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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  
 SURI RATNAPALA IN SUPPORT  
 OF PLAINTIFF’S OPPOSITION TO  
 DEFENDANT’S MOTION TO  
 DISMISS**

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

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1 I, Anura Surindra Ratnapala, also known as Suri Ratnapala, declare under  
2 penalty of perjury of the laws of the United States as follows:

3 1. This declaration is based on my personal knowledge and research into  
4 Sri Lankan law, comparative constitutional law and judiciaries around the world,  
5 including the judiciary of Sri Lanka. I submit this declaration in my capacity as an  
6 academic and expert in these fields. In the event that my testimony as to the contents  
7 of this declaration is necessary, I will testify to the same, also under oath.

8 2. In preparation for this declaration, I have reviewed the relevant  
9 documents in this case, including the First Amended Complaint and the Declaration  
10 of Joseph Asoka Nihal de Silva in Support of Defendant's Motion to Dismiss. In  
11 addition, I have reviewed Sri Lankan statutes, cases and academic articles, a list of  
12 the documents I have reviewed is attached hereto as Exhibit B. The following  
13 declaration is based on my legal knowledge and professional experience, and what I  
14 believe to be true given the facts of the case and current Sri Lankan law.

15 3. I do not have nor have I had, any family, economic, working or any  
16 other type of link to the plaintiffs, nor to the defendant Nandasena Gotabaya  
17 Rajapaksa.

18 4. I have been contracted by the attorneys representing Plaintiff Ahimsa  
19 Wickrematunge to provide information and my opinion on Sri Lankan Law and  
20 procedure, and the state of the Sri Lankan judicial system.

21 5. This Declaration for which I am receiving no remuneration is based on  
22 my personal knowledge and research into Sri Lankan law. I submit this document in  
23 my capacity as a legal academic, jurist, and former practicing attorney in Sri Lanka.

24 6. In summary, based on the reasons laid out below, it is my expert  
25 opinion that Sri Lanka is not currently an available jurisdiction to hear the claims  
26 brought by the Plaintiff in this case. First, Sri Lanka does not have a civil remedy  
27 akin to the Torture Victim Protection and Alien Tort Statute. Second, any civil  
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1 claims or administrative claims based on the Plaintiff's allegations in this case  
2 would be barred by the statute of limitations in Sri Lankan law. Finally, the judicial  
3 system in Sri Lanka has not fully recovered from the decades-long conflict.  
4 Problems with rule of law and judicial independence persist to this day.

5 **I. PERSONAL BACKGROUND AND EXPERTISE**

6 7. I am a lawyer trained in Sri Lanka and Australia, and a law professor  
7 with more than 50 years' experience in Sri Lankan and comparative constitutional  
8 law, as detailed in my CV attached hereto as Exhibit A. I am the Emeritus  
9 Professor of Public Law of the T.C. Beirne School of Law, University of  
10 Queensland and Fellow of the Australian Academy of Law. I received my Bachelor  
11 of Laws in 1970, from the University of Colombo, Sri Lanka, my Master of Laws  
12 from Macquarie University, Sydney in 1986 and my Doctor of Philosophy (Law)  
13 from the University of Queensland in 1994. I have taught and published widely in  
14 the fields of constitutional law, legal philosophy and constitutional political  
15 economy and am an author or co-author of thirteen books and over sixty published  
16 papers.

17 8. Following my graduation from the University of Colombo in 1970, I  
18 worked as a Research Officer at the Ministry of Justice in Sri Lanka. In 1974, I was  
19 admitted to the bar by the Supreme Court of Sri Lanka and joined the Attorney-  
20 General's Department as a Senior State Counsel. In this position, I appeared on  
21 behalf of the State in criminal and civil matters. I remained in this position until  
22 1983.

23 9. After graduating from Macquarie University, I began my academic  
24 career. I taught courses in the fields of constitutional law, legal philosophy, and  
25 constitutional political economy at Macquarie University (1986 – 1987) and the  
26 University of Queensland (1988 – present). I have also conducted graduate seminars  
27 at other universities including New York University, George Mason University,  
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1 Virginia, the Bowling Green State University, Ohio, the University of Buckingham,  
2 England, the University of Turin, Italy, the University of Economics, Prague, Czech  
3 Republic and the Max Planck Institute of Jena, Germany.

4 10. From 1997 to 1998, I served as the Dean of the School of Law at  
5 University of Queensland, while also serving as the Deputy Director of Studies at  
6 the Faculty of Business Economics and Law from 1997 to 2002. In 2001, I also  
7 became the Professor of Public Law at the University of Queensland.

8 11. I have received fellowships at George Mason University, the Social  
9 Philosophy and Policy Centre, the Bowling Green State University, the International  
10 Centre for Economic Research, the University of Torino in Italy, and the University  
11 of Economics in Prague, the Czech Republic. I have also been a consultant for  
12 USAID, AusAid, the World Bank, and the Asian Development Bank on institutional  
13 capacity building projects in Asia focused on judicial training.

14 12. In 2003, I was awarded the Centenary of Federation Medal for my  
15 contribution to Australian society through research in law and economics. In 2012, I  
16 was elected as a Fellow of the Australian Academy of Law. In 2015, the Attorney-  
17 General appointed me to be a Commissioner of the Australian Law Reform  
18 Commission.

19 13. I am also a member of the Advisory Council of the Centre for  
20 Independent Studies, the Mont Perelin Society, and the Research Trust of the  
21 Institute of Public Affairs.

22 **II. There are no civil causes of action for torture, extrajudicial killing, and**  
23 **crimes against humanity in Sri Lanka.**

24 14. Plaintiff's claims for remedy for torture, extrajudicial killing, and  
25 crimes against humanity—allegations involving civil remedies for violations of  
26 international law—do not have an analogous statutory tort in Sri Lanka. The  
27 Plaintiff instead will have to seek civil remedies under the Sri Lankan law of  
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1 delictual liability or by recourse to the fundamental rights jurisdiction of the  
2 Supreme Court under the Constitution of Sri Lanka.

