

GOVERNMENT OF SRI LANKA'S TERRORISM WORSE THAN OFFICIALLY LISTED STATE  
SPONSORS OF TERRORISM: CRIMINAL PROSECUTION OF RAJAPAKSE BROTHERS AND  
GENERAL FONSEKA SUPPORTED

Statement by Bruce Fein

I. Introduction

The United States State Department's 2007 Human Rights Report on Sri Lanka depicts a chilling level of state sponsored terrorism orchestrated by the Government of Sri Lanka (GOSL) far worse than some among the five countries officially listed by the United States as state sponsors of terrorism: Cuba, Sudan, North Korea, Syria, and Iran. The Congress of the United States should pass a joint resolution urging President George W. Bush to add the GOSL to the list of pariah states precluded from receiving aid or trade benefits or visitation or exchange opportunities, except for humanitarian assistance equitably distributed among Tamils, Sinhalese, and Muslims. There should be no repetition of the tsunami aid fiasco that largely excluded Tamils. The American Red Cross neglected to provide one dollar of assistance to the Tamils out of the more than \$2 billion collected for humanitarian aid.

The Human Rights Report also supports justification for United States criminal investigations and indictments of the Rajapaksa brothers and Army General Fonseka under the doctrine of command responsibility for failing to prevent or punish extra-judicial killings and torture of Tamils by persons under their direction and control, for example, the Karuna Group and Pillaiyan, and the Eelam People's Democratic Party (EPDP), lead by Minister of Social Services and Social Welfare Douglas Devananda.

The State Department's human rights indictment of the GOSL is exceptionally persuasive. The State Department is notoriously biased in favor of governments with which it maintains diplomatic relations. More important, the Bush administration is not squeamish about indulging abuses by foreign governments in the name of fighting terrorism, for example, China, India, and Colombia. Think of the President Bush's refusal to impose sanctions against China over the massacres and human rights abuses in Tibet or even to speak vocally against the Chinese government. The fact that the United States would savage the human rights record of the GOSL means that its actual terrorism record is far more gruesome

than represented. The report thus fortifies the moral and legal entitlement of Tamils to a separate statehood.

The GOSL wildly accuses every critic as a terrorist supporter of the LTTE. Like Shakespeare's Cleopatra, the GOSL attacks the messenger who brings the truthful bad news. Accordingly, the GOSL predictably lashed out at the State Department for allegedly aiding and abetting terrorism, bettering the instruction of its close ally Communist China in denouncing the Dalai Lama as a devil in searching for scapegoats for convulsions in Tibet provoked by China's oppression.

The GOSL also anemically retorted that the Human Rights Report lacks detailed names or sources for the state sponsored terrorism chronicled at great length. But the GOSL itself provides the explanation. Its notorious retaliation against any and all of its critics frightens witnesses of its terrorism into silence. If threats of physical harm are unsuccessful, bribery is attempted to fill the breach. Thus, an inquiry into the massacre of five Trincomalee students unveiled an attempt by a Sri Lankan Minister to bribe the father of one of the victims into silence. I personally know of one major case of a parliamentary assassination where an eye witness has refused to speak publicly because of fear of GOSL reprisals. Readers could undoubtedly supply me with countless others. The victims of the GOSL's terrorist assassinations, including lethal aerial bombardments of civilians, cannot speak. The fact that the GOSL has successfully killed, intimidated, terrorized, or bribed witnesses to remain silent over its terrorism crimes is not exculpatory. It is incriminating. Furthermore, the GOSL has imposed either censorship or a news blackout to prevent disinterested observers from revealing its sponsorship of terrorism. Suppression of freedom of speech and press is the characteristic response of every terrorist state in hopes of concealing their unspeakable crimes. The Human Rights Report elaborates:

“...[M]edia freedom deteriorated in the conflict-affected north and east, especially in Jaffna, where many journalists were killed, abducted, and intimidated, while others reportedly practiced self-censorship. By year's end...some [independent press or media outlets] were forced to close due to threats against journalists and media workers. Four journalists were killed in Jaffna and Vavuniya by unknown perpetrators believed to be linked to pro-government paramilitaries. Reporters Without Borders named

Jaffna one of the most dangerous places for press in the world. The government temporarily imprisoned several journalists in the south, and senior members of the Rajapaksa administration reportedly threatened others. The government censored conflict-related reporting, while security forces directly interfered with media coverage.”

