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EXECUTIVE SUMMARY

Sri Lanka has systematically protected the murderers of many media workers and journalists killed in the civil war. Not one person has ever been held accountable for an upsurge of at least 44 killings that occurred between 2000 and 2010, despite in some cases lengthy criminal investigations being launched. The lack of accountability for assaults on journalists sends a chilling message to the country’s remaining news reporters who routinely risk their lives, practice self-censorship or work in exile. The level of trauma experienced by journalists in Sri Lanka is also noteworthy, many of whom have been forced to live with death threats, go into hiding or relocate, and others of whom have been detained.

Thirty-nine-year-old Nimalarajan Mylvaganam was one of the most high profile Tamil journalists to be assassinated because his reporting on the Sri Lankan conflict threatened the interests of politicians and the security forces.

Nimalarajan Mylvaganam’s entire family fled the country for Canada, and have not ever returned home. But every year in Jaffna, Nimalarajan Mylvaganam’s death is faithfully remembered by his colleagues in the Press Club. In London, the BBC, for whom he worked, named a meeting room after him, but most of those who know his story have now retired, died or left the organisation. This report sets out to document, for the historical and legal record, the ongoing impunity surrounding the assassination of the journalist Nimalarajan. It underscores the systemic failure to prosecute those responsible – failures that may have tragically enabled further violations, including subsequent targeted killings by suspects who were never brought to justice.

The police investigation into this killing is a text-book case of how not to do it. The crime scene was never secured and recorded, no photographs were taken or forensic evidence collected. Nimalarajan’s house was never cordoned off, despite the fact the crime occurred

during a strict curfew in a high security zone, surrounded by multiple military checkpoints. It took years for some of the officers on duty that night to be interviewed but many were never identified or questioned. Ballistic evidence was mishandled and the analysis took years. No evidence was taken regarding death threats to Nimalarajan or phone calls he received, but instead bizarrely his bank account was investigated. Alleged suspects were allowed to roam free and commit further murders and then leave the country, allegedly with the help of the security forces. They were questioned but when they professed innocence this was taken at face value and they were let free and never charged with a crime. Worryingly suspects routinely turned up bruised and beaten, alleging they’d been tortured in custody and forced to sign false confessions.

Meanwhile Douglas Devananda, the leader of the Eelam People’s Democratic Party whose members are alleged to have committed the murder, has never been questioned by

police about the killing. Instead he’s been repeatedly made a cabinet minister in almost every government since 2000, only losing this position in 2024 but remaining a member of parliament. By contrast, Nimalarajan’s mother and father died in exile while still awaiting justice for the killing of their son.

Although this report focuses on the murder of Nimalarajan and at least 44 journalists in the decade that followed, it should be noted that other media workers were killed or disappeared in Sri Lanka before him, including in the South. It is also worth noting the large number of reporters – Tamil and Sinhala – who have been arrested or abducted by security forces and subjected to torture in Sri Lanka in connection with their reporting of the war. They are alive and can testify to who held them and where and yet even they have never received any acknowledgement, let alone justice. Many are now outside the country.

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NIMALARAJAN AT THE BBC

It was the time of war. The rebels were making gains in the Vanni and establishing a de facto state. But Sri Lanka's military had wrested control of the northern city of Jaffna from the Tamil Tigers, Jaffna being the heartland of Tamils. President Chandrika Bandaranaike Kumaratunge's government imposed heavy sanctions on the Tamil-speaking city: often there was no electricity, no fuel, no batteries, no newsprint. And this was the community to which Nimalarajan belonged. Though he had none of the high-tech facilities or security arrangements enjoyed by international journalists in conflict zones, he became the world's eyes and ears in war-torn Jaffna. He pedalled his bicycle around the military-infested Jaffna peninsula to wherever the story was, whether the scene of a bomb blast, a family searching for their disappeared, or powerful politicians engaged in vote-rigging; or whether it was Tamils

braving the odds to achieve a semblance of ordinary life. He had no equipment to file a report online: his community lacked electricity, let alone the internet. Instead, Nimalarajan wrote these stories by putting pen to paper, with passion and objectivity, then he awaited the telephone call from London and read them out. Braving repeated death threats, he was the voice of Jaffna, a pioneer in reporting on a conflict from within the affected community. He was killed in cold blood while working on yet another report, a report we would never hear.

**Chandana Keerthi Bandara,
ex-Senior Producer,
BBC Sinhala Service**

1. BACKGROUND

1.1 INTRODUCTION

Sri Lankan journalist Nimalarajan Mylvaganam was assassinated in his home by unknown gunmen on 19 October 2000. His assassination came to symbolise the deadly consequences of reporting during Sri Lanka's years of ethnic conflict and state-sponsored violence. It marked a turning point – one of the earliest targeted killings of a Tamil journalist – and has come to embody the climate of impunity which has plagued the country.

This report critically examines how the Sri Lankan justice system responded to Nimalarajan's assassination, drawing on a detailed analysis of the official court record, from the day after his death until November 2021, when the suspects were released from bail. Despite the best efforts of some individuals within the system, the investigation process was never designed or intended to lead to justice and accountability. Although several suspects were arrested and even

detained for months or years, others, of more political consequence, were allowed to flee the country, and no one has ever been charged for the murder. One of the suspects was later arrested in the United Kingdom in connection with the case, but the investigation remains stalled – awaiting cooperation from Sri Lankan authorities that has yet to materialise.

As a result, Nimalarajan's family remain in limbo, still waiting after 25 years for the truth to be officially acknowledged, to receive reparations, and for those responsible to be held to account. Their long struggle speaks to a broader pattern in Sri Lanka, where criminal justice mechanisms have repeatedly failed to investigate and prosecute conflict-related violations. Multiple special commissions of inquiry have been appointed over the years, but none have delivered justice.

This report begins by setting out the political context in which the killing occurred, and introduces Nimalarajan and his work. Section 2 describes his murder on 19

October 2000, and Section 3 traces the trajectory of the official investigation and its failures. Section 4 assesses the investigation against the relevant international standards that should have applied, and highlights its shortcomings. Section 5 reviews the implications of the failure to investigate the murder of Nimalarajan and Section 6 provides an overview of other killings of journalists and media workers during the civil war. Finally, Section 7 offers some conclusions and recommendations directed at the Sri Lankan Government and other relevant actors, in searching for justice and accountability.

1.2 THE POLITICAL CONTEXT FOR THE KILLING

In Sri Lanka’s north and east, where Tamils form the demographic majority, and where the historic capital of Jaffna is located, long-standing ethnic tensions underpinned a protracted three-decade-long conflict. Nationally, the population is majority Sinhala, a disparity that has contributed to decades of systemic marginalisation and discriminatory state practices against the Tamil minority. This imbalance and its political consequences were central to the start of civil war in 1983.¹

In December 1995, the Sri Lanka Army (SLA) recaptured Jaffna from the separatist Liberation Tamil Tigers of Eelam (LTTE). Despite this gain territorially, armed conflict continued for several more years as the LTTE continued its insurgency until militarily defeated in May 2009. During this period, pro-government Tamil paramilitary groups operated alongside the government’s security forces, most notably at the time of Nimalarajan’s killing, the Eelam People’s Democratic Party. The EPDP, as it was known, was openly responsible for violent political intimidation and repression, including the targeted killings of opposition Tamil politicians, activists and journalists. With the backing of the

state, which included material and political support, the EPDP under its leader Douglas Devananda was allowed to operate with impunity. Devananda and other senior figures were subsequently integrated into formal political structures, including ministerial posts.

In February 2002, the Ceasefire Agreement that came into force between the Tamil Tigers and the Sri Lankan government included provisions requiring the disarmament of paramilitary groups such as the EPDP, but these were never fully implemented. The failure to investigate or prosecute EPDP members for serious human rights violations – despite credible evidence – is itself a human rights violation. The ongoing impunity of the state and its security forces as well as of paramilitary groups such as the EPDP continues to the present day and constitutes a failure by the State to uphold its obligations under both domestic and international law to ensure accountability and prevent recurrence.

1.3 MYLVAGANAM NIMALARAJAN’S WORK

Mylvaganam Nimalarajan was a renowned multilingual Tamil journalist active in the last decade of the twentieth century. He was the Jaffna correspondent for the Tamil daily newspaper Virakesari and for the Sinhala weeklies Haraya and Ravaya, and he reported for the online

news service TamilNet.² He was also a stringer for the BBC’s Tamil and Sinhala services in the war-torn north and east, and would come to be described by the British Guardian newspaper as having been at times, ‘almost single-handedly responsible for informing the outside world of the latest developments’, and as ‘one of the few independent journalists able to function in the peninsula’.³

1.4 ELECTIONS IN SRI LANKA: OCTOBER 2000

On 10 October 2000, amidst the ongoing conflict, a general election took place in Sri Lanka. In the run up, Sri Lankan President Chandrika Kumaratunga announced a major drive against the insurgent Tamil Tigers. Nimalarajan reported on the election for various news organisations, including the BBC’s Tamil- and Sinhala-language services. As one of the few sources of independent news from Jaffna, he reported critically on the practices of the EPDP, the principal pro-government Tamil paramilitary group, accusing its members of violence, vote rigging and intimidation.⁴ In the month preceding the election, more than 50 people were reported to have been killed in election-related attacks perpetrated by both sides.⁵ Then, two weeks before the vote, Sri Lankan security forces intercepted an envelope of portrait photographs secured by

Nimalarajan showing all the Jaffna candidates. Reporters sans frontières (Reporters Without Borders, or RSF) later recorded that: ‘Members of the police and army went to his home to question him about the envelope.’ Nimalarajan found himself accused of planning to send the pictures to the Tamil Tigers, but argued that he had simply been fulfilling a request for the images by the editor of Ravaya in Colombo.⁶

The EPDP secured four seats in the elections as part of a new coalition government. Nimalarajan told TamilNet that the EPDP held him ‘partly responsible for not getting the majority of the Jaffna votes they were hoping to obtain’.⁷ Despite press condemnation, EPDP leader Douglas Devananda was made Minister of Development, Rehabilitation and Reconstruction of the North & Tamil Affairs.⁸ He subsequently threw out in an interview that the EPDP had alerted Nimalarajan to the fact that he was ‘conducting his affairs in a manner that would risk the lives of certain personalities’.⁹ Friends of Nimalarajan stated more explicitly that because of his election coverage he had received death threats from ‘the big people’ of the EPDP, and that he had said that if ‘any trouble’ was caused to him, it would come from the EPDP. Nimalarajan himself complained officially about receiving threatening phone calls but was told they were untraceable. His

wife too was a victim of intimidation.¹⁰ On 16 October Nimalarajan told TamilNet that he had been visited the day before by the army, and that ‘he was worried about his safety as he had received several threats’.¹¹ After its own investigation, RSF stated that Nimalarajan ‘was again interrogated by members of the army’ about the candidate photographs ‘a few hours before his death’.¹²

2. THE MURDER

Nimalarajan lived at 17/3 Chundukkuli Railway Avenue, Kachcheri Nallur Road, Chundukkuli, Jaffna. On the evening of 19 October 2000, he was at home with his mother and father, his wife Parimala, his three little daughters, all aged under five, and his 11-year-old nephew Prasanna, who lived next door.¹³ The local electricity supply, suspended earlier in a scheduled blackout, had failed to resume,¹⁴ so Nimalarajan was working in his study by the light of a kerosene lamp. Out in the household's main living room, his father sat in an easy chair in the semi-darkness listening to the Tamil-language news on the BBC, a bulletin that ran from 9.15 to 9.45pm. Nimalarajan's wife had fallen asleep with the children while helping to settle them in bed, and Prasanna was napping too. As the news broadcast drew towards its close,¹⁵ Nimalarajan took a phone call.¹⁶ His mother, Lily Theres, who had previously also been asleep,

had just made her way to the bathroom in the dark. Beyond the walls of their house, the neighbourhood was under heavy military curfew.

The front door to the house was ajar. In the low light, Nimalarajan's father, Mylvaganam, saw a figure enter wearing a T-shirt and long trousers. He asked, 'Son, who are you?', and began to stand up, but the man came over and shoved him back down with his head against his knees, while with his spare hand the man held a blade to Mylvaganam's neck. Mylvaganam heard a second figure 'rushing' to the doorway of his son's study as the first man now attacked him, inflicting 30 centimetres of violent knife cuts to his face, head and neck.¹⁷ Mylvaganam began screaming. Two gunshots rang out, then a third. His wife, Nimalarajan's mother, exiting the bathroom, saw the flashes of gunfire and rushed forwards. Prasanna, Nimalarajan's nephew, also came running. Mylvaganam felt his head being released and clutched at his wounds: a section of his skull had

been left embedded in his chair. As the two attackers fled, they detonated a hand grenade behind them that exploded in the middle of the living room.¹⁸ In the blast, Prasanna's leg was broken so that it hung off. Mylvaganam was hit by shrapnel. His wife suffered severe wounds to her legs and abdomen, and briefly fainted. The explosion brought down part of the ceiling, destroyed a glass-fronted display case, blew out all the window glass on the front of the house,¹⁹ and also shattered the house lamps, leaving dust and smoke to swirl in the dark. Parimala, Nimalarajan's wife, ran out of the children's bedroom to be confronted by family members bleeding on the floor.

Nimalarajan's sister Premarany, and her husband Anton Jegathas Paul, who lived with their children in rooms in an adjoining house, heard the gunshots. At first they hid for safety under a table, as was usual practice, but then they heard Mylvaganam's screaming. As they came running, along with

their older son Premjee, aged 16, they heard the grenade explode and saw the whole of the front of Nimalarajan's house momentarily light up with the blast. But once they were inside, all was darkness and confusion. Premarany felt her feet sticking to the floor; only later did she grasp that she had been walking through blood. Premjee ran back out to cry for help but found himself unable to make a sound. He was soon followed by his mother, who cried out loudly to raise help from their neighbours, themselves already highly alarmed. She alerted the Grama Sevaka,²⁰ a local government administrator at the lowest level, who lived opposite, and he set about persuading another neighbour to supply them with a Land Master, a small open tractor with a trailer, to take the family to hospital. At the same time her husband took a flashlight and hurried away to report the incident at the nearest military guard post. He would return with initially five or so soldiers just as the lights came back on: according to the superintendent of the local Electricity Board, power was restored that night at five past ten. Nimalarajan was revealed lying face down on the floor with his head by the entrance to his study, a pool of blood flowing outwards from the room. His family members now realised he was dead.

The soldiers said the army would supply a truck to take the injured to hospital. They also took charge of a grenade lever spotted under a chair in the living room, and one bullet casing. Neighbours, too, started to gather at the house, some attempting to bind the wounds of the injured family members. No army vehicle appeared, meanwhile it seemed impossible to summon an ambulance. After considerable confusion, friends and relatives carried Nimalarajan's body onto the Land Master trailer, and his three severely injured family members were also helped up and in. His sister Premarany joined them, sitting with her son Prasanna across her lap, and her husband climbed up too. The driver was fearful of breaking the curfew, with all the dangers of being caught on the move at night, and persuaded the village administrator, the Grama Sevaka, to ride with them on his motorbike; Nimalarajan's uninjured nephew Premjee rode behind him. At first this little convoy was also accompanied by neighbours on foot holding lanterns, but they soon fell back leaving the vehicles to drive on in darkness. And though two soldiers at the scene had also undertaken to escort them, they rapidly changed their minds. Instead, they offered to radio ahead, to alert various checkpoints to expect them, and to ensure that they would be able to pass through a major

roadblock on Hospital Road, the most direct route. When they reached the roadblock, however, they were told that it was closed, and that they must take the long way round. On the trailer, the family feared that the lives of the three who were injured were slowly bleeding away. They crawled to Jaffna Teaching Hospital through dark streets completely empty of civilians. A journey that should have been little more than a kilometre took them an hour.²¹

After surrendering Nimalarajan's body to the mortuary, and with the injured family members admitted to the appropriate wards, the rest of the group spent the night where they were, too afraid to pass back through the streets until dawn, when the curfew would be lifted.

THE ATTACK

ATTACK TAKES PLACE SHORTLY BEFORE 9.45 P.M. DURING AN EXTENDED POWER CUT

NEIGHBOURHOOD UNDER HEAVY CURFEW

GRENADE EXPLOSION HEARD BY SOLDIERS AT SEVERAL NEARBY CHECKPOINTS

PARIMALA NIMALARAJAN (WIFE), IN BEDROOM WITH 3 LITTLE DAUGHTERS SLEEPING

LILY THERES MYLVAGANAM (MOTHER), 59, HEARS GUNFIRE, COMES RUNNING, GRENADE EXPLODES: SEVERE SHRAPNEL WOUNDS TO ABDOMEN AND LEGS, KNOCKED UNCONSCIOUS

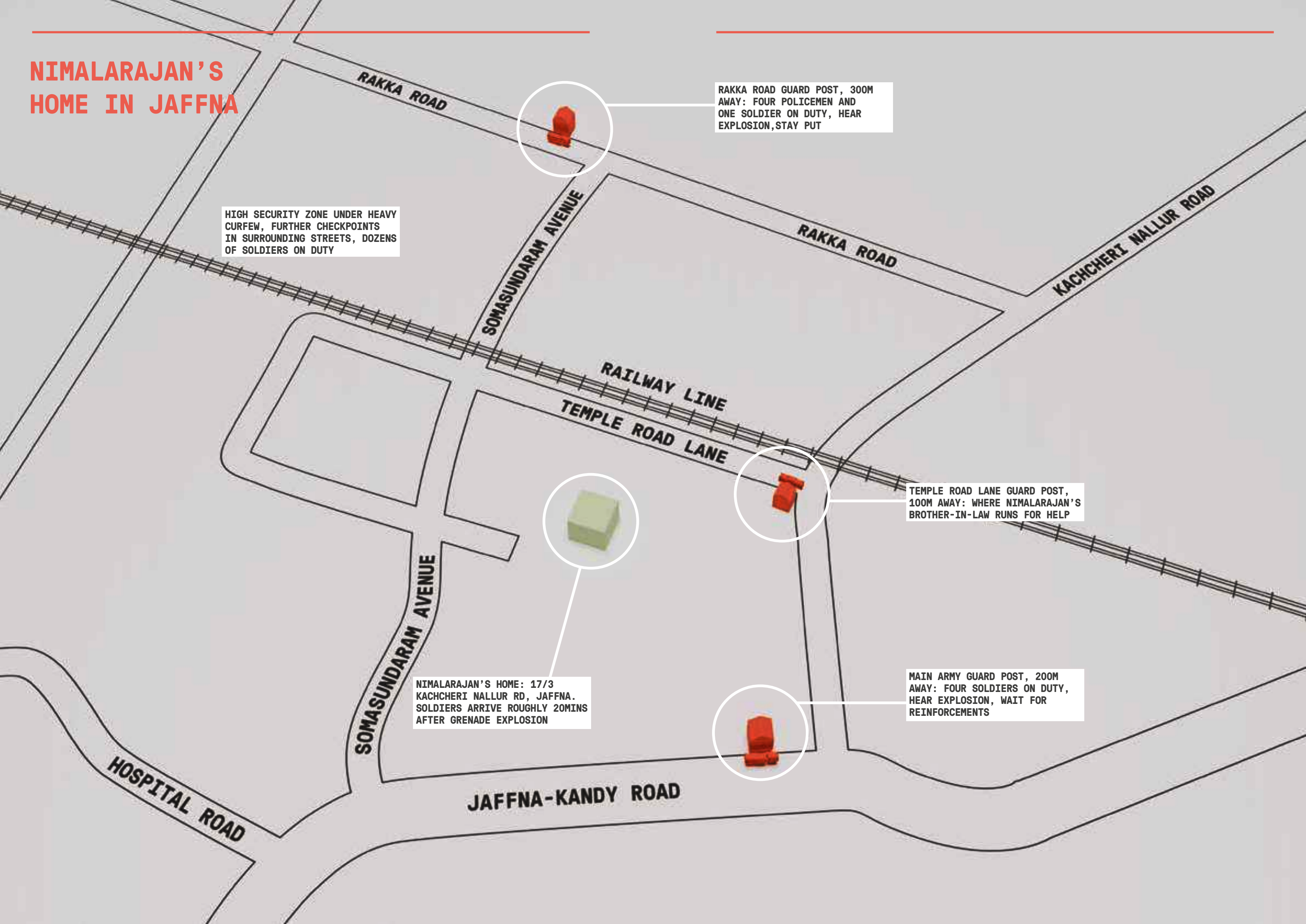
MYLVAGANAM NIMALARAJAN, 39, THREE BULLET WOUNDS, THE LAST THROUGH HIS HEAD: IMMEDIATELY KILLED