3 **A. Civil Remedies**

4 15. The law of Sri Lanka does not recognize specific causes of action for  
5 civil wrongs as in the case of the English common law of torts. Civil liability is  
6 determined by the law of delict consisting of the rules and principles of the Roman-  
7 Dutch law as interpreted and developed by Sri Lankan courts and as modified by Sri  
8 Lanka's statute law.<sup>1</sup> This body of law does not recognize specific civil causes of  
9 action for torture, extrajudicial killing or crimes against humanity although these  
10 acts are punishable under the criminal law. The crime of torture is also specifically  
11 criminalized by the Convention Against Torture and other Cruel, Inhumane or  
12 Degrading Treatment or Punishment Act No. 22 of 1994 (the "CAT Act").  
13 However, the CAT Act makes no provision for civil remedies.

14 16. As previously stated, in Sri Lanka, civil wrongs for abuses alleged in  
15 this matter would be adjudicated under the rules and principles of the Roman Dutch  
16 law as judicially and legislatively developed. The Roman Dutch Law provides two  
17 remedies for civil wrongs: (i) the Aquilian Action based on the Roman *Lex Aquilia*  
18 and (ii) the *Actio Injuriarum*. The most appropriate civil remedy for the kinds of  
19 harm alleged in this matter is the Aquilian Action. However, I will also consider the  
20 plaintiff's prospects under the *Actio Injuriarum*.

21 17. Under Sri Lanka law, damages for physical injury resulting from  
22 assault, battery, or wrongful death may be claimed under the Roman Dutch law  
23 Aquilian Action. A claimant in an Aquilian Action, to be successful, must prove  
24 pecuniary loss caused by harm to person or property by the willful (*dolus*) or  
25 negligent (*culpa*) conduct of the defendant. The remedy does not extend to the

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26 <sup>1</sup> L. J. Mark Cooray, *Common Law in England and Sri Lanka*, 24 INT'L & COMP. L.  
27 Q. 553 (1975).

1 recovery of damages for emotional harm or the loss of comfort and society of the  
2 deceased person.<sup>2</sup> Where death is caused by a wrongful act, omission, negligence or  
3 default, the spouse, a relative or guardian of the deceased person may claim  
4 damages under the Recovery of Damages for the Death of a Person Act, No. 2 of  
5 2019. The Act is not made expressly retrospective in effect. In any event, the  
6 Plaintiff is barred from claiming damages by section 9 of the Prescription Ordinance  
7 (the local Statute of Limitations).<sup>3</sup>

8       18. The second form of action under the Roman Dutch law as received in  
9 Sri Lanka is the *Actio Injuriarum*. The remedy is available for harm to the person  
10 (*corpus*), reputation (*fama*), or dignity (*dignitas*). The action must be based on  
11 actual intention to harm (*animus injuriandi*) and is available to the person who  
12 suffers indignity against the person who caused it. The *Actio Injuriarum* might be  
13 used in a case of harassment. The *Actio Injuriarum* may be applicable in cases of  
14 persecution if there is proof of an infringement of interest connected with person,  
15 dignity, or reputation, either committed intentionally or with *animus injuriandi*. This  
16 action, by its nature does not lend itself to the relief sought in this matter and in any  
17 case is not transmissible to the estate of the deceased victim and hence cannot be  
18 instituted by the Plaintiff in this case.<sup>4</sup>

19       19. There is no civil remedy in Sri Lanka analogous to Plaintiff's claim of  
20 crimes against humanity under the Alien Tort Statute. Under Sri Lankan law, the  
21 only civil remedies available to a person for actions that amount to crimes against  
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23 <sup>2</sup> See the leading authority, *Professor Priyani v. Rienzie Arasakularatne*, 2 Sri. L.R.  
24 293, 303-304 (2001).

25 <sup>3</sup> Ordinance No. 22 (1871), as amended by Act No. 5 of 2016; Ordinance No. 2  
(1889), as amended by Act No. 5 of 2016.

26 <sup>4</sup> Harry Dondorp, '*Actiones Heriditariae*': *Claims in Favour of and against Heirs in*  
27 *Medieval Ius Commune, in* SUCCESSION LAW, PRACTICE AND SOCIETY IN EUROPE  
ACROSS THE CENTURIES 77, 87-88 (Maria Gigliola di Renzo ed., 2018).

1 humanity are the Aquilian Action and an action under the Recovery of Damages for  
2 the Death of a Person Act, No. 2 of 2019. If the harms that are alleged amount to a  
3 violation of one or more fundamental rights guaranteed by the Constitution of Sri  
4 Lanka, then the aggrieved person may seek relief in proceedings under Article 126  
5 of the Constitution as discussed in paragraphs 23–28, below.

6       20. In Sri Lankan law, the crime of assault is very different to the crime of  
7 torture. “Assault” as defined by section 342 of the Penal Code concerns gestures and  
8 actions that cause apprehension of the use of criminal force. So, the more relevant  
9 distinction is between “criminal force” and “torture”. Criminal force occurs,  
10 according to section 341 of the Penal Code, when a person “intentionally uses  
11 force to any person, without that person’s consent, in order to the committing  
12 of any offence, or intending illegally by the use of such force to cause, or  
13 knowing it to be likely that by the use of such force he will illegally cause  
14 injury, fear, or annoyance to the person to whom the force is used.” The maximum  
15 punishment for the crime of “criminal force” is 3 months of imprisonment. Acts that  
16 amount to torture may also be punishable as the offence of causing of grievous hurt.  
17 The maximum punishment for causing grievous hurt is 7 years, and 10 years if the  
18 offence is aggravated by other causes. (See sections 310 to 325 of the Penal Code).  
19 Torture is a more serious and specific crime under the CAT Act. Torture which is  
20 defined in section 12 of the CAT Act carries a punishment of between 7 and 10  
21 years. The crime of torture is distinguished from similar Penal Code offences by the  
22 elements of intensity, purpose and the agency of the state. Specifically, torture  
23 differs in the following ways: (i) Torture is an act that causes severe psychological  
24 or physical pain – fear of harm is insufficient. (ii) The infliction of pain is for  
25 specific purposes, namely, obtaining information or confessions from the victim or  
26 other person; punishing the victim or other person extra-judicially; intimidating or  
27 coercing the victim or other person; or the purpose of discrimination. (iii) The act

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1 must be done by or at the initiation of, or with the consent or acquiescence of a  
2 public servant or other person acting in an official capacity.

