

**IN UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No. CV19-2577-R(RAOx)

Ahimsa Wickrematunge

Plaintiff

- and -

Nandasena Gotabaya Rajapaksa

Defendant

EXPERT OPINION BY ARTICLE 19

Introduction

1. This expert opinion has been prepared by ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19), an independent human rights organisation that works around the world to protect and promote the rights to freedom of expression and freedom of information. We have been asked by the Center for Justice & Accountability (CJA), attorneys for Ahimsa Wickrematunge (the Plaintiff), to provide an expert opinion in the present case on i) the state of gross human rights violations against journalists and the state of impunity for attacks in Sri Lanka and ii) whether these crimes have been committed as part of a widespread or systematic attack against journalists critical of the Government of Sri Lanka. We understand that this opinion will be relied upon by the Plaintiff in the case before the United States District Court Central District of California.
2. In this Expert Opinion, ARTICLE 19 submits that based on the available evidence, in the period of 2005 to 2015, journalists and media workers critical of the Government of Sri Lanka constituted a specifically targeted group, attacked due to their journalistic activities. Those journalists who criticised the Rajapaksa's family actions, while they were in Office and while they possessed absolute control of security, military and intelligence forces, were a particular target of these attacks. The Government of Sri Lanka was directly involved in and responsible for these attacks. Further, this Expert Opinion concludes that there has been a clear intention to limit any attempt to bring the perpetrators and instigators of these attacks to justice, hence contributing to a climate of impunity for violence against journalists in Sri Lanka. Based on this evidence and based on our experience in the field, ARTICLE 19 supports the Plaintiff's claims. We also support the claim that, given the widespread impunity, access to justice and the ability of the Plaintiff to access remedy at the domestic level has been and will most likely continue to be illusory.

Interest of ARTICLE 19: expertise on protection of journalists and fight against impunity

3. ARTICLE 19 is an international human rights organisation that advocates for the development of progressive standards on freedom of expression and of information at the international and regional levels, and the implementation of such standards in domestic legal systems. It has contributed to the elaboration and advocacy of international law and standards, and have been engaged in litigation in national and international fora involving states' obligations arising from international law on freedom of expression and other human rights. We are well known for their authoritative work in elaborating the implications of the guarantee of freedom of expression in different thematic areas.
4. Since 2000, ARTICLE 19 has been active in specifying international standards on protection of journalists and advocating for improved standards to tackle impunity at the United Nations and national levels. For instance, we provide support to the international and regional human rights mandate holders in drafting their annual joint declaration addressing specific challenges to the right to freedom of expression. This includes the 2012 Joint Declaration on Crimes Against Freedom of Expression which called on governments to create a new category of 'crimes against free expression' in order to recognise that such crimes are of serious nature, and that they undermine the right to know of all persons and affect society as a whole.¹ We have continually pursued the promotion of progressive standards on impunity at the Human Rights Council, lobbying for its inclusion in resolution 33/2 on the safety of journalists which committed States to a range of actions aimed at adopting strategies to combat impunity, ensuring accountability for all types of attacks against journalists, and prosecuting the perpetrators of these crimes, among other actions related to the prevention and protection of journalists.²
5. ARTICLE 19's legal expertise has also contributed to the development of progressive jurisprudence of regional and national courts in the area of freedom of expression and impunity, in particular in cases at the European Court of Human Rights, the Inter-American Court of Human Rights and the African Commission on Human and People's Rights. At the domestic level, ARTICLE 19 also litigates on behalf of journalists who are victims of serious attacks in regions where impunity is the rule and where prosecutorial inaction or political interference has resulted in a lack of investigation of attacks.
6. This expert opinion draws on factual information about the relevant circumstances under which critical journalists and media in Sri Lanka exercised their right to freedom of expression during the Administration of the Defendant and his family, as well as the connection between the attacks and certain elements that support the claims of the Plaintiff.