PRASANNA JEGATHAS, 11, (NEPHEW), HEARS GUNFIRE, RUNS OUT OF FRONT ROOM, GRENADE EXPLODES: COMPLEX WOUNDS INCLUDE A BROKEN LEG

CANAPATHYPILLAI MYLVAGANAM (FATHER), 65, FIRST ATTACKED IN HIS CHAIR: DEEP KNIFE CUTS TO HEAD AND NECK; THEN GRENADE EXPLODES: SHRAPNEL WOUNDS

TWO ATTACKERS IN AND OUT IN MINUTES

NIMALARAJAN'S HOME IN JAFFNA



FLIGHT TO HOSPITAL

HQ 512 BRIGADE OF THE SRI LANKA ARMY, GNANAMS HOTEL, CLOCK TOWER ROAD

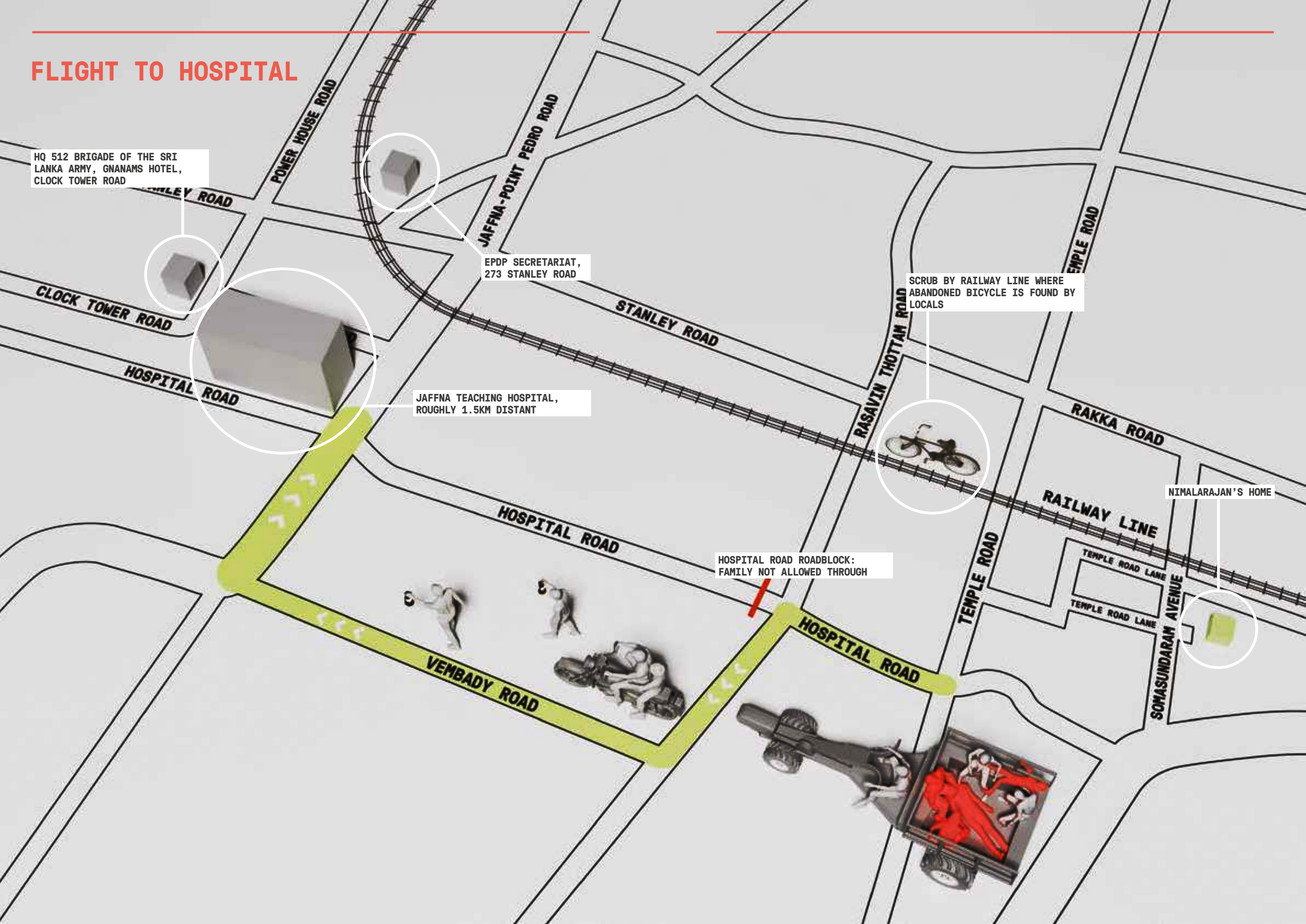
EPDP SECRETARIAT, 273 STANLEY ROAD

SCRUB BY RAILWAY LINE WHERE ABANDONED BICYCLE IS FOUND BY LOCALS

JAFFNA TEACHING HOSPITAL, ROUGHLY 1.5KM DISTANT

HOSPITAL ROAD ROADBLOCK: FAMILY NOT ALLOWED THROUGH

NIMALARAJAN'S HOME



3. THE INVESTIGATION

3.1 THE FORMALITIES OF A SRI LANKAN MURDER INVESTIGATION

According to the Sri Lankan justice system, a magistrate will oversee a criminal investigation in the geographic area where the crime took place, actively directing the investigation conducted by the police. According to the Sri Lankan Criminal Procedure Code, when the crime in question appears to be culpable homicide, the magistrate as well as the police must personally attend the crime scene.²² The magistrate's role also includes summoning and examining witnesses, issuing search and arrest warrants, and issuing other necessary orders, including that physical evidence should be sent for analysis; overall, ensuring that proper inquiries are made, and that the investigation is conducted diligently and lawfully.²³ In the Nimalarajan case, the magistrate who oversaw the case was Judge E.T. Vignaraja of the Jaffna Magistrate's Court.

Another provision of the Sri Lankan Code of Criminal Procedure gives an 'aggrieved party' the right to be represented in court by an attorney.²⁴ On this basis, from July 2002, advocates representing the interests of Nimalarajan and his family attended several of the hearings, and tried to help to steer the investigation towards a productive end. According to one of these advocates, the courts have tended to interpret the role of victims' advocates in criminal cases rather narrowly. For instance, they are not permitted themselves to cross-examine suspects or others appearing before the Court, and they are often hampered in these kinds of cases by not being given access to all the evidence.²⁵ However, several times in the Nimalarajan case advocates acting on his behalf suggested investigative steps the police should take, such as summoning particular witnesses, or gathering statements from those likely to be able to provide relevant information, or taking effective steps to

prevent suspects absconding; and Judge Vignaraja almost always ordered the police to carry out the steps recommended. However, this often proved to be in vain. During the course of the Nimalarajan investigation, Judge Vignaraja pointed out numerous times to the police that they had failed to enact his orders or to adhere to mandated standards.

When a criminal investigation is completed in Sri Lanka, the magistrate either discharges the suspects, if unconvinced that there is sufficient evidence against them, or commits them for trial. In serious cases this trial will take place before the High Court, when the magistrate will transmit a record of the inquiry and the evidence to the High Court, as well as to the Attorney General, who is responsible for decisions on charging.²⁶ In the days, months and years following Nimalarajan's killing, journalists and human rights organisations agitated for murder suspects

to be identified and brought to trial, exerting noticeable public pressure.²⁷ But after several years of investigations, and the arrest and remand in custody of five suspects, nobody was ever referred for prosecution in relation to the killing of Nimalarajan.

The Sri Lankan Code of Criminal Procedure specifies that: ‘Every investigation... shall be completed without unnecessary delay.’ It also requires that the police officer in charge must report to the Magistrate’s Court on the progress of the investigation every 15 days until it is completed.²⁸ Further, where any suspects are remanded in custody, their continued detention must be reviewed by the Court every 15 days.²⁹ These regular reports, filed along with the decisions of the magistrate, the post mortem and forensic reports and other documents, constitute the formal record of the investigation and chart its development. In 2023, ITJP and Redress obtained a copy of the record from the Jaffna Magistrate’s Court. Despite key gaps in these materials, either through investigative shortfalls or the absence of some important documents,³⁰ much can still be deduced from the evidence in this 434-page bundle, written in a mixture of three languages. An interview with one of the advocates who represented the interests of Nimalarajan in

the proceedings helped to fill in certain gaps, and allowed for a better understanding of the events behind the court record.

3.2 MILITARY AND POLICE RESPONSES ON THE NIGHT OF THE MURDER

At the time of Nimalarajan’s death, the high security zone where he lived fell under curfew at 9.00pm,³¹ overseen by the 512th Brigade of the Sri Lanka Army.³² The nearest guard post to his house, where his brother-in-law Anton Jegathas Paul went directly after the killing, was staffed by members of the 2nd Vijayabahu Infantry Regiment,³³ no further away than a quick walk of two or three minutes. Soldiers on duty at other nearby guard posts later stated that they had heard the noise of an explosion: all, therefore, were alerted immediately to the attack.³⁴ Even so, it took 15–20 minutes for a group of some 10 security personnel to reach Nimalarajan’s house. According to a Jaffna police officer, the first response of the four soldiers who happened to be at the main YMCA guard post on Jaffna-Kandy Road, at roughly 200m distance, was to contact Brigade HQ, at Gnanams Hotel on Clock Tower Road two kilometres away, to ask for instructions. They then stayed put waiting for reinforcements, before going to the scene.

Minutes after the murder, one of Nimalarajan’s family members telephoned the leading Tamil-language newspaper, Uthayan, to alert the press to the murder and ask for help.³⁵

The sub-editor on duty, unable to reach the police, instead rang an organiser of a Tamil political party, the EPRLF, and it was an EPRLF representative who then succeeded in calling in the crime to the police at 10.15pm. How the police initially responded is unclear, though Judge E.T. Vignaraja, overseeing their investigation, subsequently indicated strong displeasure that they omitted to provide Nimalarajan’s surviving family members with any form of protection that night, or after.³⁶

3.3 THE NEXT DAYS AND WEEKS

The day after Nimalarajan’s killing, Sri Lankan President Chandrika Kumaratunga promised a thorough investigation. But as Reporters Without Borders notes, this was ‘paradoxically seen as a signal to the police and army that the political establishment would prefer, or indeed was ordering, that they block the investigation’.³⁷ Nor, straight after the murder, did Nimalarajan’s family feel free to speak out. His brother-in-law, Anton Jegathas Paul, described the military response on the night as ‘cordial’.³⁸ Asked in the Magistrate’s Court

a few days later whether Nimalarajan had had enemies, his mother replied, ‘My son usually discloses nothing. Therefore, I don’t know if he has any enemies.’ Nimalarajan’s sister was reported by the police to have stated that she was ‘unable to suspect anybody’. His father maintained that in the low light, the only feature of the attackers he had seen was their clothing, and as for his family’s ongoing safety, he believed they faced ‘no threat’, and so, the police reported, he was ‘not in favour of providing police protection to them’.³⁹ There is no evidence in the court record to suggest that in the first six months of the investigation the police elicited any statements from the family or their friends regarding threats to Nimalarajan’s life.⁴⁰

A five-man team of Jaffna police officers was assigned to the case.⁴¹ When Nimalarajan’s brother-in-law returned home from hospital early the morning after the murder, he found police in the house next door. They now took charge of the 9mm bullet cartridge and the grenade lever that the army had picked up the night before, and recovered two further 9mm bullets or bullet fragments.⁴² A neighbour would later claim that a second bullet casing and a third bullet, found in Nimalarajan’s study, had already been given to

Nimalarajan’s older nephew Premjee.⁴³ The Magistrate, Judge Vignaraja, came to examine the scene himself, and noted heavy blood stains under the study window and between the window and where Nimalarajan had fallen by the door. He then left for the hospital where he authorised a post mortem.⁴⁴ This was conducted by the acting Judicial Medical Officer who stated in summary that Nimalarajan had died from ‘gunshot injuries’ to the head.⁴⁵ Specifically, Nimalarajan had been shot three times. One bullet entered his right upper arm exiting nine centimetres above, shortly below the shoulder. A second entered his right cheek from above, with blackening around the wound, then split inside his neck, one part exiting from the front of his neck, the other part causing a large contusion in his right lung. A third entered at the nape of his neck on the right side and exited his top left forehead, passing through his brain and causing multiple skull fractures.⁴⁶ There was also considerable blood staining to his front and legs, and bleeding from his nostrils. Next to ‘time of death’ the medical officer scribbled ‘instantaneous’. He added that the deceased seemed to have been in normal health, and had been wearing a green and white batik sarong.

Two days after the killing, more than four thousand mourners gathered for Nimalarajan’s funeral and black flags flew across Jaffna. Four days later, in Colombo, over 600 journalists staged a protest at his murder, which TamilNet reported had been conducted ‘allegedly by pro-government militiamen’.⁴⁷

Nearly two weeks after the attack, Nimalarajan’s nephew Prasanna was still recovering in hospital, and although Nimalarajan’s parents had by this point been discharged, when testifying in court on 31 October, his mother was unable to stand.⁴⁸ That same day, the Magistrate drew out from the village administrator, the Grama Sevaka, that the army, once alerted to the crime, had taken no steps to catch the attackers. Soldiers enforcing the curfew that night had neither cordoned off the area nor conducted any sort of search. ‘No action was taken to that effect.’⁴⁹

1 November 2000 captures the first reference in the released court record to ‘two suspected persons’, with a demand by the Magistrate that the police should arrest them. In response, across that month, the police spoke of delays in processing fingerprint evidence and bizarrely sought permission to access Nimalarajan’s bank records, with no explanation for this request. Shockingly only at the end of November,

more than a month after the killing, did they produce the bullet casing and grenade lever initially found by the army and ask Judge Vignaraja for permission to send them for analysis.

3.4 2001: LITTLE PROGRESS

In January 2001 the police repeated their request for ballistic analysis. Government analysts subsequently reported that Exhibit P1, the grenade lever, was Chinese; and that Exhibit P2 was a spent 9mm self-loading cartridge suited to a pistol or sub-machine gun.⁵⁰ In March the police explained that further delays were due to the Attorney General wanting post mortem confirmation of whether a material object had been recovered from the corpse, presumably the bullet fragment that punctured Nimalarajan’s lung. They also noted, apparently for the first time, an abandoned bicycle with a fingerprint on it found near Nimalarajan’s house the day after the killing, and explained that details of its seller and buyer had been submitted to the Attorney General. The Magistrate replied that the Court ‘cannot accept’ a bypassing of its authority, with the police reporting direct to the Attorney General. And what of the added bullet fragments, P3, found the morning after the killing? He demanded a report by 4 April explaining why

there was still no complete account of the ballistic evidence, and ‘why the police have not been able to make any progress in the case’.⁵¹

Six months after the killing, the Jaffna police reported to the Court that they were investigating a ‘Lumala’ bicycle, serial no. 55661592,⁵² found by locals⁵³ the day after the killing abandoned in scrub next to the railway line, westwards ‘about 500 meters’ from the house, and with a fingerprint on it.⁵⁴ Then, in an update, the police told the Court they had been unable to establish its owner, and as regarded the murder case, ‘no connection has been revealed so far’.⁵⁵ They also declared to the Court in a written submission that statements had been recorded from neighbours, and from police and army officers on duty at road check points, and that so far ‘no evidence whatsoever’ of relevance to the incident had been revealed.⁵⁶ Under direct questioning, an officer explained that despite the dense security in the area during curfew, there were at least two shortcuts by which the attackers could have avoided the nearby guard posts. He even agreed to the proposition that by this means a person might reach either the police headquarters or somewhere near to the 512 Brigade HQ. The Magistrate again demanded arrests.⁵⁷

A NEW INVESTIGATIVE TEAM

On 16 April 2001 the Inspector General of Police ordered a team of Colombo police officers to take over the case under lead investigator Ranjith de Silva of the Colombo CID and Homicide Unit. Before they left for Jaffna, the new team re-interviewed Nimalarajan’s relatives, as his entire family had by this point moved for their safety to Colombo, from where they were struggling to emigrate because they felt unsafe remaining in Sri Lanka.⁵⁸

In May, de Silva reported to the Magistrate that he had been unable to interview the soldiers who had been posted at the various guard posts on the night of the killing as most had now ‘gone away from their respective duty areas’. The Magistrate replied that the army could of course identify and locate them all, and repeated his own belief that, ‘No one’ could have entered the area ‘without their knowledge’. He ordered de Silva to collect a complete set of statements by these soldiers within the month. De Silva himself asked that P1, the grenade lever, and P2, a spent cartridge, should be subjected to more detailed examination. The police had already sent the bicycle for examination, he said. Fingerprint analysis was being ‘processed’.⁵⁹

