

Sri Lankan Supreme Court upholds Fonseka convictions

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The Sri Lankan Supreme Court has ruled against Sarath Fonseka, the former army commander and opposition presidential candidate, upholding the validity of the courts-martial that jailed him on trumped-up charges. The verdict will only strengthen the hand of President Mahinda Rajapakse, who has ridden roughshod over basic democratic rights.

A five-judge bench headed by Chief Justice Asoka de Silva delivered a unanimous decision on January 25, declaring that the military courts were constitutional and a legitimate part of the judicial system. The judges completely ignored the main argument of Fonseka's lawyers; that the courts-martial were inherently biased against their client.

The Supreme Court was consulted after an Appeal Court bench of two judges reportedly split over the constitutionality of the military courts and asked for clarification. The Appeal Court was hearing an appeal by Fonseka against his conviction on two charges.

Fonseka was arrested by military police as part of a political vendetta after he unsuccessfully challenged Rajapakse in the presidential election in January last year. He was held incommunicado at navy headquarters amid lurid allegations by the government that he was plotting to overthrow the president.

No evidence was ever produced to prove Fonseka was involved in a conspiracy to oust Rajapakse. His fellow "plotters" were eventually released after the police said they had no case against them. But Fonseka was held, eventually charged on unrelated matters, and tried behind closed doors by two military tribunals.

The first court-martial convicted Fonseka of engaging in political activities while a serving officer and stripped him of his military rank, honours, pension and other benefits. The second tribunal found him guilty of corruption over military procurements and jailed him for three years. After the second conviction, the government immediately stripped Fonseka of his parliamentary seat in order to silence him.

Fonseka's lawyers—Romesh de Silva and Saliya Peiris—presented two related arguments in the Supreme Court. Firstly, they argued that military courts did not provide a fair trial for the accused, and lacked the "basic elements of independence". Secondly, they explained that the military tribunals were inherently biased against Fonseka.

President Rajapakse was Fonseka's rival in the presidential election. Yet as commander-in-chief, he was also the convening authority for the courts-martial. He appointed its members from among serving military officers and approved the convictions and sentences.

Fonseka's lawyers pointed out that the judges selected had "animosity against the petitioner as did the army commander". During the court-martial, Fonseka had challenged the panel, pointing out that he had disciplined two of the officers. Another officer was a relative of the current army commander, Jagath Jayasuriya, who was also unsympathetic to Fonseka.

Chief Justice De Silva, along with three other judges, concluded that courts-martial are "competent courts" under the constitution. They cited clauses of the constitution and previous judgments to "prove" the legitimacy of the military courts. Judge Saleem

Marsoof agreed with the others, but went further in justifying stripping Fonseka of his parliamentary privileges.

The judges argued that the courts-martial cannot in general be considered biased because they are appointed by the president. But they ignored the evidence provided by Fonseka's lawyers that the particular courts-martial were biased against their client. The main judgment did not even mention Fonseka by name and was in line with submissions made by Attorney General Mohan Peiris, who defended the government's interests.

Like other state institutions including the military and police, the Sri Lankan judiciary is highly politicised. The 1978 constitution was framed to concentrate extensive powers into the hands of the executive president and, in doing so, undermined the nominal independence of the judiciary and the parliament.

Since taking office in late 2005, Rajapakse has increasingly ruled through a politico-military cabal, which includes his brothers, political cronies and generals. He has extensive police-state powers under the emergency that is still in force 18 months after the defeat of the Liberation Tigers of Tamil Eelam (LTTE) in the country's long-running civil war.

Rajapakse has increasingly flouted the country's legal system, ignoring the constitution and Supreme Court decisions when it suited him. Last May, the government placed the Attorney General's Department, previously under the Justice Ministry, directly under the president's command. Rajapakse handpicked Peiris as attorney general. Peiris previously acted as the defence ministry's legal adviser and worked closely with Defence Secretary Gotabhaya Rajapakse, the president's brother.

The conflict between Rajapakse and Fonseka is a product of tactical differences in the ruling elite. As army chief, Fonseka ruthlessly prosecuted Rajapakse's renewed war against the LTTE, but fell out with the president following the LTTE's defeat. Both men are responsible for war crimes and gross human rights abuses.

During the election campaign, Rajapakse and Fonseka each advocated a pro-market agenda. Fonseka, however, spoke for layers of the ruling elite that were disturbed by Rajapakse's orientation away from traditionally close relations with the US and toward its main rival in the region, China. During the war, the government relied heavily on financial and military support from Beijing and made various concessions to China in return.

Fonseka is facing further charges filed in civilian courts by the government. These include violating tender procedures in procuring arms and harbouring army deserters. In another high-profile case, Fonseka has been charged with attempting to whip up communal and anti-government sentiment by making false accusations.

This last case is based on an interview with Fonseka by the *Sunday Leader*, in which he accused Defence Secretary Rajapakse of ordering the military to kill surrendering LTTE leaders. Although Fonseka later retracted the comments, several major British newspapers made similar allegations at the time of the incident. The case underscores why the government is so determined to silence Fonseka. He is intimately acquainted with all the war crimes for which the government and military are responsible.

The Supreme Court's decision to approve what were little more than military kangaroo courts further undermines basic democratic rights. The build up of a repressive apparatus under Rajapakse is not directed primarily against Fonseka and his followers, but is in preparation for oppositional movements of working people who are being hard hit by the government's economic austerity measures.



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