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Human rights situations that require the Council's attention

Written statement* submitted by 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.

[16 May 2011]

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

The situation in Sri Lanka**

International Educational Development and the Association of Humanitarian Lawyers remains deeply concerned about the situation of the Tamil people in Sri Lanka. Of key concern is that the government of Sri Lanka has not begun any investigation about the events that occurred in the course of the long armed conflict between its forces and the Liberation Tigers of Tamil Eelam in spite of the fact that to do so is an affirmative obligation under humanitarian law. Further, there is no meaningful action towards communal reconciliation. Rather, we are appalled at continuing hostilities directed at the Tamil community and on-going efforts to intimidate and marginalize them.

We have raised concerns about the Tamil people in Sri Lanka for many years, and on a regular basis brought to the attention of the Commission on Human Rights and the Council actions in the course of the armed conflict that in our view were clear violations of humanitarian law: targeting of Tamil civilians and civilian towns, schools, and places of worship; summary executions, including execution-style killings of international humanitarian aid workers; incidences of torture; denial of food and medicine; and many other acts that constitute grave breaches of the Geneva Conventions. There was also extreme concern raised by a number of Special Procedures mandate holders. Nonetheless, neither the Commission nor Council adopted any statement or resolution on these grave breaches after 1987 even though the war steadily worsened and civilian casualties, the vast majority of which were Tamils, mounted alarmingly.

The war was finally ended in May 2009 when the government forces launched an all-out attack on the last areas under the control of the LTTE. The whole world watched in horror, but largely in silence -- except for the hundreds of thousands of Tamils who took to the streets in Canada, Switzerland, the United States, the United Kingdom, France, and at least 20 other countries -- as thousands of Tamil civilians, including those in the agreed upon No Fire Zones, were killed. Conservative estimates indicate as many as 50,000 lost their lives in the last months of the war, and perhaps more than 30,000 in the final days. More than 100,000 Tamil civilians died in the course of the long conflict and over a million sought and received asylum abroad. At the end of the conflict there were more than 400,000 Tamils in government controlled camps, most with appalling and humiliating conditions and almost totally beyond the access of the international community. Tamils worldwide are still in shock and mourning.

It is now the second anniversary of the final demise of the LTTE and the Council's Special Session 11, held on 26-27 May 2009. We welcomed this Special Session on Sri Lanka, hoping it would be a milestone for the issue of impunity and the need for accountability when there are grave breaches of the Geneva Convention and the laws and customs of war. However, the resolution (A/HRC/S-11/L.1/Rev.) adopted at this session remains the nadir of United Nations action in the field of human rights.¹ Rather than condemning Sri Lanka for the massive violations of humanitarian law in the course of the long conflict, it actually praised the country. Different from other special session resolutions, this one resolution does not provide for any follow-up or review.

Due to serious concerns raised by many States and actors in the international community and especially from the High Commissioner for Human Rights after Special Session 11, the

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

¹ The entire Western and Eastern European groups (except the Russian Federation) voted "no" and there were 6 abstentions,

Secretary-General decided to establish a Panel of Experts (Panel), composed of Marzuki Darusman (Indonesia), Steven Ratner (United States of America), and Yasmin Sooka (Republic of South Africa) to look into events and to report back to him as a prelude to possible further action. The government of Sri Lanka strongly protested this and ultimately denied the Panel entry to the country. Sinhala mobs actually attacked the UN office in Colombo and burned the Secretary-General in effigy. Nonetheless the Panel did its work and submitted its report on 31 March 2011.²

The Report sets out essentially the same things we have set out in numerous written and oral statements submitted to both the Commission on Human Rights and the Council, including the conclusion that we constantly stressed -- the situation constituted a “grave assault on the entire regime of international law. . . . Accountability for serious violations of international or human rights law is not a matter of choice or policy; it is a duty under domestic and international law.” (Report, iv).

The report identifies numerous grave breaches in the final days, including shelling in the No Fire Zone, at the United Nations hub, and at food distribution lines. It states categorically that most of the civilian casualties were by the government, and that, as we constantly stressed, the government deliberately understated the numbers of civilian in the war zone: the Panel concluded that there were more than 330,000 Tamil civilians there. (Report, ii). It used the term “carnage” to describe the scene. It also found that all hospitals in the Vanni (the Tamil area) were hit by mortars and artillery and that there was a systematic deprivation of food and medical supplies – which in our written and oral statements we constantly underscored is an element of the crime of extermination under the Rome Statute and Elements.

The Report also refers to both the “deeply flawed” Lessons Learnt and Reconciliation Commission (LLRC) established by the government and identifies key obstacles to accountability: (1) government “triumphalism;” (2) continuing exclusionary policies directed at the Tamil people; (3) continuance of wartime measures; (4) restrictions on the media. (Report, v).

Finally, the Report chides the United Nations system, as we have repeatedly done, for failing to live up to its responsibilities. It calls for a “comprehensive review by the United Nations system regarding implementation of its humanitarian and protection mandates” (Report, vii) and specifically urges the Council to “reconsider its May 2009 Special Session resolution (A/HRC/S-11/L.1/Rev).” (Report, viii). It proposes a full-scale independent international mechanism to fully investigate the events. (Report, vii).³

² Hereinafter “Report.” The Report does not have a UN document number. It can be found at www.un.org/news/dh/infocus/Sri_Lanka/POE_Report_full. We note that the government of Sri Lanka has vociferously rejected this Report, and Sinhala groups on the island have been engaging in protest marches and directing hostility towards the Tamil communities in the North which we consider acts of “triumphalism” as the term is used in the Report.

³ The Elders, in response to the Report, issued a statement in support of an independent mechanism. In an earlier statement, released in August 2010. The Elders indicated a “deafening global silence” about the Tamil situation and the government’s “disturbing actions” and “worrying approach” to human rights. It also worried that the attitude of the Sri Lankan authorities would be an invitation for other States to commit violations with impunity. The statement indicates that no progress had been made toward reconciliation between the Tamil and Sinhala communities. www.theelders.org, Media release of 3 August 2010. We also note that a number of persons identifiable in the Report as possible perpetrators of war crimes have been given diplomatic posts, which we consider a defensive measure to preclude legal actions due to the doctrine of diplomatic immunity. We do not think the doctrine of diplomatic immunity was meant to shield perpetrators of war crimes and mass atrocities from the legal consequences of their acts.

We urge several possible courses of action that the Council can take to both answer the Panel and to begin, after its own “deafening silence,” to play an affirmative role in coming to the rescue of Sri Lanka’s Tamil people and to assist Sri Lanka move towards genuine reconciliation. It can, as the Panel suggests, revisit resolution A/HRC/S-11/L.1/Rev. It can also, under its own authority, appoint a fact finding team similar to the teams authorized for Libya and Cote d’Ivoire. It can also urge the Secretary-General or the General Assembly or the Security Council to heed the recommendation of the Panel to form an independent international mechanism. Finally, it can urge the Secretary-General to formally submit the Report to the International Criminal Court and, as Sri Lanka is not a member of the Court, to suggest preliminary proceedings.
