

1 DEBEVOISE & PLIMPTON LLP
 Catherine Amirfar (admitted *pro hac vice*)
 2 camirfar@debevoise.com
 3 Natalie L. Reid (admitted *pro hac vice*)
 Elizabeth Nielsen (*pro hac vice* pending)
 4 Matthew D. Forbes (State Bar No. 303012)
 919 Third Avenue
 5 New York, NY 10022
 6 (212) 909-6000
 7 *Counsel continued on next page

8 *Attorneys for Plaintiff*
 9 *Ahimsa Wickrematunge*

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

13 AHIMSA WICKREMATUNGE, in her
 individual capacity and in her capacity
 14 as the legal representative of the estate
 of LASANTHA WICKREMATUNGE,

15 Plaintiff,

16 v.

18 NANDASENA GOTABAYA RAJAPAKSA,
 19 Defendant.

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**

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

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1 CENTER FOR JUSTICE & ACCOUNTABILITY
2 Nushin Sarkarati State Bar No. 264963
3 nsarkarati@cja.org
4 1 Hallidie Plaza, Suite 406
5 San Francisco, CA 94102
6 (415) 544-0444

7 SCHOBRUN SEPLow HARRIS & HOFFMAN LLP
8 Paul Hoffman, State Bar No. 071244
9 200 Pier Avenue #226
10 Hermosa Beach, CA 90254
11 (310) 396-0731

12 *Attorneys for Plaintiff*
13 *Ahimsa Wickrematunge*
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1 I, Juan E. Méndez, declare under penalty of perjury of the laws of the United
2 States as follows:

3 **I. QUALIFICATIONS**

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

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

23 3. As part of my mandate as UN Special Rapporteur on Torture, I
24 undertook, sought, received, examined and acted on information from
25 Governments, intergovernmental and civil society organizations, and groups of
26 individuals regarding issues and alleged cases concerning torture or other cruel,
27 inhuman or degrading treatment. I studied trends, developments and challenges in
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1 relation to combating and preventing torture and other cruel, inhuman or degrading
2 treatment or punishment (CIDT), and made recommendations and observations
3 concerning appropriate measures to prevent and eradicate such practices. In
4 addition, I identified and promoted best practices on measures to prevent, punish
5 and eradicate torture and other CIDT. I wrote thematic reports on various aspects of
6 the international law regarding torture with recommendations to the international
7 community and all UN member States on how to fulfill their obligations that are
8 derived from the absolute prohibition on torture and other CIDT. For example, in
9 September 2014, I submitted a report to the General Assembly on the role of
10 forensic science in the obligation of States to effectively investigate and prosecute
11 allegations of torture and other CIDT. In January 2012, I submitted a report to the
12 Human Rights Council on the role of commissions of inquiry in fulfilling States'
13 obligations to combat impunity and provide effective remedies to victims of past
14 violations for torture and other CIDT, identifying best practices for when such
15 commissions fulfil these obligations most effectively.

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

7 5. Prior to my appointment as Special Rapporteur, I was a Special
8 Advisor to the Prosecutor, International Criminal Court on the prevention of the
9 crimes under that tribunal's jurisdiction from 2009 to 2011 and Co-Chair of the
10 Human Rights Institute of the International Bar Association in 2010 and 2011.
11 Until May 2009, I was the President of the International Center for Transitional
12 Justice (ICTJ). Concurrent with my duties at ICTJ, the Honorable Kofi Annan
13 named me as his Special Advisor on the Prevention of Genocide, a task I performed
14 from 2004 to 2007. As a member of the Inter-American Commission on Human
15 Rights of the Organization of American States between 2000 and 2003 and as its
16 President in 2002, I had occasion to participate in cases that have contributed to the
17 rich jurisprudence about transitional justice and accountability for mass atrocities
18 and serious violations of human rights. Most notably, I represented the
19 Commission in the landmark litigation that resulted in the decision of the Inter-
20 American Court of Human Rights in *Barrios Altos v. Peru* (2001), which
21 established that certain amnesty laws violate a State's obligations under human
22 rights treaties and required States to deny such laws any legal effect in the domestic
23 jurisdiction. In 2002, I chaired the only country visit of the Commission to
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26 ¹ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
27 punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman
28 A/HRC/34/54/Add.2 (Dec. 22, 2016) (by Juan Méndez).*

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

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

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

20 **II. INTRODUCTION**

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

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

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

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

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

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

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

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

14 **1. Lack of Independence of the Sri Lankan Judiciary**

15 14. In a 2019 report to the UN, the International Commission of Jurists
16 noted that “the Sri Lankan justice system has for decades systematically failed to
17 respond independently, impartially and effectively to violations of international
18 human rights and humanitarian law perpetrated by security forces.”³ This finding is
19 also reflected in various indices regarding rule of law, corruption, and judicial
20 independence in which the Sri Lankan judiciary scores poorly. While World Bank
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25 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.”].

