If you write you will be killed.”\(^\text{14}\)

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.\(^\text{15}\)

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.\(^\text{16}\)

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

\(^\text{11}\) *OISL Report, supra* note 4, at ¶ 260.
\(^\text{12}\) Id. at ¶ 267.
\(^\text{16}\) *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](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.  

   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.”

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. After pressure from several cabinet members, then-President Mahinda Rajapaksa ordered his release. Noyahr and his family subsequently received death threats, forcing them to flee the country.

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.

   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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22 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. The attack came soon after Tennakoon published an article criticizing then-President Mahinda Rajapaksa’s response to Wickrematunge’s assassination. Following the attack, his wife received phone calls threatening that Tennakoon would be killed if he continued his work as a journalist.

21. In 2015, Tennakoon identified Premananda Udalagama, a Sergeant Major of the Sri Lankan military, as his attacker in a lineup. Soon after identifying Udalagama, Tennakoon was forced to flee the country following threats to his safety. 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.

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

27 Xu, Project Exile, supra note 24.
prosecuted. Where investigations are initiated, they frequently face political interference. Such obstruction is particularly prevalent when suspects are members of security forces. 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. 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. For example, the Ministry of Defence and then-President Maithripala Sirisena issued public statements criticizing the CID for

29 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, UN 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.”).


31 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).


33 Appendix B, Ratner Declaration, supra note 29, at ¶ 17; OISL Report, supra note 4, at ¶ 1234.
investigating government actors. The Attorney General’s office delays or fails to issue indictments in sensitive cases. The investigative bodies themselves have also been known to tamper with or destroy physical evidence in cases involving military members.

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 Eknaligoda case in 2016 following the arrest of seven military intelligence personnel for their connection to the disappearance of the journalist. 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. After Gotabaya Rajapaksa returned to power, however, de Silva began receiving death threats. Late in 2019, he fled to Switzerland, where he sought asylum. 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.” The government of Sri Lanka has also sought an indictment for his arrest.

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. 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.

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34 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, at 8; OISL Report, supra note 4, at ¶¶ 234-238.
35 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.”).
36 THE NEED FOR ACCOUNTABILITY, supra note 32, at 9.
37 Id. (citing Confusion over “transfer” of Senior State Counsel on Eknaligoda 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-Eknaligoda-case).
38 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.
40 Top Detective Who Investigated High-Profile Cases Flees Sri Lanka, supra note 39.
42 Abi-Habib & Yasir, Sri Lankan Critics Fear a Crackdown Is Underway, supra note 17.
26. CID Director Shani Abeysekera was removed from his position within days of Gotabaya Rajapaksa’s inauguration. 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 Gunawardena, an ally of President Gotabaya Rajapaksa. During his tenure as Defence Secretary, Rajapaksa repeatedly sought to intervene in the CID’s investigation to prevent Gunawardena’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. Indeed, since the start of Rajapaksa’s administration in November 2019, there have been between 20 and 30 investigations into Abeysekera’s conduct. 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.

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

28. Harassment of victims and witnesses is rampant in Sri Lanka. Relatives of victims face
threats, intimidation, and harassment from police or the military.\textsuperscript{52} Lawyers and witnesses in cases involving human rights violations perpetrated by the government and military are also threatened.\textsuperscript{53} 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.\textsuperscript{54} 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.\textsuperscript{55} Since his election, President Gotabaya Rajapaksa has similarly appointed military commanders accused of war crimes to positions of power in his government.\textsuperscript{56}

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.\textsuperscript{57} This announcement signaled an abandonment of any attempt to combat impunity.

\textsuperscript{52} OHCHR 2017 Report, supra note 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.”).


\textsuperscript{55} Appendix B, Ratner Declaration, supra note 29, at ¶ 16; Alleged death squad leader reinstated in special team under Army Chief, supra note 8.

\textsuperscript{56} Laxmanan Sanjeev, Is Sri Lanka Becoming A De Facto Junta?, FOREIGN POLICY (17 July 2020), https://foreignpolicy.com/2020/07/17/sri-lanka-junta-gotabaya-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.”).

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. While an investigation began shortly after his killing in 2009, the case remains open.

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.

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. Shortly thereafter, a household employee of Wickrematunge was abducted and threatened by his captors not to speak of any military involvement in the murder. 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.

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”).

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. 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
without thorough questioning, and only after his accuser died in police custody.\footnote{Vimukthi Yapa, \textit{Military Intelligence Coddles Remanded Murder Suspects}, \textit{SUNDAY LEADER} (21 August 2016) http://www.thesundayleader.lk/2016/08/21/military-intelligence-coddles-remanded-murder-suspects/}

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.\footnote{OHCHR, \textit{Promoting Reconciliation 2019}, supra note 29, at ¶¶ 47-49; \textit{THE NEED FOR ACCOUNTABILITY}, supra note 32, at 10.} 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 \textit{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.\footnote{Journalist Interrogated by CID about 2017 Article on Lasantha Wickrematunge Murder, \textit{COLOMBO TELEGRAPH} (15 July 2020), http://www.colombotelegraph.com/index.php/journalist-interrogated-by-cid-about-2017-article-on-lasantha-wickrematunge-murder/.} 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 Udes 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.\footnote{Zulfick Farzan, \textit{Lasantha Wickrematunge Homicide Cases Postponed}, \textit{NEWS FIRST} (4 December 2020), https://www.newsfirst.lk/2020/12/04/lasantha-wickrematunge-homicide-cases-postponed.}

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.\footnote{See \textit{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 Giriathale Army Camp, then killed in Akkaraipattu. Two military intelligence officers confessed that Gotabaya Rajapaksa had given the command to abduct and kill Prageeth Ekmaligoda. Investigators used cell phone records to link members of the military to the killing.  


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 Ekmaligoda’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.


43. Although a number of suspects have been arrested and released on bail, no one has been prosecuted for Ekmaligoda’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 Ekmaligoda, 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.


44. Prageeth Ekmaligoda’s wife Sandhya has also been subject to harassment, intimidation, and death threats. 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.


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. Journalists who are perceived as critical of the government have been harassed, threatened with death, intimidated, and forced into exile. In many instances, the perpetrators were suspected of intimidation.
supporters of the ruling Sri Lanka Podujana Peramuna party. 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.

46. These threats have chilled on-the-ground reporting. Journalists report self-censoring stories that criticize Gotabaya Rajapaksa or his family.

47. There has also been a disturbing increase in state surveillance and threats against reporters covering issues linked to Sri Lanka’s Tamil minority. 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.

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.”

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. 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
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. 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. 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.

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. 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.

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.

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.

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91 Shutting Down Civic Space, supra note 57.


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.”94 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.95

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.96 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.97

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

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

95 Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19, supra note 92.
97 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-c984676aac7c6005cd7d81395ba8eb78.
justice indicate Sri Lanka’s “inability and unwillingness … to prosecute and punish perpetrators of crimes when State agents are the alleged perpetrators.”

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.

   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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99 OHCHR, Promotion of Reconciliation 2021, supra note 3, at ¶ 51.
100 See id. at ¶¶ 61(a), 61(b), 61(f).
Publicly issue unequivocal instructions to all security forces to immediately end all forms of surveillance and procedures on the right of anyone deprived of their liberty to bring proceedings before a court. This should be reflected in future legislation, in line with the United Nations Basic Principles and Guidelines on Remedies and that complainants are not subject to reprisals.

Ensure that investigations into allegations of torture are launched ex officio and that complainants are not subject to reprisals. Ensure that investigations into allegations of torture are launched ex officio and that complainants are not subject to reprisals.

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. Undertake training for the police in investigative skills, dedicate personnel and infrastructure resources to the Police Act to make the police more accountable, effective and trustworthy. 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.

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.

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.

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.

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.

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.

An independent special office should be established to handle the prosecution of State officials.

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.

Provisions should be made to ensure that all detainees can challenge the lawfulness of detention before an independent court, i.e., through habeas corpus proceedings.

Ensure that all arrests are transparent, with the arresting officer showing proper identification, and based on objective evidence.

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.

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.