Summary of the submissions

¹ See Joint Declaration on Crimes Against Freedom of Expression, United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 2012, available at <https://www.osce.org/fom/91595?download=true>.

² Human Rights Council, Resolution 33/2 on Safety of Journalists, A/HRC/RES/33/2, 6 October 2016, available at <https://undocs.org/en/A/HRC/RES/33/2>.

7. In this Expert Opinion, ARTICLE 19 presents the following:
 - (i) Evidence of systematic and widespread attacks against and other forms of harassment of journalists in Sri Lanka, perpetrated in the period of 2005 to 2015, during which the Defendant and his family governed the country from the Executive Branch; and
 - (ii) Evidence of the lack of judicial independence and of prevailing impunity regarding serious crimes and gross human rights and humanitarian violations.

I. Systematic and widespread attacks against journalists in Sri Lanka

8. ARTICLE 19 submits that in the period of 2005-2015, journalists critical of the Government in Sri Lanka have been victims of numerous forms of attacks, in particular, violence and threats of violence, smear campaigns, various other forms of restrictions and misuse of domestic legislation. These amount to serious violations of international human rights and humanitarian laws standards by the Government of Sri Lanka. ARTICLE 19 believes that these violations provide an important context for consideration in the Plaintiff's case.

Violence against journalists

9. ARTICLE 19 observes that a number of international and national human rights organisations have documented attacks against journalists and the media critical of the Government. We note that the reported number of journalists killed in the period of 2005 - 2015 varies according to the methodologies used by different organisations and their ability to document the atrocities under the precarious and dangerous conditions prevailing during the relevant period. However, the toll of violence is provably high. For example:
 - In the period of 2006 – 2009, the Committee to Protect Journalists (CPJ) and Reporters Without Borders (RSF) documented the killing of 13 journalists, seven of which were connected to their journalistic activity and criticism of the Government.³ According to these organisations, at least 23 journalists went into exile from 2008 to 2013 after experiencing direct attacks, harassment, threats or imprisonment relating to their criticism of Government actions and policies; those that did not flee from the country were nonetheless prosecuted or intimidated for their coverage or position against the Government.⁴
 - Similar conclusions were also reported in Freedom House's report on 'Freedom of the Press' from 2006 to 2014.⁵
 - According to Journalists for Democracy (JDS) in Sri Lanka, more than 40 journalists and media workers were killed or disappeared from 2005 to 2010; while both Tamil Tigers

³ CPJ, 13 Journalists and Media Workers Killed in Sri Lanka between 2005 and 2015 / Motive Confirmed, available at <https://bit.ly/2HFVzHc>; RSF, Violations of press freedom barometer, 2005 - 2015, available at <https://bit.ly/2HAX663>.

⁴ CPJ, Journalists in Exile, reports 2008-2012, available at: <https://bit.ly/2PQOCvx>, <https://bit.ly/2HDFC4j>, <https://bit.ly/2Pwm8VN>, and <https://bit.ly/2HFqMdH>.

⁵ Freedom House, Freedom of the Press - Sri Lanka, 2006 – 2014, available at <https://bit.ly/2zLdiJ7>.

(LTTE- Liberation Tigers of Tamil Ealam) and government officials were reportedly involved in these attacks.⁶

10. Similarly, international human rights organisations and the institutions of other states came to the same conclusions. In particular:

- The United States Department of State (US State Department) registered in detail the widespread killings of and attacks against Tamil newspapers, journalists and media workers through their Country reports on human rights practices in Sri Lanka from 2007 to 2015, reporting that media freedom deteriorated throughout these years, as the Government restricted and attempted to avoid criticism and progress in the investigations of attacks against journalists and media outlets in the country, as well as the role of security officers and specific senior government officials in harassing, threatening and intimidating journalists and their lawyers – the Defendant included.⁷
- The 2011 report of the Panel of Experts, appointed by the UN Secretary-General to advise him on the allegations of violations of international humanitarian and human rights law during the final stages of the civil war in Sri Lanka, documented high-profile assaults, disappearances and killings of members of the media.⁸ It found that *inter alia*, “the Government sought to intimidate and silence the media and other critics through a variety of threats, including the use of white vans to abduct and make people disappear.”⁹ In addition, the Panel observed the role that public officials played towards the media and journalists critical of the Government, particularly the Defendant and the Ministry of Defence he represented. They found that the media and journalists were labelled as “traitors,” “Tiger sympathizers” and “terrorists;” such statements were publicly presented on the Ministry of Defence website or stated in public by the Defendant, who was Defence Secretary at the time.¹⁰ The report shows that the Defendant directly threatened prominent journalists and issued increasingly restrictive guidelines for journalists reporting on military operations, including making it an offence to depict operations in negative terms.¹¹
- The 2015 report of the OHCHR Investigation on Sri Lanka (OISL) found that “attacks against journalists in Sri Lanka were widespread, occurred over an extended period of time, continued throughout and after the period covered by [the 2015 investigation mandate], and appear systematic in their repeated targeting of specific media known for being critical of Government policies or figures.”¹² The report confirmed that after the formal end of the conflict, from 2009 to 2011, “[t]he space for freedom of expression and critical debate closed further, with relentless harassment and intimidation of human

⁶ JDS, Killed Media Workers, Journalists for Democracy in Sri Lanka, available at: <https://bit.ly/2maDk57>

⁷ US State Department, Country Reports on Human Rights Practices-Sri Lanka, 2005-2015, available at <https://bit.ly/3ORg4Z0>.

⁸ The Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, panel of expert appointed by the UN Secretary General after his agreement with the Government of Sri Lanka in 2009, 31 March 2011, available at <https://bit.ly/2lVH8ah>.

⁹ *Ibid.*, para 176 (e).

¹⁰ *Ibid.*, para 64.

¹¹ *Ibid.*

¹² Human Rights Council, Report of the OHCHR investigation on Sri Lanka (OISL), A/HRC/30/CRP.2, 16 September 2015, para 260, available at <https://bit.ly/2lyR6hf>.

rights defenders, interference with the independence of lawyers and judges, and attacks on journalists and the independent media.”¹³

The OISL report explicitly identified journalists as a one of the groups targeted and particularly affected during this period.¹⁴ The report observed that the scale of such killings varied over time “from 2004 and especially late 2005, unlawful killings, including targeted killings of [...]journalists, began to escalate.”¹⁵ The report also found that attacks against journalists in Sri Lanka continued throughout and after the period covered by OISL’s mandate, and appear systematic in their repeated targeting of specific media known for being critical of Government policies or figures. In several instances, media workers were offered insufficient protection measures despite recurrent attacks against them and there has been little progress in the investigations of their killings.¹⁶

- In 2014, the Human Rights Committee published the list of issues in relation to the fifth periodic report of Sri Lanka to review their compliance with the international human rights obligations under the International Covenant on Civil and Political Rights.¹⁷ A number of human rights organisations submitted information documenting attacks against journalists and a pattern of persecution against this group.¹⁸ As a result of this periodic report, the Committee concluded that one of their main concerns was the widespread reports of journalists being intimidated, harassed, attacked, detained, subject to enforced disappearance and to politically motivated charges by State officials; the Committee also noted the failure of the Government to bring perpetrators of reprisals to justice.¹⁹

Threats and other forms of restrictions against journalists

11. Although there have not been any more reports of killings of journalists after 2009, other forms of attack against journalists and others reporting on human rights abuses in Sri Lanka continued, contributing to a general climate of fear and self-censorship. For example:

- From 2011 to 2014, the US State Department reported that alarming and explicit threats were made in public by government ministers.²⁰ Journalists and media workers were the subject of threats as a result of their reporting or the unfavourable coverage of Government issues. For instance, in April 2014, aides of the Minister of Industry and Commerce threatened the editor of Mannar’s *Puthiyavan* newspaper in response to a series of reports about corruption and land disputes in the area.²¹ In 2012, the Cabinet Minister of Sri

¹³ *Ibid.*, para 101.