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

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

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

17 ⁴ WORLD BANK, JUDICIAL INDEPENDENCE (WEF) (2017)

18 [https://govdata360.worldbank.org/indicators/h5ebaeb47?country=USA&indicator=670&countries=LKA&viz=line_chart&years=2007,2017&indicators=367&compare](https://govdata360.worldbank.org/indicators/h5ebaeb47?country=USA&indicator=670&countries=LKA&viz=line_chart&years=2007,2017&indicators=367&compareBy=region)
19 [By=region](https://govdata360.worldbank.org/indicators/h5ebaeb47?country=USA&indicator=670&countries=LKA&viz=line_chart&years=2007,2017&indicators=367&compareBy=region).

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

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

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

1 16. The procedure for the removal of judges suffers from similar
 2 shortcomings. While judges may be removed from office by the President after an
 3 impeachment procedure before Parliament, this procedure is not regulated by any
 4 ordinary law and, as a result, has been characterized “by a lack of transparency, by
 5 a lack of clarity in the proceedings and by a lack of respect for fundamental
 6 guarantees of due process and a fair trial, all of which undermine its legitimacy.”⁸
 7 The problematic nature of this process was evident in the impeachment proceedings
 8 against Chief Justice Shirani Bandaranayake in 2013, who was removed from
 9 office after presiding over two decisions contrary to the Sri Lankan government’s
 10 interests.⁹ Moreover, the UN Special Rapporteur on the Independence of Judges
 11 and Lawyers found that procedures of the Judicial Service Commission,
 12 responsible for the disciplinary control of “judicial officers”¹⁰ were lacking in
 13 sufficient guarantees against arbitrary disciplinary measures and promotion
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15 ⁸ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 16 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 17 *Sri Lanka*, ¶ 48, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto);
contra De Silva Decl. ¶ 3.36–3.41.

18 ⁹ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
 19 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
 20 *Sri Lanka*, ¶ 48, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica Pinto);
 21 Press release, U.N. Off. of the High Comm’r for Hum. Rts. (“OHCHR”), Sri Lanka:
 22 UN Expert concerned about reprisals against judges urges reconsideration of Chief
 23 Justice’s impeachment (Nov. 14, 2012), available at
 24 [https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=](https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12790)
 25 [12790](https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12790); INT’L BAR ASSOC’N HUM. RTS. INST., A CRISIS OF LEGITIMACY: THE
 26 [IMPEACHMENT OF CHIEF JUSTICE BANDARANAYAKE AND THE EROSION OF THE RULE](https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12790)
 27 [OF LAW IN SRI LANKA 6–7 \(2013\)](https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12790); Int’l Comm’n of Jurists, *Sri Lanka: Judges*
 28 *Around the World Condemn Impeachment of Chief Justice Dr. Shirani*
Bandaranayake (Jan. 23, 2013), [https://www.icj.org/sri-lanka-judges-around-the-](https://www.icj.org/sri-lanka-judges-around-the-world-condemn-impeachment-of-chief-justice-dr-shirani-bandaranayake/)
[world-condemn-impeachment-of-chief-justice-dr-shirani-bandaranayake/](https://www.icj.org/sri-lanka-judges-around-the-world-condemn-impeachment-of-chief-justice-dr-shirani-bandaranayake/).

¹⁰ De Silva Decl. ¶ 3.41.

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

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

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

13 18. In addition, investigations into enforced disappearances and
14 extrajudicial killings in Sri Lanka have suffered from a lack of independence and
15 impartiality, such that they cannot guarantee accountability and provide victims
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17 ¹¹ Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the*
18 *Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to*
19 *Sri Lanka*, ¶¶ 40, 49, U.N. Doc. A/HRC/35/31/Add.1 (Mar. 23, 2017) (by Mónica
Pinto).

20 ¹² *See* De Silva Decl. ¶ 3.40.

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

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

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

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

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

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

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

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

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

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

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

6 **3. Tort Claims Do Not Provide Adequate Remedy for Gross Human Rights** 7 **Violations**

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

18 **1. Delays in Investigations and Criminal Cases**

19 20. Delays in cases implicating security forces and cases related to gross
20 violations of human rights persist from the initiation of the investigation through
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22 ²¹ OHCHR, *Promoting Reconciliation, Accountability and Human Rights in Sri*
23 *Lanka*, ¶ 49, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ³⁹ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment
23 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,
24 U.N. Doc. A/HRC/34/54/Add.2 (Dec. 22, 2016) (by Juan E. Méndez).

25 ⁴⁰ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment
26 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,
27 U.N. Doc. A/HRC/34/54/Add.2 (Dec. 22, 2016) (by Juan E. Méndez).