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

APPENDIX A

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

1
3. G. Shani Abeysekera  
Superintendent of Police, Director

4. D.W.R.B. Seneviratne  
Senior Deputy Inspector General of Police

All of the Criminal Investigation Department,  
4th 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

2
On this 9th 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 1st 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, 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 4th 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 Wickramatung, 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 1R3 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 077-3888908 to be operative in
Dompe area, ASP Wedasinghe 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 difficulty 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 II 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
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 1st suspect),

16.2(b) the number 0773635028 had been used by Corporal SHP Perera (hereinafter referred to as the 2nd suspect),

16.2(c) mobile number 0771313837 had been used by Sargent UPD Weerarathne (hereinafter referred to as the 3rd suspect),

16.2(d) mobile telephone number 0714162174 had been used by Sargent AHAL Wimalaweera (hereinafter referred to as the 4th suspect)

16.2(e) the mobile number 0775903180 had been used by Corporal SH Jayathilake (hereinafter referred to as the 5th suspect)
16.2(f) mobile number 0773794131 had been used by soldier MP Nishantha Kumara (hereinafter referred to as the 6th suspect).

16.2(g) mobile number 0773369535 had been used by Corporal Chandrabhaya Jayasuriya (hereinafter referred to as the 7th suspect)

16.3 It further revealed that the 1st to 6th 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 1st suspect was the commanding officer of the said platoon.

The 7th 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 1st suspect had even been active in Dompe area on 22/5/2008 in the following manner:

<table>
<thead>
<tr>
<th>Suspected User</th>
<th>Number</th>
<th>The Nation Office</th>
<th>Colombo University Faculty of Arts</th>
<th>Jayaratne Funeral Home</th>
<th>Queen’s Café, Bambalapitiya</th>
<th>Wellawatte</th>
<th>Dehiwela / Kehuwela</th>
<th>Ranala / Dekatana / Malwana / Dompe</th>
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</table>
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 Wallawwe” 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 Priyanka Kumara Somasuriya Corporal of the Army who was a member of the military intelligence platoon commanded by the 1st 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 1st suspect and the money to pay the utility bills and the lease was provided by Board of military intelligence.
16.5(d) Corporal Chamika Sumith, yet another subordinate of the 1st suspect had been an attesting witness to the lease agreement on the direction of the 1st suspect. He had handed over Rs 60,000/- to Corporal Somasuriya which money had been given to him by the 1st 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 1st 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 1st, 2nd 4th and the 5th 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 1st 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 order:
<table>
<thead>
<tr>
<th>SUSPECT</th>
<th>ARRESTED ON</th>
<th>FACTS REPORTED TO COURT ON</th>
<th>BAILED OUT ON</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st suspect</td>
<td>17/2/2017</td>
<td>18/2/2017</td>
<td>21/6/2017</td>
</tr>
<tr>
<td>2nd suspect</td>
<td>17/2/2017</td>
<td>18/2/2017</td>
<td>21/6/2017</td>
</tr>
<tr>
<td>3rd suspect</td>
<td>17/2/2017</td>
<td>18/2/2017</td>
<td>21/6/2017</td>
</tr>
<tr>
<td>4th suspect</td>
<td>19/2/2017</td>
<td>19/2/2017</td>
<td>21/6/2017</td>
</tr>
<tr>
<td>5th suspect</td>
<td>19/2/2017</td>
<td>19/2/2017</td>
<td>21/6/2017</td>
</tr>
<tr>
<td>6th suspect</td>
<td>20/3/2017</td>
<td>21/3/2017</td>
<td>21/6/2017</td>
</tr>
<tr>
<td>7th suspect</td>
<td>04/4/2017</td>
<td>04/4/2017</td>
<td>21/6/2017</td>
</tr>
</tbody>
</table>

(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 1st 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 1st suspect and the Petitioner on the date of abduction.

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

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

As the above contacts, as stated above, Corporal Somasuriya had revealed of his mobile number 077-4167054 to have been used by the 1st 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
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)
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

CASE NO. 2:19-CV-02577-R-RAO

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.

DECLARATION OF STEVEN R. RATNER
IN SUPPORT OF PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS
DECLARATION OF STEVEN R. RATNER
IN SUPPORT OF PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS
I, Steven R. Ratner, declare under penalty of perjury of the laws of the United States as follows:

I. QUALIFICATIONS

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

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

3. My academic career has focused on public international law, with specific expertise in international human rights law, international humanitarian law, international criminal law, international investment law, and related issues. Since I
began teaching law in fall 1992, I have taught a semester-long course on international law on human rights most years, as well as a course on the law of armed conflict that addresses prosecution of war crimes. I am the co-author of one of the leading textbooks on international law used in the United States, *International Law: Norms, Actors, Process* (Kluwer, 4th ed. 2015), as well as one of the leading commentaries on remedies for human rights abuses, *Accountability for Human Rights Atrocities in International Law* (Oxford, 3d ed. 2009). I have published numerous articles on questions of accountability and have lectured on this topic at a number of law schools.

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

5. In 2010, the U.N. Secretary-General appointed me to a Panel of Experts to examine options for accountability of individuals implicated in various human rights abuses during the last phases of Sri Lanka’s civil war. The other members of the Panel were Marzuki Darusman, former Attorney General of Indonesia, and Yasmin Sooka, former member of the Truth and Reconciliation Commissions of both South Africa and Sierra Leone. Our panel “advise[d] the Secretary-General on the modalities, applicable international standards and comparative experience relevant to the fulfillment” of a commitment by the U.N. Secretary-General and Sri Lanka’s then-president “to an accountability process, having regard to the nature
and the scope of alleged violations.” Our panel, with assistance from U.N. officials and independent consultants, worked for 10 months to produce a 213-page report that we submitted to the U.N. Secretary-General in March 2011.

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

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

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endorsement eventually led the U.N. Human Rights Council to pass a series of resolutions urging Sri Lanka to undertake bona fide investigations. In Resolution 25/1 (2014), the Council asked the U.N. Office of the High Commissioner on Human Rights (“OHCHR”) to conduct a comprehensive investigation into the alleged abuses during the war and possibilities for accountability, which it completed in 2015.\(^2\)

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

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.”


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.”

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:

5 DECLARATION OF STEVEN R. RATNER IN SUPPORT OF PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS
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.


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

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

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\(^5\) Declaration of Joseph Asoka Nihal de Silva in Support of Defendant’s Motion to Dismiss, ¶ 3.21, 3.41 [hereinafter Defendant’s Report on Sri Lankan Law].

\(^6\) Defendant’s Report on Sri Lankan Law, ¶ 3.50-3.52.

\(^7\) Defendant’s Report on Sri Lankan Law, ¶¶ 4.10–4.11.

\(^8\) Cf. Defendant’s Report on Sri Lankan Law, ¶ 3.9.

\(^9\) Defendant’s Report on Sri Lankan Law, ¶ 4.7.
B. No Remedy Is Available for Victims of the Civil War, and High-Level Perpetrators Have Not Been Held Accountable.

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

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

\(^{10}\) Panel of Experts Report, ¶ 281.


\(^{12}\) OHCHR 2019 Report, ¶ 15.

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

17. Lack of independence in the Sri Lankan judiciary and investigative mechanisms prevents accountability of high-level officials, particularly in cases such as Lasantha Wickrematunge’s. The International Commission of Jurists noted this year in a submission to the U.N. Human Rights Council 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.” The Government regularly exerts pressure on such investigations and prosecutions, shifting cases involving military officials to different jurisdictions, swapping judges presiding over particular cases, and

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15 See Sri Lankan Army Reinstates Official Suspected in Lasantha Murder, Other Attacks, COMM. TO PROJECT JOURNALISTS, May 15, 2019.
or issuing statements assigning responsibility away from defendants—practices which have “effectively sought to preclude impartial criminal investigations.”

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

19. Defendant’s Report description of the process of submitting a petition to the Attorney General to investigate criminal allegations also does not reflect reality. Although the Attorney General has broad power over the investigation and prosecution of criminal offenses, the Panel of Experts on which I sat found reasons to question the independence of the Attorney General’s Department from the presidency. We found that the Attorney General’s “past 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.”

20. We noted that the U.N. Human Rights Committee had held that a decision of the Attorney General not to initiate criminal proceedings against police officers responsible for a death in custody was so arbitrary as to amount to a denial of justice. We also found that investigations by the Attorney General’s office “have

20 See STATE DEP’T 2018 REPORT at 8.
often taken extraordinary amounts of time, if they are completed at all,”\(^{25}\) that "[v]ictims making such allegations have routinely been harassed by law enforcement personnel following filing of a complaint against state officers,”\(^{26}\) and that “[c]riminal inquiries and indictments have even been used to harass and intimidate critics of the Government, such as journalists and human rights defenders.”\(^{27}\)

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

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


\(^{29}\) INT’L CRISIS GRP., \textit{SRI LANKA’S TRANSITION TO NOWHERE} 10 (2017).
little progress. The court has released all suspects on bail. According to Sri Lankan press reports, the Criminal Investigation Division updated the court on the status of the investigation at a hearing on January 17, 2019, reporting that they suspect a single group was behind the killing of Lasantha Wickrematunge, Noyahr, and another journalist named Upali Tennakoon—but offering no further details. The magistrate judge postponed a further, pro forma hearing until May 10, 2019. There is no reason to believe that an indictment, let alone a trial, will be forthcoming.

