



General Assembly

Distr.
GENERAL

A/HRC/12/NGO/16
7 September 2009

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Twelfth session
Agenda item 4

HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

**Written statement* submitted by International Educational Development (IED), 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 Prisoners of War in Sri Lanka¹

1. International Educational Development and the Association of Humanitarian Lawyers are profoundly disturbed by the abject failure to comply with humanitarian law in the course of the conflict in Sri Lanka, especially in regards to prisoners of war (POWs) or those are alleged to be POWs.

2. In numerous written and oral statements throughout the long armed conflict in Sri Lanka we have pointed out the absence of compliance with minimum Geneva Conventions and The Hague Convention standards regarding POWs. Unfortunately the international community did not take up this issue with any seriousness of purpose regarding combatants of the Liberation Tigers of Tamil Eelam (LTTE) held by the government, allowing the current government to assume that it is free to do as it likes with them.² In our view, there is credible evidence of past and on-going grave breaches of humanitarian law in regards to LTTE combatants held as POWs by the government. The international community cannot afford to ignore this possibility, not only for past and potential victims of war crimes in Sri Lanka, but also because it is essential to re-establish the viability of humanitarian law in all conflicts. Under the terms of a common article in all four Geneva Conventions, State parties to the Geneva Conventions are obligated to search for persons alleged to have committed or ordered to be committed serious violations of humanitarian law. Additionally, under the terms of another common article, they cannot absolve any liability for such serious violations. The fact that many States have welcomed Sri Lankan officials reasonably chargeable with such crimes is itself an indication that these States have repudiated humanitarian law.

3. There are credible allegations and substantial evidence that the government forces executed senior cadres of the Liberation Tigers of Tamil Eelam (LTTE) as they attempted to surrender as POWs. The government itself released photographs that indicate that this may be true. As this would represent serious war crimes under humanitarian law if it in fact occurred, this should be investigated as soon as possible.

4. We have also forwarded to the relevant mandate holders a video tape that is alleged to be of the government forces shooting naked Tamils point blank. As the persons were naked, it is not possible to discern whether they were captured LTTE combatants or civilians, but it is reasonable to consider that they were naked so as not to be identifiable as POWs. The circumstances of this incident should also be investigated as soon as possible because such summary executions are also war crimes.

5. The situation of currently detained LTTE POWs is also of great concern, as they are all at risk of summary execution, torture and other grave war crimes.³ It is our understanding that the International Committee of the Red Cross (ICRC) has not yet been allowed access to the places where alleged POWs are being held, and we have no information about whether those detained

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

² We note that some mandate holders and other international actors indicated concern for breaches committed against POWs held by the Liberation Tigers of Tamil Eelam. Further, there were also a number of LTTE-held POWs turned over to the International Committee of the Red Cross, which was given some access to LTTE-held POWs.

³ The Council's mandate holders, for example, have repeatedly indicated widespread summary executions and torture taking place in Sri Lanka. It is reasonable to assume that ex-cadres of the LTTE would be subjected to these acts.

have access to judicial proceedings to challenge their status or the ability to exercise any of other the rights afforded POWs under international humanitarian law standards.⁴ Additionally, there is no disclosure by the Sri Lankan authorities of the names, ages or numbers of those being held.

7. We are also deeply disturbed by the abduction in Malaysia of Shanmugam Kumaran Pathmanathan, also known as KP, currently being held in detention in Colombo. Mr. Pathmanathan had, after the end of hostilities in Sri Lanka, announced he was assuming the leadership of the LTTE because all the other senior leaders had been killed. He also announced that the LTTE would utilize a “political-democratic” path to achieve Tamil goals. We fear that Mr. Pathmanathan may be subjected to torture in the course of interrogation.

8. As with others held as members of the LTTE, Mr. Pathmanathan is entitled to POW claim status or to the right to challenge that status before an appropriate judicial body.⁵ As he is essentially held incommunicado, it is not possible to know if he is claiming POW status. If he is, then he is only obligated to provide his name, rank and date of birth and military serial number. We also note that under humanitarian law rules, generally POWs may not be held in penitentiaries, but must be detained in facilities that conform to international POW standards. In Mr. Parthmanathan’s case, as with all POWs, he may not be charged with any offenses that may have been committed by LTTE combatants for which he had no direct involvement or responsibility. If he had actual command duties he may only be charged if he knew or could reasonably be expected to know that offenses would be committed by a subordinate and if he was in a position to take measures to prevent them.⁶

9. While the situation of POWs in all wars is an issue for the States that have ratified humanitarian law instruments, it is also an issue for a number of UN mandate holders. In our view this includes the Secretary- General, the High Commissioner for Human Rights, the Special Advisor on Children in Armed Conflict, the Human Rights Council and a number of its procedures and mandate holders. In particular, we consider that the mandates of the Councils rapporteurs on summary executions, torture, and the Working Groups on disappearances and detention are especially invoked. However, because of the urgent need to restore humanitarian law, we urge the Council to appoint a Special Rapporteur on Armed Conflict.

10. Regardless of politically motivated considerations regarding the LTTE, it is essential that the international community as a whole honors and respects, and ensures respect, for all the rights of LTTE combatants. Failure to do so will be yet another repudiation of humanitarian law, which, in our view, will haunt the UN and the international community for years to come.

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⁴ Minimum standards for the treatment of POWs are found in The Hague Convention of 1907, Regulations, Articles 4 – 20; Geneva Convention III as a whole (international armed conflicts) and Articles 3 and 130 (civil wars); Protocol Additional I to the Geneva Conventions, Articles 44 and 45; Protocol Additional II, Articles 5 and 6; and the application of the Marten’s Clause and the rule by analogy in general humanitarian law.

⁵ Both actual combatants and those acting purely in political roles under the authority of a combatant force are entitled to claim POW status.

⁶ This is known as “failure to act” liability.