3 21. Although torture is a criminal offence, punishable under the CAT Act,  
4 the Plaintiff has no civil remedy with respect to torture. Plaintiff cannot recover  
5 damages under the law of Sri Lanka except by recourse to the Aquilian Action for  
6 patrimonial loss resulting from willful causing of death or by an action under Act  
7 No. 2 of 2019. There are, however, serious doubts whether this Act has any  
8 retrospective effect.

9 22. No civil remedy exists in Sri Lankan law for “extrajudicial killing”  
10 except to the extent that damages are recoverable by the Aquilian Action or as  
11 provided by the Recovery of Damages for the Death of a Person Act of 2019.

12 **B. Fundamental Rights Petitions**

13 23. Chapter III of the Constitution of Sri Lanka in Articles 10 to 15 sets out  
14 the fundamental rights of persons. Article 17 states: Every person shall be entitled to  
15 apply to the Supreme Court, as provided by Article 126, in respect of the  
16 infringement or imminent infringement, by executive or administrative action, of a  
17 fundamental right to which such person is entitled under the provisions of this  
18 Chapter.

19 24. Article 126(1) of the Constitution of Sri Lanka confers on the Supreme  
20 Court “sole and exclusive jurisdiction to hear and determine any question relating to  
21 the infringement or imminent infringement by executive or administrative action of  
22 any fundamental right or language right declared and recognized by Chapter III or  
23 Chapter IV.” Where the Court of Appeal in the course of hearing an application for  
24 a writ of *habeas corpus*, *certiorari*, *prohibition*, *procedendo*, *mandamus* or *quo*  
25 *warranto*, finds prima facie evidence of an infringement of a fundamental right or  
26 language right, the Court must refer the issue to the Supreme Court. This means that  
27 other courts cannot entertain an action for civil remedies for wrongs that are

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1 infringements of fundamental rights. However, they may entertain civil claims based  
2 on general laws of civil liability.

3 25. Article 11 of the Constitution grants freedom from torture or cruel,  
4 inhuman, or degrading treatment or punishment. In *W.M.K. de Silva v. Chairman,*  
5 *Ceylon Fertilizer Corporation*, S.C. App. No. 7/88, 2 Sri L.R. 393, 403 (1989), the  
6 Supreme Court held that a victim could invoke the fundamental rights jurisdiction of  
7 the Supreme Court against a public official for torture even if that official was acting  
8 in the discharge of his executive or administrative duties or under color of law.

9 26. Article 13 grants freedom from arbitrary arrest, detention, or  
10 punishment. The Supreme Court in *Siryani Silva v. Iddamalgoda*, S.C. App.  
11 471/2000, 2 Sri L.R. 63, 75-77 (2003) held that there is an implied right to life in the  
12 Constitution, as interpreted through Articles 11 and 13. Thus, a fundamental rights  
13 petition could likely be filed premised on allegations of extrajudicial killing or  
14 enforced disappearances.

15 27. Domestic law does not recognize crimes against humanity as an  
16 actionable claim for a fundamental rights petition.

17 28. The remedies available under Article 126 in respect of the infringement  
18 of fundamental rights are subject to significant limitations. They include the  
19 following.

20 (i) An application for relief under Article 126 must be made within one  
21 month whereas section 9 of the Prescription Ordinance allows a period of  
22 2 years.

23 (ii) Article 126(5) requires Supreme Court to “hear and finally dispose of any  
24 petition or reference under this Article within two months of the filing of  
25 such petition or the making of such reference.” This period may be  
26 extended where the Supreme Court refers a matter to the Human Rights  
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- 1 Commission for inquiry and report. There is no such limitation in the  
2 general law with respect to civil or criminal proceedings.
- 3 (iii) An application under Article 126 can only be made with leave of the  
4 Court, a discretion not granted to courts of first instance.
- 5 (iv) The procedure that governs the hearing and disposal of cases under  
6 Article 126 is governed by rules of court made by the Supreme Court.  
7 These provisions displace the provisions of the Civil Procedure Code that  
8 embody the requirements of procedural fairness with respect to notice to  
9 parties, discovery, trial, interlocutory decrees, and other time-honored  
10 safeguards.
- 11 (v) The evidence in an Article 126 proceeding is by way of affidavit (sworn  
12 declaration) and certified documents. There is no scope for examining  
13 witnesses. The Supreme Court may refer a matter to the Human Rights  
14 Commission for inquiry and report.<sup>5</sup>
- 15 (vi) The Supreme Court has a wide discretion as to the relief it may grant.  
16 However, with respect to the quantum of damages the Court is not  
17 governed by the principles that guide the assessment of compensation in  
18 general civil litigation.
- 19 (vii) There is no appeal from a judgment given under Article 126 whereas  
20 the judgement of a court of first instance is subject to at least two appeals.

21 **C. Human Rights Commission**

22 29. Victims of human rights abuses may also seek administrative remedies  
23 through the Human Rights Commission of Sri Lanka (HRC), as established by the  
24 Human Rights Commission of Sri Lanka Act of 1996. Under sections 10 and 14 of  
25 the HRC Act, the HRC has the power to investigate human rights violations.

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27 \_\_\_\_\_  
28 <sup>5</sup> Human Rights Commission of Sri Lanka Act No. 21, §12(1) (1996).

