

Sri Lanka's Gotabaya Rajapaksa: "Get Gota", Holding a War Criminal Accountable

By [Dr. Binoy Kampmark](#)

Global Research, July 17, 2022

Region: [Asia](#)

Theme: [Law and Justice](#)

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The fall and ignominious retreat of Sri Lanka's Gotabaya Rajapaksa has enlivened one distinct possibility. Having formally resigned as Sri Lankan President, a point made via [email](#) from Singapore, those wishing to see him account for war crimes may get their wish.

There have been various efforts in train regarding a man who ruthlessly concluded his country's civil war in an orgy of mass killing. The war itself, waged between the forces of Sinhalese Buddhist nationalism and the minority Tamils seeking independence, was the rotten fruit of discrimination, exclusion and ethnocentric politics heralded by the passage of the Sinhala Only Act in 1956. That legislative instrument, [implemented](#) by Prime Minister S.W.R.D Bandaranaike, made Sinhalese the country's official language while banishing Tamils from important positions of employment.

Gotabaya's entry into Sri Lankan politics was a fraternal affair. His brother Mahinda, on becoming president in 2005, picked him as defence secretary. Prior to that, "Gota" [worked](#) as a computer systems administrator at Loyola School in Los Angeles, during which time he became a US citizen.

The appointment made him overseer of the war against the Liberation Tigers of Tamil Eelam (LTTE). "My job," Gota [stated in an interview](#) posted on the Sri Lankan Defence Minister website, "was to understand the priorities, rationally organise those priorities in terms of

what was really required for victory and flush out needs and requirements that had zero relevance to our objectives.”

In seeing the 26 year conflict to its conclusion in 2009, [an estimate](#) by the United Nations put the death toll of Tamil civilians at 40,000. (The number may well be as high as 70,000). The formal line taken by government forces was that the Tamils only had themselves to blame, being used as human shields by the guerrilla forces.

Such killings took place even as US President Barack Obama [urged](#) a cessation in “the indiscriminate shelling that has taken hundreds of innocent lives, including several hospitals.” Hoping for some balance, Obama also urged “the Tamil Tigers to lay down their arms and let civilians go. Their forced recruitment of civilians and their use of civilians as human shields is deplorable.”

The unabashed statement of command responsibility by the former defence secretary is also supported by the view of US Ambassador Patricia Butenis, whose [frank assessment](#) is available via a WikiLeaks cable. According to Butenis, “responsibility for many of the alleged crimes rests with the country’s senior civilian and military leadership, including President [Mahinda] Rajapaksa and his brothers.”

There is also abundant [prima facie evidence](#) that Gotabaya is responsible for the execution of a number of political leaders and their families upon surrender, was responsible for bombing civilian infrastructure such as hospitals, and insisted that the would target and kill innocent civilians, if necessary, to defeat the LTTE.

His return to public life as president took place on a populist platform denigrating his opponents for not giving “priority to national security. They were talking about ethnic reconciliation, then they were talking about human rights issues, they were talking about individual freedoms.” These [remarks](#) to Reuters assumed force in the wake of the 2019 Easter Sunday bombings by Islamist militants that caused over 250 deaths.

Over the years, Gotabaya’s resume has been weighed down with blood. His actions did not begin and end as defence minister. A May [report](#) by the International Truth and Justice Project (ITJP) and Journalists for Democracy in Sri Lanka (JDS) focused on the ex-President’s role in a number of atrocities committed in 1989. The account focuses on the role Gotabaya played as District Military Coordinating Officer of Matale District, an area that saw brutal engagements between government forces and those of the Janatha Vimukthi Peramuna (JVP).

Between May 1989 and January 1990, Gotabaya oversaw a rule of forced disappearances (the report accounts for 1,042 victims), torture, and killing. A number of Sri Lankan government commissions took note of over 700 forced disappearances.

His role in the disappearances was also noted by the lengthily titled Presidential Commission into Involuntary Removals or Disappearances of Persons (Central Zone) List of Persons Whose Names Transpired as Responsible for Disappearances - Central Province - Matale District. (In a list of 24 alleged perpetrators, Gotabaya pops up at 16.) The tenure was also characterised by an absence of interest in preventing the commission of such crimes or investigating them, “despite complaints being made to him directly by family members of the victims”.

Civil suits have become another avenue of redress in the absence of criminal proceedings, though these have been complicated by questions of state immunity. Ahimsa Wickrematunge, daughter of assassinated Sri Lankan journalist Lasantha Wickrematunge, is one figure seeking damages from the man she accuses of authorising the murder of her father, former editor of the *Sunday Leader* newspaper, in 2009.

The civil action, filed in the US District Court for the Central District of California, [alleged](#) extra judicial killing, crimes against humanity and torture. The action was [dismissed](#) because the plaintiff “cited no authority suggesting that Defendant’s citizenship alone should override the fact that all of the allegations against him concern actions taken in an official capacity as the Sri Lankan Secretary of Defense.” In conclusion, the Court found for Gotabaya, as he was “entitled to common law foreign official immunity.” There was an absence of “subject matter jurisdiction”.

Former detective with Sri Lanka’s Criminal Investigation Department (CID) Nishantha Silva also argues that, as secretary of defence, Gotabaya had the means, opportunity and, in the words of his [written statement](#) for the People’s Tribunal on the Murder of Journalists, “a clear motive for killing Lasantha Wickrematunge”.

Another possibility, one as yet unexercised, is available under the [War Crimes Act of 1996](#), which amended the Federal criminal code to enable the prosecution and punishment of US nationals for grave breaches of the Geneva Conventions. Law academic Ryan Goodman, in a pertinent 2014 [piece](#) for *Just Security*, argues that there would be “a legal windfall for any US effort to investigate and prosecute [Gota] across international borders. His citizenship also expands US policy space – by reducing US vulnerability to accusations of meddling if we go after one of our own.”

As politicians the world over dread the spectacle of an enraged citizenry storming the residences of president and prime minister, taking dips in their pools, sitting at their desks and eating on the lawns as public commons, a number of dedicated human rights lawyers will be readying their briefs and submissions. Their mission: Get Gota.

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Dr. Binoy Kampmark was a Commonwealth Scholar at Selwyn College, Cambridge. He currently lectures at RMIT University. He is a regular contributor to Global Research and Asia-Pacific Research. Email: bkampmark@gmail.com

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