De Silva also submitted interview summaries.⁶⁰ These revealed that Nimalarajan’s

family members, in the relative safety of Colombo, had finally felt able to describe the threats that he and his wife received before his murder. In separate interviews conducted in Jaffna, friends of Nimalarajan also related how he had told them about the threats he received. De Silva had also located a video shop owner who described an encounter with two cyclists in black trousers and T-shirts at 8.00pm on the night of the murder near to where the abandoned bicycle was subsequently found. In the dark, he had taken them for Sinhalese soldiers on night patrol.⁶¹ In another interview, Vanniyasingham Gunaseelan of short-lived political party the PDA⁶² said that his organisation had bought the Lumala bicycle,⁶³ and that in early 2000 it had been used by party worker Kanthsamay Jegatheeswaran alias Jegan, alias Kiruba. Jegan had quit the PDA, taking the bicycle with him; and a few days after that, Gunaseelan had seen Jegan ‘moving with members of EPDP’. When the bicycle’s discovery became public news, Gunaseelan reported Jegan to the police. Gunaseelan disclosed that Jegan had claimed to have passed the bicycle on to someone called Vishu. In another interview, an EPDP organiser denied being ‘aware’ of Jegan or the bicycle. But Jegan himself, under de Silva’s questioning, agreed that he was a member of the EPDP, though he denied

having taken the PDA bicycle or knowing anyone named Vishu. Instead, he said that after being assaulted in February by two PDA members he had ‘agreed to make a statement to the police’ admitting to placing the bicycle in the vicinity of Nimalarajan’s murder.⁶⁴ One of those to attack him had been Gunaseelan. ‘Due to the fear over their threatening’, Jegan said, he had ‘stated to the police that he gave the bicycle to the person named Vishu and states that statement is false.’⁶⁵

Late in June the Court received a report from a government analyst in which he updated his own previous finding that P1, the grenade lever, was Chinese. It was in fact, he now said, a model SFG-87 of Singaporean manufacture.⁶⁶ In July, de Silva submitted a report with the names of ten soldiers on duty the night of the killing, with a note that said: ‘According to their statements no one had passed their check points on the night in Question.’⁶⁷ The Magistrate repeated his demand for the names of all the soldiers on duty at the relevant guard posts, along with a complete set of their statements. A sub-inspector working under de Silva was unable to say whether fingerprints had been taken from Jegan or Gunaseelan. The Magistrate ordered that fingerprints should be taken from all suspects in the case. De Silva’s team requested permission to

broadcast a photograph of the abandoned Lumala bicycle, seeking information.⁶⁸ In August de Silva provided the names of the soldiers who had gone to Nimalarajan’s house after the shooting. By his account they had nothing new to offer the investigation. He gave a separate list of a further 22 soldiers, apparently not yet interviewed, but also on duty in the area that night, and requested that a ‘long date may be given to report the progress of [the] investigation please’.⁶⁹

In October, de Silva raised the matter of needing an analysis of P3, the bullets or bullet fragments found by the police the day after the murder. Were they linked to P2? And could they ‘be used to kill a human being?’ The Magistrate demanded to be given the analysis the next month.⁷⁰ On 12 November de Silva added a brief note to a court report saying that on receipt of information, the CID had recorded the statements of two individuals suspected in relation to the alleged crime. The suspects in question were Sebastian Ramesh alias Napoleon, and David Michael Colin alias Murali. Both had denied the allegations made against them and so de Silva had let them go. Their possible connection to the case apparently went unexplained, although Napoleon was commander of the EPDP’s military wing based in Kayts, an island off the west

coast of the Jaffna Peninsula, and his name was widely mentioned among journalists at the time as a suspect and the ‘shooter’.⁷¹ He added that two more suspects were yet to be traced. The Magistrate responded by explaining in detail how de Silva had broken the Code of Criminal Procedure by releasing Napoleon and Murali. On 27 November, as 2001 drew towards its close, he ordered de Silva to produce them both and threatened to report him to ‘judicial services’ if he failed.⁷²

3.5 2002: THE INVESTIGATION
RELAUNCHED

After its own investigation, Reports Without Borders stated that it could confirm that ‘from October 2000 to January 2002, the work of the police was blocked by the authorities in Colombo and Jaffna’. But after an election and a change of government on 9 December 2001, it noted, the police ‘relaunched the investigation which had come to a halt under the preceding government’.⁷³ In February 2002 TamilNet similarly reported that the Attorney General had just instructed the CID to expedite the case.⁷⁴

On 15 March 2002 de Silva reported to the Court that he had been frustrated in his attempts to bring in the suspect known as Jegan for fresh questioning. Jegan was at an EPDP camp on Delft

Island, and ‘as a result he could not be brought in and also he was not released by the EPDP’. De Silva asked the Jaffna court to order the EPDP leader, Douglas Devananda, to produce Jegan for interview ‘without fail’.⁷⁵ Jegan was produced for fresh questioning on 2 April in Colombo. A ‘medico-legal examination’ there found that he showed ‘Old Scars caused by Burn and Blunt weapon, duration over 6 months’. Jegan denied that a photograph of the Lumala bicycle showed the same one he had used, though a few days later, in a separate interview, his apparent wife told the police that this was indeed his bicycle. De Silva noted that he was seeking advice from the Attorney General.⁷⁶

In May 2002, lawyers representing the victim spoke out about the number of security personnel on duty in the area where Nimalarajan had lived, and asserted once more that, ‘there would be no possibility of anyone coming to the place that day without their knowledge’. One lawyer pointed out that police officers as well as soldiers had been on guard duty on the night of the killing,⁷⁷ and yet no statements from these officers had been sought or produced. The Magistrate now ordered that these police officers should also be identified and interviewed.⁷⁸ According to TamilNet, Napoleon, whom it called ‘the main suspect’, and who it said was implicated in a

second, more recent murder and two severe assaults, was also discussed. The police reported that he had ‘slipped out the country’, and told the Court that ‘the assistance of the Interpol would be sought’⁷⁹ to arrest him. In subsequent reporting, TamilNet alleged that Napoleon ‘worked closely with the Sri Lanka Navy in Jaffna’, and that he was suspected to have left the country ‘with the assistance of some powerful sections of the Sri Lankan armed forces’.⁸⁰

On 5 June, de Silva asked the Court to order the EPDP to produce complete documentation on its membership, and full details of its collection of firearms; also to produce Jegan, one ‘Viswan’, who had charge of EPDP vehicles including its bicycles at the EPDP Secretariat, 273 Stanley Road, and EPDP organiser Pasupathipillai Jegatheeswaran alias Vishu.⁸¹ The EPDP directed de Silva towards six of its members, but failed to help him locate a further 13.⁸² Nor did it supply a ‘properly prepared’ account of its firearms.⁸³ However, its compliance was sufficient for de Silva to succeed that same month in arresting Jegan and Viswan on suspicion of murder. Both were remanded in custody.⁸⁴ Jegan gave a voluntary statement to the Magistrate in private that does not appear in the court records.⁸⁵ Viswan addressed the Court, denying that he had been entrusted with the relevant

bicycle, or that he had been in charge of EPDP vehicles in Jaffna at the time of the murder, or that he had been in Jaffna when it took place. ‘I have nothing to do with this incident.’ The person in charge at the time, he said, had disappeared.⁸⁶

On 4 July 2002, a new witness Ponniah Dharmalingam, an ‘ex-EPDP cadre’ according to TamilNet,⁸⁷ volunteered a statement in private to the Magistrate, being professedly too afraid to speak to the police.⁸⁸ Late in October 2000, shortly after Nimalarajan’s murder, he had had a drink with an EPDP man called Saleem, who had divulged that Murali had left the EPDP ‘on the fear of Nimalarajan’s murder’. Saleem stated further that on the night of the murder he saw how ‘Murali, Basha [Batchcha] and Sathya left from the Jaffna EPDP Office at about 7.00 PM with 2 Pedal Cycles’. Under subsequent questioning by de Silva, Saleem, who was on duty at the EPDP office gate on the night of Nimalarajan’s killing, explained further that he had gone off duty at 10.00pm, but that at 5.30am the next day he had seen Murali and Basha sleeping back at the EPDP office.⁸⁹ On 5 July, de Silva asked the Court for a search warrant as he had received information that ‘a suspect is residing at EPDP office headquarters’ in Colombo, which was also the residence of Douglas Devananda. The suspect is described in the records

only as a ‘person who was released out of the case’. The warrant was granted, but the arrest failed, as the suspect ‘was not present at the spot’.⁹⁰ When de Silva tried to reinterview Saleem at intervals over the following two years he found that Saleem too had disappeared.⁹¹ But on 20 July, in Trincomalee, de Silva did arrest David Michael Colin alias Murali, and took him to Colombo, from where he was remanded to Jaffna Prison on 30 July. A few days later, Murali requested a jail transfer back to Colombo on the grounds that his life was in danger in Jaffna.⁹² He also claimed to have been severely beaten up after his arrest, and that he had been unconscious when his signature was added to a statement in a language he was unable to read. The Court ordered the authorities in Jaffna Prison to provide security for him and to organise a medical examination.⁹³

On 7 August, on the basis of information provided by Murali, so the police reportedly said,⁹⁴ de Silva also arrested Karalasingham Sinduparan alias Batchcha, who, like Murali, was supposed to have left the EPDP Jaffna offices by bicycle on the night of the murder. Batchcha was remanded in custody in Jaffna.⁹⁵ De Silva also acted on a warrant to search Jaffna’s two EPDP offices, in one of which he seized a Chinese-made 9mm pistol and six live bullets

from an EPDP member who said these had been issued to him by the Commander of Security Forces in Jaffna in 1999.⁹⁶ Six weeks later de Silva requested analysis of this EPDP pistol in relation to the P3 bullet fragments found in Nimalarajan’s study.⁹⁷ On 20 August, in response to a progress demand from the Magistrate, de Silva reported that the police officers on duty at the Rakka Road guard post on the night of the murder had all been transferred, and their present whereabouts had yet to be established.⁹⁸ There were also complaints in court from both a defence lawyer and an advocate for the victim about the injustice of the interminable investigative delays. The four suspects now on remand were said by the defence to be suffering ‘a human rights violation’.⁹⁹ The victim’s advocate replied that, ‘The murder of a journalist is a human rights violation and is a tragic incident,’ and observed that it was only because of political circumstances at the time of the incident that ‘the investigation had reached a standstill.’ Even now, the investigation had only really got going ‘due to pressure from several international agencies’.¹⁰⁰

On 3 September 2002 a defence lawyer argued ‘not a drop of evidence’ had been produced in court to

convict the suspects. ‘I would like to state without fear that politicians and political parties sought their own profits using this murder incident.’¹⁰¹ At the same time, as de Silva soon pointed out, various critical bullet parts still required ballistic analysis.¹⁰² On 16 September, subject to financial sureties, the Provincial High Court in Vavuniya granted bail to Murali, and to Viswan, the alleged EPDP vehicle manager.¹⁰³ One of the advocates for the victim objected that this was contrary to the Criminal Procedure Code when the case was pending in another court.¹⁰⁴ He also objected that this bail came ‘without any restrictions imposed on them’. After all, another suspect had been absconding for a year, he said, then added: ‘Napoleon has fled the country.’ Out on bail, these two could also be expected to escape, he said, in which case, ‘there is a chance that people will lose hope in the administration of justice’. He asked the Court to confiscate their passports and make them report weekly to the police.¹⁰⁵ When the Jaffna Magistrate stepped in and imposed a fortnightly check, lawyers for the accused argued that he had exceeded his powers. Subsequently, the High Court ruled that the suspects should report in once a month.¹⁰⁶

On 11 November, de Silva told the Jaffna court that most of the arms in the possession of the EPDP had been handed over to Army Headquarters in Columbo after the ceasefire.¹⁰⁷ Between the government and the LTTE, which dated back to 23 February that same year. The Magistrate directed that the Commander of the Army should ‘immediately’ hand over the 9mm firearms surrendered by the EPDP.¹⁰⁸

A month later, on 11 December 2002, de Silva still had nothing to report on the weapons investigation. The Magistrate gave him one month more to make progress, not least to contribute to ‘removing the international stigma on the police and the army in connection with the case’.¹⁰⁹ He also pointed out, yet again, his belief that the murder ‘could not have taken place at that time, which is a night curfew time, without the knowledge of the people in the army guard post surrounding the scene’. He observed that he still lacked the statements from all the security personnel on duty on the night of the killing that he had ordered to be collected over a year and a half before, and added bluntly: ‘It is thus clear that said order was ignored by the police’, and that as a result, the case could not progress.¹¹⁰

3.6 2003: ILLUSORY MOMENTUM

By mid-January 2003, bureaucratic delays had arisen over who had the

authority to mandate that Exhibits P5–P9 – five 9mm pistols once in the possession of the EPDP, but surrendered to the Sri Lankan military in 2002 – should now be forwarded to government analysts for investigation.¹¹¹ When the matter was brought up again in the Jaffna court in February, it became clear that de Silva had not established the exact source within the EPDP of these particular firearms.¹¹² He had, though, managed to interview two of the four policemen on duty at the Rakka Road guard post on the night of 19 October 2000 who said that they had heard an explosion ‘at the time of the assassination’ but had not seen anyone as this ‘occurred at curfew time’.¹¹³ In March 2003, whether or not he had indeed previously absented himself from the country, Napoleon was produced in the Jaffna court as a ‘key suspect’ in the Naranthanai murder case, in which EPDP paramilitary cadres were believed to have been behind fatal attacks on rival political activists during the December 2001 general election.¹¹⁴ Even as Napoleon obtained bail in this second case, Mr Remedius, advocate for Nimalarajan, urged the police to rearrest him as a suspect in Nimalarajan’s murder, on the warrant of November 2001. After all, here he was, ‘present in court’. But the police failed to act. The Magistrate ordered de Silva to provide a written explanation of this blatant lapse, and again

ordered him to execute the warrant.¹¹⁵ April 2003 delivered new results from the government ballistics analysts. P3, one bullet and two fragments, were ‘equal to’ 9mm pistol ordnance, but were too distorted and deformed to deduce anything more. A test firing of all six pistols in the case showed that P2, the bullet or casing recovered by the army on the night of the shooting, was not a match. Nor was it possible to determine when P4, the pistol de Silva had seized in Jaffna, or the five pistols from Colombo, had last been fired.¹¹⁶ Asked about the sequence of possession (chain of custody) for the five pistols, a sergeant major appeared before the Court and said he had been informed by ‘superiors’ that no one could provide an answer to this as ‘there were no witnesses’.¹¹⁷ In May, de Silva confirmed that the pistols P5–P9 had all been issued to the EPDP by the Sri Lanka Army. De Silva provided a written submission in April stating that so far the investigation had yielded no evidence to suggest that Napoleon had been involved in Nimalarajan’s murder, and that given ‘insufficient evidence’ he had not been taken into custody.¹¹⁸ In an update on 30 May, de Silva stated that after the lawyer for the victim had requested that he should produce Napoleon before the Jaffna Court, he had consulted

with the Attorney General, who had advised him not to do so unless there was ‘sufficient evidence’, on which he repeated that in the investigation to date, ‘no evidence’ had been found against Napoleon ‘in this connection’. In June, this declared lack of evidence led to a Supreme Court ruling that, ‘In the circumstance no order for the arrest or detention of the Petitioner [Napoleon] would be made’ in connection with the Nimalarajan case.¹¹⁹ That same month, June 2003, a warrant was issued for the rearrest of Murali, only for it to be stopped again almost at once following receipt of a medical certificate.¹²⁰ At the same time, defence lawyers went to the High Court to argue for bail for Jegan and Batchcha on the grounds that it was a breach of the terms of the Bail Act of 1997 to hold a suspect on remand for more than a year. A bail order was issued on 30 June and they were both released in July.¹²¹ After legal wrangling about which court had jurisdiction over the matter of bail, the High Court reduced the Magistrate’s bail terms. Once more, the suspects would be required to report to police once a month only.¹²² De Silva raised the matter of EPDP member ‘Milton’, the first name on the list of 19 members that had been provided to the Court a year earlier. The Jaffna District Secretary of the EPDP had reported to de Silva that

Milton ‘has abandoned the EPDP party since the day this investigation started. Hence, unable to investigate him’. De Silva requested more time to pursue this. ‘It is necessary for me to re-investigate.’¹²³ In September 2003 a new name entered the records: Balachandran Udhayabavan alias Atputhan. On the 23rd he became the final named suspect in Nimalarajan’s murder, though with no explanation given as to why. He was detained first in Trincomalee on 5 September, and through his lawyer later claimed to have been tortured, including the burning of his genitals, by his arresting officers, members of the ‘Secret Police’.¹²⁴ From Trincomalee he was remanded to Magazine Prison in Colombo. Subsequent delays in his transfer to Jaffna, on the grounds of ‘transportation regulation issues’, allowing some time for his purported wounds to heal, led the Jaffna Magistrate to demand a Medico-Legal examination in Colombo.¹²⁵ On 3 October the Colombo authorities found evidence solely of blunt force injuries and designated these ‘Non-Grievous’.¹²⁶ One of the defence lawyers spoke out once more against the inordinate amount of time it was taking to bring the case to resolution, and noted that the newspaper Uthayan had written of a danger that ‘people will express their

displeasure and will set to do something’. The Magistrate suggested that if the suspects felt indignant about delays they should ‘contact the Attorney General’.¹²⁷

On 17 October, the President of the Jaffna Journalists’ Association, addressing a protest, said, ‘Today we see those who murdered Nimalarajan walking about freely. Investigations into his foul murder have been going on for long without any progress.’¹²⁸ That same day, Atputhan reached Jaffna Prison.¹²⁹ In court at the end of the month, the lawyer speaking for him conceded that he was said to have been an EPDP member at the time of the killing, but added that he had had ‘nothing to do with the said incident’. Atputhan had been picked up in Trincomalee where four police officers, including ‘a person currently appearing in the court’, had addressed him in Sinhala, which he didn’t understand, and had assaulted him and made him sign a document he also didn’t understand. A deputy for de Silva informed the Court that EPDP members Milton and Saleem were now being subjected to interrogation, with two further suspects still being sought.¹³⁰

3.7 2004: THE INVESTIGATION DRAWS TO A HALT

By 2004, Inspector de Silva was producing formulaic written updates for the

Court in which he repeatedly declared that he was still searching for missing suspects, and that he was waiting for advice from the Attorney General: ‘a long date may be given to report progress of this case, please’.¹³¹ In March, the Magistrate issued a new arrest warrant for Jegan, who had failed to meet his bail terms. Jegan was subsequently picked up by police who realised that, under the alias ‘Kiruba’, he was wanted on another charge. As TamilNet reported: ‘While absconding in the Kayts area, the murder suspect is alleged to have sexually assaulted a girl student on her way home from Karampon Little Flower Girl School.’¹³²

After April, even de Silva’s formulaic court updates apparently came to an end, and on 17 May 2004, the 5th suspect, Atputhan, was released on bail.¹³³ At a hearing on 19 August 2004 de Silva reported that he was waiting for instructions from the Attorney General as regards any charges that might be filed against the suspects. The Jaffna Magistrate, Judge Vignaraja, for the first time failed to set a date for a further hearing and TamilNet reported that he had struck the Nimalarajan case off the call sheet for his court.¹³⁴

3.8 2020s

According to a letter sent to the registrar of the Jaffna Magistrate’s Court by Lalitha

Dissanayake, Chief Inspector of Police, Special Unit, CID, Colombo, Nimalarajan’s case was ‘laid by’ or officially suspended on 5 July 2020 on the instructions of the Attorney General. This appears to have been the first official response to a formal appeal that the CID had submitted to the then Attorney General ten years before, asking for ‘further instructions and future advice’. On 27 April 2021, the Attorney General ruled that it was ‘not expected to take further legal action’ against the five bailed suspects, who were therefore to be released from bail. On 16 November 2021, the Magistrate’s Court in Jaffna received instructions ‘to issue notice to inform the suspects, relevant to this case, concerning releasing them from the case’ in the matter of what the Sri Lanka Police summed up as ‘the murder of Jaffna’s famous journalist Mylvaganam Nimalarajan by shooting’.¹³⁵

4. ANALYSIS OF POLICE INVESTIGATION

4.1 THE DUTY TO INVESTIGATE, PROSECUTE AND PUNISH UNDER INTERNATIONAL LAW

Under international human rights law, the right to life is considered ‘the supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies that threaten the life of the nation’.¹³⁶ For example, one of the core international human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) of 1966, provides in Article 6.1:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Sri Lanka has been a party to the ICCPR since 1980.

