



approved of by the Defendant and for which he was otherwise responsible for ordering and commanding.

2. This action does not address or seek to interfere with matters of foreign policy, national security, or defense policy decisions of the United States. The purpose of this action is to seek relief for the mistreatment of Plaintiff's late husband and redress for Defendant's wrongful conduct surrounding the death of Plaintiff's husband. This case does not present political questions; rather, the questions presented are appropriate for judicial determination.

#### JURISDICTION AND VENUE

3. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1350. 28 U.S.C. § 1350 provides federal jurisdiction for any "civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." The following laws, agreements, resolutions, and treaties form the basis of Plaintiff's causes of action.

- a. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85; 23 I.L.M. 1027 (entered into force in the United States Nov. 20, 1994 through 18 U.S.C. § 2340);
- b. Convention on the Elimination of all Forms of Racial Discrimination, 1966 U.S.T. 521, 660 U.N.T.S. 195 (Mar. 7, 1966);
- c. International Covenant on Civil and Political Rights, adopted Dec. 19, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171, reprinted in 6 I.L.M. 368 (entered into force, Mar. 23, 1976) (ratified by the United States, June 8, 1992);
- d. United Nations Charter, 59 Stat. 1031, 3 Bevens 1153 (1945);

- e. Customary international law and principles of comity, including but not limited to the Universal Declaration of Human Rights;
  - f. Laws of the United States, including but not limited to common law principles of trespass, negligence, intentional infliction of emotional distress, and respondeat superior.
4. Personal jurisdiction and venue is proper in this Court under 28 U.S.C. § 1391 because Defendant is presently in the jurisdictional territory of the District Court for the Southern District of New York. Further, Defendant by and through his conduct and contacts within the forum has purposefully availed himself of this forum.
5. Defendant does not enjoy immunity from this suit because, among other reasons, the acts complained of:
- a. are violations of peremptory norms of international law as to which no person or state may claim immunity;
  - b. fall under exceptions of the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602-11 (1988).

#### COMMON FACTUAL BACKGROUND

6. This is an action for compensatory and punitive damages, declaratory judgment, and injunctive relief for torture; cruel, inhuman, or degrading treatment; intentional infliction of emotional distress; and, negligence and the continuing consequences of such actions inflicted by Defendant in violation of the laws of the United States and international law.

7. Plaintiff (born September 19, 1973) is a thirty seven years old mother of three children. The eldest child is an eleven years old daughter named T Merkala (born November 2, 1999), the

middle child is an eight years old son named Pirathaban (born May 22, 2002), and the youngest child is a two and a half years old daughter named Kali Chudar (born June 8, 2008).

8. Plaintiff is the widow of Col. Ramesh, who was born on September 18, 1964 and was executed on May 18, 2009 by the Sri Lankan military under the control of Defendant. Alternatively, Col. Ramesh disappeared on May 18, 2009 as a result of the conduct of the Sri Lankan military under control of Defendant Mahinda Rajapaksa (hereinafter "Defendant").

9. Defendant Mahinda Rajapaksa is the President of the Socialist Democratic State of Sri Lanka and is being sued in his individual capacity, as well as in his official capacity as President and Commander in Chief of all the Sri Lankan armed forces, military and paramilitary groups in Sri Lanka.

10. Defendant, at all times relevant to this Complaint, exercised command and responsibility or enjoyed superior authority over all of Sri Lanka's armed forces, security services, police, jail or prison wardens, paramilitaries, or law enforcement authorities of any type, including judicial or investigative bodies.

11. Defendant, as President of the Socialist Democratic State of Sri Lanka and commander over all of Sri Lanka's armed forces, security services, police, jail or prison wardens, paramilitaries, or law enforcement authorities of any type, including judicial or investigative bodies, was responsible for treatment of Col. Ramesh and directing the operations of the units or persons mentioned in the paragraphs above. He was responsible for insuring that all members of the Sri Lankan armed forces or other security or law enforcement personnel respected and complied with the rules of international law governing the conduct of warfare and to insure that the rights of persons detained by those forces would respected.

12. As a superior, Defendant was the most senior officer of the Sri Lankan armed forces and government bodies. As such, he had overall authority and responsibility for the functioning of the Sri Lankan armed forces or government sponsored paramilitaries. He was responsible for planning and directing all operations of the Sri Lankan armed forces or government-sponsored paramilitaries, and for monitoring the activities of all subordinate officers and units to ensure that his order were implemented.

13. On April 28, 2008, Plaintiff and her children left their home and traveled to Batticola in Eastern Sri Lanka and, thereafter to South Africa.

14. Plaintiff last spoke to her husband on May 15, 2008 while he was still in Sri Lanka and she and her family were in South Africa. In that final conversation he said that he would join his family in South Africa sometime in the future.

15. Plaintiff has not heard or received any information about her husband's whereabouts since their last conversation on May 15, 2008.