1           30. Upon a finding of an infringement of a fundamental right by executive  
2 or administrative action, the HRC may recommend the matter for conciliation.  
3 When conciliation does not seem appropriate, the HRC may refer the case for  
4 administrative disciplinary action or to the attorney general for prosecution, or both.  
5 The HRC may also refer the matter to a court having jurisdiction to hear and  
6 determine the matter and make a recommendation to the appropriate authorities for  
7 financial compensation for victims. However, the “HRC does not have the power to  
8 directly enforce its orders. It has to rely on the governmental institution concerned to  
9 adopt its recommendation or bring the matter before a court at its own initiative.”<sup>6</sup>

10           31. Pursuant to section 11(g) of the HRC Act, the HRC may, in its absolute  
11 discretion, make an award for costs incurred in bringing the action. This is the only  
12 monetary award the HRC can make. The HRC does not have the power to award  
13 victims monetary damages directly, but instead it may refer the matter to the  
14 appropriate authority.

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16 **III. The Prescription Ordinance (Statute of Limitations) in Sri Lanka and the**  
17 **Defense of Laches would bar claims arising in 2009**

18           32. Plaintiff’s claims, which arise from conduct that occurred in 2009, are  
19 time barred, which prevents her from pursuing any of the remedies described in Part  
20 II of this declaration.

21 **A. Civil Remedies**

22           33. Section 9 of the Prescription Ordinance<sup>7</sup> clearly states that an action for  
23 loss, injury, or damage must be brought within two years from the time when the  
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25 <sup>6</sup> Mario Gomez, *Sri Lanka’s New Human Rights Commission*, 20 HUMAN RIGHTS Q. 281,  
26 289 (1998).

27 <sup>7</sup> Ordinance No. 22 (1871), as amended by Act No. 5 of 2016; Ordinance No. 2  
28 (1889), as amended by Act No. 5 of 2016.

1 cause of action arose. Ordinarily, the cause of action arises when an aggrieved party  
2 becomes aware or should have become aware of the circumstances that establish a  
3 violation.<sup>8</sup> This two-year statute of limitations applies to both Aquilian Actions and  
4 the *Actio Injuriarum*.

5 34. The Prescription Ordinance contains no provisions for exceptions to the  
6 two-year limitation period for actions under section 9 (for loss, injury or damage).<sup>9</sup>

7 35. The two-year limitation also applies to actions brought pursuant to the  
8 Recovery of Damages for the Death of a Person Act, No. 2 of 2019 and other  
9 statutory civil remedies, unless otherwise provided.

10 36. The courts have no power to extend this two-year limitation period.

11 **B. Fundamental Rights Petitions**

12 37. Article 126 of the Sri Lankan Constitution requires the petitioner to file  
13 a fundamental rights petition within one month of the violation.

14 38. The time limit is considered mandatory and there are only a few narrow  
15 exceptions to the one-month limitations period. One such exception is when the  
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17 <sup>8</sup> II CHRISTOPHER WEERAMANTRY, LAW OF CONTRACTS 865 (1967); *Meezan v.*  
18 *Sumanasekera et al.*, SC App. No. 4/2011, 7 (2012) (Sup. Ct. Sri Lanka) (finding  
19 that the fact that plaintiff was unaware of the registered owner of the vehicle was  
20 “no excuse” for instituting an action against the owner five years after the accident).

21 <sup>9</sup> In section 14, the Prescription Ordinance provides specific reasons for exceptions  
22 to limitations periods only for causes of action in sections 5, 7, 8, 10, and 11 of the  
23 Ordinance. These causes of action are mortgage debt or bond (s. 5), promissory  
24 notes and partnership deeds (s. 6), recovery of goods, rent or money without a  
25 written security (s. 7), debt for goods, shop bills, work and labor (s. 8), other actions  
26 not mentioned in the Ordinance (s.10), reconvention or counterclaims (s.11).  
27 Section 13 provides reasons for exception to limitations with regard to claims for  
28 recovery of land or immovable property. Per the plain language of sections 13 and  
14 of the Prescription Ordinance, these exceptions do not apply to section 9, which  
pertains to prescription for actions for loss, injury or damage, and which controls the  
statute of limitations for the causes of action that could be brought by the Plaintiff in  
this case.

1 petitioner is unaware of the violation, and then files within one month of discovering  
2 such violation.<sup>10</sup> Another exception is if the petitioner is physically incapable of  
3 filing a petition.<sup>11</sup> None of these exceptions apply in this instance.

4 39. An additional exception exists where a petitioner has made a complaint  
5 to the Human Rights Commission within one month of the infringement. If that is  
6 the case, the period within which the inquiry is pending in the Commission will not  
7 be taken into account in computing the period of one month mandated in Article  
8 126.<sup>12</sup>

9 40. The Supreme Court has been unwilling to find further exceptions to the  
10 constitutionally-mandated limitations period.

11 **C. Human Rights Commission**

12 41. Complaints of infringement or imminent infringement of a fundamental  
13 right may be made to the Human Rights Commission of Sri Lanka within a  
14 reasonable time.

15 \* \* \*

16 42. Any claim by the Plaintiff relating to the death of Lasantha  
17 Wickrematunge would have accrued on the date of his death on January 8, 2009.

18 \_\_\_\_\_  
19 <sup>10</sup> See *Demuni Sriyani de Soyza et al. v. Dharmasena Dissanayake*, S.C. App.  
20 206/2008, 10 (2016) (Sup. Ct. Sri Lanka).

21 <sup>11</sup> *Id.* at 10 (noting that “most of the decisions” on the issue of exceptions to the time  
22 limit refer to situations of hospitalization after torture while in custody, or being  
23 held incommunicado. Those situations have, in prior cases, been considered  
24 sufficiently beyond the control of the petitioner to warrant an extension of time).  
25 The court in *de Soyza et al.* observed that additional exceptions could, in theory, be  
26 accepted, but emphasized that they would need to be of comparable gravity and  
27 demonstrate that the delay of the petitioner was beyond his control, for example due  
28 to “the act of a third party, or some natural or man-made disaster.” *Id.* at 11-12.  
Moreover, the extension of time would only apply until the moment when the  
petitioner’s “disability could be reasonably held to have seized.” *Id.* at 11.