International human rights bodies have long held that the right to life entails a duty on States to investigate, prosecute and punish breaches. This important element of the obligation to protect life is implicit in the duty to ‘respect and ensure’ all the rights recognised in the Covenant (article 2.1) and the duty to provide an effective remedy to victims (article 2.3).¹³⁷

International humanitarian law also applies, since the hostilities between the Sri Lankan government and the LTTE have been considered to constitute an internal (‘non-international’) armed conflict, and Sri Lanka is party to the four Geneva Conventions of 1949.¹³⁸ Murder of persons taking no active part in the hostilities is prohibited, and according to the ICRC: ‘States must investigate war crimes allegedly committed by their nationals or armed forces, or on

their territory, and, if appropriate, prosecute the suspects.’¹⁴⁰

Extrajudicial, summary or arbitrary executions are among the most egregious violations of the right to life. UN human rights bodies have singled out unlawful killings of journalists, together with human rights defenders and dissidents, as of particular concern.¹⁴¹ They have highlighted in particular the very high rate of impunity for these crimes, and pointed out that the failure of States to prosecute and punish serious crimes against journalists emboldens perpetrators, denies the victims’ families justice and can deter other journalists from reporting high-risk stories.¹⁴² As one UN Special Rapporteur put it: ‘Silencing journalists by killing them is the most egregious form of censorship.’¹⁴³

The Basic Principles on the Right to a Remedy and Reparations endorsed by

the UN General Assembly Resolution of 2005¹⁴⁴ sets out what victims of gross human rights violations – including their immediate family members¹⁴⁵ – are entitled to claim:

The obligation to ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to...

- Take appropriate legislative and administrative and other appropriate measures to prevent violations;
- Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law...
- Provide those who claim to be victims...with equal and effective access to justice...
- Provide effective redress to victims, including reparation...

The duty to investigate and prosecute has been set out in detail in various case law and decisions of treaty bodies: The UN Human Committee, charged with monitoring implementation of the International Covenant on Civil and Political Rights, summarised States’ duties as follows: in order to comply with international human rights standards, an investigation must

always be **independent, impartial, prompt, thorough, effective, credible and transparent**.¹⁴⁶ Additionally, an investigation should go up the chain of command and explore the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates.¹⁴⁷

The Minnesota Protocol on the Investigation of Potentially Unlawful Death has been widely used as a legal standard by international and national courts and human rights bodies, and sets out detailed principles that should be followed in investigating potentially unlawful death.¹⁴⁸ They apply primarily where the death ‘may have been caused by acts or omissions of the State, its organs or agents, or may otherwise be attributable to the State, in violation of its duty to respect the right to life’, including deaths possibly caused by state agents or paramilitary groups or militias suspected of acting under the direction or with the acquiescence of the State.¹⁴⁹ The principles provide detailed guidance on the professional and ethical standards that must be followed by all those involved, and practical steps relating to the collection, analysis and management of crime scene evidence, witness interviews and other types of evidence, in order to comply with international standards.

The State’s responsibility to prevent and punish such violations extends beyond its own officials. The State may itself be complicit in different ways in violations committed by non-State groups. A State may also be held responsible for the conduct of non-State actors when it can be shown that it has failed to exercise due diligence to prevent, investigate and respond to such conduct.¹⁵⁰

Family members of a direct victim, who are considered victims themselves, have rights in the context of a criminal justice process. During an investigation, States should disclose information to the victim’s next of kin, keep them informed as the investigation progresses, and enable their effective participation including the ability to make suggestions regarding investigative steps, provide evidence and assert their interests and rights throughout the process.¹⁵¹

Finally, under international human rights law, States are obliged to provide reparation to the victims. The UN Basic Principles on the Right to a Remedy and Reparations cited above specify that reparation for acts or omissions constituting violations of international human rights and humanitarian law norms must be adequate, effective and prompt, and should include restitution,

compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁵² This can include measures such as public apologies, commemorations and tributes to the victims and full disclosure of the truth. It could also include, under the heading of guarantees of non-repetition, measures designed to improve justice processes, such as ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality.¹⁵³

4.2.THE NIMALARAJAN INVESTIGATION COMPARED TO INTERNATIONAL LEGAL STANDARDS

In its report published in 2015, the Investigation on Sri Lanka (OISL) conducted by the UN Office of the High Commissioner for Human Rights (OHCHR) noted ‘the impunity that is deeply embedded in Sri Lanka to this day’.¹⁵⁴ Covering February 2002 onwards, the report does not mention the Nimalarajan case specifically, but its time frame coincided with part of the active investigation into the Nimalarajan killing, and the report specifically noted that the failure to hold perpetrators accountable dated well before its mandate period.¹⁵⁵

In order to comply with the international law standards listed above, and accepted by Sri Lanka, the investigation into Nimalarajan’s killing

should have been conducted in an independent, impartial, prompt and thorough manner in order to be effective, credible and transparent, and should have explored responsibility higher up the chain of command. An examination of the court record of the entire investigation, from the time it was opened the day after the killing in October 2000 until November 2021, when the last suspects were released from bail, exposes numerous failings and raises serious questions about the ability, and above all the willingness, of the Sri Lankan criminal justice system to deliver justice in such cases. Ultimately, the investigation to bring Nimalarajan’s killers to justice failed.

‘INDEPENDENT, IMPARTIAL AND TRANSPARENT’

On 23 April 2001, six months after the killing, the Magistrate supervising the investigation, Judge Vignaraja, exasperated at the lack of progress, asked the police representative: ‘If the police, soldiers and courts are not able to investigate and arrest the people involved, will the public’s faith in the maintenance of law and order not get destroyed?’¹⁵⁶

According to many observers, including one of the lawyers involved in the case, an independent and impartial investigation into the

killing of Nimalarajan was never likely given the extent of the collusion between the EPDP and the security forces, and the willingness of the government to protect the state security forces and their proxies. As one of the lawyers representing victims during the investigation put it, “every government of whatever party thinks it has to protect the security forces... and the EPDP was a paramilitary group working with the forces of the state.”¹⁵⁷

The international organisation Reporters Without Borders (RSF), following a fact-finding visit to Sri Lanka, concluded that ‘from October 2000 to January 2002, the work of the police was blocked by the authorities in Colombo and Jaffna’. RSF heard that several suspects were seen moving freely in Jaffna during that period, and was told that since Nimalarajan was a Tamil and therefore perceived as linked to the LTTE, the police and army would not spend time trying to find out who had killed one of their enemies.¹⁵⁸ The same report concluded that the motive for the murder was Nimalarajan’s independent coverage of unfolding events across the Jaffna peninsula for several Sri Lankan and international media outlets, and it cited the death threats he had received, which were also noted in the course of the investigation. A UN Special

Rapporteur who looked into police investigations in the context of the 2002 ceasefire concurred, finding that the Government had failed to effectively investigate most political killings, and that ‘the police have lost much of their appetite for serious investigations of political killings... These cases are simply too hot to handle’.¹⁵⁹

From the available court record, it is apparent that the failure of organs of the state and of the pro-government paramilitary, the EPDP, to cooperate, was a significant factor hindering the investigation. As described in the account of the investigation above, the EPDP persistently delayed and avoided complying with police requests and court orders. In June 2002, more than a year and a half after the murder, the EPDP’s Jaffna office was ordered to produce a register of their members, and full details of weapons currently held there including firearms, and to provide access to individuals the police sought to interview.¹⁶⁰ Yet the EPDP initially refused to provide the list of arms, produced only six of the nineteen members the Court had ordered to appear for interview, and refused access to a number of their members.

It is also apparent that the army could have been far more cooperative. It emerged during the investigation that the killing occurred during a night curfew. At least 30 soldiers are listed or

actually named in the court record as being posted in the nearby area at the time, controlling all movement, so that it seemed extremely unlikely the killers could have passed through the area without their knowledge. Yet it took many months, and an order by the Magistrate to the Commander of the Army, for the police to identify and interview some of the soldiers who had manned the nearby checkpoints and guard posts. The investigation was unable to clarify the circumstances in which army personnel responded on the night of the killing. Soldiers posted at two of the nearby checkpoints later confirmed that they had heard the explosion, and one set of soldiers claimed to have visited the scene as a result, though only after contacting brigade headquarters.¹⁶¹ Anton Jegathas Paul, Nimalarajan’s brother-in-law, hurried from the scene to a third checkpoint and persuaded a group of soldiers to return with him, but they omitted either to cordon off or to search the area.

Military personnel were reported to have visited Nimalarajan at home in the days and hours before his murder, where they accused him (spuriously, he protested) of taking steps to aid the LTTE. No attempt appears to have been made to identify who specifically these accusers were, or whether any of them were in fact assessing the layout

of his house preparatory to an attack that was carried out shortly after, at speed and without hesitation, one gunman ‘rushing’ straight from the front door into Nimalarajan’s study, according to his father’s account. Nor does any attempt seem to have been made to ascertain whether the unusually extended power cut that occurred on the night of the killing had been engineered by forces seeking to facilitate the attack.

In fact there is no indication of any meaningful efforts to explore the responsibility of more senior members of either state or paramilitary forces, whether for ordering or instigating the killing or for failing to take steps to prevent it, or to investigate or punish those responsible. This despite the fact it was quickly apparent that the chief suspects were members of the government-affiliated paramilitary, the EPDP. The investigation focused on ascertaining whether certain low-ranking members of the EPDP were involved in the murder itself, or possibly in aiding and abetting the murder (for instance by providing the transport or other means to carry it out). The EPDP Secretary General, Douglas Devananda, was ordered by the Court to produce the suspect known as Jegan in March 2002,¹⁶² but it is not clear why he himself or others in the chain of

command were not called upon to answer questions.

While there is abundant evidence of stalling on the part of the EPDP, army and police, Nimalarajan's murder was a high-profile case that attracted attention from local media and international observers, so the authorities had to be seen to be doing something. Reporters Without Borders assert that the investigation became more effective from January 2002, after a change of government, and the chronological account of the investigation above indicates bursts of activity at different times. However, reading the available court record of the investigation, it is impossible to avoid the impression that the investigation often avoided pursuing certain important evidence. Despite the regular reports the police provided to the Court during the investigation, it is clear that there are certain gaps and inconsistencies and missing explanations that raise questions about why certain leads were followed up while others were not. For example, the person known as Napoleon, a senior figure in the EPDP, was named by the Judge in 2001 as a suspect in connection with the murder, and was referred to by the victim's lawyer as 'the important witness'.¹⁶³ Yet the reason for him being a suspect, and the role he is suspected of playing in the murder, is never specified in

the Court record, as it is at least obliquely for other suspects. Nor are there ever reasons given for the CID's apparently firm belief that Napoleon was not involved, or for their failure to take steps to ensure he did not escape arrest. As noted in the account of the investigation above, Judge Vignaraja was very unhappy at not being given the chance to have Napoleon appear before him so he could decide for himself.

According to one of the advocates representing victims during the investigation, due to the pressure around the case, the government was desperately trying to move the focus of the investigation away from the real perpetrators: "The modus operandi whenever something like this happened was that the police would arrest people on the periphery, or not connected, and keep them for a long time even though they have no link to the crime so they can say they have arrested people, then when the hoo-ha dies down they release them."¹⁶⁴

In a further indication that all involved were aware of this political context, a lawyer representing the suspects complained in Court in September 2002 that whenever such murders took place, different political parties sought to use them to their advantage 'to get votes using the incident'.¹⁶⁵ Recalling that murder investigations could not

be continued indefinitely, he reminded the Judge of his duty to discharge an accused when satisfied further proceedings would not result in a conviction. Another feature that emerges from the court record of the investigation is the role played by the Attorney General. In the Sri Lankan legal system the Attorney General has the exclusive prerogative to decide whether a person should be indicted for a criminal offence. The office should exercise this power without interference from the executive and based on an objective analysis of the facts and the law, free of any prejudices or influences.¹⁶⁶ The Attorney General does not exercise any supervisory control over police investigations, but in complex investigations it is common practice for the CID to seek their advice.¹⁶⁷ Judge Vignaraja appeared to view the Attorney General as seeking to interfere in the investigation, saying at one point, 'this Court cannot accept' the police submitting reports on the investigation to the Attorney General but not to the Court.¹⁶⁸ Finally, towards the end of the investigation, the police and the Court were waiting for instructions from the Attorney General on whether anyone could be charged – an answer, in the negative, that took more than 10 years to arrive, and which resulted in their release from bail. While the role played behind the scenes by the Attorney General in the Nimalarajan

case is unclear from the court record, many have questioned the independence of the role in cases where State involvement is suspected, and the department acts simultaneously as chief lawyer for the State and prosecutor of State actors.¹⁶⁹

‘PROMPT’

Formal investigation into Mylvaganam Nimalarajan's death began on 20 October 2000, the day after the killing, and the Magistrate supervising the investigation visited the crime scene that day. However, crucial steps, such as seeking evidence from the security forces manning checkpoints in the area, and from the EPDP relating to its weaponry, were not taken until months or even years after the event. Some neighbours, friends and colleagues were not interviewed until more than six months after the killing. Physical evidence, including a bullet cartridge and part of a grenade used in the attack, found at the scene and in the police's possession, were not sent for analysis for more than two months. As described above, in August 2002 a lawyer representing the interests of the victim alleged in Court that the investigation had initially come to a standstill due to political circumstances at the time, and had only now begun again as a result of international pressure.

From the Court record, it is clear that the Magistrate in charge of the investigation, Judge Vignaraja, became increasingly frustrated at the pace of the investigation. In a decision issued a week after the killing, on 1 November 2000, he concluded that Nimalarajan had been murdered and directed the police to further investigate, arrest suspects and bring them before the Court. He repeated this instruction numerous times during the following months and years, frequently admonishing the police for their inaction or tardiness and asking why specific investigative steps had not been taken. Indeed, it would appear that had he not requested steps such as interviewing all the soldiers who had been on duty nearby on the night, that might not have been even partially accomplished: when he asked the police in May 2001 if such interviews had been conducted, the police replied that most of the soldiers had moved away to other duty stations, and it was the Judge who had to remind them they could locate these soldiers through army headquarters.¹⁷⁰

The investigation effectively ended in August 2004 when Judge Vignaraja struck it off the call sheet for his court, though the case was not formally closed until 2021.

It is clear that the delays in taking investigative steps, and the overall

length of the investigation, had a significant impact on the effectiveness of the investigation. Opportunities to obtain crucial forensic evidence were lost; military and police personnel manning the area where the victim lived became difficult to trace; members of the EPDP could not be found and some had become politicians. Weapons believed to be in the possession of the EPDP in 2000 had been handed to the army in the ceasefire of 2002.

Such delays and prevarication have been typical of how cases of this nature have been handled by the Sri Lankan criminal justice system. The UN human rights office's Investigation on Sri Lanka published in 2015 found that many cases of possible human rights violations languished in the court system, routinely postponed, and that cases of killings rarely got beyond the initial phases of opening a case in the Magistrate's Court, and limited police investigations.¹⁷¹

‘THOROUGH, EFFECTIVE AND CREDIBLE’

It is evident from the Jaffna Magistrate's Court record that there were multiple failings throughout the investigation. Crucial initial steps that should have been standard in any murder investigation were not taken, and evidence that was available was

not followed up, to the evident frustration of the Judge presiding over the investigation. According to a lawyer involved in the case, procedures that would have been followed by the police in an ordinary murder case were not followed in emblematic cases such as the killing of Nimalarajan where military or paramilitary forces were involved. In these kinds of cases the police had divided loyalties and would have been influenced by the political context of the murder. There would be an overriding interest in protecting those really involved and a proper investigation would not be carried out.¹⁷² Below are outlined some of the main failings in the investigation as deduced from the available court record.

Failure to secure, search and record the crime scene

Immediately securing a crime scene to protect the integrity and provenance of any evidence found there, followed by proper recording and recovery of the evidence, are basic elements of policing and are essential to the successful outcome of an investigation. In the case of Nimalarajan’s murder, it seems there was never any attempt to secure the crime scene, nor to record how many people entered the property, where they went, what they touched, or what they did more generally.

Neither was a record made of when the crime scene was searched or by whom. In fact there is no indication that there was ever a rigorous search. Further, it appears no original crime scene photographs were secured to allow for subsequent review. Nor, in turn, was there proper recovery and recording of evidence found at the scene, either to protect its integrity or to confirm its provenance. In fact the court records provide multiple instances where potentially crucial evidence was tampered with or lost.¹⁷³

Failure to conduct a full forensic analysis of the crime scene

Police reports to the Court make no mention of a forensic examination of the victim’s home. This should have been conducted to identify where and how Nimalarajan fell, and when, assessed in relation to where bullets, bullet fragments and cartridges or casing fragments were recovered. Multiple accounts attest that the crime scene was heavily bloodstained. Establishing the relative position of the victim and his assailant or assailants at the time he was shot would have helped to indicate the number of attackers and likelihood of one or more of them being spattered with blood, or indeed brain matter, given extensive fracturing of the victim’s head. This should have led to an effort to identify and seize the clothing and shoes

being worn on the day by any suspect.

A November 2000 reference in the court record to fingerprints collected at the scene and sent for analysis fails to specify exactly where these prints were collected from, and no subsequent fingerprint report appears to have been produced. (There is also no reference anywhere in the court notes to gathering DNA samples, though this is not perhaps surprising as the procedure was then in its infancy in Sri Lanka, and was considered prohibitively expensive.¹⁷⁴) Nevertheless, forensic testing of the front door and the door to Nimalarajan’s study, also bloodstained, might have helped to determine whether any assailant touched either door. Similarly, internal floors should have been examined for footprints or shoe marks, whether in blood or otherwise. But there was apparently no such examination or analysis.

Nor did the investigation establish whether the hand grenade that exploded in the main living room was thrown from inside or outside the house. If inside, possibly consistent with the grenade lever being found inside, then the assailant who threw it might well have been contaminated by the cloud of building dust that resulted from a partial collapse of the ceiling. Again, apparently no evidence was sought as to whether

the explosion might have injured the assailants, or resulted in glass shards from the shattered windows contaminating the assailants or their clothing. Nor does it appear that the saddle, peddles or handlebars of the abandoned bicycle that was recovered the next day (see below) were ever examined for glass shards, dust, blood staining or firearms residue.

