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18 **UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT**
19 **OF CALIFORNIA- WESTERN DIVISION**

20 ROY MANOJKUMAR SAMATHANAM,) Case No.: 2:19-cv-02626-JFW-PLA
21 ET AL.,)
22) **DECLARATION OF YASMIN L.**
23) **SOOKA IN SUPPORT OF**
24) **PLAINTIFFS' MOTION TO**
25) **PROCEED ANONYMOUSLY**
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INTRODUCTION1

PROFESSIONAL BACKGROUND2

THE RISKS FACING VICTIMS AND WITNESSES OF HUMAN RIGHTS VIOLATIONS IN SRI LANKA.....4

 A. Ongoing gross human rights violations are a clear and present danger to victims, witnesses, and family members still in Sri Lanka.5

 B. There are well-documented reprisals against witnesses and family members by security services and supporters of the Rajapaksas.....6

 C. Foreign surveillance and intimidation10

 D. Stigma and social ostracism of survivors of sexual violence.....13

SRI LANKA’S ONGOING CULTURE OF IMPUNITY ENABLES THE THREATS FACING VICTIMS, WITNESSES, AND THEIR FAMILIES14

 A. Impunity for gross human rights violations is prevalent under the current government and would likely worsen under another Rajapaksa regime.....14

 1. “De facto” amnesty for international crimes, in particular the lack of political will to hold security forces criminally accountable.....17

 2. Conflicts of interest: Security officials accused of torture remain in power, will not investigate themselves, and cannot be entrusted with protecting witnesses.21

 3. There is a lack of legal safeguards ensuring the protection and safety of survivors, witnesses and their families in Sri Lanka.26

CONCLUSION28

1 I, Yasmin L. Sooka, hereby declare pursuant to 28 U.S.C. § 1746:

2 **INTRODUCTION**

3 1. I am a human rights lawyer and UN-appointed expert with more than
4 35 years of experience pursuing accountability for human rights violations in
5 countries around the world, including Sri Lanka, South Africa, Sierra Leone and
6 South Sudan. Among other international engagements, I serve as international legal
7 counsel to Mr. Roy Samathanam, the first plaintiff in the above captioned matter,
8 acting outside the United States.

9 2. In this Declaration, I examine the risks to the 10 anonymous Plaintiffs
10 should their identities be revealed, drawing on my personal experience as a United
11 Nations expert and legal practitioner working with victims from Sri Lanka.

12 3. Based on my expertise and for the reasons detailed below, I have
13 determined that, should they bring claims as plaintiffs or present evidence, Sri
14 Lankan victims of torture and sexual violence and their families would face severe
15 and continued risks of violence, threats, harassment, and surveillance violating their
16 rights to privacy and family life. These threats are posed by members of the Sri
17 Lankan security forces, supporters of the Rajapaksa family and Sinhala Buddhist
18 extremists in Sri Lanka and abroad.

19 4. The risks extend to plaintiffs or witnesses who have found asylum
20 overseas. Such witnesses face a risk of (1) reprisal against family members in Sri
21 Lanka, (2) foreign surveillance and intimidation, and (3) stigma within the diaspora
22 community due to the often-sexual nature of their abuses. Accordingly, if the 10
23 anonymous plaintiffs were identified to the public and to supporters of the Rajapaksa
24 family, the plaintiffs and their families would face a clear and present danger to their
25 lives, physical and mental integrity, and privacy.

1 **PROFESSIONAL BACKGROUND**

2 5. My expertise on Sri Lanka originated in July 2010 when United Nations
3 Secretary-General Ban Ki-moon appointed me to serve on a three-member Panel of
4 Experts advising the Secretary General on accountability for human rights violations
5 and war crimes committed during the final stages of the war in Sri Lanka. The Report
6 of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka was
7 published on March 31, 2011, and found, *inter alia*, “credible allegations” of “a wide
8 range of serious violations of international humanitarian and international human
9 rights law . . . some of which would amount to war crimes and crimes against
10 humanity.”¹

11 6. I am currently the Executive Director of the International Truth and
12 Justice Project (“ITJP”), a non-governmental organization whose mission is to
13 document human rights violations, war crimes and crimes against humanity in Sri
14 Lanka for the purpose of building accountability and justice for the victims. I have
15 researched and authored a series of additional reports on Sri Lanka from 2014
16 onwards, including:

- 17
- 18 • *The Unfinished War: Torture and Sexual Violence in Sri Lanka: 2009-2014*
with the Bar Human Rights Committee of England and Wales and the ITJP;
 - 19 • *Five Years On: The White Flag Incident 2009-2014*, with the ITJP;
 - 20 • *Forgotten: Sri Lanka’s Exiled Victims*, (June 2016), which asked victims
21 of torture abroad to contribute to the Sri Lankan consultation process on
22 transitional justice.
- 23
24

25 ¹ *Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka*,
26 UN Secretary-General (UNSG), pg. ii, Mar. 31, 2011, available at
<https://www.refworld.org/docid/4db7b23e2.html>.

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28

1 7. My work on Sri Lanka is grounded in decades of experience in human
2 rights and international criminal law as well as transitional justice, starting in my
3 home country South Africa. I am an attorney admitted to the High Court of South
4 Africa, following my graduation from the University of Witwatersrand, South Africa
5 in 1984 with a Baccalaureus Procuratoris (“BProc”) LLB degree. Since my early
6 days as a lawyer in South Africa, I have been involved in the struggle against
7 apartheid and represented many victims of the apartheid system in their legal battles
8 with the apartheid government. I have also worked with the human rights movement
9 in my country to ensure that the rights of marginalized and vulnerable individuals
10 are respected. I also served as an Acting Judge at the Johannesburg High Court in
11 2004.

12 8. I was appointed by the late President Mandela as a Commissioner on
13 the South African Truth and Reconciliation Commission, where I served from 1996-
14 2001 under the Chairpersonship of Archbishop Desmond Tutu co-chairing the
15 Committee on Human Rights Violations, the legal sub-committee and the committee
16 responsible for the Commission’s final report from 2001-2003. I am currently the
17 Executive Director of the Foundation for Human Rights, an independent human
18 rights organization established by President Nelson Mandela’s government in 1996
19 to address the legacy of the past and build a human rights culture, promoting social
20 justice and equality in South Africa.

21 9. I have served since 2004 as an international expert specializing in
22 accountability for human rights violations and serious international crimes as well
23 as transitional justice in a number of post-conflict societies. In 2015, I was appointed
24 by the United Nations Secretary General to an independent panel investigating
25 allegations of sexual exploitation and abuse by French Peacekeepers in the Central
26 Africa Republic. I was also appointed by the United Nations to serve as one of three
27 international commissioners on the Truth and Reconciliation Commission of Sierra
28

1 Leone from 2002-2004. I currently chair the UN Commission on Human Rights in
 2 South Sudan, established by the UN Human Rights Council in 2016 which is
 3 responsible for the collection and preservation of evidence in respect of serious
 4 international crimes in South Sudan including conflict-related sexual violence.