<sup>12</sup> Human Rights Commission of Sri Lanka Act No. 21 § 13(1) (1996).

1 Any civil action for damages would have been time barred in January 2011. Any  
2 fundamental rights petition would have been time barred by February 9, 2009. Any  
3 complaint to the HRC would have been time barred after what it may deem a  
4 reasonable period. Thus, there are no longer any remedies available to Plaintiff  
5 under Sri Lankan law.

6 43. Courts have no discretion or power to extend the limitation periods  
7 prescribed in legislation and thereby remove this bar from the Plaintiff's claims. To  
8 my knowledge, there are no instances in which otherwise time barred actions have  
9 been permitted to proceed and efforts to create legislative exceptions have not  
10 succeeded. For example, following the conclusion of the Civil War in 2009, the Sri  
11 Lanka Law Commission proposed an amendment to the Prescription Ordinance to  
12 give relief to persons who were displaced or disadvantaged by the war. The  
13 proposed amendment would have tolled the limitation period for actions to recover  
14 immovable property for the period of their displacement or disadvantage. This  
15 reform was, however, not enacted.

16 **IV. Judicial Independence in Sri Lanka May Also Affect the Fair**  
17 **Adjudication of Victims' Claims in Sri Lanka**

18 44. Sri Lanka's judiciary, once internationally acclaimed for its  
19 independence, impartiality and competence, has been under great stress in the past  
20 several decades. Institutional weakening and politicization have been the major  
21 causes of this judicial decline. The judiciary's international reputation has been  
22 badly damaged as reflected in reports of the International Crisis Group<sup>13</sup>, and the  
23 International Bar Association.<sup>14</sup> The state of the rule of law in the country and the  
24 abuses of political office were central issues in the Presidential and Parliamentary  
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26 <sup>13</sup> INT'L CRISIS GRP., SRI LANKA'S JUDICIARY: POLITICISED COURTS, COMPROMISED  
RIGHTS (2009)

27 <sup>14</sup> INT'L BAR ASS'N, A CRISIS OF LEGITIMACY: THE IMPEACHMENT OF CHIEF JUSTICE  
28 BANDARANAYAKE AND THE EROSION OF THE RULE OF LAW IN SRI LANKA (2013).

1 General Elections held in 2015 that led to the election of the present government to  
2 replace the government led by Mr. Mahinda Rajapaksa, the brother of the defendant  
3 who was the Secretary of the Ministry of Defence in that Administration.

4 45. The Nineteenth Amendment enacted in 2015 made far reaching and  
5 positive changes to the Constitution. With respect to the judiciary, the critical  
6 change was the removal of the President’s power to appoint superior court judges,  
7 members of the Judicial Service Commission, the Police Commission and other high  
8 officials. They must now be recommended for appointment by a Constitutional  
9 Council composed of members nominated by different political groups. This  
10 constitutional arrangement had shown early promise as demonstrated by the  
11 Supreme Court’s decision to annul the unconstitutional dissolution of Parliament by  
12 the President. In a recent published paper, I expressed my cautious optimism but  
13 concluded that “[t]he efficacy of the Nineteenth Amendment, or indeed of a future  
14 constitution, however well crafted, to arrest and reverse this trend depends on the  
15 commitment of the political actors, the vigilance of civil society groups and the  
16 pressures of public opinion. The law has no life beyond the opinions and actions of  
17 the people.”<sup>15</sup>

18 46. Current political trends have diminished my initial optimism. The  
19 president Mr. Sirisena, who co-authored the Nineteenth Amendment, has said  
20 publicly that he now opposes the constitutional Amendment. The leader of the main  
21 opposition party, the Sri Lanka Podujana Peramuna (SLPP), Mr. Mahinda  
22 Rajapaksa also opposes the Amendment. The party’s candidate for President at the  
23 coming election is the defendant. These developments do not augur well for the  
24 Plaintiff’s prospects of gaining relief within the Sri Lankan judicial system.

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26 <sup>15</sup> Suri Ratnapala, *Decline and Fall of Sri Lanka’s Judiciary and Prospects for*  
27 *Resurrection*, in ASIA PACIFIC JUDICIARIES: INDEPENDENCE, IMPARTIALITY AND  
28 INTEGRITY 305, 329 (H.P. Lee & Marilyn Pittard, eds. 2018).



1           47. As a report from the International Crisis Group observed, “[f]ixing  
2 institutions and reforming laws will therefore only have a limited effect until  
3 political actors, and especially the presidency, feel the political cost of ignoring or  
4 infringing on judicial independence. Absent a concerted effort by the bench and bar,  
5 the political costs of interfering with the judiciary will remain minimal. So long as  
6 that remains the case, Sri Lankans of all ethnicities will continue to lack access to a  
7 reliable forum for the adjudication of state violations of their basic constitutional  
8 and human rights—and a unique opportunity to forge a lasting peace may be lost.”<sup>16</sup>  
9 This conclusion is worth heeding today.

10 **V. Conclusion**

11           48. As set forth in this report, it is my expert opinion that the Plaintiff in  
12 this case will have no access to remedies in Sri Lanka. First, the potential civil  
13 remedies that could be available are inadequate with regard to the specific claims of  
14 torture, extrajudicial killing and crimes against humanity that the Plaintiff in this  
15 case brings. Second, all the potential remedies that could have been available to the  
16 Plaintiff—civil remedies, Fundamental Rights petition, or a complaint before the  
17 Human Rights Counsel—are time-barred. Third, due to significant challenges to the  
18 judicial independence of Sri Lanka, which have been ongoing for decades and  
19 which have failed to abate despite recent reforms, it is unlikely that Sri Lankan  
20 courts can, at this juncture, be a reliable forum for the adjudication of state-based  
21 violations of the basic constitutional and human rights of Plaintiff and her father.