Failure to secure, search and analyse the surrounding area

No steps were taken to cordon off the scene immediately after the killing, or to search the surrounding area. Failure to secure the outside of the property in turn precluded any attempt to identify the number of assailants and their footwear: beyond the two who rushed inside, it was never established whether a further attacker or attackers remained outside. Meanwhile, several witnesses believed it would have been virtually impossible for the attackers to have escaped the scene undetected given the curfew in force at the time and the heavy military presence in the area. Many believed that, alerted by the grenade explosion, an instant, active attempt by those on guard duty to catch the attackers would have been successful.¹⁷⁵

Failure to follow up on findings of the post mortem

The post mortem report, written the day after the killing, detailed the size

of the victim’s bullet wounds, the fact that one was surrounded by gunshot residue, their entry and exit points and thus their trajectories, as well as significant blood found on the victim’s body. Explanations should have been sought for the differently sized entry wounds, and for what happened to both parts of the bullet that fragmented, including whether only part of it exited. But there is no record of an attempt to establish what the bullet injuries could have confirmed about the firearm or firearms used, and who might have had possession of such weapons.

Failure to investigate the bicycle fully

An abandoned bicycle was found the day after the murder by locals in scrubland near the railway line 500 metres from Nimalarajan’s house. Though the police then removed it, it first appears in the court records only five months later. While initially the police stated that they found no connection between the bicycle and the murder,¹⁷⁶ it appears to have assumed greater importance as the investigation stalled. Despite two suspects later being held in custody, one for a whole year, on suspicion of being in charge of the bicycle at around the time of the killing, still the police never clearly established a link between this vehicle and the crime. Nor, as mentioned, does there ever seem to have been a

full forensic investigation of the bicycle to check for contamination from the crime scene. Further, the court record fails to detail any attempt to compare the fingerprints of either of these two suspects (or any other suspect) with an apparently visible print observed on the bicycle. Additionally, there is no record of any attempt to recover further, possibly invisible prints. That said, given that at the time fingerprints could not be dated, a print in itself could not then have proved who, if anyone, rode the bicycle on the night of the murder; nor would this evidence alone have proved a connection between a rider of this bicycle and the murder.

Failure to secure, adequately examine and follow up on ballistic evidence

In all, nine entities of ballistic evidence (P1–P9) were listed during the course of the investigation, although the third, (P3), was a group of items, and is confusingly and inconsistently described in submissions to the Court (ostensibly three bullet fragments or a mix of whole bullets and fragmented bullet parts). Three shots were fired and one bullet split. There are references in the court record to empty cartridges (plural) found at the scene,¹⁷⁷ and to two 9mm bullets found the day

after the killing.¹⁷⁸ In a witness statement given six months later, there was also reference, apparently inaccurate, to a bullet casing and a whole bullet found in Nimalarajan's study being handed to one of his nephews.¹⁷⁹ It is unclear whether there was overlap between these items, and if so how much, or whether the description of (P3) was inaccurate, in which case the police omitted to recover certain items even when they entered the court record.

For no declared reason, the ballistic evidence recovered from the crime scene was sent for analysis in two batches at an interval of almost a year. Other than the two items handed by the army to the police after being recovered on the night of the killing – (P1) the grenade lever, and (P2) an empty 9mm cartridge case – there is no record of exactly when, by whom or where the items constituting (P3) were found. Nor is any other indication of chain of continuity given, written or photographic, to explain how these items were handled once recovered, a failure that would seriously impact the viability of any forensic analysis, and its quality in evidential terms.

Although all the listed ballistic evidence was eventually subject to basic forms of analysis, these items do not appear to have been tested for fingerprints

(let alone DNA), which might have linked specific items to individual firearms or individual suspects, as each must have been handled by an assailant. Nor is there any indication that information gleaned during the ballistic analysis, such as the country of origin of the hand grenade lever, was ever used to assess whether given items were more likely to have been in the prior possession of the army or the EPDP, or another group.

Nor was any explanation recorded or apparently sought as to what would cause one of the bullets to fragment, nor whether this would have occurred on discharge from the firearm or on impact, which might also have helped to identify the firearm used, and therefore also potentially its prior ownership. Other questions that the defective bullet should have triggered include what impact it might have had on the quantity of firearm residue left on the gunman who fired it and, given that this bullet was apparently the second shot fired, whether or not the existence of both fragmented and unfragmented bullets at the scene would indicate the use of at least two firearms.

Later in the investigation, weapons were obtained that had been in the possession of the EPDP at the time of the killing. In August 2002, a 9mm pistol (P4) was seized, along with six live bullets, from the EPDP

office in Jaffna after the Magistrate issued a search warrant.¹⁸⁰ Later still, five 9mm pistols (P5–P9) were obtained, once in the possession of the EPDP, but surrendered in 2002 to the Sri Lankan military as part of the ceasefire agreement. These were examined and discounted as having fired (P2) a cartridge found at the scene. However, while the forensic analysis concluded that ballistic remnants found at the scene had not been fired by any of the recovered pistols (P4–P9), it also concluded that they could in fact have been fired from a sub machine gun.¹⁸¹ And yet the investigation made no apparent efforts to look for a sub machine gun, nor does it appear to have considered the effect of using such a weapon in relation to the victim's injuries and to the crime scene.

Failure to pursue witness statements about death threats issued before the killing, or associated phone calls

Several of Nimalarajan's family members and others gave statements recording threats including death threats made to him by the EPDP before his killing.¹⁸² These included threatening phone calls. Nimalarajan was told by the manager of Lanka Telecom that it was not possible for the numbers to be traced. However, given his activities, it is highly likely that his phone calls were being intercepted and

listened to, and this should have been checked. The police should also have sought to discover whether he ever recorded his calls himself, and whether the threatening calls had ever contained any information that might have led to their source. The fact that the threats against him were alleged to have originated with the EPDP should have led the police to interview senior members of the EPDP as suspects, but surprisingly, its top ranked members were never the subject of investigation.

Failure to investigate a phone call received at the time of the killing

Nimalarajan's family stated that he was on an incoming telephone call when the assailants entered the house to kill him. Given the timing of this call, it is possible that it was associated with the attack, designed to confirm that he was at home, and to detain or distract him, or even to position him in a specific place where he could be immediately found by his attackers when they rushed in. There is no record of an attempt to try to trace the call or identify the caller.

Failure to investigate identified suspects fully

Though several suspects were formally identified in the course of the investigation, none was ultimately charged with any crime. What role they were suspected of

playing in the killing is often not completely clear from the court record, and is in some cases entirely unclear. This is true, for example, of the suspect Napoleon, who as described above, was identified and summoned by the Magistrate but never actively pursued.¹⁸³ Five other identified suspects were taken into custody and detained for periods of between two and twelve months before being released on bail. Inspector de Silva reported that each wanted to make a voluntary statement to the Court. However, as far as can be determined from the court record, none of them admitted to involvement in the murder.

Failure to follow up on allegations made by some suspects that they were subject to threats and beatings, or to assess their wounds as evidence

The 2015 OHCHR Investigation on Sri Lanka, which covered the period from February 2002, found that torture and ill-treatment were prevalent in the criminal justice system in Sri Lanka, with cases routinely reported from police stations throughout the country.¹⁸⁴ At least three of the detained suspects, Jegan,¹⁸⁵ Murali¹⁸⁶ and Atputhan,¹⁸⁷ complained that, as a result of threats and violence, in two cases at the hands of the police, they were forced to sign false confessions, which they later retracted; two of these statements were

in Sinhalese, which the relevant suspects did not understand. However, it is not clear how or even whether this was taken into account in the investigation. The Magistrate ordered that the suspects should be medically examined by an independent doctor, and some were found to have injuries consistent with being assaulted. Clearly this should have raised questions about the reliability of their admissions, and therefore about the integrity of the investigation, but it is again unclear how or whether these implications were taken into account, despite being of particular importance given that evidence pointed towards organs of the state being linked to the murder. It is also the case that when Jegan was examined in April 2002, and noted to have old scars including a burn scar that was over 6 months old, no assessment was apparently made as to whether this might have been consistent with being in the vicinity of a grenade explosion at the time of Nimalarajan's killing.

5. FAILURE TO INVESTIGATE: THE IMPLICATIONS

5.1 OTHER ALLEGED CRIMES BY SOME OF THE SUSPECTS

Several of the suspects named in the course of the Nimalarajan investigation were suspected, and in two cases eventually convicted, of other serious crimes, whether before or after his killing.

SEBASTIAN RAMESH ALIAS NAPOLEON; DAVID MICHAEL COLIN ALIAS MURALI – ABDUCTION AND TORTURE

1998: An allegation of the suspects Napoleon and Murali being involved in the abduction and torture of an EPDP member was reported just two years before the killing of Nimalarajan¹⁸⁸ that did not seem to have been acted upon.

SEBASTIAN RAMESH ALIAS NAPOLEON; NADARAJAH MATHANARAJAH – TWO MURDERS

28 November 2001: The Naranthani Killings involved two Tamil political activists being killed by the EPDP, and 21 others injured, including

four election candidates. One of those charged in relation to the incident was the suspect Napoleon. Along with another EPDP cadre, Mathanarajah, he was later sentenced to death in absentia in Sri Lanka for his role in the Naranthani incident; reportedly the EPDP leader said they remained members of his party even when absconding abroad.¹⁸⁹

KANDASAMY JEGATHEESWARAN ALIAS JEGAN ALIAS KIRUBA – SEXUAL ASSAULTS, RAPE AND MURDER

2004: On 26 March, media reports said the suspect Kandasamy Jegatheeswaran sexually assaulted a 12 year old school girl in Keyts, dragging her into the shrub jungle while she was on her way home from school.¹⁹⁰

2012: Three months before a murder in March (below), media reports said Kandasamy Jegatheeswaran had ‘held a young girl at gun (“plastic pistol”) point in Delft, in an attempt to intimidate and rape her’.¹⁹¹ The news story says, ‘Villagers claim

that the suspect had also attempted to abuse two other young girls, two days prior to the attack on Lakshini.’ He had reportedly been asked to sign in at the Delft police station daily.

2012: On 3 March 2012 Kandasamy Jegatheeswaran raped and killed a 12-year-old girl, Laxshini Jesurasa, in Delft; she had gone to buy fish in the market and never returned. Her family and their friends searched for her and were in the police station when a woman came to report seeing a little girl’s body near a temple in the forest when she had been collecting firewood. When they went to the scene, the family saw Laxshini’s bicycle and then her body with blood on her head and one side of her face. Her underwear was next to her body and the post mortem later confirmed she had been raped vaginally and anally and had bite marks on her arms.¹⁹² Eyewitnesses saw a stone with blood on it next to the body, as well as an empty alcohol bottle, local cigarettes and some money.¹⁹³ The local community knew that

nobody had a licence in their area to sell alcohol so it was only sold illegally by a woman in the community who confirmed that a member of the EPDP had bought alcohol from her that day.

In this case the family and their friends acted quickly and carried out their own investigation, not relying on the police. They retraced the steps Laxshini would have taken from the market to the forest, knocking on doors and asking people if they had seen anything. One woman said she had seen a man following Laxshini who was known to be from the EPDP. The local people knew where he lived, went straight to his house and found him sitting on the floor next to his wife in a sarong covered in blood. He was identified as Kandasamy Jegatheeswaran, in charge of the area for the EPDP. Somebody telephoned the police, who came and removed Kandasamy Jegatheeswaran in their vehicle to the police station, then beat up and tear-gassed locals who had gone to the police station to protest. In the following days the protests increased outside the police station and then moved to the hospital where Laxshini’s body was kept, while shops and buses stopped operating in solidarity. Marisa de Silva writing in Groundviews commented at the time on how unusual it was for the people of Delft Island to show this degree of challenge to the authorities.

She also commented on the delay by police in securing eyewitness testimony saying, ‘This raises the glaring question as to why the Police was unable to obtain a mere four eye witness statements in the course of almost a month following this incident, unless of course exterior political forces are in play,’ She went on: ‘Why an alleged attempted rapist is allowed back into the community with as little as a “rap on the knuckles” is quite telling of the political influence the accused seems to be wielding. If instead, he had been subject to due process, Lakshini might still have been alive today.’¹⁹⁴

The fact that Kandasamy Jegatheeswaran was connected to the Nimalarajan killing was well known to local people as this media report shows:

Villagers said that Jegatheswaran had been former EPDP Commander, Napoleon’s right-hand man, and also a suspect in the murder of Jaffna based Journalist Mylvaganam Nimalrajan. In addition to the two above mentioned cases, villagers claimed that he

had also attempted to abuse two other young girls, a mere two days prior to this incident. The villagers are enraged at the inaction of the Police, even after having lodged multiple complaints against the perpetrator, and are therefore convinced that it is as a result of some political influence that he was released by the Police, thus enabling him to carry out this heinous crime.¹⁹⁵

In April 2017 Kandasamy Jegatheeswaran was finally convicted of the killing and rape, in part based on the genetic tests of semen found in the body of the victim which matched his DNA.

During the court process, Laxshini’s family were repeatedly visited by officials from the EPDP, including the party’s then head in Jaffna, Kandasamay Kamalendran (himself later accused of murder) and the police (CID) to urge them to drop the case.¹⁹⁶

5.2 NIMALARAJAN’S CASE: INVESTIGATIONS OUTSIDE SRI LANKA ON THE BASIS OF UNIVERSAL JURISDICTION

Although the investigation into the Nimalarajan killing in Sri Lanka did not lead to anyone being charged with his murder, steps have been taken elsewhere to both pursue criminal proceedings and use sanctions regimes in respect of serious violations of human rights during the civil war. In 2021 the UN High Commissioner for Human Rights warned that Sri Lanka’s failure to address past violations had significantly heightened the risk of human rights violations being repeated and, among other things, called on third states to consider bringing more cases under the principle of universal jurisdiction.¹⁹⁷ According to this principle, a state may prosecute persons suspected of certain serious crimes under international law – such as crimes against humanity, war crimes, genocide and torture – regardless of where the crime was committed or any link between the crime and their country.¹⁹⁸ The principle of universal jurisdiction recognises that some crimes are so heinous that every state has an interest in seeing that justice is done: it is not only an issue for the state where the crimes took place.¹⁹⁹

Criminal complaints on the basis of universal jurisdiction have been filed over the years by the ITJP and others in a number of countries, including Australia, Brazil, Chile, Colombia, the United States, Germany, Switzerland and Singapore against Sri Lankans alleged to have been involved in human rights violations, and later found abroad. In one case, a diplomat was withdrawn following allegations submitted regarding his former role as an army commander.²⁰⁰

Only in the UK, however, has a sustained criminal investigation been pursued, during the course of which two people have been arrested in relation to political killings in Sri Lanka. In 2017, a referral was made by the ITJP and Redress to a specialist unit under the UK Metropolitan Police’s Counter Terrorism Command that investigates war crimes and crimes against humanity. The first arrest made in the UK was specifically in connection with the murder of Nimalarajan. On 25 February 2022, the Metropolitan Police War Crimes team announced the arrest of an unnamed 48-year old man in Northamptonshire, England, for the killing of Nimalarajan after conducting what they called a ‘proactive investigation’ into allegations of war crimes linked to the Sri Lankan civil war in the early 2000s.²⁰¹ The War Crimes Team issued a public appeal, saying they were

continuing their inquiries and were eager to hear from anyone who might have first-hand information about the case that could assist the investigation.²⁰² While the Metropolitan Police have not named the suspect, in accordance with their usual procedures, an individual identified as a suspect in the course of the investigation in Sri Lanka was reported by local Sri Lankan media to have left the country and moved to the UK. This individual was Sebastian Ramesh, known as Napoleon, who, as this report describes, the Jaffna Magistrates Court had ordered to be arrested and brought before the Court in connection with the Nimalarajan murder in 2002.

Then, on 21 November 2023, the Metropolitan Police arrested another Sri Lankan national in his sixties, again unnamed, in South London.²⁰³ This time, the arrest was said to be in connection with alleged crimes committed during a political rally in Naranthani, Jaffna, in late 2001, during which two people were killed and others severely wounded. Fifteen years after the attack, four suspects had been charged and put on trial in Sri Lanka, and in December 2016, the Jaffna High Court found three of them guilty. In sentencing, the Judge imposed the death penalty on all three as well as long jail terms and fines.²⁰⁴ One of those convicted was the

same individual, Sebastian Ramesh, known as Napoleon, named as a suspect in the Nimalarajan investigation and reported to have left the country. Napoleon was still outside Sri Lanka at the time of the criminal proceedings relating to the Naranthani incident, and both he and another suspect, former EPDP MP Nadarajah Mathanarajah, were reportedly tried in their absence (in absentia trials are permitted in Sri Lanka).²⁰⁵ In imposing sentence, the Judge reportedly issued an international arrest warrant, since the court had been notified that both were abroad.²⁰⁶ If either of these convicted persons were to be found in the UK, the death penalty, as well as the fact they were convicted in their absence, could present major obstacles to their being extradited to Sri Lanka: the UK will not extradite someone if they could face the death penalty unless it receives written assurance that the death penalty will not be carried out.²⁰⁷

The UK Metropolitan Police specified that the arrests of the two Sri Lankans were made under Section 51 of the UK International Criminal Court Act 2001, which allows the UK to prosecute cases of war crimes, crimes against humanity and genocide— wherever in the world they are committed. The UK established the dedicated War Crimes Team within the Metropolitan Police Counter Terrorism Command

with specialist skills to conduct investigations into allegations that persons who committed such crimes are present in the UK.²⁰⁸

After their arrest, both suspects were released under police bail, pending further investigations, and neither is known to have been charged. No further information has been made public by the Metropolitan Police since June 2024, when the police issued a new appeal for anyone who might have information that could assist the investigation to contact them, following the second arrest.²⁰⁹ As far as is known, the investigations remain open and the two suspects remain under police bail.²¹⁰

While law enforcement agencies do not generally publicise details about the progress of investigations, it is standard practice when investigating alleged crimes committed in another country to ask for cooperation from the relevant national authorities in that country through established channels for requesting mutual legal assistance. For obvious reasons, important evidence is likely to be held there and may already have been collected as a result of investigations in that country. It is not known whether any formal requests for mutual legal assistance have been sent, or have met with responses, but the UK authorities have said they are continuing to liaise with

the Sri Lankan authorities.²¹¹ In a further development indicating that UK authorities were still actively involved in accountability for end of war violations in Sri Lanka, in March 2025 the UK Government announced that it was imposing sanctions on four individuals responsible for serious human rights abuses and other violations during the Sri Lankan civil war, including extrajudicial killings.²¹² These were three senior Sri Lankan military commanders and a former LTTE military commander who subsequently led another paramilitary group working with the Sri Lanka Army. The sanctions include UK travel bans and asset freezes. In a statement, the Foreign Secretary David Lammy said: ‘The UK is committed to human rights in Sri Lanka, including seeking accountability for human rights violations and abuses which took place during the civil war, and which continue to have an impact on communities today.’²¹³