5 10. In my capacity as Executive Director of the ITJP and as a former
 6 member of the UN Secretary General's Panel of Experts, I have acquired the
 7 following information through a combination of firsthand observation, interviews
 8 with victims and witnesses as well as official reports and research from staff
 9 members.

10 **THE RISKS FACING VICTIMS AND WITNESSES OF HUMAN RIGHTS**
 11 **VIOLATIONS IN SRI LANKA.**

12 11. Sri Lankan victims of torture and sexual violence and their families face
 13 severe and continued risks of retaliation, stigma and ostracism as well as violence,
 14 threats, harassment, and continued surveillance violating their rights to privacy and
 15 family life, by members of the Sri Lankan security forces, supporters of the
 16 Rajapaksa family and Sinhala Buddhist extremists² in Sri Lanka and abroad. These
 17 violent and retaliatory attacks are commonplace and have become the norm for the
 18 survivors, witnesses and their families due to the prevalent culture of impunity that
 19 has continued to thrive in Sri Lanka under the Rajapaksa and Sirisena regimes
 20 (former and current governments, respectively) and has been exacerbated by the
 21 political and security context. I will first address the patterns of threats against
 22

23 ² On the virulent—and often violent—Sinhala-Buddhist, ethno-nationalist
 24 movement, see *Hardline Sri Lanka Monk Calls for Buddhist Sinhalese Government*,
 25 N.Y. Times, July 7, 2019,
 26 [https://www.nytimes.com/reuters/2019/07/07/world/asia/07reuters-sri-lanka-
 buddhist.html](https://www.nytimes.com/reuters/2019/07/07/world/asia/07reuters-sri-lanka-buddhist.html); Hannah Beech, *Buddhists Go to Battle: When Nationalism Overrides*
 27 *Pacifism*, N.Y. Times, July 8, 2019,
 28 <https://www.nytimes.com/2019/07/08/world/asia/buddhism-militant-rise.html>.

1 plaintiffs, victims in general, witnesses, and their families. I will then turn to the
2 culture of impunity that enables and ensures these threats under the current
3 administration. Based on my knowledge of Sri Lanka's context and the available
4 evidence, these security risks will likely worsen if the Rajapaksa family returns to
5 power.

6 **A. Ongoing gross human rights violations are a clear and present**
7 **danger to victims, witnesses, and family members still in Sri**
8 **Lanka.**

9 12. Torture and other gross violations of human rights remain prevalent in
10 Sri Lanka, which poses a risk for anyone who challenges the establishment and a
11 powerful political figure like the Defendant. Within a 26-month period between
12 December 2015 and July 2018, there were at least 51 *reported* incidents of
13 abduction, torture, murder and threats found in local Tamil newspapers.³ The ITJP
14 has also investigated 78 cases of torture that occurred from 2015 to 2019. Exh. A,
15 pg. 1 (containing summary of female Tamil victim who was abducted in 2019 by
16 members of the Criminal Investigation Department and subjected to sexual violence
17 and torture). I have personally met and interviewed many of these recent victims and
18 as an expert I find their allegations credible. To my knowledge, the UN Office of the
19 High Commissioner for Human Rights has investigated and found credible several
20 incidents of abduction, unlawful detention, and torture occurring from 2016-2018,
21

22 ³ *Inconvenient Truths[:]* the newspapers they didn't read, Journalists for
23 Democracy, pgs. 3-4, Sept. 18, 2018,
24 [http://www.jdslanka.org/images/documents/inconvenient%20truths_journalists_f
or_democracy_in_srilanka_2018_sept.pdf](http://www.jdslanka.org/images/documents/inconvenient%20truths_journalists_f_or_democracy_in_srilanka_2018_sept.pdf); see also, *Too Little Change: Ongoing*
25 *Torture in Security Operations in Sri Lanka*, Feb. 2019,
26 [https://www.freedomfromtorture.org/sites/default/files/2019-03/fft_sri_lanka
report_v5_lr.pdf](https://www.freedomfromtorture.org/sites/default/files/2019-03/fft_sri_lanka_report_v5_lr.pdf) (case study of 16 Tamil victims that documents the various tortures
27 inflicted between 2015-17).

1 based on victims who have fled the country and given testimony.⁴ The allegations
 2 of abductions, torture and sexual violence at the hands of security forces in Sri Lanka
 3 between 2016-18 have been confirmed by a special investigation conducted by
 4 OHCHR in 2018 which found reasonable ground to find the allegations credible⁵.
 5 This is corroborated by a number of UN reports, including by the UN Special
 6 Rapporteur on human rights and counter-terrorism,⁶ the UN Special Rapporteur on
 7 torture,⁷ and the UN Committee Against Torture.⁸

8 **B. There are well-documented reprisals against witnesses and family**
 9 **members by security services and supporters of the Rajapaksas.**

10 13. A large number of torture victims who fled abroad have reported violent
 11 persecution against family members remaining in Sri Lanka, as detailed in a July

12
 13 ⁴ *Promoting reconciliation accountability, and human rights in Sri Lanka: Report of*
 14 *the Office of the United Nations High Commissioner for Human Rights*, UN Human
 15 Rights Council, A/HRC/40/23, ¶ 56, Feb. 8, 2019, available at
 16 <https://undocs.org/en/A/HRC/40/23>.

17 ⁵ *Promoting reconciliation, accountability and human rights in Sri Lanka: Report of*
 18 *the Office of the United Nations High Commissioner for Human Rights*, UN Human
 19 Rights Council, A/HRC/37/23, ¶ 44, Jan. 25, 2018, available at
 20 <https://undocs.org/A/HRC/37/23>; *Report of the Office of the United Nations High*
 21 *Commissioner for Human Rights on Sri Lanka*, Human Rights Council,
 22 A/HRC/34/20, ¶ 57, Feb. 10, 2017, available at <https://undocs.org/A/HRC/34/20>.

23 ⁶ *Full Statement by Ben Emmerson, UN Special Rapporteur on human rights and*
 24 *counter-terrorism, at the conclusion of his official visit*, United Nations Sri Lanka,
 25 July 14, 2017, <http://lk.one.un.org/news/full-statement-by-ben-emmerson-un-special-rapporteur-on-human-rights-and-counter-terrorism-at-the-conclusion-of-his-official-visit/>.

26 ⁷ *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading*
 27 *treatment or punishment on his mission to Sri Lanka*, UN Human Rights Council,
 28 A/HRC/34/54/Add.2, ¶¶ 110-11, Dec. 22, 2016, available at
<https://undocs.org/A/HRC/34/54/Add.2>.

⁸ *Concluding observations on the fifth periodic report of Sri Lanka adopted on the*
 59th *Session*, UN Committee Against Torture, ¶ 11, Nov. 30, 2016, available at
<https://www.refworld.org/docid/584961524.html>.

1 2015 report of the International Truth and Justice Project.⁹ Of 80 survivors
2 interviewed in 2014 and 2015 with family in Sri Lanka, 23 had a close relative who
3 had suffered arrest and/or physical harm. The physical harm ranged from beatings
4 to detentions, and more severe torture, including gang rape, disappearance, and
5 killing. In other words, more than a quarter of torture survivors surveyed reported
6 that their close family members in Sri Lanka had been badly hurt after they had
7 escaped abroad. Of the 80 witnesses surveyed, the majority also reported that their
8 relatives had been visited, intimidated and questioned in their homes by members of
9 the security forces after they had left Sri Lanka, most on multiple occasions.

