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Agenda item 4

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.

[4 June 2012]

* 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**

Introduction

International Educational Development, Inc.(IED) and the Association of Humanitarian Lawyers (AHL) followed the situation of the Tamil people for the entire duration of the twenty-six year old war in between the various forces of the Tamil people and Sri Lanka's armed forces. The war ended in May 2009 with the defeat of the Liberation Tigers of Tamil Eelam.

Except for strong statements from former Secretary-General Annan, the last three High Commissioners, and several mandate holders, States and the Council were largely silent, even though the information provided indicated the obligations of the Responsibility to Protect (R2P) should have been undertaken.¹ Our organizations addressed war crimes and crimes against humanity in written and oral statements at all session of the Council and submitted numerous appeals and documentation to all relevant mandate holders. Other non-governmental organizations did a well. The Council's failure to act until after the war ended is without precedence, and the resolution adopted at its Special Session 11 is, in our view, the nadir of UN action in the field of human rights.

At the 19th session of the Human Rights Council, the Council, in its resolution A/HRC/RES/19/2 sets up a process to assist and monitor the recommendations made in the report of Sri Lanka's Lessons Learnt and Reconciliation Commission (LLRC).² The resolution asks the High Commissioner to report to next March's session on progress made to implement the recommendations of the LLRC and progress regarding reconciliation. It also asks mandate holders to contribute to this endeavour.

The High Commissioner sought a visit to discuss offers to advise the government and to offer technical assistance to forward the objectives of the resolution. The government refused on the pretext that Sri Lanka was not a party to the resolution. We find this explanation preposterous.

Gross violations of the rights of Tamil people continue

The mandate holders that will report at the Council's 20th session that are especially relevant to the Tamil question are the Special Rapporteur on Summary Executions, the Special Rapporteur on Freedom of Expression, the Special Rapporteur on Racism, the Special Rapporteur on the right to health and the Special Rapporteur on Freedom of Assembly.

We alert the Special Rapporteur on summary execution that some Tamils that were involuntarily returned by governments that denied an asylum claim have been killed. A group of MPs in Australia have urged that no Tamils be returned at this time. Other Tamils

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

¹ In the course of that war, conservative estimates indicate that over 140,000 Tamil civilians died, as many as 40,000 in the last few months alone, as a result military operations directed at them, while in detention, by assassination, and by starvation and illness due to government blockades of civilian supplies to Tamil areas.

² The Secretary-General appointed a Panel of Experts (POE) after the disastrous resolution adopted at the 11th Special Session that would investigate the events and provide him with recommendation on how he should proceed. The Sri Lankan government's appointment of the LRCC was intended to derail the Secretary-General's initiative.

from the Diaspora who have voluntarily returned have been killed. For example, Anthony Pillai Mahendrarajah, a Canadian Tamil seeking to protect his property, was killed on 11 May 2012 in Kilinchchi.³ Due to the rise of torture and the fear that Tamil returnees may likely face serious human rights violations, including death from torture, on 30 May 2012 the High Court of the UK overturned a deportation order for 40 failed Tamil Asylum seekers.⁴ We remind all governments that they may be liable for damages for returned persons who suffer human rights violations.⁵

We alert the other mandate holders who report to this session that the media in Sri Lanka continues at risk; the Tamil population generally dares not gather or assemble to exercise their rights, although in the past week there was a large gathering in Mannar; the Buddhist extremist political party and other parties continue their racist and very public demonization of Tamils; and many Tamils continue to suffer extreme health consequences due to the long war, war injuries, and long blockades of food and medicines. Our organizations and a number of other non-governmental organizations have submitted much information and have sent urgent-action alerts in this regard. Information and alerts have also been sent to a number of other mandate holders and procedures.

Reconciliation a non-starter

The consensus among Tamil leaders and others studying the situation is that reconciliation is at a dead end. There is neither a parliamentary committee to formulate a viable political package to address Tamil grievances nor are there any direct negotiations between the government and the Tamil National Alliance. Further, the government authorities continue their diatribes against Tamils in the Diaspora or against anyone that urges stronger efforts be made to address the Tamil question. Our organizations find no intention by the Sri Lankan government to genuinely reflect on justice and rights for the Tamil people. Rather, we still find the government resolutely clinging to its old patterns of anti-Tamil rhetoric and policies. We fear that the authorities will delay any effective investigation into the war and what has happened to the Tamils for so long that no effective remedies are possible. In our view, unless there is a full inquiry meeting all international standards there will be no possibility for meaningful reconciliation between the Tamil communities, other communities and the largely Sinhala government. Accordingly, we ask Council members to consider the fate of the Tamil people in the future: will they even have a future in Sri Lanka, or will they flee yet again in mass numbers due to failure to secure their rights and safety? We have long ago concluded that the intention of the Sinhala authorities is to drive the Tamils out of Sri Lanka (ethnic cleansing) or to “de-Tamilize” (ethnocide) them so that they no longer are a viable group.

Abandonment of the Tamil people over the course of many years

In our view, the international community has fostered this by the long-time failure to act in the face of war crimes and crimes against humanity that all knew were occurring. Not one State came to the aid of the Tamil people during the war’s final years. The government’s boldness in openly carrying out its anti-Tamil agenda indicates that the government fears no consequences.

³ www.bbc.co.uk/news/world-asia-18034631.

⁴ www.indymedia.org.uk/en/2012/06/996689.html.

⁵ The first case to address this was *Amekrane v. the United Kingdom*, (Application no. 5961/72) where a friendly settlement was reached following the death of a person returned to and killed by Moroccan authorities. The Torture Convention, in its Article 3, prohibits the return of any person to a torturing country.

States preparing to address the situation of Sri Lanka in the up-coming Universal Periodic Review should take note that Sri Lanka has not complied with many of the recommendations made at its first Review. We have no reason to believe that this time around will be any different. This is yet another reason to consider that no meaningful progress will be made to implement the recommendations of the LLRC.

We ask, will there ever be the accountability demanded by imperative rules of international law? Members of the Panel of Experts have urged international inquiry into all events, even in the face of Sri Lanka's resistance. Looking into war crimes, crimes against humanity and mass atrocities should not require the permission of the alleged perpetrator: compliance is neither discretionary nor is it a political question.⁶

Recommendations

- the Council's mandate holders should consider both individual and joint measures to address contributing to the implementation of the Council's resolution.
- the international community as a whole should look very concerted and honestly at how and why it failed the Tamil people and make recommendations in this regard.
- states should begin to prepare for Sri Lanka's up-coming UPR session.

⁶ There is also no evidence that the government authorities intend to bring any charges or that there is a judiciary sufficiently independent or impartial to undertake actions against military officers and other officials who may reasonably be charged with violations. We note there are no living commanding officers of the Liberation Tigers of Tamil Eelam to stand trial as they were summarily executed surrendering with white flags. At most, we fear a few trials of low level military personal, likely on a political basis.