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27 <sup>16</sup> INT’L CRISIS GRP., SRI LANKA’S JUDICIARY: POLITICISED COURTS, COMPROMISED  
28 RIGHTS (2009).

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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 Queensland, Australia.



Anura Surindra Ratnapala

**CERTIFICATE OF SERVICE**

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

*/s/ Catherine Amirfar*  
\_\_\_\_\_  
Catherine Amirfar

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

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

### **Emeritus Professor Suri Ratnapala**

#### **EXECUTIVE SUMMARY**

Suri Ratnapala is Emeritus Professor of Public Law of the T C Beirne School of Law, University of Queensland and Fellow of the Australian Academy of Law. He holds the degrees of LLB (Colombo); LLM (Macquarie) and PhD (Qld). He has taught and published widely in the fields of constitutional law, legal philosophy and constitutional political economy and is the author or co-author of thirteen books and many published papers. He has received fellowships at George Mason University, Virginia, the Social Philosophy and Policy Centre, the Bowling Green State University, the International Centre for Economic Research, the University of Torino, Italy and the University of Economics in Prague. In 2003 he was awarded a Centenary of Australian Federation Medal for his contribution to Australian society through research in law and economics. In 2012 he was elected as a Fellow of the Australian Academy of Law. Professor Ratnapala has been a consultant with USAID, AusAid, the World Bank and the Asian Development Bank in institutional capacity building projects in Asia focused on judicial training. He is an Attorney-at-law of Sri Lanka and has served as a Senior State Counsel in the Attorney-General's Department of Sri Lanka.

#### **QUALIFICATIONS**

- Doctor of Philosophy (University of Queensland) (1994)
- Master of Laws (Macquarie University) (1986)
- Bachelor of Laws (University of Colombo) (1970)
- Attorney at Law (Supreme Court of Sri Lanka) (1974)

#### **MEMBERSHIPS**

- Fellow of the Australian Academy of Law
- Member of the Mont Pelerin Society
- Member of the Advisory Council of the Centre for Independent Studies
- Member, Society for Evolutionary Analysis of Law
- Member of the Research Trust, Institute of Public Affairs

#### **POSITIONS HELD**

2015 Commissioner of the Australian Law Reform Commission

2001-2014 Professor of Public Law, School of Law, University of Queensland

1997-2002 Deputy Director of Studies, Faculty of Business Economics and Law

1997-1998 Dean of the School of Law, University of Queensland

1996-1997 Deputy Dean, Faculty of Law, University of Queensland

1997-2000 Reader in Law, University of Queensland

1993-1996 Senior Lecturer in Law, University of Queensland

1988-1992 Lecturer in Law, University of Queensland

1986-1987 Tutor in Law, Macquarie University

1983-1985 Research Assistant, Macquarie University

1975-1983 Senior State Counsel, Attorney-General's Department, Sri Lanka

1972-1975 Research Officer, Ministry of Justice, Sri Lanka

1970-1972 Reporter, *Ceylon Daily News*

1969-1970 Lecturer in Law, University of Colombo

## **PROFESSIONAL EXPERIENCE**

- Legal adviser in the Ministry of Justice of Sri Lanka.
- Senior State Counsel in the Attorney-General's Department of Sri Lanka engaged in a full range of professional practice.
- Consultancies with World Bank, USAID, AusAid and the Asian Development Bank projects in the legal and judicial sectors.

## LIST OF PUBLICATIONS

### Books

*Jurisprudence*, 3<sup>rd</sup> ed, Cambridge, Cambridge University Press, 2017

*Jurisprudence*, 2<sup>nd</sup> ed, Cambridge, Cambridge University Press, 2013

*Australian Constitutional Law: Foundations and Theory*, 3<sup>rd</sup> ed with Jonathon Crowe, Melbourne, Oxford University Press, 2012

*Jurisprudence of Liberty* 2<sup>nd</sup> ed, (eds Ratnapala and Moens), Sydney, LexisNexis Butterworths, 2011

*Jurisprudence*, Cambridge, Cambridge University Press, 2009

*Australian Constitutional Law: Commentary and Cases*, Oxford University Press, Melbourne, 2007 (with Cornelia Koch, Vanitha Karean and Thomas John)

*Australian Constitutional Law: Foundations and Theory* 2<sup>nd</sup> ed, Oxford University Press, Melbourne, 2007

*Environmentalism versus Constitutionalism: A Contest without Winners*, New Zealand Business Roundtable, Wellington, 2006

*Jurisprudence of Liberty*, Butterworths, Sydney, 1996 (co-edited with Gabriel Moens)

*Mabo: A Judicial Revolution?* University of Queensland Press, St. Lucia, 1993 (co-edited with Margaret Stephenson)

*Restoring the True Republic*, Centre for Independent Studies, Sydney, 1993 (co-authored with Geoffrey de Q Walker and Wolfgang Kasper)

*The Illusions of Comparable Worth*, Centre for Independent Studies, Sydney, 1992 (co-authored with Gabriel Moens)

*Welfare State or Constitutional State?* Centre for Independent Studies, Sydney, 1990

## Monograph

*The Role of Government in a Liberal Society*, Centre for Independent Studies, Sydney, 2009