16. On or about late fall of 2009, a video surfaced showing Plaintiff's late husband in the custody of the Sri Lankan armed forces. In the video, the prisoner identifies himself as Col. Ramesh and is shown being interviewed by uniformed members of the Sri Lankan military.

17. The video shows Col. Ramesh in the custody of Sri Lankan soldiers, and upon information and belief, was taped on or around May 18, 2009. In the video, the interrogators were questioning Col. Ramesh in English. Col. Ramesh was responding that he understood only a little of their questioning and that he was sincerely responding to the questions he understood. He also requests translation in Tamil as the interrogators were threatening to attack him with baton. The video abruptly ends at the 34th second, indicating the existence of a full video of the remaining interrogation.

18. The Sri Lanka army has publically denied this video's existence, allege it is fake and engineered by technicians, and deny they ever had Col. Ramesh in their custody. Despite the clear images and sounds being that of Col. Ramesh, the Sri Lankan army claim the video is not real.

19. This video confirms that Col. Ramesh had surrendered in the last days of the war and shows that he was in Sri Lankan custody. The Sri Lankan government's public statements about the video are false propaganda and only serve to confirm that Plaintiff's husband was detained by the Sri Lankan military forces and was later killed by the armed forces while a prisoner of the government in breach of customary international laws.

20. Defendant, as President of the Socialist Democratic State of Sri Lanka and commander over all of Sri Lanka's armed forces, security services, police, jail or prison wardens, paramilitaries, or law enforcement authorities of any type, including judicial or investigative bodies, was responsible for treatment of Col. Ramesh and directing the operations of the units or persons mentioned in the paragraphs above. He was responsible for insuring that all members of the Sri Lankan armed forces or other security or law enforcement personnel respected and complied with the rules of international law governing the conduct of warfare and to insure that the rights of persons detained by those forces would respected.

21. As a superior, Defendant was the most senior officer of the Sri Lankan armed forces and government bodies. As such, he had overall authority and responsibility for the functioning of the Sri Lankan armed forces or government sponsored paramilitaries. He was responsible for planning and directing all operations of the Sri Lankan armed forces or government-sponsored paramilitaries, and for monitoring the activities of all subordinate officers and units to ensure that his order were implemented.

FIRST CLAIM FOR RELIEF

*(Torture)*

22. Plaintiff incorporates paragraphs 1 through 21 as though set forth at length.
23. The acts described herein constitute torture, defined as “any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as . . . intimidating him or other persons, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” (Convention Against Torture 1465 U.N.T.S. 85, 113, Art I).
24. The acts described herein placed Plaintiff’s family in great fear for their lives and caused Plaintiff’s husband to suffer severe and continuing physical and mental pain and suffering.
25. Defendant, acting in his official and individual capacities, intentionally and maliciously directed, aided and abetted, encouraged, participated in, and/or conspired to commit acts of torture. These acts include, but are not limited to: acts of mental and physical intimidation; forcing Plaintiff’s husband to remain in unsanitary conditions; holding Plaintiff’s husband captive for several days; and subjecting Plaintiff’s husband to torture.
26. By failing to rectify Plaintiff’s situation, Defendant exacerbated and/or continued Plaintiffs’ mental and physical suffering.
27. Defendant deliberately and intentionally inflicted the acts described herein.

SECOND CLAIM FOR RELIEF

*(Cruel, Inhuman, or Degrading Treatment)*

28. Plaintiff incorporates paragraphs 1 through 27 as though set forth at length.

29. The acts described herein had the intent and the effect of grossly humiliating and debasing Plaintiff's husband, forcing him to act against his will and conscience, inciting fear and anguish, breaking physical and moral resistance, and/or forcing Plaintiff's family to leave their homes and country into exile. These acts constitute cruel, inhuman, or degrading treatment in violation of customary international law and the common law of the United States.

### THIRD CLAIM FOR RELIEF

#### *(Intentional Infliction of Emotional Distress)*

30. Plaintiff incorporates paragraphs 1 through 29 as though set forth at length.

31. Defendant intentionally and willfully caused the forced relocation; torture; cruel, inhuman, and degrading treatment; negligence; expropriation of property; and intimidation and obstruction of justice. Such outrageous conduct violates normal standards of decency and was without privilege or justification.

32. Defendant's outrageous conduct constitutes the intentional infliction of emotional distress and is actionable under the laws of the United States.

### DAMAGES AND RELIEF

33. As a proximate result of Defendant's actions, Plaintiff suffered extreme anguish, pain and grief, and was made to experience emotional distress.

34. As a proximate result of Defendant's actions, Plaintiff has been damaged in an amount to be determined at trial but in excess of \$5,000,000.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- i. for compensatory damages according to proof;



- ii. for punitive and exemplary damages according to proof;
- iii. for reasonable attorneys' fees and costs of suit, according to proof;
- iv. for injunctive and declaratory relief; and
- v. for such other and further relief as the court may deem just and proper.

A jury trial is demanded on all issues.

Respectfully submitted,



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