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“Accountability and Justice in Sri Lanka”
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Thank you, Chairman McGovern, Chairman Smith, Congresswoman Ross, and esteemed Members of the Tom Lantos Human Rights Commission, for the opportunity to testify today.

My name is Sondra Anton, and I am a JD Candidate at Harvard Law School and Co-President of the student practice organization, the Harvard Law School Advocates for Human Rights. I am also a student attorney with the International Human Rights Clinic, where my work focuses on justice and accountability for those who have suffered mass atrocities. I ask that my written testimony be submitted for the record.

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Today, my remarks will center on efforts to hold the Sri Lankan state security forces accountable for mass atrocity crimes against the Tamil civilian population during the final stages of the country’s internal armed conflict in 2008-2009. This is particularly critical in light of the ongoing impunity that is likely to breed further violence and violations, as recognized by the UN Office of the High Commissioner for Human Rights (OHCHR) in her recent report on Sri Lanka in January 2021. In considering current accountability initiatives, I will also identify how the United States can bolster these efforts while ensuring that the voices of survivor communities remain central to advancing justice and accountability.

I am honored to speak today not only based on my academic and professional training in international human rights and criminal law, but also given my unique personal connection to the issues at hand. I was born and raised in North Carolina, the product of two lineages of survivors that, at different periods in history, sought refuge and relief in the United States to escape relentless ethnic persecution and violence. My father is a Jaffna Tamil who managed to leave Sri Lanka prior to the start of the war, later working tirelessly to get my aunt, my grandmother, and countless other relatives to safety. My

mother, on the other hand, is Ashkenazi Jewish, whose ancestors landed in Ellis Island after fleeing pogroms in Eastern Europe prior to World War II. Needless to say, my Tamil family has learned from painful experience that the international community is far from fulfilling the sacred promise of “Never Again” made to my Jewish relatives following the Holocaust.

Despite significant advances in international accountability avenues over the past several decades, the logic of law will never make sense of the illogic of mass atrocity. It cannot take away the pain of the Tamil mothers of the disappeared in Mullaitivu—who, as of today, have been protesting for 1,750 consecutive days with the simple demand of learning the fate of their missing loved ones. It cannot bring back the countless Tamils like Father Francis Joseph—an elderly Catholic priest who disappeared in May 2009 in one of the white flag incidents only days after pleading from the war zone for international intervention to assist trapped civilians.

But the pain of history must not be compounded by the refusal to confront it. Just as it was for my Jewish ancestors and the victims of all too frequent atrocities in modern times, international justice for the Tamil community is a crucial step not simply to help prevent the reoccurrence of violations in Sri Lanka, but around the world. Law is but one tool that can help recognize the fundamental human dignity that has been repeatedly denied to Tamils by successive Sri Lankan governments since independence. As the current situation on the island has made painfully clear, in the absence of justice within Sri Lanka, the international community must fill the void.

The United States has a crucial role to play in facilitating international accountability processes for a number of reasons. It was our leaders that pledged “Never Again” following World War II, and it is this country that has given safe haven to tens of thousands of Tamils over the past several decades who are now proud Americans. What’s more, there are perpetrators in Sri Lanka, including the current president Gotabaya Rajapaksa, who were or still are citizens of the United States.

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What happened in Sri Lanka in the last eight months of the country’s 26-year-long internal armed conflict in 2008 and 2009 marks one of the worst humanitarian catastrophes in recent history.

During the final months of the war, the Sri Lankan government ordered the withdrawal of most aid agencies and outside observers from the Northeast as it launched its “at all costs” offensive in September 2008 against the Liberation Tigers of Tamil Eelam (LTTE). The fighting trapped hundreds of thousands of Tamil civilians. There is overwhelming evidence that starting in January 2009, state security forces began ushering men, women, and children into successively smaller government-designated “No Fire Zones” (NFZs), where civilians were systematically and knowingly bombed by artillery fire and indiscriminately shelled, primarily by the military. As the Sri Lankan forces gained territory, the plight of the trapped civilians became increasingly desperate. By April, Human Rights Watch declared that the NFZ had become “one of the most dangerous places in the world.” By early May, the United Nations reported that the remaining NFZ had shrunk to a three-kilometer spit of land, with at least 100,000 trapped civilians.