¹⁴ *Ibid.* paras 213 and 217.

¹⁵ *Ibid.*, para 217.

¹⁶ *Ibid.*, para 260.

¹⁷ Human Rights Committee, List of issues in relation to the 5th periodic report of Sri Lanka, CCPR/C/LKA/Q/5, 24 April 2014, available at <https://bit.ly/2kpsgAh>.

¹⁸ HRC, Summary prepared by the OHCHR in accordance with para 5 of the annex to Human Rights Council resolution 16/21-Sri Lanka, A/HRC/WG.6/14/LKA/3, 30 July 2012, available at <https://bit.ly/2ko12dq>.

¹⁹ Human Rights Committee, Concluding Observations on the 5th periodic report of Sri Lanka, CCPR/C/LKA/CO/5, 21 November 2014, paras 15 and 21, available at <https://bit.ly/2ko1bgY>.

²⁰ See US State Department, 2011 and 2012 Country Reports on Human Rights Practices - Sri Lanka, *op.cit.*

²¹ US State Department, 2014 Country Reports on Human Rights Practices - Sri Lanka, *op.cit.*

Lanka admitted forcing a journalist to flee and threatened those journalists and human rights activists opposing to the Government.²²

- Several human rights organisations have reported vast number of threats, harassment, intimidation and physical attacks against journalists or the facilities of media outlets, mainly perpetrated under similar patterns such as by unidentified men or the direct participation of the Government or security forces in charge of the Ministry of Defence.²³ According to Amnesty International, on 5 July 2013, the Secretary of Defence, Defendant Gotabaya Rajapaksa, threatened *Sunday Leader* journalist Frederica Jansz with death when she attempted to interview him about alleged abuse of power.²⁴ Also, in September 2013, a journalist and photographers were surrounded and threatened by army personnel when they tried to report on the relocation of displaced people.²⁵
- According to numerous reports, labelling journalists was a common practice from 2007 to 2010. For instance, the Health Minister called media “rabid,”²⁶ and the Defendant called journalists that criticised the Government policies “terrorists” and “Tiger sympathisers;”²⁷ senior government officials also accused critical journalists of treason.²⁸ The reports also show that in 2010 and 2011, the Government pressured editors and media to print stories that benefited the government, sometimes threatening and intimidating them, occurrences that perpetuated the self-exile of some journalists.²⁹ After the Human Rights Council issued a resolution on Sri Lanka in 2012, calling on the Government to initiate credible actions to ensure justice and accountability, State television programs attacked journalists and activists supporting the resolution calling them “traitors.”³⁰

12. The Government also adopted a series of measures to restrict media and journalistic activities in and about the country situation if they were considered as negative reporting. For instance:

- In 2007 and 2008, security forces and public officials ordered internet access restrictions to pro Tamil's media websites and pressured publishers to cover Governments' affair in a positive way.³¹
- In 2009, the visas of foreign journalists were revoked and they were asked to leave the country when they reported sensitive issues in a tone critical of the government.³² Visas

²² BBC, Sri Lanka minister Mervyn Silva threatens journalists, 23 March 2012, available at <https://www.bbc.co.uk/news/world-asia-17491832>

²³ See, e.g. Human Rights Watch (HRW), Sri Lanka, World Report 2010, January 2010, available at <https://bit.ly/32nqLmq>, or Sri Lanka: Stop Harassing Victims, Activists, 3 September 2013, available at <https://bit.ly/2ZqYNt8>; see also Amnesty International, Report 2014 - 2015-Sri Lanka, 25 February 2015, available at <https://bit.ly/3ORXaI0>.

²⁴ Amnesty International, Annual Report 2013 - Sri Lanka, 23 May 2013, available at: <https://bit.ly/2ZqY6A9>.