The International Independent Group of Eminent Persons (IIGEP), established in 2007 to assist and to monitor the work of the Commission of Inquiry (COI) to investigate 16 high-profile killings, ceased operations because the GOSL consistently blocked its authority or recommendations. The IIGEP explained that the “persistent disregard for its observations and recommendations” by the GOSL and the COI made its continued role “irrelevant.”

Moreover, the GOSL repudiated the Cease-Fire Accord (CFA), and expelled the Sri Lanka Monitoring Mission, which further reduced sunshine on its terrorism.

In sum, the State Department’s Human Rights Report unmasking the GOSL’s sponsorship of terrorism is highly credible. Further, its lengthy roster of terrorism incidents perpetrated by the GOSL is incomplete. The State Department would apparently place the GOSL in the ninth level of Dante’s Inferno.

## II. Command Control and Agency Responsibility

The GOSL under the criminal law is responsible for the crimes of its employees or agents about which it knew or should have expected and could have prevented or punished. Articles 6(3) and 7(3) of the Yugoslav and Rwanda War Crimes Tribunal Charters, respectively, declare: “The fact that any of the acts was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.” The doctrine of command responsibility was employed to prosecute Japanese General Yamashita after World War II, and to prosecute Slobodan Milosevic for crimes against humanity and genocide for actions taken by Serbs in Bosnia.

As applied to the GOSL, the doctrine of command responsibility makes the Rajapaksa brothers and General Fonseka criminally accountable for the actions of the Karuna Group, and its successor, Pillaiyan,

and EPDP, paramilitary organizations that responded to the government's orders every bit as much as the Soviet KGB followed the directives of Stalin. That conclusion is strengthened by Karuna's imprisonment in Great Britain for document fraud, which required the collaboration of the GOSL. Karuna could not have been dispatched abroad and given a false government identity unless he was under its control. Karuna himself in British courts has implicated Gothabaya Rajapakse, Sri Lanka Defense Chief, United States citizen, and brother of the Sri Lankan President, in the crime. The GOSL leaders are similarly accountable for the acts of the (EPDP,) which is headed by a GOSL Minister, who was trained by the terrorist PLO in Lebanon.

### III. Summary of GOSL State Sponsored Terrorism Compared with Cuba

The State Department's summary of the GOSL terrorist state against its Tamil citizens reads like a page from Stalin's reign of terror in the 1930s:

“While ethnic Tamils composed approximately 16 percent of the overall population (diminished by twenty five years of emigration provoked by state terrorism), the overwhelming majority of victims of human rights violations, such as killings and disappearances, were young male Tamils. Credible reports cited unlawful killings by government agents, assassinations by unknown perpetrators, politically motivated killings and child soldier recruitment by paramilitary forces associated with the government, disappearances, arbitrary arrests and detention, poor prison conditions, denial of fair public trial, government corruption and lack of transparency, infringement of religious freedom, infringement of freedom of movement, and discrimination against minorities. There were numerous reports that the army, police, and pro government paramilitary groups participated in armed attacks against civilians and practiced torture, kidnapping, hostage-taking, and extortion with impunity. The situation deteriorated particularly in the government-controlled Jaffna peninsula. By year's end extrajudicial killings occurred in Jaffna nearly on a daily basis and allegedly perpetrated by military intelligence units or associated paramilitaries. There were few arrests and no prosecutions as a result of these abuses...Government security forces used the broad 2005 emergency regulations to detain civilians arbitrarily, including journalists and members of civil society.”

Cuba, which is listed as a state sponsor of terrorism, displayed a much less ugly terrorist face than the GOSL. The State Department's Human Rights Reports amplifies:

“...There were at least 240 political prisoners and detainees held at year's end. As many as 5,000 citizens served sentences for 'dangerousness', with no more specific criminal behavior charged. The following human rights problems were reported: unlawful killings, killings, beatings, and abuse of detainees and prisoners, including human rights activists, carried out with impunity; harsh and life-threatening prison conditions, including denial of medical care; harassment, beatings, and threats against political opponents by government-recruited mobs, police, and state security officials; arbitrary arrest and detention of human rights advocates and members of independent professional organizations; denial of fair trial, and interference in privacy, including pervasive monitoring of private communications....” But neither the government nor its agents were known to have committed any politically motivated killings.

#### IV. The GOSL's Terrorism Face

The GOSL's squalid chronicle of terrorism against its Tamil citizens tends to benumb. Thus, Stalin cynically remarked that one death is a tragedy, but one million corpses are a statistic. An extended description of the GOSL's terrorism reported by the State Department is necessary, nonetheless, to convince all fair-minded readers. Just as no person could fabricate the Holocaust, no person could concoct these endless tales of GOSL terrorism.

