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**Racism, racial discrimination, xenophobia and related
forms of intolerance, follow-up and implementation
of the Durban Declaration and Programme of Action**

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.

[11 February 2013]

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

Racism and “racist regimes” in international humanitarian law*

International Educational Development, Inc. (IED) and the Association of Humanitarian Lawyers (AHL) have long raised the issue of ethnic conflicts and their status under international humanitarian law.¹ We consider Article 1.4 of Protocol Additional I to the Geneva Conventions a great step forward as it recognizes protection of combatants fighting against “racist regimes.” Although some States have not yet ratified this Protocol, we consider it to now be viewed as binding customary law or even a norm of *jus cogens* as it has a major role in implementing the international prohibition against racism – itself a norm of *jus cogens*.

The language of Article 1.4 reveals the intention to ascribe the right to self-determination to those fighting against a racist regime. Self-determination is itself a norm of *jus cogens*, placing yet more weight to the imperative duty on States to support the people who are fighting against a racist regime.

Alarming, the imperative duty to assist those fighting against racist regimes has become politicized to a serious extent. In some situations, the conflict receives scant attention or is simply ignored such as occurred in several ethnic conflicts in Myanmar and the conflict involving the Moluccan people in Indonesia. The situation of the Tamil people in Sri Lanka illustrates the extreme of politicization of the term “racist regime” – not a single State came to the support of the Tamil dissidents.

There is arguably no State more overtly racist than Sri Lanka. Being the numerical minority community on the island, the Tamil people have been subjected to discrimination and marginalization from the Sinhala majority since the 1948 Citizenship Act. Other acts, such as the “Sinhala only” language act of 1956, and numerous other anti-Tamil acts lead to the tragic 1983 anti-Tamil riots which resulted in over 2000 Tamil casualties and, ultimately, more than a quarter-million Tamil refugees. The Sinhala-controlled government sat idly by for days. These conditions were sufficient for the international community to identify Sri Lanka as a “racist regime” yet the United Nations and international community failed to do so, giving instead shallow lip service to “communal unrest.”

When war breaks out because of ethnic or racial conflict, the international community must exercise its duties under humanitarian law, in particular the duty set out in Common Article 1 to the Geneva Conventions of 1949 to ensure that the rules are respected “in all circumstances.” Yet in a number of recent ethnic or racial conflicts this has not occurred. Again using the example of Sri Lanka and the Tamils but also applicable to the conflict in Turkey with the Kurdish people, this did not occur. Instead, the international community, and in particular certain Western States, began treating the situations as terrorism in spite of the fact that all humanitarian law norms that are applicable to the characterizations of armed conflict were met. The dissident combatants were fighting against “racist regimes” and the rules relating to responsible command and the principle of distinction (having visible evidence of uniforms, insignia, military identification papers and serial numbers) to warrant combatant status as provided for in The Hague Regulations and other provision of

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

¹ The Association of Humanitarian Lawyers researcher Jennifer Perimal assisted in the preparation of this document.

customary humanitarian law were fully met.² Using the “terrorism” label for political purposes in these and other conflicts has result in a severe undermining of the norms of humanitarian law, not just in conflict against “racist regimes” but in all conflicts.

Failures to recognize “racist regimes” and the obligation to act in conformity with humanitarian law when the oppressed people fight back has undermined the remedies for racism and appropriate international action in the face of “racist regimes.” In the case of Sri Lanka, the United Nation’s failure to identify Sri Lanka as a racist regime and to take necessary measures resulted in unimaginable atrocities by the government’s armed forces against Tamil civilians as set out in the report of the Panel of Experts appointed by the Secretary- General. These atrocities include killing Tamil civilians through widespread shelling in their areas, shelling of hospitals and humanitarian objects and the denial of humanitarian assistance.

When we raised the issue of the lack of clear definitions of “racist regimes” to the new Special Rapporteur on Racism at the Council’s 21st session, he responded that the international community is clear about what constitutes a “racist regime.” This does not explain, however, how our numerous submissions to his predecessor on the situation in Sri Lanka failed to result in a single comment during the last years of the war in Sri Lanka, and the obvious fact that the conflict was degenerating into the most extreme form of racism – genocide. Indeed, former Secretary-General Kofi Annan stated on more than one occasion that when there is ethnic conflict, the issue of genocide is raised.

We hope that the Special Rapporteur on Racism contributed to the Council’s efforts in regard to Sri Lanka, since the failure of this mandate to respond at the critical juncture was a factor in the deaths tens of thousands of Tamil civilians, especially in the last phases of the conflict. We also hope that the Special Rapporteur will undertake a mission to Sri Lanka – the war may be over but the government there is still anti-Tamil.

We also hope that the Special Rapporteur clearly sets out the definition of a “racist regime” and will provide for early warnings when racism is likely to lead to ethnic conflict so that appropriate and timely action may be taken. There should have been no more “Rwandas,” but then there was Sri Lanka.

² In both circumstances, the dissident armed forces also occupied considerable territory and launched military operations from that territory.