22. Lasantha Wickrematunge’s case is not isolated. U.N. experts have noted the Government’s “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,” concluding that “[i]mpunity is so widespread that it has become a normal occurrence, thereby contributing to shattering the public’s confidence in its judiciary.” To my knowledge, since the end of the civil war, no Sri Lankan court has ever adjudicated a victim’s claim against a Government or security official of violating humanitarian or human rights law arising out of the civil war.


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

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

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

33 See Plaintiff’s First Amended Complaint, ¶ 59.
34 See INT’L CRISIS GRP., SRI LANKA’S TRANSITION TO NOWHERE 7, n.17 (2017).
35 INT’L CRISIS GRP., SRI LANKA’S TRANSITION TO NOWHERE 7 (2017).
faced prosecution for conflict-era crimes despite numerous credible allegations against them—even made by, among others, the then-U.S. Ambassador.\(^{36}\)

D. Human Rights Litigants and Defenders, Like Plaintiff, Are Often Victims of Retaliation.

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

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

\(^{36}\) AMBASSADOR PATRICIA A. BUTENIS, U.S. DEP’T OF STATE, SRI LANKA WAR-CRIMES ACCOUNTABILITY: THE TAMIL PERSPECTIVE, ¶ 3 (2010) (“[R]esponsibility for many of the alleged crimes rests with the country’s senior civilian and military leadership, including President Rajapaksa and his brothers.”); see also 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 (collecting and citing reliable and independent sources); Ryan Goodman, Helping Sri Lanka’s New Democracy, N.Y. TIMES, Jan. 19, 2015.

\(^{37}\) OISL 2015 Report, ¶¶ 42–44.

\(^{38}\) OISL 2015 Report, ¶ 1233.

\(^{39}\) OHCHR 2017 Report, ¶ 50.
forces to end immediately all forms of surveillance and harassment of and reprisals against human rights defenders, victims and social actors.” The State Department reported in 2017 that “the 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.” On July 12, 2017, attorney Amitha Ariyaratne was abducted and attacked, and the assailants told him it was due “to his appearance in cases against the police.”

27. In 2018, OHCHR expressed “grave[ ] concern[ ]” that, “2½ years into a reconciliation process, [the] 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 later reported “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 U.N. staff member was visited by

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40 OHCHR 2017 Report, ¶ 66(a).
43 OHCHR 2018 Report, ¶ 43.
armed men who questioned him about his activities in support of visits by diplomats and United Nations officials.”

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

III. CONCLUSION

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

44 OHCHR 2019 Report, ¶ 55.
retribution against plaintiffs, witnesses, and attorneys. Defendant—a Rajapaksa, former Secretary of Defence, and leading presidential candidate—is effectively untouchable.

* * *

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

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

Steven R. Ratner
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

Home Address

340 Rock Creek Drive
Ann Arbor, Michigan  48104
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Work Address

University of Michigan Law School
625 South State Street
Ann Arbor, Michigan  48109
(734) 647-4985  (734) 763-9375 (fax)
sratner@umich.edu

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

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
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
International human rights
United Nations and international organizations
Moral philosophy and international law

Foreign investment
International humanitarian law
Ethnic and territorial conflict
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 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

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


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


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


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

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


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

ARTICLES


International Law and Political Philosophy: Uncovering New Linkages, 14 Philosophy Compass (2019)


Compensation for Expropriations in a World of Investment Treaties: Beyond the Lawful/Unlawful Distinction, 111 American Journal of International Law 1-50 (2017)

Complicity and Compromise in the Law of Nations, 10 Criminal Law and Philosophy 559-573 (2016)


Think Again: Geneva Conventions, Foreign Policy, March/April 2008, at 26-32

Can We Compare Evils? The Enduring Debate on Crimes Against Humanity and Genocide, 7 Washington University Global Studies Law Review 583-89 (2007)


Jus ad Bellum and Jus in Bello After September 11, 96 American Journal of International Law 905-21 (2002)


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


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


BOOK CHAPTERS


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


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


OTHER WORKS


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

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)


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


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

Why a UN probe of Sir 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)


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


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


Failure of U.S. leaders led to Abu Ghraib, Detroit News, September 1, 2004, at 13A


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


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


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


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


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)


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


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)


**Speeches, Paper Deliveries, and other Engagements by Invitation**


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


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”


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

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

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

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


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 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”


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


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 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


September 7, 2015 – Max Planck Institut für Auslandisches 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


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”


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


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


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


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

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”


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


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”

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


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


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”


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

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”


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”


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?”


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


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?”


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”


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”


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”


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”


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


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


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


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 Universita Internazionale degli Studi Sociali seminar on international economic law (Rome, Italy), guest lecturer

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

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

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

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

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

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”


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


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


EXHIBIT B

MATERIALS CONSULTED
I. U.N. Reports


II. **U.S. Government Reports**


III. **Sri Lankan Government Reports**


IV. **U.N. Human Rights Committee Decisions**

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%2fPPRiCAqhKb7yhsvpwkwDHeBnDsuioOrYcq2REt4MGPG8oN2eHRJeRyLjYn3OTpxWR64kchOofqMULe%2bH8eK06qDy1vIHunIK9eDLM7X029heRtp00rfc1GEjOICPb6dLQx4waU0Gw%3d%3d


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%2bd0qWyqVUSFRZW4i6lEdvDLmG4eUIH84KrHhh%2b%2bqjW9B7nzPkgSxFa%2fFYa%2f2fDNY7g0bQ9tE4R2%2f9sb7BD10BeW88Hnx50DvlyIWvsCO1vTDQ%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,


**VI. Press Reports**


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)
DECLARATION OF JUAN E. MÉNDEZ 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

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.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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

DECLARATION OF JUAN E. MÉNDEZ IN SUPPORT OF PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS
DECLARATION OF JUAN E. MÉNDEZ IN SUPPORT OF PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS

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Attorneys for Plaintiff
Ahimsa Wickrematunge

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

I. QUALIFICATIONS

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

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

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

DECLARATION OF JUAN E. MÉNDEZ IN SUPPORT OF PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS
relation to combating and preventing torture and other cruel, inhuman or degrading treatment or punishment (CIDT), and made recommendations and observations concerning appropriate measures to prevent and eradicate such practices. In addition, I identified and promoted best practices on measures to prevent, punish and eradicate torture and other CIDT. I wrote thematic reports on various aspects of the international law regarding torture with recommendations to the international community and all UN member States on how to fulfill their obligations that are derived from the absolute prohibition on torture and other CIDT. For example, in September 2014, I submitted a report to the General Assembly on the role of forensic science in the obligation of States to effectively investigate and prosecute allegations of torture and other CIDT. In January 2012, I submitted a report to the Human Rights Council on the role of commissions of inquiry in fulfilling States’ obligations to combat impunity and provide effective remedies to victims of past violations for torture and other CIDT, identifying best practices for when such commissions fulfil these obligations most effectively.

4. In addition, as part of this mandate, I undertook country visits to advise countries on how to meet their obligations to combat, prevent, punish and eradicate torture and other CIDT and report on their efforts. In 2016, during the final year of my mandate as Special Rapporteur, I undertook a country visit to Sri Lanka jointly with Mónica Pinto, the UN Special Rapporteur on the Independence of Judges and Lawyers, to assess recent developments and identify challenges faced in the eradication of torture and other cruel, inhuman or degrading treatment, while promoting accountability and fulfilling victims’ right to reparations. During my visit, I met with representatives of the Ministry of Foreign Affairs; the Ministry of Defense; the Ministry of Law and Order; the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs; the Ministry of Women and Child Affairs; the Ministry of Health; the Office of the Attorney General; the
National Police Commission; the National Human Rights Commission; the United Nations; the diplomatic community; international organizations; and civil society. I also met the Governor of Eastern Province, and torture survivors and their families. Following my visit to Sri Lanka, I submitted a report to both the government of Sri Lanka and the Human Rights Council. My report was considered by the Human Rights Council during its Thirty-Fourth session in March 2017.¹

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

¹ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur on torture and other cruel, inhuman 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).
Venezuela, which produced a report that recommended prosecution of serious violations and safeguards for due process of law and fair trial guarantees.