##### A. Arbitrary or Unlawful Political Assassinations.

In 2007, the number of civilian deaths associated with the GOSL's war against the LTTE approximated a staggering 1,000—or three political assassinations daily. The corresponding figure for Cuba was zero. The assassinations were intended to cow the political opposition into submissiveness and to exterminate every Tamil who protested GOSL oppression. The State Department explained that the number of civilian assassinations was probably vastly understated: “Reliable statistics on such killings were not available, since this crime often goes unreported by families who fear reprisals if they file complaints.

The GOSL predominantly placed Tamils in their assassination cross-hairs. The Consortium of Humanitarian Organizations, an umbrella group of indigenous nongovernmental organizations, reported

that the extra-judicial killings occurred where Tamils predominated. Accordingly, in Tamil dominated Jaffna, which comprises 3.5% of Sri Lanka's population, there were two hundred assassinations. In contrast, the corresponding number for the more pluralist Colombo where 8% of the population resides was 35. The assassination rate in Jaffna was thirteen times the rate of Colombo. The Jaffna population is less than one third of Colombo's, yet has attracted 50,000 armed Sri Lankan troops stationed on active duty and security.

The GOSL's assassination victims could not have been mistaken for LTTE warriors. They were overwhelmingly humanitarian aid workers, opposition politicians, or innocent Tamil civilians.

United Nations Under-Secretary-General for Humanitarian Affairs John Holmes estimated the NGO casualties for the past two years at 30, but other NGO sources placed the figure at 44. A signature case of the GOSL sponsored terrorist killings with impunity uncurtained on June 3, 2007. Two men dressed in police uniforms abducted two Tamil employees of the Sri Lanka Red Cross from the Colombo train station, a high security area. The following day their bodies were discovered in the vicinity. Low level arrests were made, but the finger of responsibility pointed to Defense Secretary Gothabaya Rajapaksa and Colombo Police Deputy Inspector General Abeywardena. But the latter were not investigated, and prosecutions of the foot soldiers in the assassinations were languishing at the year's end.

On December 14, 2007, unidentified gunmen abducted and decapitated a Sri Lanka Red Cross member Sooriyakanthi Thavarajah in Jaffna.

The GOSL enlisted paramilitary terrorist groups to intimidate its media and parliamentary critics: Karuna, Pillaiyan, and the EPDP. On November 18, 2007, the GOSL withdrew police security from the homes of several opposition Tamil MPs from the east. Like clockwork, Pillaiyan terrorists burglarized their homes, abducted a relative of an MP, and threatened to kill the hostage if the MP voted against the GOSL's budget. Pillaiyan himself phoned one of the MPs and reiterated the death threats hours before the budget vote. A comparable case in the United States would be if President Bush withdrew Secret Service protection from House Speaker Nancy Pelosi, ordered Blackwater to abduct Pelosi's children, and then threatened to kill them if she did not vote to fund the war in Iraq.

On December 11, the Pillaiyan group abducted three family members and associates of Tamil MPs in Batticaloa, again threatening to kill the hostages if the MPs voted against the budget. The three abstained. A culture of impunity emboldened the paramilitaries to political crimes, frequently targeting civilians thought sympathetic to the political goals of the LTTE.

During 2007, numerous civilians, including priests and NGO workers, were slaughtered by agents of the Karuna/Pillaiyan group or the EPDP.

On April 1, Karuna terrorists slew six Sinhalese aid workers building an orphanage in Batticaloa. No investigation was conducted.

On July 23, a suspected EPDP agent murdered a teenage Tamil employee of the international NGO the Danish Refugee Council, Mariyanayagum. No investigation was conducted.

The Tamil National Alliance (TNA) was a repeated target of politically motivated assassinations. Evidence implicated the Karuna group in the assassination of TNA Party Chairman for Ampara district Thillainathan Uthayakumar on June 28. No investigation was conducted.

Evidence implicated the Karuna group in the assassination of the brother of a TNA MP. No investigation was conducted.

In December 2006, GOSL President Mahinda Rajapaksa established a Commission of Inquiry (COI) to investigate 16 high-profile killings since 2005. In response to international alarm over spiraling human rights abuses, President Rajapaksa invited the International Independent Group of Eminent Persons (IIGEP) to assist and monitor the COI. The IIGEP concluded that the COI's foot dragging and inactivity was tantamount to a GOSL obstruction of justice. It refused to permit the GOSL and COI to hijack its credibility, and elaborated that the "persistent disregard for its observations and recommendations" by the GOSL and COI reduced the IIG to "irrelevan[ce]."