## Articles and Book Chapters

- Austin Pullé and Suri Ratnapala, ‘Sri Lanka’s Quest for a Reformed Constitution: Lessons from a Lost Opportunity’, to be published in September 2019 in *The Chinese Journal of Comparative Law*.
- Suri Ratnapala, ‘Defending Liberal Democracy and Liberal Peace in the Time of Rising Populism and Fascism’, Analysis Paper No 3, Sydney: Centre for Independent Studies, 2019, 16-23.
- Suri Ratnapala, ‘Liberal Peace and its Prospects in the Twenty First Century’, in *A Commitment to Excellence: Essays in Honour of Emeritus Professor Gabriël A. Moens*, Brisbane: Connor Court Publishing, 2019, Chapter 7.
- Suri Ratnapala, ‘Reform and Crisis: Reflections on the Culture of Constitutional Government in Sri Lanka’ in *Constitutional Reform and Crisis in Sri Lanka*, ed Asanga Welikala, Colombo: Centre for Policy Alternatives, 2019, 240-262.
- Suri Ratnapala, ‘Enlightenment under siege: Are the obituaries premature?’ (Review Essay on Steven Pinker, *Enlightenment Now: The Case for Reason, Science, Humanism and Progress*, New York: Viking, 2018) in *Policy* Vol 34 No 2 2018, 57-62 (PDF available at [www.cis.org.au](http://www.cis.org.au))
- Suri Ratnapala, ‘Decline and Fall of Sri Lanka’s Judiciary and Prospects for Resurrection’ (Chapter 14) in *Asia Pacific Judiciaries*, eds H P Lee and Marilyn Pittard, Cambridge, Cambridge University Press, 2017.
- ‘The two theses of the philosophy of separating powers: Who exercises power and how?’ in *Judicial Independence in Australia: Contemporary Challenges, Future Directions*, eds Rebecca Ananian-Welsh and Jonathan Crowe, Federation Press, Sydney, 2016



- ‘Failure of Quasi-Gaullist Presidentialism in Sri Lanka’, in *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects*, ed A Welikala, Centre for Policy Alternatives, Colombo, 2015, Volume II, 649-690
- S Ratnapala, 'Fiscal Federalism in Australia: Will Williams v Commonwealth Be a Pyrrhic Victory?' (2014) 33 (1) *University of Queensland Law Journal* 63-82
- S Ratnapala, ‘The Economics of Collective Choice: The Missing Dimension of Constitutional Theory, *Public Choice* (2012) 152:461–466
- S Ratnapala and J Crowe, 'Broadening the Reach of Chapter III: The Institutional Integrity of State Courts and the Constitutional Limits of State Legislative Power' (2012) 36:1 *Melbourne University Law Review* 175-215.
- J Crowe, S Ratnapala, 'Military Justice and Chapter III of the Constitution: The Constitutional Basis of Courts Martial' (2012) 40:2 *Federal Law Review* 161-180.
- ‘*Foedus Pacificum*: A Response to Ethnic Regionalism within Nation States’ in *Future of Australian Federalism*’ eds N Aroney, G Appleby and T. John, Cambridge: Cambridge University Press, 2012.
- ‘Bills of Rights in Functioning Parliamentary Democracies: Kantian, Consequentialist and Institutional Scepticisms’, (2010) 34:2 *Melbourne University Law Review*, 591-616.
- ‘The Chimera of the Adam Smith Problem’, *The Market Society and Its Morality: 250 Years of Adam Smith’s Theory of Moral Sentiments*, M Zoeller and M Petri, eds, Council on Public Policy, University of Bayreuth, Germany, 2010
- Suri Ratnapala ‘The Jurisprudence of F A Hayek’, *The Multi-layered Hayek*, Oliver Hartwich, ed, Sydney, Centre for Independent Studies, pp 45-59, 2010

- Suri Ratnapala (2010) ‘Separation of Powers: The Cornerstone of Liberty Under Law’, *Jurisprudence of Liberty* 2<sup>nd</sup> ed, S Ratnapala and G A Moens, eds, LexisNexis Butterworths, Sydney, 2010
- Chapter on F A Hayek’s *Law Legislation and* in *100 Great Books of Liberty*, Melbourne, Connor Court Publishing, 2010.
- Chapter on Adam Smith’s *Theory of Moral Sentiments* in *100 Great Books of Liberty*, Melbourne, Connor Court Publishing, 2010
- ‘Constituent power of the Queensland Parliament’ in *Queensland’s Constitution: Past, Present and Future*, (eds M White and A Rahemtula), Brisbane, Queensland Supreme Court Library Inc, 2010, Chapter 7
- ‘The Constitutional Jurisprudence of Justice Ian Callinan’, 2007 *The Supreme Court Yearbook*, Brisbane, Supreme Court Library Inc
- ‘John Locke’s Doctrine of the Separation of Powers: A Re-evaluation’, in *Locke and Law*, (Philosophers and Law Series) Aldershot, Ashgate, 243-274 (Republication from *The American Journal of Jurisprudence*)
- ‘Reason and Reach of the Objection to Ex Post Facto Law’, (2007) 1:1 *The Indian Journal of Constitutional Law*, 140-168
- ‘Environmentalism versus Constitutionalism: A Contest without Winners’, [2007] *Resource Management Theory and Practice*, 110 -164
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- ‘Cultural diversity and liberal society – A case for reprivatising culture’, (2005) X:2 *The Independent Review: Journal of Political Economy*, 249-271
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- ‘Sir William Webb – A Hobbesian Jurist?’ in *Queensland Judges in the High Court*, M White and A Rahemtula eds, 2003, Queensland Supreme Court, Brisbane, 134-150
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- ‘Republicanism’s Debt to Liberalism: Comments on Pettit’, (2000) 25:2 *Australian Journal of Legal Philosophy*, 263-271
- ‘The Idea of a Constitution and Why Constitutions Matter’, *Policy* 1999/2000 Summer, 3-10
- ‘The Republic and the States: Papers Delivered at a T C Beirne School of Law Symposium Held on 11 June 1998’ (1999) 20:2 *University of Queensland Law Journal* 222-224
- ‘The Case for Adopting the American Model in an Australian Republic’ (1999) 20:2 *University of Queensland Law Journal*, 242-249
- ‘Federalism as a Response to Ethnic Regionalism’, in I Copland and J Rickard (eds), *Federalism: Comparative Perspectives from India and Australia*, Monash University, Melbourne & Manohar, New Delhi, 1999, pp 113-136
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- ‘Complexity and the Law: Epstein’s Profound Case for Simplicity’ (1997) 4(3) *Agenda* 341-350
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- ‘Westminster Democracy and the Separation of Powers: Can they Co-exist?’ in *Republicanism, Responsible Government and Human Rights* (ed Kathleen Dermody), Papers on Parliament No 26, Department of the Senate, Canberra, 1995, pp 85-99
- ‘Harry Brandy’s Case and its Implications for Taxation Administration in Australia’, (1995) 18(2) *University of Queensland Law Journal* 233-248
- ‘Review Article: Asking the Law Question’, (1995) 16(3) *New Zealand Universities Law Review*, pp 326-347
- ‘An Epistemological Approach to Customary Law’ in *Tradition* (ed Christoph J Nyiri), Verein Internationales Forschungszentrum Kulturwissenschaften, Vienna, 1995, pp 61-81
- ‘Two Faces of Australian Republicanism’, in *Policy*, Spring 1994, 46-50
- ‘The Other Road to the Republic: the Separation of Powers’, in *Australia: Republic or Monarchy?* (ed Clive Turner and Margaret Stephenson), University of Queensland Press, St. Lucia, 1994, 211-232
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- ‘The Trident Case and the Evolutionary Theory of F A Hayek’, (1993) 13 *Oxford Journal of Legal Studies*, 201-224