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

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

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

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

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

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

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

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

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

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

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

23 ⁴⁷ De Silva Decl. ¶ 3.69.

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

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

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

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

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

12 29. In 2015, Sri Lanka adopted the Assistance to and Protection of
13 Victims of Crime and Witnesses Act (No. 4 of 2015) (the “Act”). Although a
14 welcome and necessary advance toward victim and witness protection and
15 ending impunity in Sri Lanka, the United Nations has frequently raised
16 concerns that the protections are insufficient and ineffective, falling short of
17 international standards.⁵¹ In a report published in 2016, the OHCHR pressed
18 the Government of Sri Lanka to review and amend the Act to ensure “better
19 safeguards for the independence and effectiveness of the victim and witness
20 protection program.”⁵² There are three main concerns with Sri Lanka’s
21

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

24 ⁵¹ See, e.g., OHCHR, *Oral Update of the High Commissioner for Human Rights on*
25 *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*, ¶¶ 24-25,
26 U.N. Doc. A/HRC/27/CRP.2 (Sept. 22, 2014); OHCHR, *Promoting Reconciliation,*
Accountability and Human Rights in Sri Lanka, ¶ 23, U.N. Doc. A/HRC/37/23 (Jan.
25, 2018).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **IV. CONCLUSION**

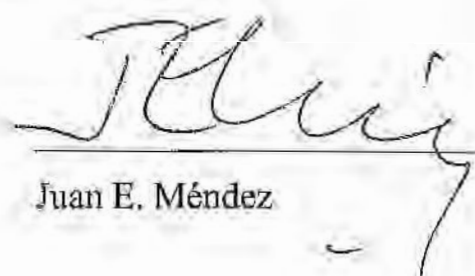
4 32. As a result of the limitations identified herein, including (a) the
5 lack of an adequate witness protection program, (b) delays in court
6 proceedings amounting to a de facto denial of justice, (c) the lack of
7 independence and impartiality in the Sri Lankan judiciary and investigative
8 mechanisms, and (d) the inadequacy of tort remedies for gross human rights
9 violations, including torture and extrajudicial killings, it is my expert opinion
10 that Sri Lankan courts cannot, as yet, provide an adequate remedy for victims
11 of human rights violations, including torture and extrajudicial killing.
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25 ⁶⁴ Special Rapporteur on Torture and other inhuman or degrading treatment or
26 punishment, *Report of the Special Rapporteur on Torture and other inhuman or*
27 *degrading treatment or punishment on his mission to Sri Lanka*, UN Doc.
28 A/HRC/34/54/Add.2 ¶¶ 23, 42 (Dec. 22, 2016) (by Juan Méndez).

1 I hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, and
2 under the laws of the United States, that the following is true and correct.

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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

2801 New Mexico Ave NW, # 321
Washington DC 20007
1 202 333 2062 (H)
1 202 274 4252 (W)
1 917 975 5700 (M)
jmendez@wcl.american.edu
Jmendez1211@gmail.com

Summary

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

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

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

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

Education

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

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

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

Membership in Professional Organizations

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

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

District of Columbia Court of Appeals, 1981.

District of Columbia Bar Association, 1981.

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

International Bar Association, London, 2010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Work Experience

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

1973: Acting Dean, School of Economics, Provincial University, Mar del Plata, Argentina.

1974: Legal Counsel, Technological University, Buenos Aires.

1974-1975: Private Practice, Buenos Aires, Argentina.

Between 1970 and 1975, my law practice in Argentina was generally limited to labor law and defense of political prisoners. From August 1975 to February 1977, I was held in administrative detention under the state of siege.

1977-1978: Director, Centro Cristo Rey (Catholic Center for Hispanics), Aurora, Illinois.

1978-1981: Legal Assistant, Staff Attorney, and Acting Director, Alien Rights Law Project, Lawyers' Committee for Civil Rights Under Law, Washington, D.C.

1982-1988: Director, Washington Office of Americas Watch (Now Human Rights Watch)

1989-1994: Executive Director, Americas Watch.

1994-August 1996: General Counsel, Human Rights Watch, New York.

September 1996–October 1999: Executive Director, Inter-American Institute of Human Rights, San Jose, Costa Rica.

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

June 2004-June 2009: President, International Center for Transitional Justice, New York.

July 2004-March 2007: Special Advisor to the Secretary General on the Prevention of Genocide, United Nations, New York.

Summer 2009, Scholar in Residence, Ford Foundation, New York.

August 2009-2014, Visiting Professor; 2014 to present, Professor of Human Rights Law in Residence, Washington College of Law, The American University, Washington, DC

November 2010 to October 31, 2016: United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Human Rights Council, Geneva, Switzerland.

Member, Selection Committee to appoint truth commissioners and magistrates of the *Jurisdiccion Especial de Paz* created by the Colombian Peace Accords, 2017.