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

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

II. INTRODUCTION

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

9. I do not have, nor have I had, any family, economic, working or any other type of link to the plaintiffs, nor to Defendant, Nandasena Gotabaya Rajapaksa.
10. My declaration, for which I am not receiving any remuneration, is based on my personal experience and knowledge, as well as research and my professional experience, especially as the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment of Punishment. In addition, I have researched and published extensively on the accountability for human rights violations, including in post-conflict situations and relating to torture and extrajudicial killing, and on transitional justice.

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

12. In summary, my conclusions are as follows:

   a. Political interference with the Sri Lankan judiciary and with investigations into civil-war-era human rights violations, including torture and extrajudicial killing, prevents adequate investigations of such cases, thus, inhibiting the right to an effective remedy of victims and their families. Tort remedies, such as assault, battery and wrongful death, even if available under Sri Lankan law are not adequate remedies for gross human rights violations such as torture and extrajudicial killing.

   b. The delays in both criminal and civil court processes in Sri Lanka amount to an effective denial of justice, which prevents victims of human rights abuses from seeking an effective remedy in Sri Lanka.

   c. The lack of an effective witness protection program in Sri Lanka presents serious risks to victims and witnesses of human rights violations, particularly in cases related to civil-war-era abuses involving the government or the security sector of Sri Lanka.
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, 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.” 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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2 Declaration of J. A. N. De Silva in Support of Defendant’s Motion to Dismiss, ¶¶ 3.36-3.41, ECF 42-1 [hereinafter “De Silva Decl.”].

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

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

4 WORLD BANK, JUDICIAL INDEPENDENCE (WEF) (2017)
https://govdata360.worldbank.org/indicators/h5ebaeb47?country=USA&indicator=6
70&countries=LKA&viz=line_chart&years=2007,2017&indicators=367&compare
By=region.
5 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
Pinto); contra De Silva Decl. ¶¶ 3.38-3.41.
6 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
7 Special Rapporteur on the Independence of Judges and Lawyers, Rep. of the
Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to
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.”

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. 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” were lacking in sufficient guarantees against arbitrary disciplinary measures and promotion.


10 De Silva Decl. ¶ 3.41.
decisions. She found that the decisions of the Judicial Service Commission reportedly have “been used to exercise undue control and to retaliate against judges refusing to align themselves with the government.”

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

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

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

> Concerns . . . remain regarding 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. The advances that were made – in the form of arrests or new investigations – were

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

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

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

B. Delays in the Sri Lankan Justice System

1. Delays in Investigations and Criminal Cases

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


\footnote{22 De Silva Decl. ¶ 4.4. See also Defendant’s Motion to Dismiss the First Amended Complaint, ECF 42 at 9-11.}

proceedings in the Sri Lankan courts. During my mission to Sri Lanka in 2016, I was “alarmed that investigations into allegations of torture and ill-treatment are not investigated” and I discerned a worrying lack of will within the Office of the Attorney General and the judiciary to investigate and prosecute such allegations.24 As Mónica Pinto, the Special Rapporteur on the Independence of Judges and Lawyers, found during our joint mission to Sri Lanka in 2016, “[a]ccording 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.”25

21. More recent reports show that there has been little progress since 2016. As recently as February 2019, the OHCHR, in its annual report on Sri Lanka’s progress in promoting reconciliation, accountability and human rights following the civil war, expressed 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.”26 The report noted that when advances, such as arrests or new investigations, occurred, they were possible “thanks to the persistence and commitment of individual investigators despite political interference, patronage networks and a generally dysfunctional criminal justice system.”27 To date, many

24 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 ¶ 94 (Dec. 22, 2016) (by Juan Méndez).


27 OHCHR, Promoting Reconciliation, Accountability and Human Rights in Sri
emblematic cases of extrajudicial killing in Sri Lanka, of which the United Nations
taken note, have not yet been investigated or prosecuted.\textsuperscript{28}

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

\textsuperscript{28} See, e.g., OHCHR, \textit{Rep. of the OHCHR Investigation on Sri Lanka (OISL)}, ¶ 240
U.N. Doc. A/HRC/30/CRP.2 (Sept. 16, 2015) (noting that no investigation had been
undertaken into the death of six civilians on April 1, 2007); OHCHR, \textit{Rep. of the
A/HRC/34/20 (Feb. 10, 2017) (noting that no prosecution or disciplinary action had
been taken against the perpetrators of a deadly attack on a group of protestors by
army personnel at Weliwerya in August 2013).

\textsuperscript{29} See Special Rapporteur on the Independence of Judges and Lawyers, \textit{Rep. of the
Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to
(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.”).

\textsuperscript{30} See, e.g., OHCHR, \textit{Rep. of the Office of the U.N. High Comm’r for Human Rights
in the investigations into the killing of five students in Trincomalee in January 2006,
and of 17 humanitarian workers of the non-governmental organization “ACF”
(Action Contre la Faim) in Muttur in August 2006); OHCHR, \textit{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, \textit{Promoting Reconciliation,
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).
and cumbersome nature of investigations . . . the general and consistent absence of progress conveys the impression of a lack of will to effectively investigate, prosecute and punish serious crimes.”

In many cases involving members of the security forces accused of human rights abuses and violations, such as torture and extrajudicial killing, the Attorney General’s office delays issuing indictments for many years or fails to issue them all together, even once it has received investigation materials. With respect to sensitive cases, in particular those implicating security forces and cases related to human rights violations and corruption, the Attorney General’s office has been slow to act.

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


found that cases take on average 17 years to come to a conclusion in the Sri Lankan legal system, recognizing that this amounts to a “serious and shameful delay.”

There are also examples of civil cases that have been pending for more than 30 years.

24. During my mission to Sri Lanka, I found that the failure to prosecute the vast number of documented cases of torture and other CIDT and the resulting impunity, clearly indicated a lack of will on the part of the judiciary. Further, I found that impunity is “directly attributable to the entire criminal justice system, and particularly to the judiciary.”

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


39 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).

40 Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on His Mission to Sri Lanka, ¶ 95, U.N. Doc. A/HRC/34/54/Add.2 (Dec. 22, 2016) (by Juan E. Méndez).
pending cases; poor case management policies that do not prioritize consecutive court hearings; legal practices allowing for repeated postponement of hearings that take little account of the urgency to end remand; and lack of accountability for long judicial delays.\textsuperscript{41} This finding has been echoed by the United States Department of State.\textsuperscript{42}

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


26. Such significant delays and irregularities in the investigation of this case amount to a *de facto* denial of justice, which especially negatively affects victims of human rights abuses, including victims of torture and extrajudicial killing, their families, and persons deprived of liberty.\(^\text{46}\)

2. Delays in Fundamental Rights Petitions Before the Supreme Court

27. As Defendant’s expert notes, Sri Lanka’s Supreme Court has jurisdiction over claims seeking remedy for the infringement of any of the fundamental rights enshrined in the Constitution.\(^\text{47}\) When the Supreme Court finds such a violation has occurred, the Court can order compensation and make recommendations. However, during our joint mission in 2016, Mónica Pinto, the U.N. Special Rapporteur on the Independence of Judges and Lawyers, learnt from the Sri Lankan Chief Justice that there was a backlog of approximately 3000 fundamental rights petitions.\(^\text{48}\) While this figure appears to have decreased, it is still significant and results in unacceptable delays. Barriers to justice using the fundamental rights mechanism include this backlog and its resulting delays, as well as fears of reprisal for filing these petitions, and the fact that fundamental rights petitions have a one-month statute of limitations.\(^\text{49}\) These barriers render the fundamental rights petition an insufficient mechanism for providing victims with an


\(^{47}\) *De Silva Decl.* ¶ 3.69.


