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Human rights situations that require the Council's attention

Written statement* submitted by the International Educational Development, Inc., a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 August 2011]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

The situation of the Tamil people in Sri Lanka**

International Educational Development, Inc. and the Association of Humanitarian Lawyers have expressed concern for the Tamil people in Sri Lanka since 1983 when, after a massacre in which Sinhala thugs killed or wounded thousands of Tamils, burned or otherwise destroyed homes and businesses of thousands more and left upwards 150,000 displaced, the Liberation Tigers of Tamil Eelam (LTTE) began military operations to defend Tamil lives and liberties. We have submitted more than 30 written statements and have addressed the Commission on Human Rights and the Human Rights Council in more than 30 oral statements, in which we have set out large-scale attacks by the governmental authorities on civilians and civilian property (including over 1000 places of worship where Tamil civilians had sought protection); denial of access to food, water, and medicine to Tamil civilians (an element of the crime of extermination under the International Criminal Court), killing of humanitarian aid workers, and other serious violations of humanitarian law. We submitted information attesting to violations to Secretary-Generals Annan and Ban, to the High Commissioners, and urgent action appeals to two Special Representatives for the Prevention of Genocide and Mass Atrocities (Mendez and Deng). We sent urgent action appeals to all relevant mandate holders of the Commission and Council and to a number of governments. Except for a few strong public responses, the international community as a whole and the United Nations in particular, was largely silent. We concur with the Panel of Experts appointed by the Secretary-General that the United Nations system failed to live up to its responsibilities and that a comprehensive review of its humanitarian and protection mandates is needed.¹

The government of Sri Lanka has responded poorly to charges of violations in the course of the long war, its continuing policies that violate the rights of the Tamil people, and its failure, to date, fully to investigate all aspects of humanitarian law violations, including those occurring at the end of the war. We note that authorities vociferously deny any violations occurred,² they defend their Lessons Learnt and Reconciliation Commission (LLRC) referred to as “deeply flawed” by the Panel of Experts, and strongly criticize those who report on violations. For example, at the 17th session of the Council, the representatives for Sri Lanka criticized the High Commissioner, Special Rapporteur Heyns, the Panel of Experts (and indirectly the Secretary-General), and a number of States and NGOs. We were particularly shocked by the criticism of the High Commissioner, which we consider *ad hominem*.³

** The Association of Humanitarian Lawyers, an NGO without consultative status, also shares the views expressed in this statement.

¹ The report can be found at www.un.org/dh/infocus/Sri_Lanka/POE_Report_full.

² The authorities usually refer to killing of Tamils as “collateral damage.” As estimates range for a conservative 20,000 to a more realistic tally of 50,000 in the last days alone, “collateral damage” is not an appropriate term. Further, these figures are higher than the numbers in the LTTE’s armed forces at their highest levels. This term was recently used by Admiral Samarasinghe in response Kevin Rudd, Australia’s Foreign Minister, who called for an international investigation. D. Welch, “Tamil killings were just collateral damage, says Sri Lanka,” *The Sydney Morning Herald*, 17 August 2011. Admiral Samarasinghe also stated: “It was not an international conflict, [it was an] internal conflict and we fought it ourselves and we manage our citizens and I don’t see any reason why an international investigation should be carried out.” *Id.* This is, of course, an absurd contention, defying Article 1 Common to the Geneva Conventions and other provisions of humanitarian law.

³ The statement questioned the High Commissioner’s objectivity and propriety, accused the High Commissioner of prejudice, and called her statement unbecoming, unprofessional, counter-productive and setting a dangerous precedent. See, UN Human Rights Council webcam, 30 May 2011.