10 14. Mere involvement in peaceful political campaigning can carry a huge
11 price. For example, on November 15, 2013, British Prime Minister David Cameron
12 visited the northern city of Jaffna during the Commonwealth Heads of Government
13 meeting (CHOGM). His convoy was met by families of disappeared persons,
14 pleading for his help in locating their loved ones. Revenge attacks occurred against
15 at least five of those who protested. They have subsequently been granted asylum in
16 the U.K. after being abducted and tortured.

17 15. The ITJP has continued to encounter cases of persecution and
18 harassment against witnesses' family members under the current coalition
19 government. In January 2016, the ITJP published a study of 20 torture cases
20 occurring after the change in government in which the victim fled abroad. The study
21 found that in all cases the remaining family members in Sri Lanka had been
22 repeatedly visited by security forces and threatened.¹⁰ In at least two cases a parent

24 ⁹ *A Still Unfinished War: Sri Lanka's Survivors of Torture and Sexual Violence*
25 2009-2015, International Truth and Justice Project: Sri Lanka, pgs. 109-11, July
26 2015, http://www.itjpsl.com/assets/stoptorture_report_v4_online.pdf.

27 ¹⁰ *Silenced: survivors of torture and sexual violence in 2015*, International Truth and
28 Justice Project: Sri Lanka, pg. 30, Jan. 2016, <http://www.itjpsl.com/assets/Silenced-jan-2016.pdf>; see also, *Unstopped: 2016/17 Torture in Sri Lanka*, International

1 had been detained and in other cases a parent was forced to report to the security
2 forces on a routine basis. Victims remain frightened to phone home lest they put
3 their families in danger.

4 16. The intimidation of family members is, among other things, part of an
5 on-going system to deter witnesses to crimes committed by the security forces from
6 coming forward. In many cases, survivors of torture including sexualized torture
7 have been expressly warned by the security forces not to communicate with
8 foreigners or provide outsiders evidence of war crimes or the abuse they suffered in
9 detention. The U.S. State Department's 2014 report on Sri Lanka noted this
10 phenomenon: "There were reports that authorities released detainees with a warning
11 not to reveal information about their arrest or detention, under the threat of re-arrest
12 or death."¹¹

13 17. Those threats are not idle. For example, the ITJP recorded a case of
14 reprisal against the family of an individual who testified confidentially to the United
15 Nations Office of the High Commissioner on Human Rights Investigation on Sri
16 Lanka (OISL). The reprisal involved detention of a family member in 2014 with
17 threats and harassment continuing afterwards. The victim and family were
18 eventually granted asylum in the U.K. on the basis of this risk.

19 18. Speaking out about human rights abuses remains hazardous. For
20 example, in two cases studied by the ITJP, Tamil war survivors gave interviews to
21 Tamil language media abroad – in one case a TV station and in the other a magazine
22

23 Truth and Justice Project, July 2017,
24 http://www.itjpsl.com/assets/ITJP_unstopped_report_final.pdf (describing 24
25 additional cases of abduction, illegal detention, torture and sexual violence between
26 2016-17).

26 ¹¹ *Sri Lanka 2014 Human Rights Report*, Bureau of Democracy, Human Rights and
27 Labor, pg. 15, <https://2009-2017.state.gov/documents/organization/236862.pdf> (last
28 visited on Aug. 23, 2019).

1 – only to see their families face violent and swift reprisals in 2015. In another case,
2 an individual was arrested on arrival in Sri Lanka and questioned about media
3 interviews abroad.

4 19. In June 2019, Reporters without Borders expressed concern about
5 ongoing attacks on Tamil journalists in the former conflict areas, complaining that
6 there has been “complete impunity” for the killing and torture of dozens of
7 journalists over the years.¹² In 2018, Journalists for Democracy in Sri Lanka reported
8 that human rights activists and reporters were coming under increasing threat from
9 military officials and ultra-nationalist Buddhist monks.¹³ A Tamil disappearance
10 activist and her daughter were reportedly assaulted and hospitalized in August 2019
11 in Sri Lanka.¹⁴ In another example, Shalin Uthayasara, a journalist at the Tamil
12 Guardian, an online news portal, was threatened and interrogated by the military
13 about his investigative journalism in the former conflict zone in the north of the
14 country.¹⁵

15 20. The UN special rapporteur on the rights to freedom of peaceful
16 assembly and association, Mr. Clément Nyaletsossi Voulé, visited Sri Lanka in July
17 2019 and said he was very concerned at the numerous accounts he received of
18

19 ¹² *Alarming resurgence in Sri Lankan police attacks on Tamil journalists*, Reporters
20 Without Borders, June 6, 2019, <https://rsf.org/en/news/alarming-resurgence-sri-lankan-police-attacks-tamil-journalists>.

21 ¹³ *Sri Lanka: Soldiers, bankers and monks intimidate journalists and activists*,
22 Journalists for Democracy in Sri Lanka, June 20, 2018,
23 <http://www.jdslanka.org/index.php/news-features/media/786-srilanka-journalists-intimidated>.

24 ¹⁴ *Disappearance activist and daughter attacked in Batticaloa*, Tamil Guardian,
25 Aug. 4, 2019, <https://www.tamilguardian.com/content/disappearance-activist-and-daughter-attacked-batticaloa>.

26 ¹⁵ *Tamil reporter harassed by Sri Lanka’s anti-terrorism police*, Reporters Without
27 Borders, Oct. 24, 2018, <https://rsf.org/en/news/tamil-reporter-harassed-sri-lankas-anti-terrorism-police>.

1 surveillance, including online surveillance, used to monitor the activities of the civil
2 society sector and intimidate those protesting peacefully.¹⁶ He complained he
3 himself was subjected to surveillance by security officials watching his meeting
4 places and writing down the number plate of his vehicle and telephoning members
5 of civil society he met to intimidate them before, during and after his meetings with
6 them.

7 **C. Foreign surveillance and intimidation**

8 21. The threats extend beyond Sri Lanka's borders. The Sri Lankan
9 government has pursued an active campaign of surveilling and intimidating Tamils
10 and other perceived political opponents outside the country. In February 2018,
11 Brigadier Priyanka Fernando was filmed making death threats to Tamil
12 demonstrators outside the Sri Lankan High Commission in London. After being
13 recalled to Sri Lanka following a diplomatic protest, he was subsequently privately
14 prosecuted in the U.K. for disturbing the peace. In the course of those proceedings
15 it emerged that his official job description as Defense Attaché included "monitoring
16 any anti-Sri Lanka activities in the UK and reporting to ... Intelligent [sic] agencies
17 in Sri Lanka."¹⁷ This revelation confirms the findings of U.K. Upper Tribunal that
18
19
20

21 ¹⁶ *End of Mission Statement, United Nations Special Rapporteur on the rights to*
22 *freedom of peaceful assembly and association, Mr. Clément Nyaletsossi Voulé, on*
23 *his visit to Sri Lanka (18-26 July 2019)*, UN Human Rights Office of the High
24 Commissioner, July 26, 2019,
[https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24818](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24818&LangID=E)
&LangID=E.