The COI was entrusted with investigating the massacre of 17 members of a French NGO Action Contre La Faim. The Sri Lankan Monitoring Mission (SLMM) accused the GOSL state security forces of the massacre. No arrests have been made.

Two 2006 abductions were re-classified as assassinations. Human rights activist and Reverend Thiruchchelvan Nihal Jim Brown was decapitated and mutilated. The GOSL manipulated the Judicial

Services Commission to suppress the investigation of the assassin by removing judges and interfering with the judicial process. The investigation thus languished. Eastern University Vice-Chancellor Raveendranath disappeared while attending a conference in a high security zone in Colombo. The GOSL predictably conducted no investigation and even denied his death.

In August the Supreme Court, notorious for its pliability, upheld the GOSL assertion of secrecy over its pending human rights investigations implicating the police, military personnel, or progovernment terrorist groups. The cases covered-up from public and international scrutiny included: the killings of five Tami youths in the Trincomalee High Security Zone; the beating to death of Nallawarige Sandasirial Fernando; the slaughter of TNA parliamentary candidate V. Vigneswaran by the Karuna group; the killings of Don Wijerathna Munasinghe by police officers; the beheadings of five Tamil farmers near Batticaloa; the Jaffna killing of a Tamil-language newspaper and circulation manager B.G. Saeadas and night supervisor R. Ranjith by EPDP terrorists in collaboration with state military intelligence; the massacre of a thirteen-member Tamil family in their home on Kayts Island by the Sri Lankan navy; the killings of eight civilians in the home of Sellathural Amalathas on Katys Island by the Sri Lankan navy; the slaughter of an elderly man with two members of his family plus a tea shop owner in Jaffna; the killing of a Tamil civilian by men in uniform by firing into a church in Pesalai, Manner, where Tamil civilians sought refuge from aerial bombardments reminiscent of Hitler's bombing of London, Coventry, etc.; the aerial bombardment of Trincomalee killing 50 civilians and wounding 200; the aerial bombardment of Mullaitivu in which 51 teenage girls were massacred and more than 100 injured; the killing by unknown gunmen of a TNA local government member for Serunuwara, Trincomalee District-Eastern Province, Gopala Krishnan Padmanathan; the assassination of a TNA MP Nadaraja Raviraj in Colombo; and, the killings of two brothers while in the custody of the Ambalangoda police after surrendering to the Special Investigative Unit in Galle.

The GOSL's investigations predictably stagnated concerning the 2005 assassinations of former TNA MP A.C. Nehru and MP Joseph Pararajasingham while attending a midnight mass, and the slaying of E. Kausalyn, political head of the Batticaloa-Ampara division of the LTTE.

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The GOSL's political assassinations and massacres through aerial bombardments or otherwise fit the definition of a terrorist state like a glove. The aerial bombardments of civilians are indistinguishable from the Luftwaffe's killing of more than 1,650 civilians in Guernica on April 26, 1937, a crime against humanity later memorialized in the annals of terror by Pablo Picasso. United States law makes extra-judicial killings perpetrated under the aegis and direction of the Rajapakse brothers and General Fonseka illegal and subject to civil suit in United States courts. The Torture Victims Protection Act provides: "An individual who, under actual or apparent authority, or color of law, of any foreign nation...subjects an individual to extra-judicial killing shall in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death." Extrajudicial killing is defined as "a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable to civilized peoples."

#### B. Disappearances.

Disappearances are a terrorist adjunct to extrajudicial killings.

The Sri Lanka Human Rights Commission (SLHRC) was muzzled by the GOSL to prevent its reporting on the number of disappearances in 2007. The number in 2006 that were politically motivated and perpetrated by state security forces, progovernment paramilitary groups or the LTTE was 345. The Foundation for Coexistence reported 880 disappearances.

Witnesses and potential victims identified the kidnappers as Tamil-speaking armed men using white vans without license plates, earmarks of the Karuna group or EPDP. The GOSL refused to investigate on the pretense that white vans are too commonplace.

In March, President Rajapaksa was presented with a list of 350 disappeared persons in the previous twelve months. By the end of 2007, 325 of the abductions had not been solved. Four cases confirmed murders. And the GOSL claimed to have found 21 of the listed persons. Human rights organizations highlighted that relatives of human rights victims, particularly in Jaffna, frequently shunned the police for fear of reprisals against family members.

On February 2, unknown men in Jaffna abducted Ranjan Sellanthurai, the son of the widow Ranganathan Visalakshmi. The GOSL covered up the crime.

