



New York District Court Dismisses Suit Against Alleged War Criminal Shavendra Silva Based on “Cloak” of Diplomatic Immunity

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WASHINGTON, D.C., FEB. 9, 2012—Yesterday, the District Court for the Southern District of New York dismissed a lawsuit filed by Tamil victims of the armed conflict in Sri Lanka against Shavendra Silva, a former Sri Lanka Army general, who is now Sri Lanka’s Deputy Permanent Representative to the United Nations in New York. Despite serious allegations of war crimes, Silva has recently been “selected” as an advisor for U.N. Secretary-General Ban Ki-moon’s Senior Advisory Group on Peacekeeping Operations.

Silva led the 58th Division of the Sri Lanka Army and committed unlawful acts of extrajudicial killing and torture during the final stages of the war. International law prohibits the intentional killing of civilians in protected places, and the torture and execution of persons *hors de combat*. The plaintiffs filed a lawsuit under the Alien Tort Claims Act and Torture Victim Protection Act.

The Tamil plaintiffs in this case turned to a U.S. court to obtain redress and establish the truth about the deaths of their relatives—an outcome that is impossible to achieve in Sri Lanka, nearly three years after the end of hostilities. The Sri Lankan government refuses to acknowledge its responsibility for any violations of international law, even in the face of the United Nations’ conclusion that its wartime conduct “represented a grave assault on the entire regime of international law.”

Although acknowledging “the gravity of the allegations made by the plaintiffs,” Judge J. Paul Oetken concluded that Silva’s diplomatic immunity precluded the court from looking at the merits of the plaintiffs’ claims. “We hope that the Court reconsiders, rectifies its position and enforces ‘jus cogens’ principles,” said Sivakumaren Mardemootoo, co-director of SPEAK Human Rights & Environmental Initiative. “Interpreting the law to provide a diplomatic ‘cloak’ of protection to Silva—who is seen as a war hero in Sri Lanka, but as a war criminal by the United Nations Panel of Experts—contravenes the U.S. Congress’s intent behind the law,” said Ali Beydoun, co-director at SPEAK and director of the UNROW Human Rights Impact Litigation Clinic. “The U.S. Congress never intended to immunize war criminals, and international law does not permit such immunity either. Judge Oetken’s decision suggests that individuals who deliberately trample upon humanitarian law during armed conflict can later take advantage of the U.N. system. They can serve as diplomats and invoke its protections to evade accountability in every jurisdiction. This result not only represents an egregious failure of the U.N. human rights system, it should shock the conscience of the international community.”

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