25 ¹⁷ Phil Miler, 'Death threats were part of Sri Lankan diplomat's job description,'
26 *court told*, Morning Star, Mar. 1, 2019,
27 [https://morningstaronline.co.uk/article/b/death-threats-were-part-sri-lankan-](https://morningstaronline.co.uk/article/b/death-threats-were-part-sri-lankan-diplomat-job-description-court-told)
[diplomat-job-description-court-told](https://morningstaronline.co.uk/article/b/death-threats-were-part-sri-lankan-diplomat-job-description-court-told).

1 “[t]he Sri Lankan authorities’ approach is based on sophisticated intelligence, both
2 as to [Tamil] activities within Sri Lanka and in the diaspora.”¹⁸

3 22. The Fernando proceedings in the UK included incidents of witness
4 intimidation occurring in the UK and reprisals against family in Sri Lanka:

- 5 • **Witness Statement 1:** Mr. Majuran Sathananthan testified that
6 after he reported the incident involving the Sri Lankan diplomat
7 in London he started receiving death threats on the phone. The
8 following month his parents in Sri Lanka told him their home had
9 been visited and they had asked for Mr. Sathananthan and cited
10 by name the other private prosecutors in the case.¹⁹
- 11 • **Witness Statement 2:** Mr. Gokulkrishnan Narayanasamy
12 testified he too received threats after filing the police complaint
13 and his uncle in Jaffna reported someone had turned up at his
14 sister’s school, shown her Mr Narayansaamy’s photo and said he
15 should drop the case or else.²⁰
- 16 • **Witness statement 3:** Mr. Palliya Guruge Vinoth Priyantha
17 Perera said after he made a complaint to the police, he and his
18 family received threats. A man approached his mother and
19 neighbours and said Mr. Perera should drop his case. Another
20 man went to his family home in Sri Lanka to ask for his telephone
21 number. Mr. Perera’s wife has had to move within Sri Lanka
22 because of harassment.²¹
- 23 • **Witness statement 4:** Mr. Sabeshraj Sathiyamoorthy - filmed
24 the incident and reported it to the police. Approximately a week

19 ¹⁸ *GJ and others (post-civil war: returnees) Sri Lanka CG*, UK Upper Tribunal
20 (Immigration and Asylum Chamber), [2013] UKUT 319, ¶ 8, July 5, 2013, *available*
21 *at*

22 http://www.bailii.org/uk/cases/UKUT/IAC/2013/00319_ukut_iac_gj_ors_srilanka_cg.html;
23 *see also, id.* at ¶ 7 (“The evidence before us indicates that the Sri Lankan
24 government is determined to ensure that Tamil separatism and the conflict it brought
25 never recur. The government's intention is being carried into effect by an intensive
26 militarisation and Sinhalisation of former Tamil areas, "rehabilitation" of 11,000
27 former LTTE cadres, and intelligence-led monitoring and supervision of Tamil
28 activities, both within Sri Lanka and in the diaspora.”).

¹⁹ Exh. D, pg. 8 at ¶¶ 11-12.

²⁰ *Id.*, pg. 12 at ¶¶ 26-17.

²¹ *Id.*, pg. 19 at ¶¶ 18-21.

1 later he was at a function in London and two Sinhalese men
2 approached him, spoke in Tamil and threatened him: “We’ve got
3 all your details, in Sri Lanka and here, . . . if you come back to
Sri Lanka, at the airport you will go missing.”²²

4 23. There is no doubt the Sri Lankan security forces have the intelligence
5 network and technology to identify a victim abroad and locate their family in Sri
6 Lanka merely from their face, let alone name. It was the routine practice of the
7 security forces to photograph detainees, which means images of their faces are likely
8 to be on the government’s database.

9 24. Another threat facing witnesses located abroad is online harassment.
10 Sri Lanka has seen an upsurge in online vigilante mobs and cyber death threats,
11 targeted particularly at minorities both within the country and abroad.²³ Online
12 vigilantism has reached a fevered pitch since the Easter Sunday bombings in 2019,
13 particularly amongst supporters of the Rajapaksas. While the Muslim minority is the
14 frequent target, Tamils are targeted as well. In one recent instance, a Sri Lankan
15 Tamil living in London gave an interview to the BBC in which he mentioned the
16 country’s long history of ethnic conflict. Online, rumors spread that he had accused
17 Sinhala Buddhists of carrying out the Easter bombings. As the New York Times
18 reported:

19 This past week an online mob soon identified Dr. Nandakumar’s family
20 and began circulating photos of them. His parents and brother received
21 death threats. His teenage sister was graphically threatened with rape
22 as well.

23 Meanwhile, Dr. Nandakumar faced ever-worsening threats. “I got one
24 message saying some S.T.F. boys are waiting to ‘smoke’ me,” he said,

25 ²² *Id.*, pg. 23 at ¶¶ 11-12.

26 ²³ See Amanda Taub and Max Fisher, *Where Countries are Tinderboxes and*
27 *Facebook is a Match*, N.Y. Times, Apr. 21, 2018,
<https://www.nytimes.com/2018/04/21/world/asia/facebook-sri-lanka-riots.html>.

1 a reference to the Special Task Force, a notorious unit of the Sri Lankan
2 military.²⁴

3 **D. Stigma and social ostracism of survivors of sexual violence.**

4 25. Victims living abroad who experienced sexual violence in detention
5 present an additional range of protection issues. Tamil culture is generally
6 conservative, and sexual violence victims face an enormous amount of stigma. As
7 one aid worker explained to ITJP:

8 In Tamil culture virginity is considered something higher than any other
9 virtue in life until a girl is married. That is drilled from an early age. It
10 is so important that if lost, suicide is considered as a solution. She feels
11 she is a bad woman and unworthy and no male would want to marry
12 her. In our culture the proposed in-laws demand that the brides to their
13 sons are virgins. They will inquire and if the girl says she is not a virgin
14 then the family will not allow the marriage. It matters not whether she
15 lost her virginity willingly or was raped. If she is raped after marriage,
16 as so often happened in the war by the security forces, in most cases
17 she will be rejected by society, including in-laws, husbands, neighbours
18 and in many cases their own families.²⁵

19 26. Male survivors of sexual violence also face stigma, shame, and
20 ostracism. An independent academic report the commissioned by the ITJP in 2018
21 concluded that for male victims abroad: “They couldn’t speak about their ordeal to
22

23 ²⁴ Amanda Taub, *'We will come for your': How Fear of Terrorism Spurs Online*
24 *Mobs*, N.Y. Times, Apr. 29, 2019,
25 [https://www.nytimes.com/2019/04/29/world/asia/sri-lanka-attacks-death-](https://www.nytimes.com/2019/04/29/world/asia/sri-lanka-attacks-death-threats.html)
[threats.html](https://www.nytimes.com/2019/04/29/world/asia/sri-lanka-attacks-death-threats.html).