6. THE KILLING OF OTHER JOURNALISTS & MEDIA WORKERS

In May 2002, Reporters without Borders (RSF), reporting on press freedom in Sri Lanka, noted that, ‘the impunity of the murderers of the journalist Nimalarajan, killed in 2000, still hangs over the profession’.²¹⁴ In 2004, further journalist murders began (see following infographic). In a news update of 30 April 2007, reporting that Uthayan staff reporter Selvarajah Rajeewarnam had been shot dead at a road junction by a killer on a motorbike the previous day, RSF observed: ‘The people who murder journalists in Sri Lanka feel so well protected that they carry out fresh murders to mark the anniversaries of their preceding ones.’²¹⁵ In the article RSF drew a link to the abduction and shooting dead of Nimalarajan’s friend, and TamilNet editor, Dharmeratnam Sivaram, known as Taraki, exactly two years earlier, on 29 April 2005, and the killing the year after, on 2 May 2006, of two employees of the newspaper Uthayan, along with the

severe injuring of others, in a semi-random spray of over 40 bullets at the paper’s offices. Local journalists suspected the EPDP.²¹⁶

Although other journalists had been murdered before Nimalarajan, including in the South, in 2014 the Jaffna Press Club (JPC) identified the killing of Nimalarajan as the start of a ‘trend of murdering journalists’. Intimidation, too, remained rife. Currently, JPC said in 2014, arbitrary arrest on trumped up charges, death threats and attempted killings meant that journalists were ‘gripped with fear’, with numbers fleeing the country; and ‘Till now,’ the JPC statement noted, ‘the Sri Lankan government has responded to these incidents with a long silence.’²¹⁷ A year later, it repeated its point that Nimalarajan’s murder had come to be seen as ‘setting the stage for violence against Tamil journalists’, and added: ‘different parties have come into power and have created commissions to appear as if they are undertaking

inquiries’, but, ‘instead destroyed the statements and testimonies of colleagues of the killed or missing. To this day, we still cannot learn what has happened to those commissions or their reports.’ The JPC demanded a proper investigation, with this caveat: ‘we can never have trust in inquiries undertaken with the same security mechanisms related to journalist killings and abductions. Therefore we would like to clarify our demands for inquiries carried out under the scrutiny of impartial international media organisations.’²¹⁸

The 2015 report of the OHCHR Investigation on Sri Lanka (OISL) singled out killings of journalists among the serious violations of human rights committed since 2002. The special investigation team noted that the number of journalists and media workers killed in Sri Lanka ranks among the highest in the world and placed severe restrictions on freedom of

expression. The 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 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 investigations of their killings.²¹⁹

The Committee to Protect Journalists (CPJ) recently updated its entry for Nimalarajan. ‘As of early 2025, Sri Lanka media minister Nalinda Jayatissa did not respond to CPJ’s text messages requesting comment

on whether the newly elected government would pursue justice for Nimalarajan.’²²⁰

The chronology presented above powerfully illustrates that the killings of journalists in Sri Lanka are not isolated but form part of a pattern of politically motivated, ethnically targeted violence, often linked to paramilitary groups like the EPDP, which enjoyed state protection and impunity and continue to do so. The observation from RSF in 2007 that murderers ‘mark anniversaries’ with new killings is a grim reflection of a culture of impunity so entrenched that it emboldens further violence. The Jaffna Press Club’s (JPC) statements are crucial: they underline not only the lack of justice, but also the active suppression of truth through destruction of testimonies and sham commissions. The CPJ update highlights that even in 2025, under a new administration, no meaningful action has been taken to re-open or resolve Nimalarajan’s case – a damning sign of the continuity of impunity.

44 KILLINGS OF JOURNALISTS AND MEDIA WORKERS IN SRI LANKA SUBSEQUENT TO THE 19 OCTOBER 2000 MURDER OF MYLVAGANAM NIMALARAJAN:

2004



Aiyathurai Nadesan
print and radio journalist;
shot dead, 31.05.2004



Kandasamy Aiyer Balanadarajah
print journalist;
shot dead, 16.08.2004



Lanka Jayasundara
photojournalist;
killed on assignment
by grenade, 11.12.2004

2005



Dharmeratnam Sivaram (Taraki)
print journalist and senior editor
of TamilNet; abducted, body found
next day: 28.04.2005, bullet wounds
to the head.



Kannamuttu Arsakumar
newspaper delivery worker;
shot dead, 29.06.2005



Relangi Selvarajah
TV and radio host and commentator;
shot dead, 12.08.2005
[n.b. killed with her husband,
a political activist]



David Selvaratnam
security officer at newspaper office;
killed by grenade, 29.08.2005

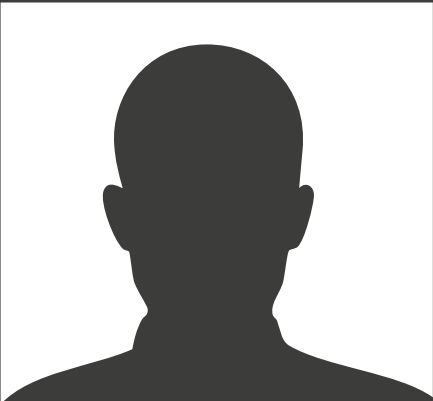


Yogakumar Krishnapillai
newspaper distributor;
shot dead, 30.09.2005



L. M. Faleel /
Netpittimunai Faleel
writer;
shot dead, 02.12.2005

2005



K. Navaratnam
newspaper distributor;
shot dead, 22.12.2005

2006



Subramaniam Sugitharajah
print journalist;
shot dead, 24.01.2006

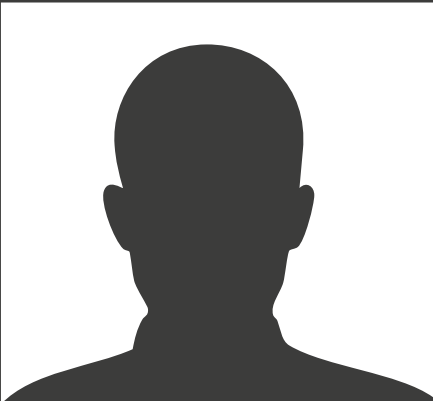


Rajaratnam Ranjith Kumar
newspaper circulation supervisor;
shot dead, 02.05.2006



Sathasivam Baskaran
newspaper agent and driver;
shot dead, 15.08.2006

2007



S. Raveendran
newspaper printing machine operator;
shot dead, 12.02.2007



Selvarajah Rajeewarnam
print journalist;
shot dead, 29.04.2007



S. T. Gananathan
owner of news and information
centre; shot dead, 01.02.2006



Sampath Lakmal de Silva
freelance reporter;
shot dead, 01.07.2006



Sinnathamby Sivamaharajah
newspaper managing director;
shot dead, 20.08.2006.



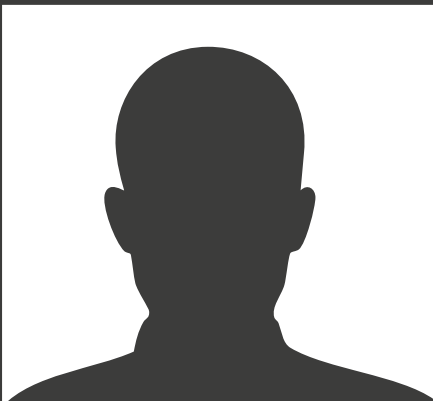
Subramaniam Ramachandran
newspaper correspondent;
disappeared, 15.02.2007



Sahadevan Nilakshan
student journalist;
shot dead, 01.08.2007



Bastian George Sagayathas (Suresh)
newspaper circulation manager;
shot dead, 02.05.2006



Mariadasan Manojanraj
newspaper distributor;
killed in claymore explosion,
01.08.2006



Chandrabose Suthakar
publisher, editor and journalist;
shot dead, 16.04.2007



Anthonypillai Sherin Siththiranjana
newspaper delivery agent;
disappeared, 05.11.2007

2007



Vadivelu Nirmalaraj
newspaper proofreader;
disappeared, 17.11.2007



Isaivizhi Chempian (Subhajini)
radio reporter; killed in Sri Lankan
Air Force bombing of radio station,
27.11.2007 [n.b. at least five others
killed in addition to the two
technicians also listed below]



Paranirupesingham Devakumar
TV reporter,
stabbed to death, 28.05.2008
[n.b. his motorbike travelling
companion also killed]



T. Tharmalingam
radio technician; killed in Sri
Lankan Air Force bombing of radio
station, 27.11.2007



W. Gunasinghe
journalist; killed in a passenger
bus by roadside bomb, 05.12.2007



Mohamad Rasmi Maharroof
TV reporter;
killed by a suicide bomber,
06.10.2008 [n.b. one of at least 27
killed and at least 80 wounded]



Suresh Limbiyo
radio technician; killed in Sri Lankan
Air Force bombing of radio station,
27.11.2007



Rasiya Jeynthiran
journalist and former subeditor;
killed in unclear circumstances,
c. Oct 2008.

2008

2009



Lasantha Wickrematunge
print editor and journalist;
shot dead, 08.01.2009



Nalliyah Maheswaran
reporter, and newspaper
distribution coordinator;
killed under mortar fire, 06.03.2009.



Jeyaraja Susithara (Suganthan)
newspaper printing machine operator;
killed by sniper fire, 25.04.2009.



Punniyamurthy Sathyamurthy
print, TV and radio reporter;
killed on assignment during a Sri Lankan
artillery barrage, 12.02.2009 [n.b. his
death partly blamed on inadequate medical
attention after receiving his injuries]



Mariyanayagam Anton Benedict
newspaper distributor;
killed under mortar fire,
c. March 2009



Mari Arulappan Antonykumar
(Antony Cruise)
reporter and newspaper distributor;
killed under army fire, 14.05.2009



Sasi Mathan
newspaper distributor; killed under
mortar fire, 05.03.2009



Rajkumar Mary Densy
newspaper graphic designer;
killed under military shellfire,
09.04.2009



Sankarasivam Sivatharsan
newspaper graphic designer;
killed under army fire, 14.05.2009

2009



Thirukulasingham Thavabalan
radio journalist and photographer;
believed summarily executed by SL
military, c. May 2009

2010



Prageeth Ekneligoda
cartoonist and columnist;
disappeared, 24.01.2010



Isai Priya (Shoba / Shobana
Dharmaraja)
journalist and news presenter;
shot dead, 18/19.05.2009
[n.b. photographic evidence led
many to believe she had also been
sexually assaulted]

7. CONCLUSIONS AND RECOMMENDATIONS

CONCLUSION

The case of Nimalarajan Mylvaganam – a prominent Tamil journalist murdered during the early years of Sri Lanka’s civil war – illustrates the deep-seated structural impunity within the country’s criminal justice system, which continues to shield perpetrators of serious human rights violations particularly where state actors may be implicated.

His assassination, and the persistent failure to secure justice, exemplifies a broader pattern in which the Sri Lankan criminal justice system has been unable – and in many cases, unwilling – to investigate and prosecute crimes where state involvement is suspected. Despite decades of domestic and international scrutiny, the Sri Lankan authorities have consistently failed to deliver justice in such cases. This failure is not accidental – it is systemic. This pattern has

been widely documented by United Nations human rights mechanisms, Sri Lankan civil society organisations, and international NGOs.

PROSECUTORIAL INDEPENDENCE AND THE ROLE OF THE ATTORNEY GENERAL

The Attorney General of Sri Lanka occupies a dual role as both the chief legal adviser to the Government and the primary authority for prosecution of criminal offences at the national level. This dual function has been the subject of sustained criticism by both domestic and international legal observers, particularly in the context of investigations and prosecutions involving state actors, including members of the armed forces and the police.

The Attorney General’s Department is structurally located within the executive branch and serves as legal counsel to multiple arms of government. As such, it is neither functionally independent nor institutionally separated

from those it may be required to investigate or prosecute. This results in an inherent conflict of interest, which fundamentally undermines the credibility and impartiality of investigations and prosecutions into serious human rights violations and crimes under international law.

The United Nations High Commissioner for Human Rights, in her 2021 report on Sri Lanka (A/HRC/46/20), noted that:

The current system remains incapable of delivering accountability. The Attorney General’s Department has repeatedly failed to effectively prosecute serious human rights cases, often citing insufficient evidence despite credible findings by prior commissions

and inquiries. An independent and specialized prosecutorial body is required.

Similarly, the International Commission of Jurists (ICJ) has consistently recommended the establishment of an Office of the Special Counsel – an autonomous body with prosecutorial powers, independent of the Attorney General, to investigate and prosecute gross violations of human rights and international crimes.

Given the Attorney General’s institutional affiliation with the executive, reliance on this office to prosecute crimes allegedly committed by state agents fails to meet international standards of independence and impartiality. This concern is particularly salient in relation to past emblematic cases where prosecutorial inaction has contributed to a pattern of impunity.

Where allegations implicate individuals or entities to whom the Attorney General owes a duty of legal representation, the principle of recusal or institutional separation must be observed. The lack of such a mechanism in Sri Lanka’s legal architecture renders the existing prosecutorial structure inadequate to meet the requirements of fair and independent investigations. Reform is necessary not only

to restore public confidence in the justice system but also to fulfil Sri Lanka’s binding international legal obligations. In the absence of an independent prosecutorial authority, any attempts to address the legacy of past abuses will remain legally and morally deficient.

In addition, over the years successive governments have convened multiple commissions of inquiry into human rights violations, which have rarely led to prosecutions or reparations. These bodies have too often served as tools of political deflection rather than instruments of justice.

The Nimalarajan case is emblematic of this wider crisis of accountability. It demonstrates that Sri Lanka’s justice system lacks the capacity, will, independence and impartiality to conduct prompt, thorough and credible investigations into politically motivated crimes.

UNIVERSAL JURISDICTION

This case underscores the reach of universal jurisdiction: those responsible for grave international crimes – such as extrajudicial killings – can be prosecuted wherever they are found, regardless of where the crimes occurred. In the context of Sri Lanka, where domestic remedies are manifestly unavailable or ineffective, the role of the international

community becomes critical in facilitating independent international investigations and prosecutions under universal jurisdiction. States have a duty to act. Justice must not be derailed by borders or delayed by political will. Nimalarajan’s case is a test of the global commitment to end impunity.

As former UN High Commissioner for Human Rights, Navi Pillay, affirmed:

There is no expiration date on justice ... Those who commit serious violations of human rights must know that they will be held accountable – even if not immediately, and wherever they may be.²²¹

Sustained international pressure is essential to break the cycle of impunity, secure justice for victims, and deter future violations.

Without such measures, the killing of Nimalarajan – and many others – will remain unpunished, and the structures that enable political violence will remain intact.

RECOMMENDATIONS TO THE GOVERNMENT OF SRI LANKA

1.Establish an Independent Investigative Mechanism with International Participation

The Government must immediately establish an independent and impartial body to investigate and prosecute serious conflict-related violations, including the murder of Nimalarajan Mylvaganam. This mechanism must include and embed international actors including investigators, prosecutors and judges in investigations, as well as decisions on prosecutions.²²² Such a mechanism must have a clear mandate, and decision-making authority to ensure credibility and effectiveness.²²³ The UN's 2015 report on Sri Lanka has in the past underscored that a purely domestic solution will not suffice.²²⁴ In establishing such a mechanism, the Government should consult victims and civil society in designing the mechanism and consider models such as the Guatemalan CICIG²²⁵ or a fully international tribunal such as the IIIM for Syria,²²⁶ or a Hybrid Court developed in cooperation between the Government of Sri Lanka and the United Nations(UN), or such as the Gambian Court established with ECOWAS's support.²²⁷ A key element must be the independence of such a mechanism and its insulation from political authorities and influence.

2.Establish an independent Office of the Special Counsel

- The Government of Sri Lanka should:
- Establish an independent Office of Special Counsel with a clear mandate to investigate and prosecute serious human rights violations and international crimes.
 - Ensure that this office is operationally and institutionally independent from the Attorney General's Department and other executive bodies.
 - Provide the Office with sufficient legal authority, budgetary resources, and protection mechanisms to guarantee its independence and effectiveness.
 - Engage in a consultative process with civil society, victims' groups, and international legal experts in the design and implementation of the Office, in line with best practices on accountability mechanisms.
 - Such reform is necessary not only to restore public confidence in the justice system but also to fulfil Sri Lanka's binding international legal obligations. In the absence of an independent prosecutorial authority, any attempts to address the legacy of past abuses will remain legally and morally deficient.

3.Cooperate with Foreign Legal Processes and Universal Jurisdiction Investigations

Sri Lanka must comply fully with its obligations under international law by cooperating with foreign authorities investigating atrocity crimes under universal jurisdiction. This includes responding without delay to judicial cooperation requests – such as from the UK authorities in the ongoing Nimalarajan and Naranthani investigations – and refraining from obstructing or politicising such processes.

4.Engage with International Accountability Mechanisms

The Government should demonstrate genuine commitment to justice by cooperating fully with the UN's Sri Lanka Accountability Project (SLAP) and other mechanisms established to pursue accountability for grave human rights and humanitarian law violations. This entails granting access to information, ensuring witness protection, and respecting the independence of international investigations.

5.Ensure accountability for all killings of journalists since 2000:

- Officially recognise that journalist killings since 2000 – including that of Nimalarajan – form part of a broader pattern

of ethnically targeted violence and impunity.

- Ensure that any independent, internationally supervised investigation examines all unsolved journalist killings since 2000, with a transparent mandate, protection for witnesses, and public reporting.
- Declassify and release past commission reports – immediately declassify and publish all records from past commissions related to journalist killings and disappearances, including evidence that may have been suppressed or destroyed.

RECOMMENDATIONS TO THE UN HUMAN RIGHTS COUNCIL, MEMBER STATES AND THE INTERNATIONAL COMMUNITY

1.Reaffirm the Need for an Independent Investigative Mechanism with International Involvement

The Human Rights Council should reiterate its position, consistent with the findings of the 2015 OHCHR Investigation on Sri Lanka (OISL), that domestic mechanisms alone lack the independence, credibility, and public trust required to address serious violations committed during and after the armed conflict. Member States should call on Sri Lanka to establish an independent accountability mechanism with genuine international participation, including

foreign investigators, prosecutors, and judges, or support the establishment of a fully international tribunal under UN auspices, noting that the current proposed Truth Commission would need to be compliant with international norms and standards, including a focus on national ownership, inclusive participation and a demonstration of political will.

2.Urge Cooperation with Universal Jurisdiction Investigations

The Council should encourage States to exercise universal jurisdiction over international crimes committed in Sri Lanka, and call on the Government of Sri Lanka to cooperate fully with such proceedings, including the timely provision of judicial assistance and information in ongoing investigations, such as the one underway in the United Kingdom related to the killing of journalist Nimalarajan Mylvaganam and the Naranthani killings.

3.Strengthen and Sustain the Mandate of the Sri Lanka Accountability Project (SLAP)

The HRC should renew and enhance the mandate and resourcing of the SLAP, recognising its critical role in collecting, preserving, and analysing evidence for future accountability efforts. Member States should ensure political, financial, and operational support for

the Project to function independently and effectively.