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

C. Witness Protection in Sri Lanka

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

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

52 OHCHR, Promoting Reconciliation, Accountability and Human Rights in Sri
witness protection program as it stands. First, the Act does not clearly provide
criteria to determine whether a victim or witness should be given protection.\textsuperscript{53}
Second, the recommendations of the National Authority for victim or witness
protection, the body which recommends who ought to be protected and how,
are not binding on the agency to whom they are directed: “[t]hus, a person or
agency receiving a protection-related recommendation is not obliged to
implement it, only to take note.”\textsuperscript{54}

30. Finally, the two bodies established by the Act, the National
Authority for the Protection of Victims of Crime and Witnesses (the National
Authority) and the Witness Protection Division, suffer from a lack of
independence compromising the effectiveness of the witness protection
program.\textsuperscript{55} The National Authority is the body established under the Act to
identify and protect the rights of victims and witnesses of crime, including by
issuing guidelines and supervising their implementation and investigating and
monitoring the infringement of victim and witness rights.\textsuperscript{56} On reviewing the

\textsuperscript{53} OHCHR, \textit{Rep. of the OHCHR Investigation on Sri Lanka (OISL), ¶ 1186-87, U.N.
Doc. A/HRC/30/CRP.2 (Sept. 16, 2015).}

\textsuperscript{54} OHCHR, \textit{Rep of the OHCHR Investigation on Sri Lanka (OISL), ¶ 1187, U.N.
Doc. A/HRC/30/CRP.2 (Sept. 16, 2015).}

\textsuperscript{55} See OHCHR, \textit{Rep of the OHCHR Investigation on Sri Lanka (OISL), ¶ 1187-88,
United Nations High Commissioner for Human Rights on Sri Lanka), ¶ 44, U.N.
Doc. A/HRC/34/20 (Feb. 10, 2017); Special Rapporteur on the Independence of
(Mar. 23, 2017) (by Mónica Pinto).}

\textsuperscript{56} See National Authority for the Protection of Victims of Crimes and Witnesses, SRI
LANKA MINISTRY OF JUSTICE & PRISON REFORMS,
draft Act, the OHCHR expressed concern that some appointments to the National Authority were to be made at the sole discretion of the President, and emphasized the importance of ensuring “the independence and integrity of those appointed[.]”\(^{57}\) However, when the appointments were made, it was clear that these strictures were not followed. Civil society raised concerns regarding at least four of the members of the National Authority because of the positions they had held during the civil war and the well documented allegations of human rights abuses against them.\(^{58}\) Similarly, the Witness Protection Division, established by the Act to draw-up and implement the witness protection program in accordance with the guidelines provided by the National Authority, lacks independence and impartiality.\(^{59}\) In other words, the Act’s operating body is established within the institutional hierarchy of the Sri Lankan police force.\(^{60}\) This is the case despite the fact that the security forces, including the police, are likely to be among those investigated for human


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

31. The lack of an effective, independent, and impartial witness protection system is particularly concerning and likely to prevent adequate remedy for human rights abuses, such as torture and extrajudicial killing, given my findings during my 2016 mission to Sri Lanka. These findings, which highlight the need for a strong and effective witness protection system, include reports by victims of human rights abuses, including torture, of threatened retaliation for reporting their abuse and filing complaints,\textsuperscript{63} and the continued use of surveillance, intimidation and, reportedly, ‘white van abductions’ by the military, intelligence and police forces against suspected


\textsuperscript{63} Special Rapporteur on Torture and other inhuman or degrading treatment or punishment, \textit{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).
former militants as well as against local community leaders and human rights activists, even after almost a decade since the war ended.64

IV. CONCLUSION

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

64 Special Rapporteur on Torture and other inhuman or degrading treatment or punishment, Report of the Special Rapporteur on Torture and other inhuman or degrading treatment or punishment on his mission to Sri Lanka, UN Doc. A/HRC/34/54/Add.2 ¶¶ 23, 42 (Dec. 22, 2016) (by Juan Méndez).
I hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, and under the laws of the United States, that the following is true and correct.

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

Juan E. Méndez
CERTIFICATE OF SERVICE

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

/s/ Catherine Amirfar
Catherine Amirfar
Exhibit A: Curriculum Vitae and List of Publications
Exhibit A: Curriculum Vitae and List of Publications

Juan E. Méndez

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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.

**Membership in Professional Organizations**

Colegio de Abogados de la Provincia de Buenos Aires, 1970.
District of Columbia Court of Appeals, 1981.
District of Columbia Bar Association, 1981.
Asociación Gremial de Abogados (Mar del Plata chapter of an organization of human rights lawyers), (Founder and Vice-President, 1971-1974).
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).
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.

Work Experience

1973: Acting Dean, School of Economics, Provincial University, Mar del Plata, Argentina.
1974: Legal Counsel, Technological University, Buenos Aires.

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.
October 1999-May 2004: Professor of Law and Director, Center for Civil and Human Rights, University of Notre Dame, Notre Dame, Indiana.
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).


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.


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


_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.


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.


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


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


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


La Trascendencia del juicio a Fujimori para la lucha contra la impunidad en el Perú y en el mundo, en La trascendencia del juicio y la sentencia de Alberto Fujimori, Lima and Fairfax, Virginia: IDL and George Mason University, 2011.


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


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).

Avances del Sistema Interamericano sobre las Obligaciones de los Estados, and El Caso Barrios Altos, Peru, in Justicia para las Victimas en el siglo XXI, Due Process of Law Foundation (Washington) and IDHUCA (San Salvador), 2002.


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.


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 50th Anniversary of the American Declaration on the Rights and Duties of Man, Vol. 11.1, 1998.


El Instituto Interamericano de Derechos Humanos y la Libertad de Expresión en América Latina y El Caribe, Cuadernos de Capel, IIHR, San Jose, 1999.

La lucha por la verdad y la Justicia: aportes latinoamericanos a principios universales, (with Javier Mariezcurrena), Social Science Research Council, Program on Collective Memory (forthcoming).


Relativismo y Universalidad de los Derechos Humanos, (with Francisco Cox), in Lecciones y Ensayos (law review of the University of Buenos Aires), 1998.

Responsabilización por los Abusos del Pasado in Metodología para una Comisión de la Verdad en Guatemala, ODHA, Guatemala, 1996; in Relaciones Internacionales (Review of the University of La Plata, Argentina), Año 7, No. 13, June-November 1997; and in Presente y futuro de los Derechos Humanos: Ensayos en Honor a Fernando Volio, Lorena Gonzalez, ed., IIDH, San Jose, 1998.


*Amicus Curiae sobre la Interpretación del Art. 4, Pfo. 2 in fine y Pfo. 3 de la Convención Americana de Derechos Humanos: OC-14*, (con J.M. Vivanco y V. Krsticevic) in Revista IIDH, No. 18, July-December 1993, San José, Costa Rica.


*Disappearances and the Inter-American Court: Reflections on a Litigation Experience*, (with José Miguel Vivanco), Hamline Law Review, Volume 13, Summer 1990, Number 3.


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

Jeanne and Joseph Sullivan Award for “outstanding Midwest, national, and international leadership on behalf of human rights,” Heartland Alliance, Chicago, May 2003.


**Personal**

Exhibit B: Documents Considered
Exhibit B: Documents Considered

Case History

1. Declaration of J. A. N. De Silva in Support of Defendant’s Motion to Dismiss.
2. Defendant’s Motion to Dismiss the First Amended Complaint.

United Nations Office of the High Commissioner for Human Rights Documents


United Nations Special Rapporteurs’ Reports

1. Juan Mendez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to


NGO Reports


Other

1. Assistance to and Protection of Victims of Crime and Witnesses Act (No. 4 or 2015).


5. *Recommendations Pertaining to the Expeditious and Efficient*
Report on Harassment, Intimidation, Surveillance and Attacks Against Journalists in Sri Lanka

APPENDIX D

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


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


JURY TRIAL DEMANDED
DEBEVOISE & PLIMPTON LLP
Catherine Amirfar *(pro hac vice pending)*
Natalie L. Reid *(pro hac vice pending)*
Matthew D. Forbes *(application for admission to C.D. Cal. pending)*
919 Third Avenue
New York, NY 10022
(212) 909-6000

SCHONBRUN SEPLOW
HARRIS & HOFFMAN LLP
Paul Hoffman, SBN 071244
200 Pier Avenue #226
Hermosa Beach, California 90254
(310) 396-0731

*Attorneys for Plaintiff*
*Ahimsa Wickrematunge*
Plaintiff Ahimsa Wickrematunge, in her individual capacity, and in her capacity as the legal representative of the estate of Lasantha Wickrematunge, complains and alleges as follows:

PRELIMINARY STATEMENT

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

2. On numerous occasions, Lasantha and his newspaper exposed
allegations of corruption and abuses by the Defendant in his capacity as Secretary of Defense. Lasantha’s reporting, which was widely followed in Sri Lanka, led to Defendant’s targeted attempts to silence him. Defendant ordered Lasantha’s arrest and filed a defamation suit against him. Intelligence services under the Defendant’s command began surveilling Lasantha’s mobile telephone. Before he was due to testify against Defendant regarding an alleged corruption scandal, Lasantha was brutally attacked and murdered in broad daylight by members of the Tripoli Platoon, a unit of Sri Lanka’s Directorate of Military Intelligence operating under Defendant’s command.