26 ²⁵ *A Still Unfinished War: Sri Lanka's Survivors of Torture and Sexual Violence*
27 *2009-2015*, International Truth and Justice Project: Sri Lanka, pgs. 85-86, July 2015,
28 http://www.itjpsl.com/assets/stoptorture_report_v4_online.pdf.

1 close family members or spouses. They felt isolated because of this and said they
2 felt this was exactly the goal the perpetrators had in mind.”²⁶

3 27. In fact, ITJP has found that at least 19 of the 76 male and female victims
4 of sexual violence interviewed by ITJP have attempted suicide, some on multiple
5 occasions.²⁷

6 28. Thus, the public disclosure of the identities of sexual violence victims,
7 and the facts of their ordeal, could destroy whatever is left of their lives. Most victims
8 encountered by ITJP have hidden the details of sexual violence from their family.
9 The consequences of disclosure would be cataclysmic and, given the high rate of
10 suicide observed amongst survivors, could pose a very real risk to their lives and
11 welfare.

12
13 **SRI LANKA’S ONGOING CULTURE OF IMPUNITY ENABLES THE**
14 **THREATS FACING VICTIMS, WITNESSES, AND THEIR FAMILIES**

15 **A. Impunity for gross human rights violations is prevalent under the**
16 **current government and would likely worsen under another**
17 **Rajapaksa regime.**

18 29. The risks to Plaintiffs need to be assessed from two perspectives: first,
19 under the current coalition government and second, if the Rajapaksa family and their
20 allies return to power after presidential and parliamentary elections due to be held
21 soon. While the current risks are already prohibitive, the latter scenario would
22 significantly raise the risks for these plaintiffs.

23
24 _____
25 ²⁶ *Unsilenced: Male Survivors Speak of Conflict-Related Sexual Violence in Sri*
26 *Lanka*, International Truth and Justice Project: Sri Lanka, pg. 44, Sept. 2018,
27 http://www.itjpsl.com/assets/ITJP_unsilenced_report-final.pdf.

28 ²⁷ *Ongoing Torture*, International Truth and Justice Project, Dec. 31, 2018,
http://www.itjpsl.com/assets/ITJP_ongoing_violations_fact_sheet_v6.1.pdf

1 reform and reconciliation, and would likely impact Sri Lanka's ability to contribute
2 forces to UN peacekeeping missions.³⁰

3 32. The appointment of Silva was done despite the publicized risk that the
4 United States would be forced to cut off military assistance under the "Leahy Law,"
5 22 U.S.C. § 2378d (prohibiting provision of security aid to "any unit of the security
6 forces of a foreign country if the Secretary of State has credible information that
7 such unit has committed a gross violation of human rights.>").³¹

8 33. This substantially raises the risks for the Plaintiffs. Shavendra Silva is
9 a long-time comrade of the Defendant, having served under his command in the
10 same regiment in 1989 when crushing a Sinhalese uprising, as well as again in 2008-
11 09 in the war in the north of the island.³² The promotion of Silva sent shock waves
12 through civil society in Sri Lanka. The Defendant now has allies in the top military
13 positions of the country. In addition, news reports say the Defendant is recruiting 50
14 retired army officers to serve him as volunteers during the election campaign³³ while
15 a recent media report also spoke of the Defendant having his own private intelligence
16 unit.³⁴

18 ³⁰ *Appointment of alleged war criminal to head of Sri Lanka army 'deeply troubling',*
19 *says UN human rights chief*, UN News, Aug. 19, 2019, <https://news.un.org/en/story/2019/08/1044501>.

20 ³¹ See Lesley Wroughton, *U.S. warns Sri Lanka on investment, military ties after*
21 *army chief promotion*, Reuters, Aug. 20, 2019, <https://reut.rs/2P46row>.

22 ³² *Shavendra Silva Chief of Army Staff Sri Lanka*, International Truth and Justice
23 Project, pgs. 4-5, Jan. 29, 2019, [http://www.itjpsl.com/assets/shavendra-Silva_-_](http://www.itjpsl.com/assets/shavendra-Silva_-_final-dossier.pdf)
[final-dossier.pdf](http://www.itjpsl.com/assets/shavendra-Silva_-_final-dossier.pdf).

24 ³³ *A team of volunteers to provide security for Gota*, Daily Mirror, Aug. 5, 2019,
25 [http://www.dailymirror.lk/top_story/A-team-of-volunteers-to-provide-security-for-](http://www.dailymirror.lk/top_story/A-team-of-volunteers-to-provide-security-for-Gota/155-172310)
[Gota/155-172310](http://www.dailymirror.lk/top_story/A-team-of-volunteers-to-provide-security-for-Gota/155-172310).

26 ³⁴ *Gotabaya Rajapaksa Informs President Sirisena That his Intelligence Unit Has*
27 *Uncovered Alleged Plot by a Northern Terror Group Targeting Him Along With*
Douglas Devananda and Karuna Ammaan; Sniper Rifle Imported From Malaysia

1 holding sensitive positions. Exh. B at 90. As another example, TID Officer in Charge
2 Lal Hirambara Gamage was identified by torture victims as “a notorious interrogator
3 who was involved in assaults, beating and torture, including of a sexual nature...”
4 *Id.* at 84-85. Nevertheless, he remained in the TID post-civil war as an Inspector in
5 2014, Chief Inspector in 2015, and more recently as the Officer in Charge of the
6 Jaffna Division. *Id.* at 80-82. There have been no records that these individuals were
7 ever prosecuted for their alleged crimes.³⁸

8 38. Worryingly, in the wake of the 2019 Easter Sunday bombings, there
9 has already been a proposal for an immunity provision from prosecution for the Sri
10 Lankan military and intelligence services in a report reportedly authored by
11 Gotabaya Rajapaksa and handed over to the President by a number of known alleged
12 war criminals,³⁹ including Jagath Jayasuriya,⁴⁰ the 2008-9 commander of one of the
13 torture sites mentioned by the Plaintiffs - Joseph Camp.⁴¹ “If they cannot do it, I will
14
15
16

17 ³⁸ See also Exh. C, pgs. 4-8 (based on publicly available information and provides a
18 sample list of Sri Lankan officers involved in the 2008-09 war who were deployed
as peacekeepers after the war as an award).

19 ³⁹ *Sri Lanka president accepts proposal to legalise impunity*, Journalists for
20 Democracy in Sri Lanka, May 5, 2019, <http://www.jdslanka.org/index.php/news-features/politics-a-current-affairs/882-sri-lanka-president-accepts-proposal-to-legalise-impunity-video>.
21

22 ⁴⁰ In 2017, ITJP in partnership with Latin American NGOs filed complaints against
23 Jagath Jayasuriya alleging torture, sexual violence, extrajudicial killings and other
war crimes and crimes against humanity. *The Case Against Jagath Jayasuriya*,
24 International Truth and Justice Project, <http://www.itjpsl.com/reports/the-case-against-jagath-jayasuriya> (last visited on Aug. 25, 2019).

25 ⁴¹ Joseph military camp is a well-documented torture site which served as the
26 Security Force Headquarters for Vavuniya during the civil war. See generally,
Joseph Camp, International Truth and Justice Project, March 2017,
27 http://www.itjpsl.com/assets/ITJP_Joseph_camp_report_FINAL.pdf.

