

NEWS

Fonseka's legal perils

TamilNet

AS Major General Sarath Fonseka's military and political stars in Sri Lanka show signs of decline, the General may have to soon decide whether to stay in Sri Lanka and suffer ignominy under the Rajapakse brothers, or to use the lottery-won US Green Card, and seek safety with his children in the US. But safety in US may spell judicial danger.

Without the cover of sovereign immunity, which had protected Fonseka's alleged war-crimes until now, the General will be exposed to answer charges, in the US Federal Courts, against his conduct of war in Sri Lanka.

Both criminal and civil actions against Maj.Gen. Fonseka are likely in the US, and Colombo's resources, including legal help from US lobby-firms under Sri Lanka's payroll, will unlikely be available to him, legal sources in Washington said.

"Slow decline of Fonseka's stature in Sri Lanka is quite clear to the public, and many are bewildered at the treatment given to the General, especially after his contributions to the military victory against a formidable foe," a political analyst in Colombo told TamilNet.

Confusion prevails "whether former Army Commander Sarath Fonseka had accepted his new appointment as Secretary to the Ministry of Sports," adding, "even Sports Minister Gamini Lokuge expressing his lack of knowledge on the issue," Sunday Leader said today.

"Fonseka is reported to have told close confidantes that he will not accept any position which was likely to be an insult to his stature. He had said it was better that he leaves the country in dignity rather than accept positions which discredit his standing," the paper further said.

On July 14th Maj. Gen. Fonseka was moved from Commander of the Army, to the largely ceremonial post of Chief of Defence Staff (CDS).

Meanwhile, here in the US, Attorney General and his prosecutorial staff possess enviable discretionary powers in criminal prosecution of foreign defendants in the U.S. However, Tamils Against Genocide (TAG), a Washington D.C based pressure group, said the model indictment against Gotabaya Rajapakse and Sarath Fonseka, TAG submitted to the Justice Department in January, is under review.

"If and when the U.S. foreign policy interests converge to bring prosecution against Sri Lanka officials responsible for the alleged war-crimes, the Justice Department will begin a grand jury investigation," TAG officials said.

According to TAG, possible crimes Maj.Gen. Fonseka will be charged under a criminal indictment are likely to be:



The future is uncertain for Maj. Gen. Sarath Fonseka with a potential war crimes trial in the US and few friends in Sri Lanka

■ Charge of genocide, as recognized by Article 2 of the 1948 Geneva Convention, punishable under section 1091 of title 18, United States Code.

■ Charge of torture, a violation of the laws or customs of war, as recognized by Article 3(1)(a) of the Geneva Conventions, punishable under subsection (d)(1)(A) of section 2441 of title 18, United States Code, punishable under subsection (a) of section 2340A of title 18, United States Code.

■ Charge of murder, a violation of the laws or customs of war, as recognized by Article 3(1)(a) of the Geneva Conventions, punishable under subsection (d)(1)(D) of section 2441 of title 18, United States Code.

TAG officials pointed out that while the existing indictment document covered the crimes until January 2009, crimes allegedly committed between February and May 18th 2009 will also be added as a superseding indictment.

Evidence collection based on Satellite-imagery, and independent verification of the Channel-4 broadcast extra-judicial execution video, will further add to the evidence pool for indictment, TAG officials said.

For civil charges the situation is different, as individual victims, whether a US citizen or not, can use the US Federal court to file compensation for compensatory and punitive damages, according to TAG.

"US Courts can exercise jurisdiction for the crime of torture,

war-crimes, and crimes against humanity for tort action. TVPA (Torture Victims Protection Act) applies only to U.S Citizens committing crime outside the U.S, and therefore, this act will only apply to defendants such as Gotabaya Rajapakse.

"Being a resident-alien without the cover of sovereign immunity, Maj.Gen. Fonseka's crimes can be prosecuted under the ATCA (Alien Tort Claims Act) for which there are illuminating precedents in US Courts," TAG official added.