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

4. The acts alleged herein were carried out in the context of a systematic crackdown against journalists critical of the government. Lasantha’s attack and subsequent death was one of many attacks against journalists perpetrated under the Rajapaksa regime. Security forces under Defendant’s command and control engaged in a widespread and/or systematic campaign against journalists, marked by a pattern and practice of violations including but not limited to extrajudicial killing; arbitrary detention; torture; and cruel, inhuman and degrading treatment in an effort to stamp out criticism of the Rajapaksa government.
5. On information and belief, Defendant is a citizen of the United States and Sri Lanka and is a former resident of Los Angeles, California.

6. Plaintiff seeks compensatory and punitive damages and declaratory and injunctive relief for torts in violation of international and domestic law.

JURISDICTION AND VENUE


8. This Court has jurisdiction over Plaintiff’s claims for extrajudicial killing, torture, and crimes against humanity as torts in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350.

9. Defendant is, and was at all relevant times, a U.S. citizen and resident of Sri Lanka. Defendant was served in Los Angeles, California. Venue is proper in the Western Division of the Central District of California pursuant to 28 U.S.C. § 1391(b)(3) and (c)(3).

PARTIES

Defendant Nandasena Gotabaya Rajapaksa

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

Decedent Lasantha Wickrematunge

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

**Plaintiff Ahimsa Wickrematunge**

13. Plaintiff Ahimsa Wickrematunge is the daughter of Lasantha Wickrematunge. In 2002, Ahimsa and her siblings moved to Australia due to ongoing threats of violence against their family in Sri Lanka arising from Lasantha’s publications in *The Sunday Leader*. Ahimsa returned to Sri Lanka when she was sixteen and was living with Lasantha in Colombo when he was killed. She has been pursuing justice for her father’s killing for the past ten years. Plaintiff is a citizen and resident of Australia. She brings this action for extrajudicial killing, torture, and crimes against humanity in her individual capacity and in her capacity as personal representative of her father’s estate.
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
Tamil separatism, the liquidation of media critics and political opponents, and the enrichment of the Rajapaksa family’s inner circle through corruption.

17. To ensure a cohesive political and military leadership, President Mahinda Rajapaksa appointed his brother, Defendant Gotabaya Rajapaksa, as his Secretary of Defense. The Rajapaksas further consolidated power by appointing another brother, Basil Rajapaksa, first as his senior presidential advisor, and later as the Minister of Economic Development. Yet another brother, Chamal Rajapaksa, held the position of Speaker of Parliament.

Defendant’s Role as Secretary of Defense and Consolidation of Intelligence Agencies

18. Defendant served as Secretary of Defense from 2005 to 2015. The Secretary of Defense is the most senior civil servant in the Ministry of Defense, which houses all branches of the Sri Lankan security forces. This includes the three branches of the Sri Lankan military: the Sri Lanka Army (SLA), the Sri Lanka Navy (SLN) and the Sri Lanka Air Force (SLAF). It also includes three civilian bodies: the Sri Lanka Police (SLP), the National Intelligence Bureau (NIB) (currently known as the State Intelligence Service (SIS)), and the Civil Defense Forces (CDF). All six branches were part of the Ministry of Defense until 2013.

19. As Secretary of Defense, Defendant consolidated control over all of Sri Lanka’s military and civilian intelligence agencies by cementing the position of
Chief of National Intelligence. The Chief of National Intelligence served as a direct line of authority between the Secretary of Defense and all of the intelligence units within the Ministry of Defense, including the SLA’s Directorate of Military Intelligence.

20. The Secretary of Defense played a key role in coordinating operations between the different agencies within the Ministry of Defense and Defendant played a particularly hands-on role with respect to working with the intelligence services. In media interviews published in April 2009, the Inspector General of the SLP and the Deputy Inspector General of the Criminal Investigation Department (“CID”) described weekly meetings of the different intelligence services held by the Secretary of Defense. Interviews with senior officials, including Defendant and his Chief of National Intelligence Kapila Hendawitharana, described the weekly meetings as a way to share intelligence between the agencies, discuss incidents and investigations, and address security concerns outside the main conflict zone in northern Sri Lanka. Defendant reportedly “went down to the nuts and bolts of security issues” and made “spot decisions on issues raised by the representatives of the various intelligence agencies.”

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

In carrying out its national security mandate, the different agencies of the Ministry of Defense, all under the command of Defendant in his capacity as Secretary of Defense, acted with a high degree of coordination, engaging in joint intelligence activities and information sharing, as well as joint planning. Units from both military and civilian security forces worked in concert to carry out
arrests of numerous individuals, including human rights defenders and journalists, under the pretext of protecting “national security.”

Rajapaksa Regime and Its Widespread and Systematic Attacks on Journalists

23. The Rajapaksa regime was sensitive to criticism of its war effort and allegations of corruption. As a result, it launched an assault on the free press, routinely harassing journalists, editors, and other individuals associated with the press. Although the Rajapaksa regime frequently denied playing any role in the attacks against journalists — which ranged from veiled threats to abductions, assaults, torture, and killings — many attacks were traced back to government security forces. The Rajapaksa regime also arrested, deported, and sued journalists, and attempted to enact laws and regulations limiting free press.

24. In response to this assault on the media, many journalists fled, and independent media outlets shut down. Several independent journalists who remained active in the country and did not exercise “self-censorship” were targeted for attack. During the 10-year rule of the Rajapaksa family, violence against journalists spiked, with at least sixteen journalists and media workers killed, and many others threatened, assaulted, or abducted. Press freedom organizations such as the Committee to Protect Journalists and Reporters Without Borders documented serious threats to media workers throughout the Rajapaksa regime.
25. After the end of the war, a United Nations human rights investigative body examined allegations of serious violations and abuses of human rights committed by both parties in the Sri Lankan civil war from 2002 to 2011. The investigation concluded that the attacks against journalists were widespread and occurred over an extended period of time; they also appeared to be systematic in targeting media known to be critical of government policies and officials.

26. The Ministry of Defense played a key role in this crackdown on independent journalism. Joint security forces and military intelligence units identified and targeted journalists alleged to pose a threat to national security. Some journalists critical of the Rajapaksa regime were branded as “Tiger sympathizers” by the government, and the Ministry of Defense posted their names on its official website. As a result, these journalists found themselves subject to arrest or attack by government security forces.

27. The Directorate of Military Intelligence (MID) was part of the inter-agency intelligence group that met weekly with Defendant. The MID also operated a clandestine unit known as the “Tripoli Platoon,” which was comprised of elite commandos and members of the Special Forces. The Tripoli Platoon was directly under the control of the Ministry of Defense and was tasked with surveillance of and attacks on journalists who engaged in independent (and sometimes negative) reporting on the Ministry of Defense, Defendant, or the Rajapaksa regime.
According to court filings made by the CID, the Tripoli Platoon has been linked to at least three attacks on journalists, including Lasantha’s attack, torture, and assassination; the abduction and torture of newspaper editors Keith Noyahr; and the assault on Upali Tennakoon.

28. In 2008, Keith Noyahr, deputy editor of The Nation, was kidnapped outside of his home by unidentified men and taken away in a white van. He was taken to a military intelligence safe house, where he was stripped, suspended in mid-air, and beaten. During this attack he was questioned as to the sources of his news articles. In his search for Noyahr, The Nation’s CEO, Krishantha Cooray, called Cabinet Minister Karu Jayasuriya for assistance, who in turn called President Mahinda Rajapaksa. Jayasuriya threatened to make a public statement and resign from the government along with several other cabinet colleagues if Noyahr was not released. Noyahr was finally released after a series of telephone calls down the chain of command from the Defendant to the Major in charge of the Tripoli Platoon. Noyahr and his family subsequently received death threats and fled the country, ending his reporting in Sri Lanka.

29. On January 23, 2009, Upali Tennakoon, editor of the newspaper Rivira, was driving to his office when four men on motorcycles stopped him, smashed in his car windows, and proceeded to beat him and his wife with metal bars. Following the attack, Tennakoon’s wife received telephone calls threatening
that Tennakoon would be killed if he continued to work as a journalist. Mobile
telephone records establish that Tennakoon was under surveillance by the Tripoli
Platoon in the weeks prior to his attack. In 2016, Tennakoon identified a senior
officer of the Directorate of Military Intelligence in a lineup. Soon after the
identification, Tennakoon was forced to flee the country following threats to his
safety.

