

Sri Lankan military presses cases against Fonseka

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The Sri Lankan government and military are proceeding with their political vendetta against former army commander General Sarath Fonseka—the failed opposition candidate in the country's presidential election in January. Fonseka was detained in February amid trumped up allegations that he was planning a coup against President Mahinda Rajapakse. He is currently facing two courts martial—over alleged political activity while in uniform and corruption involving military tenders. Fonseka has denied the charges and launched cases in civil courts arguing that he is being improperly held and tried by the military.

The first court martial was held up by an Appeal Court decision on May 3 to stay proceedings. Fonseka's lawyers had challenged the legality of the trial on the grounds that the presiding judges were biased—two of the three major generals had been previously punished by Fonseka and the third was a relative of the current army commander. Last Friday the Appeal Court refused to extend the stay, even though it has yet to make a final ruling. The army has fixed a hearing date for the court martial for June 1. Fonseka is challenging the refusal of the Appeal Court to extend the stay.

The second court martial was dissolved after Fonseka's lawyers disputed the legitimacy of the same judges presiding over the corruption allegation. The matter was referred to President Rajapakse and the court martial reconstituted in early April with new judges. Fonseka's lawyers filed a new application on Monday challenging the legitimacy of the second court martial on grounds of bias. The hearings into the corruption charge have continued. All court martial proceedings are held behind closed doors, with the media barred.

Fonseka has filed two other cases in the Supreme Court.

The first is a fundamental rights application to have the country's highest court declare his detention and trial by the military illegal and to order his release. That case has been postponed until July 5, even though the courts martial are proceeding. The second seeks to have Rajapakse's election declared null and void on the grounds of improper electoral practices, and to have Fonseka installed as president.

The government's determination to prosecute Fonseka reflects bitter differences in the Colombo political establishment following the defeat of the separatist Liberation Tigers of Tamil Eelam (LTTE) last May. As the country's top general, Fonseka was part of the Rajapakse cabal. After Rajapakse restarted the war in mid-2006 in open breach of the 2002 ceasefire, Fonseka orchestrated the relentless military offensives that cost thousands of civilian lives and laid waste to much of the North and East of the island.

Fonseka fell out with Rajapakse, who sidelined the general following the end of fighting. Fonseka resigned from the army last November to become the common presidential candidate of the two main opposition parties—the right-wing United National Party and Sinhala chauvinist Janatha Vimukthi Peramuna (JVP). He was detained amid hysterical government accusations that he was planning to imprison the president and murder his brothers. He was held for a month before the army laid unrelated charges. Despite being in military custody, Fonseka contested parliamentary elections last month on an electoral platform with the JVP and was elected as an MP.

Fonseka and the opposition parties have no fundamental differences with the Rajapakse government—all of them backed the communal war against the LTTE and

subscribe to the same pro-market agenda. Tactical differences emerged over foreign policy—while Rajapakse depended on China in particular during the war, the opposition parties oriented more closely to the country’s traditional allies in the West. As the LTTE’s defeat approached, the US and Europe made limited criticisms of the military’s human rights abuses as a means of exerting pressure on Rajapakse.

The threat of war crimes investigations is an added reason for the government’s relentless pursuit of Fonseka. As the country’s top general and part of the presidential cabal, he is intimately familiar with all of the crimes carried out in the course of the war. He has already hinted that he might be prepared to testify against President Rajapakse and his brother, Defence Secretary Gotabhaya Rajapakse.

Despite being in military custody, Fonseka has attended parliamentary sessions. Speaking to reporters on May 6, Fonseka asserted that the military had not carried out any war crimes. However, he added: “I will go out of my way to expose anyone who has committed war crimes. I will not protect anyone, from the very top to the bottom.” He said that he would fully support any international investigation.

In an interview with the *Island* on the same day, Defence Secretary Rajapakse launched a blistering attack on Fonseka, claiming “those bent on destabilising the country would now exploit Fonseka’s parliamentary privileges to fast track their sinister campaign against [Sri Lanka].” As far as Rajapakse is concerned, the “sinister campaign” involves any criticism of the government for war crimes and the abuse of democratic rights.

The defence secretary explained that without “conventional fighting capability, the LTTE rump would strive to isolate the country. The fastest way to achieve their goal was to use MP Sarath Fonseka to justify their baseless allegations.” He then declared that “anyone throwing his or her weight behind an anti-Sri Lanka conspiracy” would be “a traitor” and face “capital punishment.”

Rajapakse pointed in particular to an interview given by Fonseka to the *Sunday Leader* last December in which the former general claimed that the defence secretary had given orders to shoot three LTTE leaders who had

attempted to surrender. While Fonseka later claimed that he had been misinterpreted, the incident had already been reported last May by two British newspapers—the *Times* and the *Guardian*.

A week after Rajapakse’s interview, the Criminal Investigation Department brought Fonseka before the Colombo Chief Magistrate Champa Rajaratne on charges of “inciting unrest” over the *Sunday Leader* interview. Prosecutors indicated that the ex-general would be indicted in the High Court under the country’s draconian emergency laws. Fonseka has denied the charges.

Two reports last week point to the extent of the war crimes for which the Sri Lankan government and military are responsible. The International Crisis Group published a detailed document which concluded that there was credible evidence that the Colombo government and military leaders had carried out war crimes by deliberately targeting civilians, hospitals and aid efforts. It estimated that between 30,000 and 75,000 Tamil civilians had been slaughtered in the final stages of the war.

Fonseka certainly has no intention of broadly implicating the Sri Lankan military in the atrocities for which he is also responsible. But the government is clearly worried that Fonseka will use his inside knowledge to expose the role of key figures including the president and his brother. If Fonseka is convicted and sentenced to more than two years jail on any of the charges against him, he automatically loses his parliamentary seat and parliamentary privileges to speak out without facing legal action such as defamation.



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