On March 2, four men in a white van abducted Protestant Pastor Victor Emmanuel Yogarajan, his two sons, and a third Tamil youth. Three bodies were found in October. The clothes on the dead bodies were identified as belonging to the pastor and his two sons. No DNA testing had been completed at the year's end, as the investigation dragged.

In May, paramilitary security guards abducted a wealthy Muslim businessman from Colombo and extorted a ransom of \$200,000. A GOSL minister was publicly accused in Parliament, but no investigation was pursued.

The GOSL made no progress on 2006 disappearances, including the kidnappings of eight Tamil men from a Hindu Temple in Jaffna District in the presence of security personnel. Past disappearances yielded no indictments, investigations, or prosecutions of security personnel. The GOSL also disbanded the 2004 President Commission of Inquiry with a staggering 16,305 disappearances still unsolved.

### C. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

The GOSL has failed to implement several provisions of the United Nations Convention Against Torture. The few prosecutions of torture that succeed generally result in the release of the perpetrator pending appeal. United Nations Special Rapporteur on Torture Manfred Nowak reported that torture by police and security forces to extract admissions and confessions was endemic and conducted with impunity. Emergency regulations authorize detentions based on confessions derived from torture. Nowak criticized the GOSL for failing to investigate torture or adequately protect victims and witnesses. The police employed threats of violence or fabrication of criminal charges to frighten torture victims away from filing complaints. Magistrates denied the victims an opportunity to complain about police torture while the perpetrators regularly accompanied them to court and chaperoned their medical examinations.

The GOSL's methods of torture rank with the Spanish Inquisition: beatings with sticks, iron bars, or hose; electric shock; suspension by the wrists or feet in contorted positions; burning with metal objects or cigarettes; genital abuse; blows to the ears; asphyxiation with plastic bags containing chili pepper or gasoline; and, waterboarding. The Terrorist Investigative Department facility in Boossa was unexcelled in torture villainies.

In the north and east, military intelligence and sister security personnel, occasionally collaborating with armed paramilitaries, detained civilians suspected of LTTE connections. The detainees were regularly tortured. They were routinely released and threatened with reprisals if they reported the conditions of their detentions to third parties. Some were slain by masked gunman on the heels of leaving military facilities. The military denied Nowak access needed to investigate torture.

The GOSL ordained silence about torture for the SLHRC. Accordingly, there were no accurate, publicly available statistics on torture. The GOSL laboriously concealed its incriminating fingerprints.

On January 3, military intelligence officers abducted and tortured Arunakirinathan Niruparajh, a Tamil student-faculty member of Jaffna University for 10 days. The GOSL filed no charges.

On May 11, army officers detained a Jaffna University student, who was then beaten, shackled, and tortured. The GOSL declined to initiate an investigation.

The GOSL displayed no resolve to pursue torture cases from 2006, including the arrest and torture of farmer Suddage Sirisena at a police station; the 2005 trial of three police officers accused of sexual abuse and torture; and, the 2005 torture cases against police involving a pair of victims.

Under United States law, torture is a universal crime. Perpetrators of whatever nationality or citizenship irrespective of where the torture was committed and the identity of the victim may be prosecuted in United States courts. The United States criminal code, 18 United States Code 2340A, provides: "Whoever outside the United States commits or attempts to commit torture shall be fined...or imprisoned not more than 20 years...and if death results...shall be punished by death or imprisoned...for life. There is jurisdiction over [torture] if (1) the alleged offender is a national of the United States; or (2)

the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.”

The State Department’s Human Rights report strongly implicates the Rajapakse brothers and General Fonseka in a criminal violation of section 2340A under the doctrine of command responsibility as amplified above. In light of the power hierarchy within the GOSL, the torture chronicled in the Human Rights report could not have occurred without their express or tacit consent; and, in any event, they failed to take reasonable measures to punish the direct perpetrators of torture.

### Conclusion

The GOSL is a terrorist state under any sensible definition of the term. It assassinates, maims, and intimidates its political opponents every bit as much if not more than countries officially listed as state sponsors of terrorism. It indiscriminately kills Tamils with the specific intent of extermination, with the exception of Tamils who agree to subsist as vassals in a Sinhalese state. Under international law and practice, the victims of state sponsored terrorism are regularly entitled to separate statehood. Kosovar Albanians had their Slobodan Milosevic. East Timorese had their Suharto. Eritreans had their Mengistu Haile Mariam. The southern Sudanese had their Hassan al-Turabi. And Tamils have their Rajapakse brothers and General Fonseka.

Tamil statehood is at hand if Tamils demonstrate courage, resolve, and speak truth to power.