30. Other examples of attacks on journalists followed a similar pattern:
journalists critical of the government were publicly identified and threatened by the
Rajapaska regime, and were subsequently abducted, beaten, or killed. On January
24, 2006, journalist Subramaniyam Sugitharajah was shot and killed on his way to
work. His murder occurred just weeks after he had published photos of five Tamil
students who had been murdered execution-style by the police, contradicting the
government’s claims that the students had been killed by a self-detoned grenade.
On March 7, 2008, a columnist for The Sunday Times, J.S. Tissainayagam, was
arrested by the Sri Lanka Police’s Terrorist Investigation Division and sentenced
under the Prevention of 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. On June 1, 2009, Poddala Jayantha, a journalist at Mihira newspaper,
was abducted by men in a white van and severely beaten. Defendant had
personally threatened Jayantha in 2008 after he participated in a free media
demonstration, 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 of Poddala Jayantha and other journalists, while the Inspector General of Police referred to them as traitors. In May 2009, Defendant also confronted and intimidated a Channel 4 news reporter covering reports of sexual violence and other abuses allegedly perpetrated by the Sri Lankan military in government internment camps in northern Sri Lanka. The Rajapaksa government viewed these reports as anti-government propaganda, and Defendant personally telephoned the journalist to tell him he was being deported because of his reporting. The journalist was detained and questioned by Sri Lankan police, while his vehicle and equipment were searched, prior to his deportation. On January 24, 2010, two days before the 2010 election, political cartoonist and journalist Prageeth Eknaligoda disappeared after leaving his office in the evening. Eknaligoda had been investigating Defendant and had published a “family tree” of the dozens of Defendant’s relatives that held government office, and publicly supported the campaign of the opposition candidate Sarath Fonseka.

31. While Lasantha’s attack and assassination on a crowded street in Colombo was one of the most prominent and visible attacks on independent
journalists carried out under the Rajapaksa regime, it was part of a larger pattern of intimidation, persecution, and violence.

_Lasantha’s Corruption Investigation and Threats Preceding the Assassination_

32. _The Sunday Leader_ newspaper was an English-language weekly publication that was printed from 1994 to 2017 in Sri Lanka. Lasantha co-founded the paper and served as editor-in-chief from 1994 until his death in 2009.

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

34. Between July and September 2007, _The Sunday Leader_ published a series of articles alleging that Defendant was involved in embezzling millions of dollars in a 2006 contract to purchase MiG fighter jets from Ukraine. The reporting exposed financial and procedural irregularities in the 2006 procurement of aviation
equipment and services by the Sri Lanka Air Force from the Government of
Ukraine, identifying Defendant as overseeing the transaction and alleging potential
corruption in the procurement process led by Defendant. The reporting also
indicated that the transactions went through a U.S. bank, raising the allegation that
the proceeds of the crime were being laundered through the U.S. financial system.

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

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

37. In October 2008, President Mahinda Rajapaksa called Lasantha a
“terrorist journalist” during an interview with Reporters Without Borders.
38. On or before September 2008, a few months before Lasantha’s assassination, the State Intelligence Service, which was overseen by Defendant, began surveilling Lasantha’s mobile phone for reasons of “national security.”

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

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

41. Two days before Lasantha’s murder, MTV/MBC Media Network, Sri Lanka’s largest private and independent broadcasting company and broadcaster of the popular TV channel “Sirasa TV,” was stormed by black-clad commandos armed with automatic weapons, grenades, and claymore mines. Such weapons could only be lawfully obtained and used in Sri Lanka by the armed forces, which were under the direct command of Defendant. Lasantha had been working at MTV/MBC Media Network as a presenter on a weekly current affairs program. Lasantha made his final television appearance in the immediate aftermath of the
attack, on the early morning of January 6, 2009, urging viewers in English and Sinhala to remain resolute and unbowed in the face of government attempts to silence the media.

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

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

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

44. Three days after Lasantha’s death, *The Sunday Leader* published an
editorial left on file by Lasantha in the event of his death. Reprinted around the
world, Lasantha’s “Letter from the grave” became an infamous broadside against
the Rajapaksas:

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

…

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

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

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

But like all the inquiries you have ordered in the past, nothing will
come of this one, too. For truth be told, we both know who will be
behind my 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
inspiration for those who survive to step up their efforts. Indeed, I hope that it will help galvanise forces that will usher in a new era of human liberty in our beloved motherland. I also hope it will open the eyes of your President to the fact that however many are slaughtered in the name of patriotism, the human spirit will endure and flourish. Not all the Rajapaksas combined can kill that.

No Credible Investigation into Lasantha’s Attack and Killing

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

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

47. Shortly after Lasantha’s murder, Defendant sat for a television interview with the British Broadcasting Corporation (BBC), in which he was questioned about the assassination. At the time, Defendant was in charge of civilian law enforcement in Sri Lanka, including the police force tasked with
investigating homicides. During this interview, Defendant stated that the killing of Lasantha was “just another murder,” insisting that he was “not concerned about that.” He asked the interviewer “why are you so worried about one man.”

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

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

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

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

52. That same month, the TID also took into custody the member of the Tripoli Platoon who had originally been sought for questioning by the CID. While in custody, however, this suspect was granted a promotion 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 without thorough questioning. No further investigations into the murder of Lasantha were conducted until 2015, when President Mahinda Rajapaksa was defeated in a general election and Defendant was forced to leave public office. Shortly thereafter, the Sri Lanka Police re-activated its investigation into Lasantha’s killing, re-assigning the investigation to the CID.
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
of Defense’s official website. The lawyer defending J.S. Tissainayagam received anonymous threats. Additionally, the office of human rights lawyer Amitha Ariyaratne, who represented individuals accusing the government of torture, was burned down, and he received death threats from the police. Similarly, the home of prominent human rights lawyer J.C. Weliamuna was attacked with grenades. To date, no individuals have been charged or prosecuted for these attacks.

**Ongoing Impunity**

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

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

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

59. The Rajapaksa family continues to hold political power and has asserted influence over the current government. A new political party, the Sri Lanka Podujana Peramuna (SLPP), formed in 2016 under the banner of Mahinda Rajapaksa and won the highest percentage of seats in the 2018 Sri Lankan local elections. On October 26, 2018 President Sirisena dismissed the sitting Prime Minister and appointed Mahinda Rajapaksa as the new Prime Minister, creating political turmoil and prompting international outcry. Shortly afterwards, President
Sirisena sought to transfer Nishantha Silva, the main CID officer investigating Lasantha’s case and other related cases, to a different department. Over the past year, President Sirisena has publicly criticized ongoing investigations into abuses committed by military officers and Defendant during the Rajapaksa regime, and stated that he will shield them from prosecution. This political situation has impaired the progress of human rights cases against former government officials.

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

61. Witnesses are also reluctant to come forward in politically sensitive cases because they fear reprisals. During the Rajapaksa regime, victims, witnesses, and lawyers were frequently intimidated or attacked. Due to Sri Lanka’s failure to implement an adequate victim and witness protection system, witnesses continue to face intimidation to this day. Although a new witness protection law was enacted in 2015, it only applies to witnesses in criminal cases and has been widely
criticized as unsuitable for protecting witnesses in cases against public officials.
The lack of an effective witness protection mechanism has contributed to a high
level of impunity, and has limited progress in the CID’s investigation into
Lasantha’s killing. The possibility that Defendant will become Sri Lanka’s next
president has further dissuaded witnesses from participating in the investigation
related to Lasantha’s killing, as well as other investigations relating to the
Defendant.

The aforementioned facts constitute extraordinary circumstances that
prevented Plaintiff from bringing this action and accordingly toll any applicable
Even after the end of the armed conflict, Defendant was shielded by and acted with
impunity during the Rajapaksa regime, which lasted through 2015. The Rajapaksa
administration exerted executive control over the judiciary and enacted emergency
regulations, some of which are still currently in effect, to limit the ability for
individuals to seek remedy against state officials, as noted in paragraph 21.

62. During this time, the investigation into Lasantha’s assassination was
marred by obstruction and delay.

63. The Rajapaksa family continues to exercise ongoing influence in the
current government. Following 2015, the new government administration
announced an ambitious plan that called for criminal accountability for human
rights abuses committed during the Rajapaksa regime, thus providing a reasonable expectation that domestic investigations would continue without interference. However, to date, none of the recommendations on accountability were put in place, and Sri Lanka continues to be criticized for the continued impunity for past human rights abuses of the Rajapaksa administration. Moreover, pervasive witness intimidation and judicial delay further amplify the effect of Defendant’s impunity and ongoing political influence. The danger to witnesses and victims seeking accountability for human rights violations continues to this day.