- ‘Role of the Administrative Appeals Tribunal in Australian Constitutionalism’, (1991) 11 *Queensland Lawyer*, 177-185
- ‘Australia's Upper Houses and their Role in Responsible government’, (1990) Summer, *Policy*, 48-52
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- ‘How the welfare state undermines constitutionalism’, (1989) Autumn *Policy*, 50-52
- ‘An alternative theory of peace’, (1988-89) Dec-Jan *Policy Report*, 40-42
- ‘What is law?’ in *A Career in Law* (ed J Corkery), Federation Press, Sydney, 1989, 8-17
- ‘High Court and the Constitution: literalism and beyond’(with M Cooray), *Convention Debates, 1891-1898: Commentaries, Indices and Guide*, Vol 6, Legal Books, Sydney, 1986, 203-225

### **Book Reviews**

- Book Review, *Deepak Lal, Reviving the Invisible Hand: The Case for Classical Liberalism in the Twenty First Century*, (2007) XII:2 *The Independent Review: A Journal of Political Economy*, 285-290
- Book Review, G Craven, *Conversations with the Constitution*, (2005) 26 *Adelaide Law Review* 185-188.

### **Unpublished Conference Papers**

- ‘British Conservatism *versus* F A Hayek’, paper presented to the 1995 Annual Conference of the Australian Society of Legal Philosophy.
- ‘Is Culture Naturally Selected?’, paper presented in July 1996 to the *Conference on Cultural Heritage: Legal and Philosophical Issues*, Centre for Applied Philosophy, Flinders University, Adelaide, Australia.
- ‘Legal Complexity: Its Causes and Possible Responses’ paper presented in

the Graduate Seminar Series, Commerce Department, University of Queensland, March 1998.

- ‘The Constitution of Liberty at the Dawn of this Century’, paper presented at the January 2002 Regional Meeting of the Mont Pelerin Society in Goa, India.

### **Editorships**

Editor, *University of Queensland Law Journal* 1989-1993

Editor, *LAWASIA Journal* 2007 – 2009

## **Exhibit B: Documents Considered**

## **Exhibit B: Documents Considered**

### Case History

1. First Amended Complaint.
2. Declaration of Joseph Asoka Nihal de Silva in Support of Defendant's Motion to Dismiss.

### Treatises and Articles

1. C.G. Weeramantry, *LAW OF CONTRACTS*, Vol. II (1967).
2. J.H. Dondorp, '*Actiones Hereditariae*': *Claims in Favour of and against Heirs in Medieval Ius Commune*, in *SUCCESSION LAW, PRACTICE AND SOCIETY IN EUROPE ACROSS THE CENTURIES*, 77, 87-88 (Maria Gigliola di Renzo, ed., 2018).
3. L. J. M. Cooray, *Common Law in England and Sri Lanka*, 24(3) INT'L & COMP. L. Q. 553 (1975).
4. Mario Gomez, *Sri Lanka's New Human Rights Commission*, 20(2) HUM. RTS. Q., 281 (1998).
5. Suri Ratnapala, *Decline and Fall of Sri Lanka's Judiciary and Prospects for Resurrection*, in *ASIA PACIFIC JUDICIARIES: INDEPENDENCE, IMPARTIALITY AND INTEGRITY* 305 (H.P. Lee and Marilyn Pittard, eds. 2018) Cambridge University Press.

### Sri Lankan Statutes and Constitution

1. Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment Act No. 22 of 1994 (the "CAT Act").
2. Constitution of Sri Lanka
3. Human Rights Commission of Sri Lanka Act No. 21 of 1996.
4. Ordinances No. 22 of 1871 and No. 2 of 1889, as amended by Act No. 5 of 2016.
5. Recovery of Damages for the Death of a Person Act, No. 2 of 2019.
6. Sri Lanka Penal Code Sections 310-325, 341-342.

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2. *Meezan v. Sumanasekera et al.*, SC App. No. 4/2011 (2012) (Sup. Ct. Sri Lanka).
3. *Professor Priyani v. Rienzie Arasakularatne*, 2 Sri L.R. 293 (2001).
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5. *W.M.K. de Silva v. Chairman, Ceylon Fertilizer Corporation*, S.C. App. No. 7/88, 2 Sri L.R. 393 (1989).



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1. International Bar Association, *A Crisis of Legitimacy: The Impeachment of Chief Justice Bandaranayake and the Erosion of the Rule of Law in Sri Lanka* (2013).
2. International Crisis Group, *Sri Lanka's Judiciary: Politicised Courts, Compromised Rights*. Crisis Group Asia Report No 172 (2009)