1 do it when the next government comes to power,” Gotabaya is reported as saying
2 regarding his plan.⁴²

3 39. Politicized interference was highlighted in a pardon recently granted to
4 a hardline Sinhala nationalist Buddhist monk, Galagoda Aththe Gnanasara, known
5 to be an ally of Gotabaya Rajapaksa.⁴³ Gnanasara, who is alleged to have inspired
6 communal violence in Sri Lanka, was convicted in 2018 for contempt of court
7 including criminally intimidating a plaintiff in court - the wife of a disappeared
8 Sinhalese journalist - in 2016. He was sentenced to 19 years of rigorous
9 imprisonment to be completed within 6 years. However, in May 2019, Gnanasara
10 was released from jail after receiving a presidential pardon – a move heavily
11 criticised inside Sri Lanka.

12 40. In another example, in May 2019 in the aftermath of the Easter Sunday
13 bombings, an opposition politician close to Gotabaya Rajapaksa, Dayasiri
14 Jayasekara, is alleged to have gone to a police station and transferred four alleged
15 perpetrators of attacks on Muslims to another police station before bailing them out.
16 This shows that the political protection of certain suspected human rights abusers
17 ensures they can act with impunity.

22 ⁴² *The Bulathwatte bewilderment*, Sunday Observer, Aug. 11, 2019,
23 [http://www.sundayobserver.lk/2019/05/19/news-features/bulathwatte-](http://www.sundayobserver.lk/2019/05/19/news-features/bulathwatte-bewilderment)
24 [bewilderment](http://www.sundayobserver.lk/2019/05/19/news-features/bulathwatte-bewilderment).

25 ⁴³ *Sinhala extremist group seen with Sri Lankan president in Tokyo*, Tamil Guardian,
26 Mar. 15, 2018, [https://www.tamilguardian.com/content/sinhala-extremist-group-](https://www.tamilguardian.com/content/sinhala-extremist-group-seen-sri-lankan-president-tokyo)
27 [seen-sri-lankan-president-tokyo](https://www.tamilguardian.com/content/sinhala-extremist-group-seen-sri-lankan-president-tokyo); *Gota was Behind Bodu Bala Sena claims Rajitha*,
Daily FT, Jan. 5, 2018, [http://www.ft.lk/article/589513/Gota-was-behind-Bodu-](http://www.ft.lk/article/589513/Gota-was-behind-Bodu-Bala-Sena-claims-Rajitha)
28 [Bala-Sena-claims-Rajitha](http://www.ft.lk/article/589513/Gota-was-behind-Bodu-Bala-Sena-claims-Rajitha).

1 **2. Conflicts of interest: Security officials accused of torture**
2 **remain in power, will not investigate themselves, and cannot**
3 **be entrusted with protecting witnesses.**

4 41. Members of the security and military forces implicated in Rajapaksa-
5 era abuses remain in office despite the transition and have recently been supported
6 by President Sirisena. Many of them are connected to the abuses at issue in this case.
7 The ITJP has identified a number of current police officials who were either named
8 by Plaintiffs as perpetrators of torture or were overseeing those perpetrators at the
9 time.⁴⁴ For example, two alleged perpetrators of torture identified in the First
10 Amended Complaint are still in office. Assistant Superintendent of Police Prasanna
11 de Alwis, is currently working in the Colombo Crimes Division of the Sri Lanka
12 Police,⁴⁵ while Nishantha de Silva is in charge of the Organized Crime Investigation
13 Unit of the Criminal Investigation Department of the Police.⁴⁶ In another instance
14 the Prime Minister brought an alleged perpetrator, Sisira Mendis who ran the
15 notorious “Fourth Floor” torture site, out of retirement to work in a top position in
16 his administration, including being sent to Geneva to represent the government at a
17
18

19 ⁴⁴ *E.g.*, Inspector Hettiarachchige Harendra Janakantha— currently the Officer in
20 Charge and Chief Inspector of Warakapola; Mr. Nandana Munasinghe – currently a
21 Senior Deputy Inspector of Police (“SDIG”) of police for the Western Province and
22 a member of the ten-member National Authority for witness protection; Mr. Asange
23 Karawita – previously Terrorism Investigation Division (“TID”) Director and since
24 2015 in charge of the Prime Minister’s Security Division; Gamage – Officer in
25 Charge (“OIC”) of TID at Boossa from 2009 for several years (unknown current
26 location); Mr. Sisira Mendis, previously DIG of the Criminal Investigation
27 Department (“CID”) (recently resigned from the position of the Chief of National
28 Intelligence over the Easter Sunday bombings).

⁴⁵ First Amended Complaint, Dkt. No. 35, ¶¶ 61, 72, 177, 196-98; *see also*, Exh. B
at 44.

⁴⁶ First Amended Complaint, Dkt. No. 35, ¶¶ 85-86.

1 meeting on torture prevention;⁴⁷ he recently resigned over the Easter Sunday
2 bombings.

3 42. The presence of accused perpetrators in senior police positions would
4 jeopardize the safety of the plaintiffs' relatives in Sri Lanka, since they are
5 implicated in the torture alleged in this case. Moreover, any investigation would
6 potentially be a conflict of interest as the police would be investigating their own
7 misconduct. By way of example, Nishantha de Silva,⁴⁸ the lead police officer tasked
8 with leading a handful of human rights investigations, was himself named by a
9 Plaintiff in the amended complaint as his torturer on two occasions.⁴⁹

10 43. These conflicts of interest mean there is no reliable police protection
11 for the Plaintiffs' families in Sri Lanka. To date there is no credible independent
12 investigative body that can hold the security forces accountable for grave violations
13 of human rights, thus placing survivors, witnesses and their families at serious risk
14 of retaliatory attacks for seeking redress in any form. Indeed, the secretary of the
15 National Police Commission⁵⁰, charged with oversight and discipline of the police
16 force, was recently himself arrested in connection with a corruption case involving
17 a defense company given a monopoly by the Ministry of Defense when the
18 Defendant was in charge⁵¹.

19
20 ⁴⁷ *The Case Against Sisira Mendis*, International Truth and Justice Project, pg. 4,
21 Nov. 15, 2016, [http://www.itjpsl.com/assets/press/The-case-against-Sisira-Mendis-](http://www.itjpsl.com/assets/press/The-case-against-Sisira-Mendis-final.pdf)
22 [final.pdf](http://www.itjpsl.com/assets/press/The-case-against-Sisira-Mendis-final.pdf).

23 ⁴⁸ In a separate case, the chief investigator, Nishantha de Silva, himself alleged to be
24 a torturer, now says his life has been threatened and key witnesses interviewed by
25 police in the Trincomalee navy case have fled abroad and are claiming asylum.

26 ⁴⁹ First Amended Complaint, Dkt. No. 35, ¶¶ 85-86.

27 ⁵⁰ *What We Do*, National Police Commission, Nov. 10, 2018,
28 <https://www.npc.gov.lk/what-we-do-2/>.

⁵¹ *NPC Secretary Saman Dissanayake arrested*, News Radio, July 18, 2019,
<https://www.newsradio.lk/local/npc-secretary-saman-dissanayake-arrested/>.