²⁵ *Ibid.*

²⁶ RSF, Statement of the International Press Freedom Mission, 24 June 2007, updated 20 January 2016, available at <https://bit.ly/2kpLMfZ>.

²⁷ The Report of Panel of Experts, *op.cit.*

²⁸ US State Department, 2010 Country Reports on Human Rights Practices - Sri Lanka, *op. cit.*

²⁹ *Ibid.*

³⁰ See, e.g. Freedom House, Freedom of the Press 2012 - Sri Lanka, 2 November 2012, available at <https://bit.ly/2KnOcOv>; or the US Department 2013 Report, *op.cit.*

³¹ US State Department, 2007 and 2008 Country Reports on Human Rights Practices - Sri Lanka, *op.cit.*

³² US State Department 2009 Country Reports on Human Rights Practices - Sri Lanka, *op.cit.*

for international media journalists were rejected over several years and government authorities confiscated copies of *The Economist* newspaper in 2010, preventing local distribution in Sri Lanka.³³

- From 2010 to 2015, the Government issued a series of administrative and institutional bans to UN mandates and civil society, even in cases of only partial relevance to freedom of expression and journalistic activities. For instance, it refused entry to the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression³⁴ and the delegation of the International Bar Association's Human Rights Institute which included the UN Special Rapporteur on the Independence of Judges and Lawyers.³⁵

Legal actions against journalists

13. ARTICLE 19 also observes that as part of the attacks, the Government of Sri Lanka adopted a series of legal measures to target journalists. For instance:

- In 2005, the Emergency Regulations were reintroduced allowing the government to ban the publication, redistribution, performance, or airing of any print or broadcast material deemed likely to cause public disorder.³⁶ In December 2006, the Emergency regulations were used to arrest and detain journalists for months without charges; in some cases, after being held without charge, several journalists were indicted under the Prevention of Terrorist Act (PTA).³⁷
- In 2009, the Government triggered the 1973 Press Council Act, which conferred the power to "fine and/or impose punitive measures including lengthy prison terms," on publishers of articles that discuss government decisions and/or affairs relating to national security.³⁸
- From 2008 to 2010, the *Sunday Leader* – the newspaper founded by the Plaintiff's father – faced several defamation lawsuits in which the then Ministry of Defence – the Defendant – was seeking LKR 2 billion in damages (around 16 million USD in 2010),³⁹ a clearly disproportionate monetary award potentially aimed to restrain the publication of more articles potentially critical of the Government.

14. **Based on the evidence outlined above, ARTICLE 19 believes that violence and attacks against journalists were not incidental events during the armed conflict. On the contrary, the evidence shows that journalists were a primary target, with their targeting directly connected to their journalistic activity critical of the Government.**

³³ US State Department, 2010 Country Reports – Sri Lanka, *op.cit.*

³⁴ Sri Lanka Brief, UN Special Rapporteur on Freedom of Expression Refused Entry, 17 March 2013, available at <https://bit.ly/2kOIReH>.

³⁵ International Bar Association, Sri Lanka denies entry to IBAHRI delegation for the second time, ahead of major Commonwealth summit, 13 November 2013, available at <https://bit.ly/2k4e93p>.

³⁶ Freedom House, Freedom of the Press 2009 - Sri Lanka, 2009, *op.cit.*

³⁷ *Ibid.*

³⁸ US State Department, 2009 Country Reports on Human Rights Practices - Sri Lanka, *op.cit.*