ATCA permits foreign nationals to seek relief in Federal court for actions that violate the "law of nations" or a U.S. treaty. U.S. courts have interpreted violations of the "law of nations" under the ATCA to include crimes against humanity, war crimes, genocide, torture, rape, and summary execution.

With the international climate turning against Colombo in its disregard for human rights of the more than 280,000 Tamils civilians incarcerated in military supervised internment camps, rights organizations are urging the international community to take stern action against Rajapakse Government.

"With evidence of alleged war-crimes slowly seeping past Colombo's harshly imposed blackout, many former officials stand exposed to prosecution in countries where courts exercise universal jurisdiction for war-crimes," TAG officials said.

Sri Lanka military budget raised

THE Sri Lankan parliament has approved an additional 20% budget for the country's military for the remainder of this year, reported the BBC.

The government argued the cash boost was essential despite the end of the long-running war in May because the security forces still need strengthening.

It was pushing for an additional \$300m to be added to the military budget – on top of the record \$1.6bn already allocated this year.

The extra revenue is said to be for funding the armed forces' fuel and medical supplies and provide compensation for those who were injured or died. All three armed services wings will benefit, the government claimed.

The money was approved by parliament which also extended by a further month the country's state of emergency, nearly five months after the end of the war, reported the BBC.

When an opposition politician, speaking in parliament, asked why the extra military budget was needed given the end of the conflict, the government

pointed to the need to prevent any resurgence of the Liberation Tigers and the need to maintain the heavy fortifications.

There are plans to set up two major new military bases in areas captured from the Tigers and to increase military surveillance of the north which will last long after the planned resettlement of Tamil displaced people currently interned in camps, BBC reported.

The country is plastered with posters glorifying the armed forces, most of them in the majority Sinhalese language whose speakers constitute the vast bulk of the military.

Meanwhile, the Sri Lanka Army celebrated its 60th anniversary in early October.

"[T]he renowned "Defenders of the Nation" which has triumphantly accomplished a record multiplicity of tasks in its sixty years of survival as a distinguished and admirable force to reckon with, marked its 60th Anniversary cum Army Day (Oct 10th) during a colourful parade and other important features," reported the defence.lk website.

SLA explosive expert arrested for van bomb

A SRI LANKA Army (SLA) soldier and explosive expert attached to Minneriya camp in Polonnaruwa was arrested by Kurunegala Police Friday, October 2, in connection with the school van bomb blast the previous Friday that killed a 11 year old girl student and injured 11 others including school children and the driver.

The soldier, a neighbour of the van owner, is suspected for making the bomb by smuggling C4 explosives from the military installation.

Erandika Dissanayake, aged 11, succumbed to her injuries and 11 others, including school children, were wounded following a bomb blast in Uduwalpola area in Kurunegala.

The blast is reported to have occurred when the driver started the vehicle with the children inside a garage. The wounded including the driver were rushed to Kurunegala hospital.

Carefree violence is becoming a social phenomenon in southern Sri Lanka as a consequence of an attitude arising from the war that didn't care for human rights, journalistic circles in Colombo commented.

Meanwhile, Sri Lanka has formally discharged nearly 25,000 Sri Lankan military personnel, who deserted its forces at the height of the war, AFP reported, citing officials.

The discharged include

20,000 from the army and 5000 from the navy and air force.

According to military sources, the idea of getting the deserters off the books was to make way for fresh recruits.

Thousands of deserters who had been jailed were freed in recent months and those who were discharged will not be court martialled.

During the war SL government was wooing the deserters to come back and fight.

Deserters and discharged of a military, orientated not to observe human rights, have become a serious social problem in southern Sri Lanka, social-work circles in the island said.

The Guardian reported that almost ten percent of the prisoners in UK are ex-soldiers and there is a 30 percent increase of them in the prison population in the last five years.

An estimated 20,000 ex-soldiers are in the criminal justice system of UK and 8500 are behind the bars.

The number is more than double the total British deployment in Afghanistan, The Guardian said.

A survey found most of them having chronic alcohol or drug problems and half of them suffering from post-traumatic stress disorder or depression. Most conviction cases are connected to violent offences, particularly domestic violence.