4.Ensure Follow-Up to Council Resolutions and Compliance Monitoring

The HRC should strengthen its follow-up mechanisms to assess Sri Lanka's implementation of past Council resolutions (eg HRC/46/1), particularly those relating to accountability, judicial reform, and victim-centred justice. This includes setting clear benchmarks and timelines, and considering additional measures in the absence of meaningful progress.²²⁸

5.Promote Victim Participation and Witness Protection

The Council and Member States should ensure that victims and civil society are central to any justice process, including through safe and secure consultations in Sri Lanka and in the diaspora on establishing any accountability mechanism. This should be coupled with witness protection measures and protection from reprisals, and support for survivors' associations, as well as secure participation from abroad. The HRC should explicitly condemn threats, harassment, and surveillance of human rights defenders and journalists in Sri Lanka.

RECOMMENDATIONS TO THE UK GOVERNMENT

It is recommended that the UK authorities should continue their investigations and, if evidence links the suspects now in the UK to the murders, should prosecute them in a UK court. This may be the only potential form of justice for the families of the victims.

RECOMMENDATIONS TO MEDIA INSTITUTIONS AND PRESS FREEDOM GROUPS

1.Support Documentation and Legal Advocacy

Fund and partner with Sri Lankan journalists, lawyers, and civil society to document cases, preserve testimony, and initiate strategic litigation where possible.

2.Champion Public Memorialisation

Recognise and memorialise journalists killed in the line of duty – especially Tamil journalists – in global press freedom events and museums, to prevent erasure and challenge impunity.

RECOMMENDATIONS TO THE BBC

The BBC, as a leading global broadcaster and employer of Nimalarajan Mylvaganam at the time of his assassination, holds both symbolic and institutional power to push for justice and uphold the safety of journalists.

Accordingly we recommend that the BBC:

1.Publicly Honours Nimalarajan’s Legacy and Demands Justice

Issues a high-level public statement reaffirming Nimalarajan’s courage and integrity as a journalist, explicitly calls for accountability for his assassination, and uses its platform to highlight the continuing impunity in Sri Lanka including the broader pattern of violence against Tamil journalists.

2.Actively Pursues Accountability

Supports independent legal avenues for justice, including international advocacy, strategic litigation, and expert investigations into the failure of the Sri Lankan justice system. Collaborates with human rights groups and UN mechanisms to ensure that the case remains visible and that credible prosecutions are pursued.

3.Strengthens Journalist Safety Mechanisms

Adopts and implements enhanced safety protocols for journalists in high-risk contexts, including:

- Threat and risk assessment frameworks tailored to conflict zones,
- Emergency relocation and evacuation systems,

- Secure communication and legal defence support.

Extends safety training and protective resources not only to staff, but also to local stringers and freelance contributors who are most vulnerable.

4. Reviews and Reforms Internal Policies

Undertakes a retrospective internal review of how the BBC responded to Nimalarajan’s killing, including what support was offered to his family and colleagues.

Institutionalises lessons learned to improve future responsiveness and risk mitigation for journalists under threat.

5.Support to Family

Supports the family in its pursuit of justice and accountability and also ensures financial support for the family.

Supports memorialisation initiatives to honour Nimalarajan and other slain journalists and to preserve the truth of the historical record.

In a world where journalists continue to be killed for telling the truth, the BBC’s response to Nimalarajan’s assassination can set a vital precedent. Justice delayed is not justice denied if the commitment is clear, sustained, and loud.

ENDNOTES

1 For a timeline of events 1972-2012 and a description of some incidents, see Frances Harrison, ‘Still Counting the Dead: Survivors of Sri Lanka’s Hidden War’, Portobello Books, 2012, or BBC Sri Lanka Profile – Timeline: <https://www.bbc.co.uk/news/world-south-asia-12004081>

2 See TamilNet: 19, 20 October 2000, 13 October 2003: <https://www.tamilnet.com/art.html?catid=13&artid=12703>; TamilNet is a widely read English language news website launched in 1995 that specialises in reporting on the Tamils in Sri Lanka and the Sri Lankan conflict, and its then editor (subsequently also murdered) was Nimalarajan’s friend.

3 Guardian 23 October 2000: <https://www.theguardian.com/news/2000/oct/23/guardianobituaries2>

4 TamilNet: 20 October 2000: <https://www.tamilnet.com/art.html?catid=13&artid=5513>

5 BBC News, 6 October 2000: http://news.bbc.co.uk/1/hi/world/south_asia/959214.stm

6 RSF (Reporters without Borders) with the Damocles Network, open letter, 17 October 2002: <https://rsf.org/en/open-letter-sri-lankan-prime-minister>

7 TamilNet: 20 October 2000: <https://www.tamilnet.com/art.html?catid=13&artid=5513>

8 TamilNet: 25 October 2000: <https://www.tamilnet.com/art.html?catid=13&artid=5523>

9 July 2001: <https://www.theacademic.org/feature/deva/>. Devenanda went on to add that: ‘We were not in any way responsible from his killing.’

10 An extensive but not complete set of court documents covering the investigation into Nimalarajan’s murder was released by the Jaffna Magistrate’s Court in 2023, hereafter MCJ2023. See police summaries of witness statements submitted to the court by Inspector de Silva of the Colombo CID on 30 May 2001: MCJ2023 pp269–271.

11 TamilNet: 20 October 2000: <https://www.tamilnet.com/art.html?catid=13&artid=5513>

12 RSF, 2002: <https://rsf.org/en/open-letter-sri-lankan-prime-minister>. See also TamilNet, 27 Oct 2000, where it is stated that Nimalarajan ‘had reportedly been visited and threatened by party cadres the day before his killing, sources said’: <https://www.tamilnet.com/art.html?catid=13&artid=5530>

13 This account of Nimalarajan’s killing combines multiple documents within MCJ2023: statement given by Nimalarajan’s father to Dr S V Sirirajaeswaron, Acting Judicial Medical Officer, Jaffna, 20 October 2000: MCJ2023 p243; notes of site investigation by Magistrate, Justice Mr E T Vignaraja, 20 October 2000: MCJ2023 pp52–55; statement given to Magistrate in hospital by Nimalarajan’s father, 20 October 2000: MCJ2023 pp57–59; court testimony by Nimalarajan’s brother-in-law, 27 October 2000: MCJ2023 pp60–64; court testimony by Nimalarajan’s mother, 31 October 2000:

MCJ2023 pp65–67; CID summaries of undated statements by Nimalarajan’s family members submitted to the Court by Jaffna Officer-in-Charge, I P Ariyawansa: 22 April 2001, MCJ2023 pp264–266; CID summaries of statements by neighbours and other relevant parties taken by Colombo CID team 28 April 2001, plus CID summaries of further statements by Nimalarajan’s family, now living in Colombo, jointly submitted to the court by Colombo CID Inspector de Silva, 30 May 2001: MCJ2023 pp268–273. It also draws on recollections provided to ITJP in May 2025 by surviving Nimalarajan family members.

14 Neighbours expected the supply to resume at around 9.15 or 9.30pm: see CID summaries of statements by George Rajaratnam Thirubeirajah, Balaratnam Ganeshandan and Thirugnanam John Quintous submitted to the Court by Inspector de Silva on 29 April 2002: MCJ2023 pp295–296; also the statement of Kandiah Sidambaranadan, Superintendent of the local Electricity Board, submitted to the Court on 30 May 2001: MCJ2023 p270.

15 In his hospital interview the next day, Nimalarajan’s father linked the time of the killing to this BBC news broadcast. Some neighbours would subsequently put the time a little later at 10 or 10.15pm.

16 The police summary states he was ‘receiving’ a telephone call, not making one: MCJ2023 p2.

17 See https://www.bbc.com/sinhala/highlights/story/2004/08/040820_frances. Although the assaults on Nimalarajan’s family members are listed as part of the police investigation, the medical report cited here is not documented in MCJ2023.

18 Accounts supplied in MCJ2023 fail to specify exactly where the attackers were positioned when they threw the grenade, but its lever, which blows off on release, was found inside under a chair: see summarised statement by neighbour Sisil Selvaraj Dinesh submitted to the court by Inspector de Silva on 30 May 2001: MCJ2023 p268.

19 News reporters subsequently established what has become a persisting narrative, in which Nimalarajan was shot dead through his study window. However, even if there had been an unobserved third attacker outside, the angles of his bullet wounds make this virtually impossible.

20 This Tamil designation was officially replaced in 1993 by the Sinhala ‘Grama Niladhari’ (Village Officer), but among Tamil speakers, the old title continued in use.

21 See https://www.bbc.com/sinhala/highlights/story/2004/08/040820_frances

22 Code of Criminal Procedure Act, section 143.

23 The role of the Magistrate is set out in the Sri Lankan Code of Criminal Procedure Act 1979, especially in sections 9, 124, 136.

24 Code of Criminal Procedure Act 1979, section 260.

25 Interview with Advocate K.L. Ratnavel, 14 February 2025.

26 Code of Criminal Procedure Act, sections 153-154 and 159.

27 See for example the submission to the Northern Province High Court, Vavuniya Bench, on 25 June 2003, in which a government advocate notes that because the victim was a journalist, ‘human rights activists are concerned that those involved in this murder should not escape the law’: MCJ2023 p340.

28 Ibid, section 120(1).

29 Code of Criminal Procedure Act 1979, section 115(2).

30 See also court notes, 23 July 2019, in response to a request by the Attorney General, saying that the statement of suspect 1 ‘is not available in the record’: MCJ2023 p47,

31 TamilNet: 19 October 2000: <https://www.tamilnet.com/art.html?catid=13&artid=5512>

32 UN Human Rights Council, Working Group on Enforced or Involuntary Disappearances (A/HRC/WGEID/119/1), 2 December 2019, p34: notes among 36 cases of the disappeared in Sri Lanka: ‘Ramanan Sivananthan, allegedly arrested in a vegetable farm in Allari Meesalai [fifteen miles east of Jaffna] on 21 July 1996 by the 512th Brigade of the Sri Lankan Army’. See <https://documents.un.org/doc/undoc/gen/g19/334/74/pdf/g1933474.pdf>

Jaffna SFHQ was at the time under the command of Maj Gen Anton ED Wijendra RSP USP ndc psc, 2000.08.03 - 2001.07.02 who is still alive (<https://alt.army.lk/ces/content/major-general-anton-wijendra-rettd-rwp-rsp-vsv-usp-ndc-psc-msc-graced-guest-speaker-diners%E2%80%99>) and could be questioned.

51 Division was under the command of GBW Jayasundara RWP RSP, <https://alt.army.lk/sfhqj/51-division>, retired but alive as of 2021 (https://www.defence.lk/Article/view_article/4113); VIR regiment (<https://alt.army.lk/vir/former-colonel-of-the-regiment>)

33 Questioning by Judge Vignaraja of Officer Ariyawansa, Jaffna Crime

Branch, on 23 April 2001: MCJ2023 pp86–87. The commanding officer of this military unit was W.M.D. Gunasena; in charge on the ground was 2nd Lt. W K Adihetti: MCJ2023 p282. <https://alt.army.lk/vir/2vir-1> 0/2588 Maj WMD Gunasena VIR Photo: <https://alt.army.lk/vir/3vir-1>

34 CID summary of interviews with soldiers, submitted to the Court by Inspector de Silva on 27 August 2001: MCJ2023 p282.

35 CID summary of statement by Uthayan sub-editor Gnnanasundaram Kuganathan, submitted to the Court by Inspector de Silva on 27 August 2001: MCJ2023 p281. (Speaking nearly a year after the murder, the witness apparently remembered the caller as having been Nimalarajan’s mother, though given her injuries, it might seem more plausible that it had been his sister or his wife.) The precise involvement of the EPRLF is incidentally noted in a submission to the Court by Inspector de Silva on 15 September 2002: MCJ2023 p374.

36 Judge Vignaraja speaking in court on 27 October 200: MCJ2023 p63.

37 <https://rsf.org/en/open-letter-sri-lankan-prime-minister>

38 Statement included in the post mortem report written overnight on 19–20 October

2000: MCJ2023 p252.

39 Lily Theres Mylvaganam before Judge Vignaraja on 31 October 2000: MCJ2023 p67; CID summary of statement of Premarany Jegathas submitted to the Court by Officer Ariyawansa, Jaffna Crime Branch, on 22 April 2001: MCJ2023 p266; CID summary of statement of Canapathypillai Mylvaganam submitted to the Court by Inspector de Silva on 30 May 2001 MCJ2023 p272; record of Canapathypillai Mylvaganam declining police protection provided to the Court by Jaffna Crime Branch Officer in Charge, in a note written on 31 October 2000: MCJ2023 p240.

40 See footnote 9 above.

41 Questioning by Judge Vignaraja of Officer Ariyawansa, Jaffna Crime Branch, on 23 April 2001: MCJ2023 p86.

42 ‘Death Inquiry’ notes made by Judge Vignaraja on 20 October 2000: MCJ2023 p54.

43 CID summary of statement by Sisil Selvaraja Dinesh submitted to the Court by Inspector de Silva on 30 May 2001: MCJ2023 p268. There is no record of this assertion being pursued.

44 ‘Death Inquiry’ notes made by Judge Vignaraja on 20 October 2000: MCJ2023 pp52–56.

45 For the complete post mortem, see MCJ2023 pp241–253.

46 No analysis of the post mortem findings is provided in MCJ2023, beyond the tacit implication that three shots were fired in the order given above. Nevertheless, the extreme angles of these shots are highly suggestive.

47 TamilNet: 21 and 25 October 2000. See: <https://www.tamilnet.com/art.html?catid=13&artid=5515>, and <https://www.tamilnet.com/art.html?catid=13&artid=5523>

48 See Judge Vignaraja’s observation on this point, allowing her to sit: MCJ2023 p65.

49 Statement of Vairamuththu Santhiraraja given in court on 31 October 2000: MCJ2023 p71.

50 Report of government analyst M.A.J. Mendis, 29 January 2001: MCJ2023 p259.

51 Questioning by Judge Vignaraja of Sergeant Vimalasena, Jaffna Police Station, in court on 27 March 2001: MCJ2023 pp81–82.

52 The correct serial number by most accounts.

53 See for instance CID summary of statement of Ratnam Dayabaran submitted to the Court by Inspector de Silva on 30 May 2001: MCJ2023 pp 269–70. NB one local stated that he had helped the police to ‘load’ the bicycle, with no reference to preserving its integrity as evidence: see CID summary of statement of Navaratnam

Parameshwaram submitted to the Court by Inspector de Silva on 30 May 2001: MCJ2023 p270.

54 Officer Witharana, Crime Branch, Jaffna, submission to the Court on 4 April 2001: MCJ2023 p262.

55 Officer Ariyawansa, Jaffna Crime Branch, submission to the Court on 23 April 2001: MCJ2023 p84.

56 Officer Ariyawansa, Jaffna Crime Branch, submission to the Court on 22 April 2001: MCJ2023 p266.

57 Questioning by Judge Vignaraja of Officer Ariyawansa, Jaffna Crime Branch, in court on 23 April 2001: MCJ2023 pp85–88.

58 Their new statements, in a CID summary, submitted to the Court by Inspector de Silva on 30 May 2001: MCJ2023 p271–273. Also sourced to Frances Harrison.

59 Inspector de Silva, submission to the Court, and questioning of Inspector de Silva by Judge Vignaraja, 30 May 2001: MCJ2023 pp91–92.

60 CID summary of witness statements submitted to the Court by Inspector de Silva on 30 May 2001: MCJ2023 pp268 and ff.

61 Reporters Without Borders later pointed out that ‘EPDP members, especially those who belonged to the paramilitary forces, had special authorisations for night-

time movement’, and that the EPDP and the security forces ‘worked together closely at that time’: <https://rsf.org/en/open-letter-sri-lankan-prime-minister>

62 The PDA was a small Tamil political party or faction that never flourished in elections (MCJ2023 p281 glosses the PDA as ‘People Democracies Alliance’, presumably ‘People’s Democratic Alliance’).

63 See also CID summary of statements by Nagalingam Rajendram Rameshwaram, PDA Party Organiser, Jaffna Division, submitted to the Court by Inspector de Silva on 27 August 2001, and 11 June 2002: MCJ2023 pp281, 305.

64 If so, the Jaffna police seemingly gave no account of this to the court at the time.

65 For apparent corroboration by his wife, Jegatheeswaran Thavamany, see CID summary of her statement submitted to the Court by Inspector de Silva on 27 August 2001MCJ2023 p282. For a PDA rejoinder, see CID summary of statement of Shanmugaratnam Jeyamohan alias Nishanthan submitted to the Court by Inspector de Silva on 11 November 2001: MCJ2023 p287.

66 Report of government analyst M.A.J. Mendis, 25 May 2001: MCJ2023 pp276.

67 Inspector Linton, CID, submission to the Court on [unclear] July 2001: MCJ2023 p278.

68 Inspector de Silva, submission to the Court on 16 July 2001: MCJ2023 pp95–97.

69 Inspector de Silva, submission to the Court on 27 August 2001: MCJ2023 p282–283. When the BBC asked the Sri Lanka Army who had been on duty that night, ‘they said they’d lost the records’. This question (not the answer), which local journalists had been too afraid to ask, itself became a headline in the newspaper Uthayan the next day. See: https://www.bbc.com/sinhala/highlights/story/2004/08/040820_frances

70 Exchanges in court, 3 October 2001: MCJ2023 pp100–102, 284–285.

71 Frances Harrison, BBC Correspondent, Colombo 2000–2004. TamilNet: 7 Nov 2001: <https://www.tamilnet.com/art.html?catid=13&artid=6443>

72 Court notes from 12 November 2001, 27 November 2001 and 26 November 2001: MCJ 2023 pp287, 289, 104. Marking the first anniversary of Nimalarajan’s murder, the Committee to Protect Journalists (CPJ) wrote to the President of Sri Lanka that the organisation was ‘profoundly troubled by the failure of authorities to investigate vigorously the

assassination of our esteemed colleague’: <https://cpj.org/2001/10/on-anniversary-of-journalists-murder-cpj-demands-a/>

73 <https://rsf.org/en/open-letter-sri-lankan-prime-minister>. (Ratnasiri Wickremanayake was replaced as Prime Minister by Ranil Wickremesinghe.)

74 TamilNet: 10 Feb 2002: <https://www.tamilnet.com/art.html?catid=13&artid=6692>

75 Inspector de Silva, submission to the Court on 15 March 2002: MCJ2023 pp106–107, 293.

76 Inspector de Silva, submission to the Court on 29 April 2002: MCJ2023 p296. In this document, Jegan’s ‘lawful’ wife, so described, is named as Ponnasamy Mary Suba. (See footnote 65 for an apparently different ‘wife’.)

77 The presence of police officers on guard duty had in fact been noted in passing by the Jaffna police in their submission of 23 April 2001.

78 Order of Judge Vignaraja on 5 July 2002: MCJ2023 p129.

79 Tamil separatist politicians were said to ‘dismiss the Police claim’. See TamilNet: 7 June 2002: <https://www.tamilnet.com/art.html?catid=13&artid=7037>

80 TamilNet: 11 November 2002: <https://www.tamilnet.com/art.html?catid=13&artid=7799>

81 See MCJ2023 pp108–109.

82 See MCJ2023 p303 for the 19 names.

83 Inspector de Silva and Sub-Inspector M.R. Dayaratna, submission to the Court on 7 June 2002: MCJ2023 p111.

84 Inspector de Silva, submission to the court 11 June 2002: MCJ2023 pp305–306; report, 21 June 2002, of Sub-Inspector M.P.C. C. de Silva on the arrest of Viswan and Jegan, and Viswan’s appearance in court on 21 June 2002: MCJ2023 pp310, 120.