³⁹ Freedom House, Freedom of the Press 2012 - Sri Lanka, *op.cit.*

II. Lack of judicial independence and the state of impunity for violations in Sri Lanka

15. ARTICLE 19 also finds that there is evidence that there has been little progress on securing accountability for crimes under international law and other human rights violations and abuses against journalists in Sri Lanka, and that the failure to provide effective remedies in individual cases has hardened a climate of impunity.
16. Impunity in Sri Lanka is deep-rooted and can be partially attributed to the lack of judicial independence.⁴⁰ The criminal justice system operates in a highly politicised environment that undermines the effectiveness, impartiality and transparency of criminal investigations. Notably, the Attorney General's Office played a significant role in the failure to properly investigate and prosecute state agents allegedly involved in human rights violations. According to the International Commission of Jurists (ICJ), the Attorney General had the legal power to override wide immunity clauses protecting State officials and possessed a range of discretionary powers, including but not limited to transferring or withdrawing cases, stopping criminal trials, ordering the release of suspects and taking over prosecutions.⁴¹
17. Information available shows that the investigations of emblematic cases of killings, disappearances and abductions of journalists that exposed the Government's corruption and wrongdoing from 2006 to 2010 have failed to bring to justice both the perpetrators and instigators of attacks. Military and security officers have been identified for their participation in the serious attacks against journalists and released on bail due to the lack of evidence.⁴² In 2017, the Special Rapporteur on the independence of judges and lawyers confirmed that there was virtual impunity for any abuse committed by the police or the security forces during the conflict.⁴³
18. ARTICLE 19 concurs with the OISL's assessment that investigations of *inter alia* attacks against journalists in the respective period in Sri Lanka should not be treated as ordinary criminal offenses at the national level. On the contrary, the Government should recognise that the particularities of these attacks requires different treatment and should instead be addressed as international crimes. In this respect, we note that the Government created many formal and informal obstacles to ensure accountability for the violations through special investigatory bodies.

⁴⁰ C.f. Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Sri Lanka, presented before the Human Rights Council, 23 March 2017; International Commission of Jurists, Authority without Accountability: The Crisis of impunity in Sri Lanka, November 2012, available at: <https://bit.ly/2kwkpBj>; International Commission of Jurists, Written statement submitted by International Commission of Jurists, a non-governmental organization in special consultative status, Human Rights Council, A/HRC/40/NGO/X, February 2019, available at <https://bit.ly/2IKRREk>

⁴¹ International Commission of Jurists, 2012, *op. cit.* pages 12 and 79.

⁴² Tamil Guardian, Families of murdered Tamil journalists still awaiting justice, 31 January 2016, available at <https://bit.ly/2IO7Dyh>; Human Rights Council, Report of the OHCHR investigation on Sri Lanka (OISL), *op. cit.*, paras. 262, 263 and 267; BBC, Prageeth missing due to 'chemical weapon probe', 28 January 2011, available at <https://bbc.in/2kH2fwz>; Sri Lanka Brief, Information Requested For Ekmaligoda Case Extremely Sensitive And Ultra-secret – Army HQ, 17 September 2016, available at <https://bit.ly/2keJ4Kh>; Colambage, M., The Bulathwatte bewilderment, The Sunday Observer, 4 August 2019, available at <https://bit.ly/2IOQB2T>; Colombo Gazette, Probe on Major Prabath Bulathwatte to continue, 16 May 2019, available at <https://bit.ly/2kxCA9l>

⁴³ Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Sri Lanka, *op. cit.*, para. 87.

19. In 2013, a series of *ad hoc* commissions to investigate human rights abuses and politically sensitive crimes were set up, mainly in response to the recommendations of the Lessons Learned and Reconciliation Commission (LLRC). The first one was the Commission of Inquiry (COI) to Investigate Complaints Regarding Missing Persons; however, this was problematic due to the lack of transparency over the criteria to select and prioritise the cases to be investigated by the COI and the political influence that conditioned the development of competent and independent institutions aimed to guarantee accountability for the gross human rights violations committed during the armed conflict.⁴⁴

- Evidence shows that despite of some of its important findings, the COI has failed to conduct comprehensive, independent and transparent inquiries into the disappearances of persons.⁴⁵ The report also showed evidence of retaliations against some of those who provided testimony to the COI.⁴⁶ Importantly, the COI exonerated all government security forces in cases they were appointed to investigate regardless of the evidence provided.
- An International Independent Group of Eminent Persons (IIGEP) was appointed to observe the inquiries and the hearings held by the COI. IIGEP repeatedly expressed concern about the lack of impartiality in the COI proceedings and decided to abandon the process as credible investigations were compromised for numerous reasons, including the conflict of interest embodied in the Attorney General's role, and the lack of independence of the Commission.⁴⁷