1 44. I am aware of evidence which shows that witnesses or Plaintiffs were
2 threatened in court proceedings in Sri Lanka, including:

3 45. *Magistrate’s Examination of Disappearances at Trincomalee Naval*
4 *Base*. There is an ongoing magistrate’s court case regarding the disappearance of 11
5 people thought to have been abducted for ransom by naval intelligence officers; it is
6 also an emblematic case reported on by the United Nations. ITJP has first-hand
7 knowledge that at least one witness in the ongoing navy case has fled abroad this
8 year because of threats. The chief police investigator says he has had his life
9 threatened by suspects in the prison jail who were allegedly arranging to hire hitmen
10 to kill him. The Chief of Defense Staff of the Sri Lanka military (the top official)
11 allegedly harbored an absconding suspect.⁵² There are also allegations that
12 Wijegunaratne’s secretary gave the absconding witness a bag full of cash. The same
13 official, Admiral Ravindra Wijegunaratne, is alleged to have threatened a witness
14 and then attempted, with his staff, to abduct him. The Chief of Defense Staff was
15 briefly arrested over this incident but extraordinarily continues to represent the
16 security forces and recently had his contract extended beyond the usual two year
17 term.

18 46. Meanwhile in February 2019 the former Navy Commander, Wasantha
19 Karannagoda, who is alleged to have known about the abductions, applied to the
20 Supreme Court for an order to prevent his arrest on the grounds that he was a “war
21 hero”.⁵³ The Supreme Court issued an order preventing the police from arresting
22

23 _____
24 ⁵² *Promoting reconciliation, accountability and human rights in Sri Lanka: Report*
25 *of the Office of the United Nations High Commissioner for Human Rights*, UN
26 Human Rights Council, A/HRC/40/23, ¶ 39, Feb. 8, 2019, available at
<https://undocs.org/en/A/HRC/40/23>.

27 ⁵³ Azzam Ameen (@AzzamAmeen), Twitter, (Feb. 25, 2019, 4:27 AM),
<https://twitter.com/azzamameen/status/1100009350771425280?lang=en>.

1 him.⁵⁴ He has not been arrested since. A prominent Tamil opposition MP and lawyer
2 commented on this order in a speech in parliament:

3 It has become a joke now that people run to the Supreme
4 Court – they do not go to the Magistrate’s Court where
5 under the Bail Act you can ask for anticipatory bail. This
6 is a new trend now. You go to the apex court of the country
7 and prevent arrest. The point I am trying to make is that
8 even in a case where the abducted persons were not
9 members of the LTTE, had nothing to do with the war,
10 even so, because the suspects were members of an armed
11 force – the Sri Lanka Navy who were running an extortion
12 racket they could not arrest the Navy Commander. This
13 was abduction and extortion of money for ransom and it
14 was revealed that the Navy Commander at that time knew
15 about it and himself made a complaint to the police – the
16 first complaint was by him. And because he was a war-
17 time Commander, the petition was taken up in the SC that
18 he is a war hero and that he should not be arrested. I wish
19 to ask, if a person had been a Commander of the Armed
20 Forces during the war, does that give him immunity from
21 arrest? I did not see that happening in the case of Field
22 Marshal Sarath Fonseka.”⁵⁵

17 **47. Welikada prison: proceedings concerning the death of 27 inmates**
18 **during a security operation to control a riot in November 2012.** On 28 March 2018,
19 a Narcotics Bureau inspector and a former Prisons Commissioner were arrested in
20 connection with the deaths of the 27 inmates in Welikada prison. On 25 September,
21 the inspector was released on bail and reinstated to his position in the police on 22

23 ⁵⁴ SC issues order preventing Wasantha Karannagoda’s arrest, Adaderana, Mar. 7,
24 2019, [http://www.adaderana.lk/news/53658/sc-issues-order-preventing-wasantha-](http://www.adaderana.lk/news/53658/sc-issues-order-preventing-wasantha-karannagodas-arrest)
[karannagodas-arrest](http://www.adaderana.lk/news/53658/sc-issues-order-preventing-wasantha-karannagodas-arrest).

25 ⁵⁵ A. Sumanthiran, *Continuing culture of impunity: The Karannagoda case*, Sunday
26 Observer, Mar. 17, 2019, [http://www.sundayobserver.lk/2019/03/17/opinion/continuing-culture-impunity-](http://www.sundayobserver.lk/2019/03/17/opinion/continuing-culture-impunity-karannagoda-case)
27 [karannagoda-case](http://www.sundayobserver.lk/2019/03/17/opinion/continuing-culture-impunity-karannagoda-case).

1 November. Media reports in 2019 alleged the former Prisons Commissioner who
2 remained in jail, had been threatening the main witness in the case, Sudesh
3 Nandimal.⁵⁶ In 2016 the Convener of the Committee to Protect Rights of Prisoners,
4 Sudesh Nandimal said he had been threatened to “give up the Welikada case as it
5 will land several of them in jail, and he will be six feet under if the warning goes
6 unheede.”⁵⁷ In 2017, he reported threats to the national Witness Protection
7 Authority and within hours his house came under fire.⁵⁸ In an interview he said the
8 government had shown no interest in protecting him as a witness and was merely
9 “awaiting his impending demise.”⁵⁹

10 48. These recent events are consistent with reported incidents of witness
11 intimidation dating back to the period when the Defendant was in office as Secretary
12 of Defense, including red-flags raised by the Bar Association of Sri Lanka and by
13 the International Independent Group of Eminent Persons, a body approved by the
14 Sri Lankan government to observe inquiries into human rights violations.⁶⁰

15 _____
16 ⁵⁶ Namini Wijedasa, *Victims and witnesses: No protection, but persecution*, Sunday
17 Times, July 31, 2016, <http://www.sundaytimes.lk/160731/news/victims-and-witnesses-no-protection-but-persecution-202919.html>.

18 ⁵⁷ Kithsiri Wijesinghe, *Sri Lanka: Prisoners’ rights activists under death threat*,
19 Journalists for Democracy in Sri Lanka, Feb. 11, 2016,
20 <http://www.jdslanka.org/index.php/news-features/human-rights/590-sri-lanka-prisoners-rights-activist-under-death-threat>.

21 ⁵⁸ *Shots fired at the house of Welikada shooting eyewitness*, Daily Mirror, Sept. 5,
22 2017, <http://www.dailymirror.lk/article/Shots-fired-at-the-house-of-Welikada-shooting-eyewitness-136006.html>.