85 See court hearing 12 June 2002: MCJ2023 pp117–119.

86 Palanichchamy Viswanathan, statement to the Court on 21 June 2002: MCJ2023 p121.

87 TamilNet: 4 July 2002: <https://www.tamilnet.com/art.html?catid=13&artid=7154>

88 See MCJ2023 pp124–126.

89 CID summary of statement of Hameed Sulthan Mohamed Rilvan alias Saleem, submitted to the Court by Inspector de Silva on 7 August 2002: MCJ2023 p360.

90 Inspector de Silva, submission to the Court on 5 July 2002: MCJ2023 pp127–129; additional report submitted 19 July 2002: MCJ2023 p132.

91 Inspector de Silva, submissions to the Court on 11 November 2002, 10 December 2002, 30 October 2003, 23

March 2004 and 27 April 2004: MCJ2023 pp383, 385, 409, 420, 424.

92 Suspect and his advocate, Mr Pon Vetrivel, court hearing before Judge Vignaraja on 2 August 2002: MCJ2023 pp140–144.

93 This medical report does not appear in the court records.

94 See TamilNet: 7 August 2002: <https://www.tamilnet.com/art.html?catid=13&artid=7254>

95 Arrest report of Inspector de Silva 2 August 2002: MCJ2023 pp320; Batchcha produced before the Court on 7 August 2002: MCJ2023 p360.

96 Search noted in a submission to the Court by defence advocate Mr Pon Vetrivel on 13 August 2002 MCJ2023 p148. Results described by Inspector de Silva, submission to the Court on 20 August 2002: MCJ2023 p363.

97 Inspector de Silva, submission to the Court on 21 October 2002: MCJ2023 p378. Across 1999 the Jaffna Security Force was commanded by two men: Brig LCR Gunawardana RSP USP ndu IG, 1998.11.09 – 1999.11.12, and Maj Gen PSP Munasinghe RWP RSP USP, 1999.11.12 – 1999.12.26. See: <https://alt.army.lk/sfhqj/past-commanders>

98 Inspector de Silva, submission to the Court on 20 August 2002: MCJ2023 p363.

99 Advocate for the suspects Mr Vetrivelu, submission to the Court on 20 August 2002: MCJ2023 p152.

100 Advocate for the victim Mr K S Ratnavale, submission to the Court on 20 August 2002: MCJ2023 p153.

101 Advocate for the suspects Mr Vetrivelu, submission to the Court on 3 September 2002: MCJ2023 p154.

102 Inspector de Silva, submission to the Court, 17 September 2002: MCJ2023 p158. In October Reporters Without Borders wrote in its letter to the President of Sri Lanka that it stood ready ‘to provide the Sri Lanka police and judicial authorities with the help of international experts, in particular experts in ballistics and judicial identification’: <https://rsf.org/en/open-letter-sri-lankan-prime-minister>.

103 See Court notes: MCJ2023 pp20, and Order by High Court Judge Vavuniya, 15 August 2002: MCJ2023 p352.

104 TamilNet: 11 September 2002: <https://www.tamilnet.com/art.html?catid=13&artid=7458>

105 Advocate for the victim Mr Remedius, submission to the Court on 17 August 2002: MCJ2023 pp161–163.

106 Order by Judge Vignaraja, 11 November 2002: MCJ2023 p166; Advocate for the defence Mr Sirisivaya,

submission to the Vavuniya High Court on 4 July 2003: MCJ2023 p353; Judge, High Court Vavuniya, modified bail conditions, 23 July 2003: MCJ2023 p357.

107 See https://peacemaker.un.org/sites/default/files/document/files/2024/05/1k02022_2ceasefireagreementgovernment-liberationtigerstamileelam.pdf

108 Inspector de Silva, report to the Court, 11 November 2002: MCJ2023 p383; Order by Judge Vignaraja, 11 November 2002: MCJ2023 p164.

109 See MCJ2023 pp174, 178.

110 MCJ2023 p177.

111 Inspector de Silva, report submitted to the Court on 14 January 2003 saying he had been instructed by a Magistrate in Colombo to seek advice on this point from the Attorney General: MCJ2023 pp179, 387.

112 Evident from an Order by Judge Vignaraja on 25 February 2003 requiring Inspector de Silva to find the answer: MCJ2023 p188.

113 CID summary of statements of Reserve Police Constable (RPC) Mahinda Darmapriya Weerasinghe and RPC Jayaweera Arqchchilage Gnanaratne Jayaweera, in a report by Inspector de Silva of 25 Feb 2003: MCJ2023 p389.

114 This was the Naranthanai murder case. See TamilNet: 27 March 2003: <https://www.tamilnet.com/art.html?catid=13&artid=8616>

115 Court hearing, 27 March 2003: MCJ2023 pp190–192.

116 Report of Assistant Government Analyst P.G. Madawala and Senior Government Analyst W.D.P.S. Gunathilaka, 23 April 2003: MCJ2023 pp323–327.

117 Sergeant Major Piyasena questioned by Judge Vignaraja, 25 April 2003: MCJ2023 p193.

118 Inspector de Silva, 25 April 2003: MCJ2023 p394.

119 Inspector de Silva, 30 May 2003: MCJ2023 p397. See also Supreme Court response to a petition by Napoleon’s lawyers against the possibility of his arrest or detention in the Nimalarajan case once released on bail on a separate murder charge. Counsel quotes the CID as having instructed him that there is ‘no evidence revealed so far’ implicating the Petitioner in Nimalarajan’s murder. Supreme Court ruling forwarded to Magistrate’s Court Jaffna 16 June 2003: MCJ2023 pp329–332.

120 Court notes, 27 June 2003: MCJ2023 p30.

121 Order of Judge Viswananth, High Court

Vavuniya on 25 June 2003: MCJ2023 pp342; Court notes, 27 June 2003: MCJ2023 p30.

122 Order of Judge Viswananth, High Court Vavuniya on 23 July 2003: MCJ2023 p358.

123 Inspector de Silva, submission to the Court on 25 July 2003: MCJ2023 p202.

124 Defence Advocate Mrs Linga Thurairajah, submission to the Court on 23 September 2003: MCJ2023 pp206–207. The term ‘secret police’ was widely used by Tamil speakers at the time, but was not an official police designation.

125 Order by Judge Vignaraja, 23 September 2003: MCJ2023 p209.

126 Report of Balachandran Uthypawan, of the Judicial Medical Office, Colombo, received in Jaffna 25 November 2003: MCJ2023 pp410–411.

127 Defence Advocate Vetrivel, submission to the Court, and response of Judge Vignaraja, on 23 September 2003: MCJ2023 pp208, 211.

128 TamilNet: 17 October 2003: <https://www.tamilnet.com/art.html?catid=13&artid=10152>

129 Court notes: MCJ2023 p35.

130 Defence Advocate Mrs Linga Thurairajah before the Court, and Inspector de Silva, submission to the Court, 30 October 2003: MCJ2023 pp 223–224 and 215.

131 E.g. April 2004: MCJ2023 p424.

132 TamilNet: 31 March 2004: <https://www.tamilnet.com/art.html?catid=13&artid=11629>. See also its reporting on 5 March 2012 for the rape and murder of a 13-year-old schoolgirl, a crime of which Jegan was subsequently found guilty.

133 Court notes: MCJ2023 p43.

134 TamilNet: 20 August 2004: <https://www.tamilnet.com/art.html?catid=13&artid=12703>

135 Motion Paper, 16 November 2021: MCJ2023 p425; ‘Further Report’, Sri Lanka Police, 21 November 2016: MCJ2023 p430.

136 General Comment No. 36 of the UN Human Rights Committee, CCPR/C/GC/36, 3 September 2019, para 2: <https://documents.un.org/doc/undoc/gen/g19/261/15/pdf/g1926115.pdf>

137 Ibid, para 27.

138 See for example UN Human Rights Council, Terms of Reference for Office of the High Commissioner for Human Rights Investigation on Sri Lanka, 2014, available at: <https://www.ohchr.org/en/hr-bodies/hrc/oisl>

139 IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949, Article 3

140 International Committee of the Red Cross, database of 161 rules of customary

international humanitarian law (IHL) identified in volume I of the ICRC’s Study on Customary International Humanitarian Law, Rule 158, Prosecution of war Crimes, available at: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule158>

141 See A/HRC/41/36: Investigation of, accountability for and prevention of intentional State killings of human rights defenders, journalists and prominent dissidents – Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 4 October 2019.

142 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Human Rights Council, document A/HRC/50/29, 20 April 2022, para 29.

143 Ibid.

144 UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Serious Violations of Humanitarian Law (hereafter, UN Principles on Reparations), UN General Assembly Resolution 60/147 of 16 December 2005, Article 3.

145 Article 8, UN Principles on Reparations.

146 General Comment No. 36, supra, para 28.

147 Ibid, para 27; UN Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 1 April 2014, A/HRC/26/36, para 81.

148 The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 2017: <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>

149 Minnesota Protocol, p.1.

150 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on armed non-State actors: the protection of the right to life, UN Human Rights Council, document A/HRC/38/44, 7 December 2020, para 22.

151 Minnesota Protocol, para 35. See also UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN General Assembly resolution 40/34, 29 November 1985, particularly para 6.

152 UN Principles on Reparations, articles 15–23.

153 UN Principles on Reparations, articles 22–23.

154 Report of the OHCHR Investigation on Sri Lanka, A/HRC/30/CRP.2, 16 September 2015, para 7.

155 Ibid, para 1175.

156 Jaffna Magistrate’s Court hearing on 23 April 2001: MCJ2023 p88.

157 Interview with Advocate K.L. Ratnavel, 14 February 2025.

158 Reporters Without Borders, ‘Open Letter to the Sri Lankan Prime Minister’, 19 October 2022, available at: <https://rsf.org/en/open-letter-sri-lankan-prime-minister>

159 Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, E/CN.4/2006/53/Add.5, 27 March 2006, para 34.

160 Order of Judge Vignaraja, 5 June 2002: MCJ2023 pp108–109.

161 CID summary of statements taken from 10 soldiers on duty: MCJ2003 p282.

162 Order of Additional Judge Elango, 15 March 2002: MCJ2023 pp11, 107, 296.

163 Order of the Court, 27 November 2001: MCJ2003 p289; Advocate Remedius submission to the Magistrate during a hearing on 11 November 2002: MCJ2003 p172.

164 Interview with Advocate K.L. Ratnavel, 14 February 2025

165 Advocate for the suspects Pon Vetrivel addressing the Court on 3 September 2002 and 23 September 2003, citing sections 186 and 456 of the Code of Criminal Procedure Law 1979: MCJ2023 pp155-156 and 208.

166 ‘The role of the Attorney General of Sri Lanka and the Rule of Law’, edited version of speech delivered by former Attorney General Palitha Fernando, Sunday Times, 13 November 2016, available at: <https://www.sundaytimes.lk/161113/sunday-times-2/the-role-of-the-attorney-general-of-sri-lanka-and-the-rule-of-law-216616.html>

167 Ibid.

168 Order of Judge Vignarajan, 27 March 2001: MCJ2023 p82.

169 In February 2025 Attorney General Ranasinghe was forced to reverse a decision to discharge three key suspects, two intelligence officers and a police inspector, in an investigation into the murder of another high profile journalist, Lasantha Wickrematunge, in 2009: <https://economynext.com/sri-lankas-attorney-general-makes-u-turn-in-row-over-emblematic-case-204916/> For a detailed historical analysis of the role of the Attorney General in Sri Lanka and its politicisation over time, see Authority without accountability: The Crisis

of impunity in Sri Lanka, International Commission of Jurists, November 2012, chapter 3. <http://www.humanrights.asia/wp-content/uploads/2018/07/The-Final-Report-of-the-IIGEP.pdf>. See also the Final Report of the International Independent Group of Eminent Persons established to observe the work of the national Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights, dated 14 April 2008, which identified the conflict of interest in the role of the Attorney General as one of the principal reasons for concluding a lack of political will to support a search for the truth: <http://www.humanrights.asia/wp-content/uploads/2018/07/The-Final-Report-of-the-IIGEP.pdf>.

170 Judge Vignaraja’s order in Court on 30 May 2001: MCJ2023 p92.

171 Report of the OHCHR Investigation on Sri Lanka, A/HRC/30/CRP.2, 16 September 2025, paras 1226-1228.

172 Interview with Advocate K.L. Ratnavel, 14 February 2025.

173 This seems by no means exceptional. After reviewing multiple CID investigation reports and other documents relating to crimes committed since 2002, the UN human rights office’s Investigation on Sri Lanka concluded in 2015 that criminal investigations

had been undermined by the failure of the police to properly document crime scenes and record evidence. The Investigation documented instances where crucial evidence had been lost or tampered with, key evidence such as bullets and casings had not been collected and phone records not requested: see Report of the OHCHR Investigation on Sri Lanka, A/HRC/30/CRP.2, 16 September 2025, para 1236.

174 See <https://www.sundaytimes.lk/990411/plusm.html>.

175 See evidence given before the Court by the Grama Sevaka or village administrator Vairamuththu Santhiraraja on 31 October 2000 and by Jaffna Crime Prevention Unit Officer in charge Aryavamsa on 26 April 2001: MCJ2023 pp73 and 87.

176 As the Jaffna police officer in charge of the investigation informed the Magistrate on 23 April 2001.

177 Mentioned in Inspector de Silva’s reports to the Magistrate on 19 September 2022 and again on 25 July 2003: MCJ2023 pp158 and 201.

178 The court record states that the police informed the Magistrate the day after the killing: ‘it was only after the examination; he had shown me that he had taken two 9mm bullets’: MCJ2023 p54.

179 This emerged in the statement given by a

neighbour 6 months after the killing: MCJ2023 p268. (The Nimalarajan family states that his nephew never received this evidence.)

180 An EPDP official gave evidence that these had been issued by the Commander of the Jaffna Defence Forces in 1999, and a defence lawyer clarified that this had been done at a time when all provincial council leaders had been given guns: MCJ2023 p363.

181 Report of Government Analyst’s Department, 25 April 2003: MCJ2023 p326.

182 Nimalarajan’s wife told the police that a year before the murder, she herself had been threatened by someone who described himself as a member of an armed organisation and told her the time had come for her to be in a white dress because her husband was submitting reports against his organisation. In Sri Lanka, white is associated with funerals.

183 Hearing on 26 November 2001: MCJ2023 p104.

184 Report of the OHCHR Investigation on Sri Lanka, A/HRC/30/CRP.2, 16 September 2015, para 533.

185 Statement taken on 28 April 2001: MCJ2023 p271.

186 Suspect David Michael Collin, known as Murali, addressing the Court on 2

August 2002: MCJ2023 pp139-144.

187 Submission of lawyer for the suspect to the Jaffna Magistrates Court, 23 September 2003: MCJ2023 pp206-207, and statement given to the Magistrate, 30 October 2003: MCJ2023 p221.

188 <https://www.tamilnet.com/art.html?catid=13&artid=2296>. Murali appears to have been killed by the LTTE on 12 December 2005. See: https://www.satp.org/other-data/srilanka-na-easternprovince/shot-dead_2005

189 <https://tamildiplomat.com/naranthanai-convicts-still-members-epdp-arrested-bring-challenges-doughlas-devananda/>

190 <https://www.tamilnet.com/art.html?catid=13&artid=11586> <https://www.tamilnet.com/art.html?catid=13&artid=11629>

191 https://www.sundaytimes.lk/120401/News/nws_045.html: villagers angry over armed cadres still at large, 1 April 2012.

192 Former EPDP member sentenced to death for rape and murder of 12-year-old, 10 April 2017, Tamil Guardian, <https://www.tamilguardian.com/content/former-epdp-member-sentenced-death-rape-and-murder-12-year-old>

193 https://www.sundaytimes.lk/120401/News/nws_045.html

194 The rape of a 13 year old and paramilitary presence in

Jaffna , 4 Feb 2012, Masisa de Silva. <https://groundviews.org/2012/04/02/the-rape-of-a-13-year-old-and-paramilitary-presence-in-jaffna/>

195 <https://groundviews.org/2012/04/02/the-rape-of-a-13-year-old-and-paramilitary-presence-in-jaffna/>

196 ITJP Confidential Statement W300.

197 Promotion of reconciliation, accountability and human rights in Sri Lanka, Report of the Office of the High Commissioner for Human Rights, UN document A/HRC/46/20, 27 January 2021, paragraph 61(c).

198 Many states do require some link, such as the residence or presence of the suspect within their territory, before they will exercise jurisdiction.

199 See Redress, Universal Jurisdiction: <https://redress.org/universal-jurisdiction/>.

200 For a summary of some of these efforts see ‘Universal jurisdiction – the most difficult path to achieve justice for Sri Lanka’, Andreas Schuller, Just Security, 24 February 2021, available at: <https://www.justsecurity.org/74941/universal-jurisdiction-the-most-difficult-path-to-achieve-justice-for-sri-lanka/>

201 ‘Rights groups welcome arrest in the UK of suspected killer of BBC journalist in Sri Lanka 22 years ago’, Press Release, 25 February 2022, available at: <https://redress.org/news/rights-groups-welcome-arrest-in-the-uk-of-suspected-killer-of-bbc-journalist-in-sri-lanka-22-years-ago/>

202 The appeal following the first arrest was reproduced here: <https://telo.org/man-arrested-by-mets-war-crimes-team-as-part-of-sri-lankan-murder-investigation/>; <https://news.met.police.uk/documents/ter008-2022-ctp-sri-lanka-war-crimes-appeal-tamil-translation-dot-pdf-441507>

203 Trial International, Universal Jurisdiction Annual Review 2024, page 117, available at: https://trialinternational.org/wp-content/uploads/2024/04/UJAR-2024_digital.pdf; ‘Second arrest in UK’s Sri Lanka war crimes investigation’, Association of Tamils of Sri Lanka in the USA, available at: <https://sangam.org/second-arrest-inn-uks-sri-lanka-war-crimes-investigation/>

204 ‘Jaffna High Court Judge imposes double-death sentence’, Daily Mirror (Sri Lanka), 8 December 2016, available at: <https://www.pressreader.com/sri-lanka/daily-mirror-sri-lanka/20161208/282522953094096>

205 <https://www.parliament.lk/members-of-parliament/directory-of-members/viewMember/344>

206 ‘Jaffna High Court yesterday issued Interpol arrest warrant on Napoleon and Mathanarajah of EPDP’, Tamil Diplomat, 27 October 2024, available at: <https://tamildiplomat.com/jaffna-high-court-yesterday-issue-interpol-arrest-warrant-napoleon-mathanarajah-epdp/>

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228 Noting for example the UN Committee Against Torture hasn’t considered Sri Lanka since 2016.

The ITJP is an independent international, non-profit organisation working since 2013 to protect and promote justice and accountability in Sri Lanka.

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