20. The evidence shows that various Governments of Sri Lanka have had no intention to establish mechanisms for addressing impunity for human rights violations of human rights and attacks against journalists.⁴⁸ For instance:

- UN human rights reports have also established that criminal accountability will remain illusory in circumstances where both the President and the Prime Minister deny the need for judicial mechanisms and foreign assistance in the matter, despite the fact that exhaustive evidence proves that the ordinary criminal justice system is unable to deal with the nature of allegations and the complexity of crimes.⁴⁹
- The Center for Policy Alternatives (CPA) examined seven emblematic cases in Sri Lanka, to evaluate the levels of accountability in the prosecution cases of human rights within the criminal justice system and confirmed that over the years state actors have contributed to the existing institutionalized impunity in Sri Lanka.⁵⁰ CPA reports described a culture of impunity characterised by (i) the lack of or delays with prosecution caused by political influence and in the Attorney's General Department; (ii) lack of independent

⁴⁴ See Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Sri Lanka to, the Human Rights Council, 23 March 2017, para 88, available at <https://bit.ly/2m36YsZ>.

⁴⁵ Human Rights Council, Report of the OHCHR investigation on Sri Lanka (OISL), *op. cit.*, paras 518 and 523

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, paras. 1211-1216.

⁴⁸ *C.f.* OHCHR, Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/40/23, 8 February 2019, para 29, available at <https://bit.ly/2m2A5MX>.

⁴⁹ *Ibid.*, paras. 27-29.

⁵⁰ CPA, The Need for Accountability in Sri Lanka's Criminal Justice System, A glance at seven emblematic cases, March 2019, p. 7, available at <https://bit.ly/2kho5Xr>.

investigations in which the Sri Lankan Police, the TIC, and the CID have been forced to overturn certain investigations; (iii) deficient victim and witness protection insofar as the continued functioning of the Protection Division under the Inspector General of Police raises questions of independence; (iv) evidence tampering, concealment and destruction that has also resulted in prolonged investigations and inadmissibility of evidence;⁵¹ (v) political interference in investigation institutions.⁵²

21. Finally, the Government of Sri Lanka has not made public any information regarding the actions taken to prevent the impunity of the perpetrators and the status of the judicial enquiries conducted in each of the killings of journalists.⁵³ The Government has been ignoring the urgent need for openness and transparency required to ensure the effectiveness of investigations of crimes against freedom of expression and gross human rights violations.

III. Conclusions

22. In view of the foregoing, ARTICLE 19 finds that there has been a clear pattern in the attacks against journalists critical of the Government in Sri Lanka from November 2005 to January 2015. This pattern consists of specific and documented actions practiced by the Government of Sri Lanka in general, and the Defendant in particular. Neither the perpetrators nor the instigators have been brought to justice due to a systematic and historical interference of the Executive branch in the judicial and criminal justice system. The current state of the investigations demonstrates that the Government of Sri Lanka is unable to prosecute and indict those responsible for the killing of Lasantha Wickrematunge and other journalists targeted for their journalistic activity during the Rajapaksa administration.
23. In light of the above considerations, ARTICLE 19 submits that the targeted attacks against journalists in Sri Lanka should be treated as international crimes insofar as impunity for these widespread incidents has impeded access to justice and redress for victims of serious international crimes.

In London
13 September 2019


Paulina Gutiérrez
ARTICLE 19 Legal Officer

⁵¹ *Ibid.*, p. 45-68.

⁵² *Ibid.*, p. 7-9.

⁵³ *C.f.* UNESCO, Response of Member State, UNESCO Condemns Killing of Journalist, available at <https://bit.ly/2k1CZki>.