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Look Back to Move Forward: Advice to the New Sri Lankan President

Sri Lanka has a real chance to move on from its troubled past.

By Jared Genser

This week, Sri Lankans welcome their first [new president](#) in a decade. In an election called two years ahead of schedule, surprise incumbent challenger and former Health Minister Maithripala Sirisena narrowly, albeit impressively, [defeated outgoing President Mahinda Rajapaksa](#). But while the face of Sri Lankan politics is changing, the challenges of restoring human rights to the war-torn country remain. With this change in power comes an opportunity for a turning point in the country's troubled history.

Looming large over the new administration is the question of whether there will be continued impunity for the violence endured over decades of fighting between the military and separatist Tamil forces. Sirisena steps into office as the UN Office of the High Commissioner for Human Rights Investigation in Sri Lanka (OISL) enters the final stages of its investigation into the alleged atrocities committed under Rajapaksa's rule at the end of the [twenty-six year conflict](#). The UN report on the investigation will be issued in March, meaning that Sirisena has no time to waste if he is to take domestic action to address Sri Lanka's human rights record.

When Rajapaksa came into office ten years ago with a promise of peace, an uncomfortable and uncertain ceasefire was already breaking down between the Sri Lankan Government and the Liberation Tigers of Tamil Eelam (LTTE). Before being elected, Rajapaksa himself had called on the UN for its assistance in ending the conflict. But once in power he [shunned](#) the international community's calls for a further ceasefire. After peace talks collapsed for the last time in June 2006, there was another three years of armed conflict that left more than [40,000 dead](#) on his watch.

Five years later, Rajapaksa enjoyed a hero status in the eyes of many of the Sinhalese majority for ending the bitter conflict. Leveraging that status, he called for early elections, confident of his chances. That time, he was [right](#).

The president began to display an increasingly authoritarian bent. Having amended the Constitution in 2010 to allow himself to run for a third term, Rajapaksa called for early elections again at the end of 2014. He may well have been trying to again extend the longevity of his claimed constitutional immunity – despite suggestions that such sovereign claims of impunity would [flounder](#) in the face of international norms. With the impending UN report in March – a report that will likely condemn Rajapaksa's actions and may even lead to calls for his prosecution as a war criminal – the timing of the elections was no coincidence. The move was just the latest in his efforts to [immunize](#) himself against justice over the past few years.

This time, his plan failed dramatically.

Rajapaksa has been ousted from Sri Lankan politics, and he is unlikely to be able to avoid being held accountable internationally come March, as he has come under the most [scrutiny](#) for his part in ending the conflict. As commander-in-chief of the Sri Lankan military, he had a duty to prevent any crimes committed by his subordinates that he knew about, or should have known about. He was also duty bound not to order such crimes be committed himself. And given that Rajapaksa's internal inquiry into the events of the latter years of the conflict were roundly lambasted as a sham, it seems almost certain that Rajapaksa failed in his international law obligations both to abide by the Geneva Conventions and protect civilians from mass atrocity crimes.

It remains to be seen what the inquiry will reveal. But a pattern of summary executions of Tamil forces – all in which they were shot at close range with hands tied behind their backs – suggest a systematic plan. And government killings weren't limited to enemy militia, but [targeted civilians](#) too. As former UK Secretary of State for Foreign and Commonwealth Affairs, David Miliband, pointed out, the amount of food aid making its way into a no-fire zone – where 200,000 to 300,000 Sri Lankan civilians sought refuge during the month of April 2009 – was enough to feed no more than 60,000 people for just two days. By deliberately downplaying the numbers of civilians at 5,000-10,000, the government effectively justified the starving of innocent civilians. Even more egregious, government troops later took out and shot the wounded in what it claimed was a rescue mission.

In their pursuit of the Tamil Tigers, there was at least one thing Rajapaksa and his officials were not willing to sacrifice: their impunity. While the international community has been left aghast by humanitarian atrocities that they see as being easily traced up the chain of command to Rajapaksa and his military leaders, Rajapaksa found solace in Article 35 (3) of the Sri Lankan Constitution, which, as the UN Human Rights Committee [noted](#), provides virtually total immunity to Sri Lankan heads of state – in direct contradiction to international laws on the prosecution of suspected war crimes and crimes against humanity.

However, even the harshest critics of Rajapaksa and his government agree that the LTTE committed major atrocities themselves. Having carried out over two hundred suicide bombings and forcing children to act as combatants, the [LTTE](#) has a terrible record. But the commission of war crimes and crimes against humanity by the LTTE does not justify even greater atrocities being committed as a retaliatory response by the government. Both sides need to be held to account to the same international standards.

If he is at all concerned with human rights, Maithripala Sirisena's first priority must be to address the failings of his predecessor in respect to the conflict. Unfortunately, this looks unlikely. Sirisena has offered [no messages](#) of support to the Tamil and Muslim populations and has made it clear that he has no intention of seeing justice done for the crimes alleged to have been committed by the government and its forces at the end of the war. He has issued statements indicating his complicity in burying Sri Lanka's troublesome recent history. Like Rajapaksa, Sirisena too has given a cold shoulder to the UN investigation. And most concerning, he has said that he will not allow the [prosecution](#) of any political leader or senior military commanders for war crimes.

If Sirisena is to make a change, he can start by leveraging the hopefulness and eagerness for change that surrounds his election by reconsidering his stance on the UN investigation, and turning around his policy on political and military immunity. As he establishes his administration, he can also make conscientious choices about who to share his power with. Right now, Sri Lanka has a chance for unprecedented change, but it rests in Sirisena's hands.

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