23 ⁵⁹ Sanchith Karunaratna, *Govt has shown no interest in witness protection- Sudesh*
24 *Nandimal*, Adaderana, Sept. 5, 2017, <https://www.adaderana.lk/news/42857/govt-has-shown-no-interest-in-witness-protection-sudesh-nandimal->

25 ⁶⁰ *Sri Lanka: Police Intimidate Rathupaswala Witnesses*, Sri Lanka Brief, Sept. 18,
26 2013, <http://srilankabrief.org/2013/09/sri-lanka-police-intimidate-rathupaswala-witnesses/>. I have personal knowledge that the International Independent Group of
27 Eminent Persons (IIGEP) found credible evidence that the Rajapaksa Government’s
28 Human Rights Minister, Mahinda Samarasinghe, had attempted to bribe a material

1 **3. There is a lack of legal safeguards ensuring the protection**
2 **and safety of survivors, witnesses and their families in Sri**
3 **Lanka.**

4 49. The current witness protection system is so inadequate that it actually
5 increases the risks to witnesses. As the Human Rights Commission of Sri Lanka
6 commented in March 2017 on The Assistance to the Protection of Victims of Crime
7 and Witness Act No. 4 of 2015, “The main shortcoming in the Act is that the Police
8 itself is tasked with providing protection.”⁶¹ The Commission in 2016 found torture
9 was routine all over the country and added that it was sometimes “used for settling
10 personal scores by the Police”.⁶² Furthermore, witnesses who testify from abroad to
11 a Sri Lanka court have no protection as they are compelled to testify in a diplomatic
12 mission which means their identity is known to the Sri Lankan authorities.

13 50. The impediments in the legal framework are further exacerbated by the
14 composition of the national witness protection authority which includes individuals
15 implicated in gross human rights violations.⁶³ This includes the former Terrorism
16 Investigation Division (“TID”) police official, Nandana Munasinghe, named in a
17 UN report in 2008 as an individual who should be investigated and charged for his

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19 witness called before a local commission of inquiry. IIGEP’s report to its donors said
20 a witness, Dr Manoharan, gave sworn testimony that Mahinda Samarasinghe had
21 contacted him by phone and told him not to talk to internationals, that members of
22 the security forces had killed his son, and that he would assist him and his family
23 with a new life in Colombo.

24 ⁶¹ *Submission of The Human Rights Commission of Sri Lanka to The Third Universal*
25 *Periodic Review of Sri Lanka*, Human Rights Commission Sri Lanka, ¶ 17, Mar. 30,
26 2017, available at
27 [https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4432&file=EnglishT](https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4432&file=EnglishTranslation)
28 [ranslation](https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4432&file=EnglishTranslation).

⁶² *Id.* at ¶ 14.

⁶³ *Putting the Wolf to Guard the Sheep: Sri Lanka’s Witness Protection Authority*,
International Truth and Justice Project, pg. 3, [http://www.itjpsl.com/assets/Sri-](http://www.itjpsl.com/assets/Sri-Lanka-Witness-Protection-Report.pdf)
[Lanka-Witness-Protection-Report.pdf](http://www.itjpsl.com/assets/Sri-Lanka-Witness-Protection-Report.pdf) (last visited on Aug. 24, 2019).

1 alleged role in torture.⁶⁴ This was the official in charge of TID when some of the
2 Plaintiffs were detained and as such, he cannot be expected to protect them. Serious
3 credibility questions have been raised in respect of other individuals in the National
4 Authority. Concerns were raised about the integrity and impartiality of the former
5 Additional Solicitor General, Yasantha Kodagoda who is alleged to have covered up
6 serious human rights abuses when he worked for the Rajapaksa government.⁶⁵ These
7 concerns were raised not only by the Asian Human Rights Commission, but also in
8 a confidential report to donors who funded the International Independent Group of
9 Eminent Persons (IIGEP), a document I have seen. Kodagoda is now President of
10 the Court of Appeal.⁶⁶

11 51. Additionally, the Easter Sunday bombing in April 2019 has led to a
12 marked increase in securitisation in an environment where legal safeguards are
13 missing. The Government of Sri Lanka deployed up to ten thousand soldiers to carry
14 out policing duties even though there are serious questions about the human rights
15 records of many of the army commanders in charge.⁶⁷

16 52. The impunity and the lack of legal safeguards has made any attempt to
17 seek justice by survivors and witnesses in Sri Lanka a life-threatening exercise. The
18 United Kingdom—which has a sizable diaspora community from its former
19 colony—has recognized and continues to recognize in its asylum guidance that
20

21 ⁶⁴ *Id.* at 3-5.

22 ⁶⁵ *Id.* at 10-13; *see also*, Exhibit E at 3-4 (Dossier of Yasantha Kodagoda describing
past allegations of covering up human rights abuses).

23 ⁶⁶ *Yasantha Kodagoda sworn in as new President of the Court of Appeal*,
24 ColomboPage, Mar. 28, 2019,
http://www.colombopage.com/archive_19A/Mar28_1553755139CH.php.

25 ⁶⁷ *The Men Now Patrolling Sri Lanka*, International Truth and Justice Project and
26 Journalists for Democracy in Sri Lanka, May 2019,
27 [http://www.itjpsl.com/assets/press/2019_may_the_men_now_patrolling_sri_lanka
_itjp_jds.pdf](http://www.itjpsl.com/assets/press/2019_may_the_men_now_patrolling_sri_lanka_itjp_jds.pdf).

1 witnesses to human rights violations are at particular risk of persecution in Sri
2 Lanka:

3
4 Individuals who have given evidence to the Lessons Learned and
5 Reconciliation Commission implicating the Sri Lankan security forces,
6 armed forces or the Sri Lankan authorities in alleged war crimes.
7 Among those who may have witnessed war crimes during the conflict,
8 particularly in the No-Fire Zones in May 2009, only those who have
9 already identified themselves by giving such evidence would be known
10 to the Sri Lankan authorities and therefore only they are at real risk of
11 adverse attention or persecution on return as potential or actual war
12 crimes witnesses.⁶⁸

11 CONCLUSION

12 53. In sum, reprisals against witnesses' families in Sri Lanka are well
13 documented. The phenomenon of foreign government surveillance is well-
14 established, as is online vigilantism targeting Tamils and perceived opponents of
15 Sinhala-Buddhist nationalism. Moreover, the dangers of social ostracism facing
16 victims of sexual violence has been observed first-hand in ITJP's research. For these
17 reasons, I am of the view that the anonymous plaintiffs in this case, and their
18 relatives, would face a real and imminent risk of threats, intimidation, social stigma,
19 and violence should their identities be exposed to Gotabaya Rajapaksa or to the
20

21
22 ⁶⁸ *GJ and others (post-civil war: returnees) Sri Lanka CG*, UK Upper Tribunal
23 (Immigration and Asylum Chamber), [2013] UKUT 319, ¶ 356, July 5, 2013,
24 *available at* http://www.bailii.org/uk/cases/UKUT/IAC/2013/00319_ukut_iac_gj_ors_srilanka_cg.html;
25 *see also, Country Policy and Information Note, Sri Lanka: Tamil separatism*, v. 5.0,
26 Home Office (United Kingdom), June 2017, *available at* [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attach
27 ment_data/file/619535/Sri_Lanka_-_Tamil_Separatism_-_CPIN_-_v5.0_June_2017_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/619535/Sri_Lanka_-_Tamil_Separatism_-_CPIN_-_v5.0_June_2017_.pdf).

1 general public, including supporters of the Rajapaksa family and the Sinhala-
2 Buddhist nationalist movement.

3

4 I declare under penalty of perjury under the laws of the United States of
5 America that the foregoing is true and correct.

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Executed on August 26, 2019 in Juba, South Sudan.

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Yasmin L. Sooka

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