Teaching Experience

Professor of Human Rights Law in Residence, 2014 to present; Visiting Professor, Washington College of Law, The American University, Washington, DC, Fall 2009 to Spring 2014.

Lecturer, Summer Academy on Human Rights, Washington College of Law, The American University, Washington DC; 2008- present.

October 1999-May 2004: Professor of Law, University of Notre Dame Law School (International Human Rights Law and International Humanitarian Law).

July 1997, July 1998, July 2000, and July 2001: Oxford Summer Programme on International Human Rights Law, George Washington University and Oxford University, United Kingdom.

July 2003, July 2004, August 2006, July 2007, July 2008, July 2009, July 2010, July 2012, July 2013, July 2014, July 2016: Oxford University Masters of Law Programme on International Human Rights Law, Oxford Department of Continuing Education, Oxford, United Kingdom.

November-December 2012 and July 2015: Universidad Nacional de Lanus (Argentina), Masters Program on Human Rights;

December 1997: Universidad Internacional de Andalucia, sede La Rabida; Masters Program on Critical Legal Studies.

January-May 1996: Visiting Fellow, Kellogg Institute, and Lecturer, School of Law, University of Notre Dame, Indiana.

January-June 1995: Lecturer in International Relations and International Law, School of Advanced International Studies, Johns Hopkins University, Washington, D.C.

1992-1996: Adjunct Professor of Law, Georgetown University Law Center, Washington, D.C. (Seminar on International Human Rights Protection and Litigation).

1990-1998: Aspen Institute, Wye, Maryland, Seminars on International Law of Human Rights for Judges, directed by Professor Louis Henkin.

1996-1999: Lecturer and Director of three consecutive Annual Inter-Disciplinary Courses on Human Rights, Inter-American Institute on Human Rights, San Jose, Costa Rica.

1971-1974: Associate Professor, Political Science, School of Law, Stella Maris Catholic University, Mar del Plata, Argentina.

Publications

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

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Awards

Annual Eclipse Award, Center for Victims of Torture, Minneapolis and Washington, June 2016.

Jose Siderman Award, Southwestern Law School, Los Angeles, February 2016

Adlai Stevenson Human Rights Award, UN Association of the USA, Princeton-Trenton Chapter, December 2015.

Doctor Honoris Causa, Universidad Nacional de Mar del Plata, Argentina, 2015

Letelier-Moffitt Human Rights Award, Institute for Policy Studies, Washington, DC, October 2014

Louis B Sohn Human Rights Award, United Nations Association of the National Capital Area (UNA-NCA), Washington, DC, December 2014

Doctorate Honoris Causa, Universidad Nacional de La Plata, Argentina, 2013.

“Patrick Rice Human Rights Award, Torture Abolition Survivors’ Support Coalition (TASSC), Washington, DC, June 2013

Rafael Lemkin Award, Auschwitz Institute on Peace and Reconciliation and Government of Argentina, April 2010

Goler T. Butcher Medal, American Society of International Law, Washington DC, March 2010

Skoll Award for Social Entrepreneurship (jointly with Paul van Zyl), Oxford, UK, 2009

Doctorate Honoris Causa, Université de Québec a Montreal, 2007.

The Maryland Hispanic Bar Association, September 2003

Harry Blackmun Fellowship, Aspen Institute Seminar on Justice and Society, Aspen, Colorado, August 2003.

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

Inaugural "Monsignor Oscar A. Romero Award for Leadership in Service to Human Rights," University of Dayton, Ohio, April 2000.

“Reverend William M. Lewers, C.S.C. International Award for Distinguished Services in Civil and Human Rights,” Notre Dame University Law School, 1998.

The Trial Lawyers for Public Justice Foundation, Award for Public Interest Litigation for *Rapaport v. Suarez Mason*, Oakland, California, 1989.

“Juarez-Lincoln Award,” New York, September 7, 1985, Hispanic National Bar Association.

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1992 Peace Lecture, The Sidwell Friends School, Washington, “Human Rights: The Content of Peace.”

Honorary Membership, Equipo Argentino de Antropología Forense, Buenos Aires, Argentina, 1987.

Servicio de Paz y Justicia para América Latina (SERPAJ), Buenos Aires, Premio en Derechos Humanos, January 1992.

Personal

Born on December 11, 1944 in Lomas de Zamora, Argentina. Married with three children, five grandchildren. Twice imprisoned in Argentina for political and professional activities. Adopted by Amnesty International as a “Prisoner of Conscience” in 1976.

Exhibit B: Documents Considered

Exhibit B: Documents Considered

Case History

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

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3. U.N. Office of the High Comm'r for Human Rights, *Oral Update of the High Commissioner for Human Rights on Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*, U.N. Doc. A/HRC/27/CRP.2 (Sept. 22, 2014).
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