We join those who consider that the LLRC process is grossly inadequate, and find the words of former High Commissioner Louise Arbour compelling:

As Sri Lanka's long history of failed and ignored presidential inquiries demonstrates, these mechanisms are ultimately powerless. The country's post-war course will not change unless the Rajapaksas decide it has to. So far they have given no interest in doing anything that would diverge from the Sinhala nationalist vision they have embraced fully, as both means to stay in power and end in itself.⁴

Mme Arbour also states that the government increasingly cuts off minorities from a say in their economic and political futures and "cling[s] to its claim that the war was about terrorism and not an ethnic conflict."⁵

As is apparent in even a cursory review of current information, the Tamils are being subjected to increasing militarization of their areas, an influx of Sinhala settlers who have been given Tamil lands without compensation, the continuation of emergency and "anti-terrorism" laws, and many Tamils being held with no charges or access to counsel. In recent local elections, the Tamils overwhelmingly voted for Tamil politicians from the Tamil National Alliance (TNA). Talks undertaken in January 2011 by the TNA with the government seeking an acceptable political solution have been to no avail; as of time of writing, the government has not responded to TNA proposals. Of particular concern to the TNA are those Tamils still displaced, damage and destruction of Tamil cultural and religious places, and other policies that they view will have irreversible and negative consequence for the Tamils.⁶ Nonetheless, the government uses the fact that "negotiations" are on-going as an excuse to keep the international community at bay, called "deceitful" in a statement issued by the TNA on 4 August 2011.⁷

We have been dismayed by the failure of the Council to take up again the issue of Sri Lanka in spite of overwhelming concerns expressed that it do so. The Panel of Experts was especially forceful on this point. Moreover, Special Session 11, the low point in United Nations action on human rights, is the only one with no scheduled follow-up. While there is some concern that Sri Lanka will try to rally the same cast that allowed resolution S-11/L.1.Rev. to pass, with the new international scenario, it becomes increasingly doubtful that it could.⁸ While we think a "revisit" of the Special Session is ultimately imperative,

⁴ L. Arbour, "What South Africa can do to help with reconciliation in Sri Lanka," *The Sunday Independent*, 24 July 2011. Mme Arbour indicates deep concern that the government of Sri Lanka refers to its LLRC as akin to the post-conflict report of South Africa and calls it an "insult." She urges South Africa to resist Sri Lanka's attempt to gain legitimacy for its commission by such comparison.

⁵ *Id.* Mme Arbour further states that the government has controlled narratives in this regard, both inside and outside Sri Lanka, and "react[s] furiously to any challenge of its official version." *Id.* We have also made the point for many years, and consider applause to Sri Lanka for defeating "terrorism" in the Council's resolution at the 11th Special Session (A/HRC/S-11/L.1/Rev) the low point of United Nations action in the field of human rights.

⁶ A correspondent for the Weekly Leader reports shock over the Sinhalaization of the Tamil areas, with Sinhala only signs, 2500 temples and 400 churches, and defense forces occupying 7000 square kilometers out of 18,000 square kilometers of Tamil inhabited lands, many Sinhala families in towns that are then renamed in Sinhala, and infrastructure development jobs given to Sinhala workers and contractors and other activities changing the Tamil cultural flavor of the area. "Exclusive: Erasing the cultural of Tamils to convert Sri Lanka into Sinhala country," www.theweeklyleader.com/causes/615/Exclusive:-Lankan-deculturization.html.

⁷ A.Wamanan, "TBA gives ultimatum on proposals to solve the ethnic question: no point in talks if the government does not respond [says] Sumanthiran," *The Nation*, 7 August 2011.

⁸ Mme Arbour urges South Africa to use its influence with developing nations and the non-aligned movement in this regard. *Op.cit.*

there may be steps that the Council can undertake at its 18th session that are forwards looking and that can encourage the Tamil people that they are not forgotten. We obviously strongly encourage the High Commissioner, mandate holders and genuinely concerned States and NGOs to speak out as strongly as possible about the situation. We also think that the example of a “special sitting,” as took place on Somalia at the Council’s 15th session merits review. If a “special sitting” is put in place, we think that a representative of the Panel of Experts as well as several of the key mandate holders should be invited. There also should be an expanded participation of NGOs.

Time is running out for the type of investigation that meets minimum standards of humanitarian law. Much evidence is presumably being destroyed by government authorities, as is the case of the final battles, now largely bulldozed over. As stated by Edward Mortimer, Chair of the Sri Lanka Campaign for Peace and Justice: “Sri Lanka must not become another hollow “never again” but the starting point for a real change in the world’s response to genocide and mass atrocities.”⁹

⁹ E. Mortimer, “Is This Ban’s ‘Never Again’ Moment?,” www.huffingtonpost.co.uk, 17 August 2011.