The number of civilian deaths during the last eight months of the conflict is staggering. Conservative estimates place this number at as many as 40,000, although other credible reports have signaled that the death toll is likely significantly higher. To date, the exact numbers are unknown. What’s more, even after the end of active fighting on May 18, 2009, government security forces continued to orchestrate

widespread human rights abuses against Tamil civilians. One major 2015 Report of the OHCHR Investigation on Sri Lanka outlines how more than 250,000 Tamils were detained in military-run closed IDP internment camps; even after being released, they remained at risk of surveillance, further detention, torture and ill-treatment, and sexual violence.

Extensive investigations and documentation over the past decade, including by UN bodies, have determined that these abuses likely amount to war crimes and crimes against humanity.

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In the nearly thirteen years that have passed since the end of the war, survivors' calls for truth and justice have been consistently and actively denied by each Sri Lankan government in power. Women-led protests in the Northeastern Province demanding answers for the whereabouts of their loved ones have been met by increased government threats and surveillance. Family members of Tamil victims have been denied the opportunity to openly mourn and memorialize the dead, and community-built monuments have been deliberately destroyed by the state. Thousands of survivors remain displaced, with the traditional Tamil land and homes subject to intense militarization in the North and Northeast.

The unwillingness and inability of successive Sri Lankan governments to acknowledge, let alone independently investigate and prosecute, grave violations of international law committed against the Tamil community in 2008-2009 is undeniable. Indeed, the failure of Sri Lankan institutions to investigate and prosecute was recognized in no uncertain terms by the UN High Commissioner for Human Rights in her January 2021 Report.

The return to power of the Rajapaksa family in November 2019 has only underscored the illusiveness of justice in Sri Lanka and the urgent need to pursue accountability internationally. It is well-documented that the current President (and former US citizen), Gotabaya Rajapaksa, played a central role in orchestrating the atrocities committed at the end of the war while serving as Secretary of Defense under his brother, then-President Mahinda Rajapaksa, who now serves as Prime Minister. Only months before Gotabaya's election, two civil suits for torture and extrajudicial killing were brought against him in California. Rather than investigate and prosecute others responsible for wartime abuses, the Rajapaksa brothers have promoted them, filling current top government and military positions with close relatives, allies, and a wide array of former officials accused of severe human rights abuses.

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Given the gravity of the atrocities and the inaction to date, the international community must step in to fill the accountability gap and pursue the prosecution of war crimes and crimes against humanity for 2009-era violations. The United States has a critical role to play in the efforts to bring high-level perpetrators to justice in international and domestic forums outside Sri Lanka. To date, the U.S. government has begun to impose travel bans against Sri Lankan military officials accused of war crimes and should also consider economic sanctions. In addition, the U.S. government should:

First, support the collection, verification, analysis, and sharing of evidence, including survivor testimony. Overall, in order to pursue prosecutions for civil war-era violations, one critical factor will be ensuring the collection and preservation of evidence. This tangible action can be done even while the Rajapaksas are still in office. In March 2021, the UN Human Rights Council resolution on Sri

Lanka called for the establishment of a dedicated new capacity within the OHCHR “to collect, consolidate, analyse and preserve information and evidence” of grave violations of international law in Sri Lanka. The U.S. government should fully support this call to expand independent investigative efforts as it has supported similar efforts in Syria or Myanmar to collect and preserve evidence.

Second, coordinate and facilitate information-sharing and cooperation with foreign officials’ investigations and prosecutions of crimes under their universal jurisdiction frameworks. The Human Rights Council also called on governments to “to support relevant judicial and other proceedings, including in Member States, with competent jurisdiction.” With this in mind, U.S. government agencies should coordinate and facilitate information-sharing and cooperation with foreign officials’ investigations and prosecutions of crimes under their domestic universal jurisdiction frameworks. Countries like Germany are actively using universal jurisdiction laws to prosecute former high-ranking officials accused of war crimes and crimes against humanity in Syria and elsewhere. Similarly, a growing number of war crimes units are also collecting evidence and documentation of human rights violations akin to those committed in Sri Lanka. Once evidence is collected, it can also be shared with counterparts in other countries, which can spur the initiation of proceedings if suspects travel to other jurisdictions.

Finally, center survivor communities in accountability efforts and provide them with dedicated support. As those with the most at stake, survivor communities have relevant experiences, evidence, and expertise that should be integrated into a holistic approach to achieving accountability and justice. The U.S. government should provide resources for survivor communities and offer Tamils opportunities to participate in high-level convenings or access much-needed funding to help them to gather and share evidence with investigators and prosecutors.

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In conclusion, while the United States and the international community cannot undue what happened in 2009, we must make sure that the calls for justice do not go ignored. Thank you for your time today.