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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.

[28 August 2009]

* 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 Lanka¹

1. International Educational Development and the Association of Humanitarian Lawyers have been profoundly disturbed for many years by the abject failure to comply with humanitarian law in the course of the long conflict in Sri Lanka, and are now alarmed by the continuing tragedy of genocidal proportions affecting the Tamil people there.

2. Throughout the long conflict there have been serious violations of humanitarian law that we have raised in numerous oral and written statements during the course of the conflict, mainly committed against the Tamil civilian population in the Tamil areas in the North and East. Yet Tamil civilians in the Tamil areas now actually face worse violations and misery than when combat was raging. As many as 500,000 Tamils are being held involuntarily in a number of detention camps, the largest of which, Menik Farm, holds nearly 300,000.² Conditions in all the camps is appalling, with grossly inadequate facilities, and extremely harsh conditions that worsened horrifically because of flooding due to recent tropical storms.

3. We stress that these Tamils are detained, not because they are civilians, but because they are Tamil. In this regard, we are troubled by press releases, reports and statements by members of the international community, including NGOs, that comment on the situation of “civilians” – seemingly intentionally leaving out the fact that these “civilians” are all Tamil and that they are detained precisely because they are Tamil.

4. Because of the large-scale detention of Tamils, we urge the Council’s Working Group on Arbitrary Detention to undertake urgent actions, especially because on 23 August 2009, the Sri Lankan Secretary of Defense, Gotabhaya Rajapakse, claims that the detention of these Tamils will be indefinite.

5. We have studied the laws of the internment of persons based on ethnicity, looking especially at rulings related to the Holocaust, the capture and internment in the United States of persons of Japanese ancestry during World War II, the seizure and internment by the United States of Latin Americans of Japanese ancestry during the same period, and the more recent cases of the situation of the Miskito people in Nicaragua during the “Contra affair” and the removal, incarceration and destruction of property of the Kurdish people in Turkey. Regarding the Japanese Americans, the United States subsequently determined that this violated international law, and passed a bill providing for apology and compensation. Regarding the Latin Americans of Japanese ancestry, a case in their behalf is currently before the Organization of American States American Commission on Human Rights, primarily on the issue of equal compensation. Regarding the Miskito people, the Inter-American Commission on Human Rights, in its “Report on a Segment of the Nicaraguan Population of Miskito Origin” (the Miskito case, OEA/Ser.L/V.11.62.Doc.10,rev.3 (29 November 1983) addressed many factors identical to the Tamil situation, finding numerous violations: the Miskito people had been prevented from fishing, they were prohibited from leaving “camps” and witnessed the expropriation of their lands under a variety of pretexts. The Organization of American States also considered the application of Article 27 of the American Convention on Human Rights (essentially identical to

¹ The Association of Humanitarian Lawyers (AHL) also shares the views expressed in this statement.

² The Sri Lankan government refers to these camps as “welfare centers,” but its own Minister for Disaster management and Human Rights called them “so-called welfare centers” at a Parliamentary debate on 22 July 2009. In any case, the Tamils are clearly not free to leave and there is very little outside access to them.

Article 4 of the International Covenant on Civil and Political Rights) in the context of the removal of Miskito from the combat areas. The OAS indicated that while in times of armed conflict civilians may be relocated from the area of combat, any relocation must meet the “strict exigency” test and not be based solely on ethnicity. Further, at the conclusion of hostilities, those persons removed from the area of hostilities must be allowed to return to their original homes. Finally, the Inter-American Commission ruled that those whose properties were damaged or expropriated for illegitimate grounds be compensated. Regarding the Kurdish people, the European Court of Human Rights, in its case *Akdivar v. Turkey*, App. No. 99/1995 (1996), ruled that Turkey violated the rights of the residents of Kelekci when it destroyed the village, and that the residents should receive just compensation.³

6. In our view, review of the above cases and many other similar ones, when applied to the situation of the Tamil people in the detention camps in Sri Lanka, shows clear and convincing violations of their rights. The hostilities are clearly over, and there is no possibility of them resuming in the foreseeable future. The international community as a whole, and especially officials of the United Nations, should insist in the strongest possible way that all persons detained in the camps be free to come and go as they please. They should insist that there is full access to the camps by responsible international actors, human rights investigators, media, aid workers, and family members. The aid sent to people in need in Sri Lanka should not be subject to taxes and other impediments. Aid specially sent for the Tamils should be distributed to them, and not expropriated for other needs.

7. Equally important, the Tamil people should be allowed to return to their own villages, be provided with sufficient means to rebuild what has been destroyed, and receive full compensation for their losses if from intentional destruction.⁴

8. We have heard alarming news that the authorities plan to settle both military personnel and Sinhala civilians in former Tamil villages, and expropriate lands belonging to Tamils in large sections of the Tamil areas.⁵ This should be immediately investigated because if this occurs it would constitute ethnic cleaning. In similar fashion, the Tamil fisherfolk should have unfettered access to their traditional fishing grounds, and the agricultural lands confiscated to form “High Security Zones” should be restored to their owners. We urge Mr. de Schutter, the Special Rapporteur on the right to food, to assist in this regard. We also urge the Special Rapporteur on housing, Mrs. Rolnik, to assist in setting up a registry of Tamil properties and former villages, especially in the Vanni area, to ensure that they are rightfully restored to their owners. This can perhaps be facilitated with an expanded office of the High Commissioner in Sri Lanka.

9. We continue to have serious concerns about the physical survival of the Tamil people and their culture in the North and East of the country. We note with alarm statements by government authorities who insist that with the demise of the Liberation Tigers of Tamil Eelam, there are no minorities or minority issues in Sri Lanka. We urge the Special Rapporteur on Racism, Mr.

³ Turkey subsequently had to allow the resettlement of the Kurdish people back to the more than 3000 villages destroyed or ethnically cleansed. Turkey has previously defended its policy of destroying Kurdish villages and removing the residents because the people sympathized with the armed resistance movement, the PKK.

⁴ We point out that wanton destruction or expropriation of civilian property is a grave breach of Geneva Convention IV of 1949 (Article 147) and is also prohibited by The Hague Convention of 1907 (Regulations, Article 25).

⁵ We also point out announcement by the authorities to increase the numbers of military in the Tamil areas.

Muigai, to undertake a mission to Sri Lanka, especially to the Tamil areas and to the camps, to assess what we clearly see as racism with genocidal implications. In particular, he should ask the government to set out its intentions regarding the Tamil people so that they may be evaluated under existing norms.

10. The international community has responded far too late and has done far too little for the Tamil people: the international community allowed the war against them to take on genocidal proportions, it allowed the “peace” to mean total subjugation and mass internment, and it allowed the government to enjoy total impunity. The Council, in spite of what in our view was a very distressing Special Session, must begin to act forcefully to ensure the physical survival of the Tamil people and their full enjoyment of human rights. A minimum first step in this direction for the Council would be to most strongly urge the government to allow the High Commissioner to expand her office in Sri Lanka, and to allow her and her staff unfettered access to all areas of the island to investigate human rights and humanitarian law compliance. The Council should also undertake action to restore respect for humanitarian law – so egregiously absent in this war.

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