**GENERAL ALLEGATIONS**

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

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

66. Defendant exercised command responsibility over the Tripoli Platoon, which carried out the attack, torture, and murder of Decedent as well as attacks against journalists perceived as critical of the Rajapaksa government. The Tripoli Platoon operated under the command of the Chief of National Intelligence, who reported directly to the Defendant, the Secretary of Defense during the relevant time period. Defendant Gotabaya engaged in weekly meetings and closely coordinated with the Directorate of Military Intelligence. Due to this relationship, Defendant knew or should have known about the attack on Lasantha. Furthermore, widespread media coverage of the attack, and of the allegations of security forces involvement, was enough to give Defendant knowledge of the murder after the fact. As the commander of both the armed forces and the police, Defendant had a duty to ensure an effective investigation and to punish those responsible for Lasantha’s attack, torture, and murder. Rather, the investigation during Defendant’s tenure as Secretary of Defense was marked by interference and cover-ups by the investigating authorities, including actions taken by Defendant to actively interfere with any attempt to conduct a credible investigation.

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

68. Defendant also contributed to the commission of the unlawful acts alleged herein by a joint criminal enterprise comprised of Defendant and his subordinates in the Ministry of Defense, specifically the Directorate of Military
Intelligence and the Sri Lanka Police. Defendant and the co-participants entered into a joint criminal enterprise with a common plan or purpose of waging a widespread and systematic campaign to silence and violently repress journalists who were critical of the Rajapaksa government. Defendant and his co-participants committed the wrongful acts alleged herein in furtherance of this common plan or purpose. Defendant provided substantial assistance to the common plan by publicly targeting journalists critical of the government with inflammatory labels and threats, ordering surveillance of journalists, using security forces under his direct command to attack journalists, including the Decedent, and facilitating impunity for these attacks. Defendant and his subordinates in the Ministry of Defense contributed to this joint criminal enterprise at each stage. Defendant also made a substantial contribution to the joint criminal enterprise by participating in the cover-up of the crimes alleged, ensuring that the perpetrators would not be held accountable. This contribution was intentional and made with knowledge of the shared purpose of the group to silence and repress critics.

69. Defendant is also responsible by virtue of having aided and abetted, or otherwise substantially assisted in the commission of the crimes against Lasantha, including through his role in Lasantha’s killing by his subordinates and by then covering up the crimes and obstructing an effective investigation into the murder. Defendant was in command of the law enforcement agencies investigating
Lasantha’s murder and took actions to stall the investigation and ensure that Directorate of Military Intelligence officials were not implicated in the crimes. At all relevant times, Defendant knew and purposefully intended that his actions would aid, abet, or assist in the commission and cover-up of the murder. Defendant is therefore jointly and severally liable for the wrongful conduct of the persons whom he aided and abetted.

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

**FIRST CLAIM FOR RELIEF**

*(Extrajudicial Killing of Lasantha Wickrematunge)*

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

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


74. In addition, the killing constitutes a “tort . . . committed in violation of the law of nations or a Treaty of the United States” under the Alien Tort Statute, 28
U.S.C. § 1350, in that it was committed in violation of customary international law
prohibiting extrajudicial killing, as widely expressed, clearly defined, and codified
in multilateral treaties and other international instruments, international and
domestic judicial decisions, and other authorities.

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

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

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

78. As Secretary of Defense, Defendant possessed the legal authority and
practical ability to exert control over the individuals who carried out the attack.
Following the highly publicized killing, and the widespread allegations of military involvement, Defendant knew, or reasonably should have known, about the actions of his subordinates, but failed to take necessary and reasonable measures to punish them.

79. Prior to his death, Decedent underwent painful emergency surgery as a result of the puncture in his skull. As a result, Decedent suffered severe physical abuse and agony before succumbing to his injuries. Plaintiff, as the daughter of Decedent and representative of Decedent’s estate, has standing to bring suit in her individual capacity and on behalf of her deceased father. The extrajudicial killing of Decedent Lasantha Wickrematunge also caused Plaintiff Ahimsa Wickrematunge severe pain and suffering and emotional distress. As a result, Plaintiff has been damaged in an amount to be proven at trial.

80. In addition, Defendant’s acts and omissions were deliberate, willful, intentional, wanton, malicious, and oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF

(Crimes Against Humanity)

81. Plaintiff Ahimsa Wickrematunge, in her capacity as the legal representative of the estate of Lasantha Wickrematunge, re-alleges and
incorporates by reference the allegations set forth in paragraphs 1 to 80 as if fully set forth herein.

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF

(Torture of Lasantha Wickrematunge)

90. Plaintiff Ahimsa Wickrematunge, in her capacity as the legal representative of the estate of Lasantha Wickrematunge, re-alleges and incorporates by reference the allegations set forth in paragraphs 1 to 89 as if fully set forth herein.
91. On January 8, 2009, Decedent Lasantha Wickrematunge was attacked in his car while driving to work and suffered excruciatingly painful injuries that led to his death hours after the attack. The assailants were members of the Sri Lanka Directorate of Military Intelligence and/or individuals working with the security forces of Sri Lanka during the period in which Defendant was Secretary of Defense.


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

94. The acts described herein caused Decedent Lasantha severe physical and mental suffering. In the moments before receiving a deadly injury to his skull, Lasantha was surrounded by black-clad attackers in motorcycles, unable to move his car and under the control of his attackers, and only able to scrawl down license
plates of some of his attackers; he endured fear for his physical integrity and life, causing him severe mental suffering. When his attackers broke the windows of his car and inflicted injuries on him, including a blow with a sharp instrument that punctured his skull, Decedent Lasantha suffered excruciating pain and agony, both physical and mental. Lasantha suffered additional agony in the hours after his attack, as he lay injured, and was rushed to a hospital and underwent painful surgery until he finally succumbed to his injuries.

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

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

97. Lasantha’s attack and torture were inflicted deliberately with the intention of punishing Lasantha for reporting on issues perceived as critical of Defendant or the Rajapaksa government. As detailed in paragraphs 32 to 41, Lasantha endured public and private threats, including death threats, surveillance by government forces under Defendant’s command and control, and persecution, including being branded a “terrorist journalist,” for his reporting on the Rajapaksa government.
98. Lasantha’s attack and torture were inflicted with the intention to intimidate Lasantha and other journalists so that they would desist from reporting on issues that did not reflect well on the Rajapaksa government. As detailed in paragraphs 23 to 31, the Rajapaksa government engaged in a pattern and practice of intimidation and retaliation of journalists whose reporting was perceived as critical to the Rajapaksa government. As part of this pattern and as detailed in paragraphs 32 to 41, Lasantha endured targeting and threats for his journalistic reporting.

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

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

101. As detailed in paragraphs 18 to 22, and 65 to 70, Defendant exercised command responsibility over, conspired with, aided and abetted, directed and/or incited individuals in the Sri Lankan security forces and Directorate of Military Intelligence, or groups acting in coordination with these units, to perpetrate the attack and torture of Decedent Lasantha.
102. As Secretary of Defense, Defendant possessed the legal authority and practical ability to exert control over the individuals who carried out the attack. Following the attack, torture and subsequent death of Lasantha, which was highly publicized, and the widespread allegations of military involvement, Defendant knew, or reasonably should have known, about the actions of his subordinates, but failed to take necessary and reasonable measures to punish them.

103. Plaintiff, as the daughter of Decedent and representative of Decedent’s estate, has standing to bring suit in her individual capacity and on behalf of her deceased father. The attack and torture endured by Decedent Lasantha Wickrematunge prior to his death also caused Plaintiff Ahimsa Wickrematunge severe pain and suffering and emotional distress. As a result, Plaintiff has been damaged in an amount to be proven at trial.

104. In addition, Defendant’s acts and omissions were deliberate, willful, intentional, wanton, malicious, and oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court to

(a) enter judgment in favor of the Plaintiff on all counts of the Complaint according to proof;

(b) award compensatory and punitive damages according to proof;
(c) grant reasonable attorneys’ fees, costs, and expenses according to proof;

(d) grant the Plaintiff equitable relief including, but not limited to, an injunction prohibiting Defendant from interfering with any criminal investigations involving the murder of Lasantha Wickrematunge in Sri Lanka; and

(e) such other and further relief as the court may deem just and proper.

A jury trial is demanded on all issues so triable.

Dated: 15 June 2019

Attorneys for Plaintiff Ahimsa Wickrematunge

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 15, 2019, I electronically filed the foregoing PLAINTIFF’S FIRST AMENDED COMPLAINT 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/Nushin Sarkarati
Nushin Sarkarati