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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.

[22 May 2009]

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

Application of humanitarian law 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, and the unfolding tragedy of genocidal proportions affecting the Tamil people there.

2. Throughout the long conflict there have been serious violations of humanitarian law – many of them considered grave breaches (war crimes) under Article 50 of Geneva Convention I of 1949, Article 130 of Geneva Convention III, and Article 147 of Geneva Convention IV. In numerous oral and written statements we have brought these violations to the attention of the Commission on Human Rights and now the Human Right Council for many years.

3. We are very grateful to the many United Nations officials who have addressed those violations falling under their particular mandates, both in individual and joint statements and in undertaking missions to Sri Lanka.

4. At the present time we have serious concerns about the physical survival of the Tamil people in the North and East of the country. For that reason we were especially pleased with the statement of 8 May 2009 issued by Rapporteurs Alston, Grover, de Schutter and de Albuquerque. Tamil victims of armed conflict are being killed outright: recent figures from UN officials indicate at least 8,000 Tamil civilians killed since January 2009 – a figure we consider low as there is presently no way of knowing how many were killed in the final two or three days or, having been left wounded on the field of battle, subsequently died. Survivors face life-threatening shortages of food, water and medical care. The government refused to allow the International Committee of the Red Cross and the World Food Programme to provide urgently needed medical care, food and water for a number of weeks prior to the government force's assaults on the remaining Tamil-controlled area. Many of the nearly 300,000 recent arrivals in government –controlled camps have died or are near death due to food, water and medical care. The government is also preventing access of humanitarian aid providers to these victims, and we expect deaths to mount. As we have pointed out in a number of our statements, denial of food, water and medical care to victims of armed conflict is an element of the crime of extermination under the Statute and Elements of the International Criminal Court.² If a combatant force is unwilling or unable to provide food, water or medical care, it must allow others, such as United Nations entities or humanitarian aid organizations, to do so. Additionally, medical personnel, whether treating sick or wounded combatants or civilians, have a right to protection. The provision of care may not be criminalized. In this light we are concerned about the fate of three doctors -- Dr. T. Sathiyamoorthy, Dr. T. Varatharajah, and Dr. Shanmugarajah -- who are apparently being detained by government authorities. We are also concerned about the staff of the Tamils Rehabilitation Organization who were in the Tamil-controlled area and whose whereabouts are unknown. We have grave concerns about the condition of captured or surrendered combatants of the Liberation Tigers of Tamil Eelam, as there are reports of outright killings in contravention of Article 130 of Geneva Convention III, and that those who are sick or wounded are not attended to in contravention of Article 50 of Geneva Convention I, Articles 10, 40 and 41 of Protocol Additional I to the Geneva Conventions and numerous other provisions of

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

² International Criminal Court, Rome Statute, Articles 7 (1)(b) and 7(2)(b); ICC Elements, Article 7(1)(b).

humanitarian law. International organizations, such as the International Committee of the Red Cross, must be given access to all prisoners of war.

5. One reason for the tragic Tamil genocide is that the international community did way too little for far too long, and when it finally began to act it was too late. Unfortunately, there are a number of States with geopolitical interests in Sri Lanka, including the United States, India, China, and Japan, that was made appallingly apparent recently when the Security Council was deciding whether to even address the situation at all. The Secretary-General did not help matters, by stumbling with the media over the issue and twice sending an envoy who is closely related to a paid military consultant to the government of Sri Lanka. Nine European governments, India, Israel, Iran, China and Pakistan have provided the government with military arms and equipment, even in light of the serious humanitarian law violations and the serious risk of genocide raised in this forum for so many years by us and many other non-governmental organizations. This so emboldened the current administration in Sri Lanka that it was persuaded it could carry out the extermination of the Tamil people and engage in serious and repeated illegal military operations in plain view with total impunity – which it did. It was persuaded that it could silence the media, either by assassination or intimidation with impunity – which it also did.³ Rather than comply with human rights and humanitarian law when urged to by the international community, government authorities were openly defiant. For example, when addressing the media after a recent meeting with the foreign ministers of the United Kingdom and France, President Rajapakse stated “they are trying to preach to me about civilians. I tell them to go and see what they are doing in Iraq and Afghanistan.”

6. While this written paper is submitted prior to the Special Session on Sri Lanka, we assume that the international community, especially the Council, will come to grips with the gravity of the situation, will demand immediate access by international actors to all places and Tamil victims they wish to see, and will take other relevant actions on an urgency basis. While military operations appear to be over, the resolution of the Tamil conflict is not. It is clear that the government of Sri Lanka, heavily dominated by the Sinhala majority, is unwilling and unable to resolve the situation on its own. Further, it intends to keep much of the Tamil population in the north in concentration camps with no access of international actors for quite some time, in spite of promises made to the contrary. This will result, of course, in prolonged arbitrary detention and other gross violations of human rights of the Tamil people: the Council must do all possible to prevent this from occurring.

7. One measure the Council should undertake is to demand that the government of Sri Lanka permit the High Commissioner to expand her office in Sri Lanka so that the situation of the Tamil people can receive concerted attention. The Council can also appoint a Special Rapporteur for Sri Lanka, with a mandate that includes monitoring progress made by the government to address the underlying causes of the armed conflict and how to ensure the full realization of the rights of the Tamil people. Should the government of Sri Lanka resist measures urged by the Council, the Council should urge penalty action within the United Nations system.

³ As stated in the Statement of 9 February 2009 by mandate-holders Corcuera Cabezul, Sekaggya, LaRue, Castrillo, Grover, Despouy, de Schutter, Alston and Rolnik, the government engaged in the “suppression of criticism and unabated impunity.”

8. Remedies to the Sri Lanka genocide may, with great international resolve and many years, result in the realization of all human rights of the Tamil people in Sri Lanka. However, the damage done to humanitarian law as a whole will also need such a resolve and many years to restore it as a viable and compelling body of law. It will not happen without actual efforts rather than mere talk. In this light, the Council must undertake specific actions to restore and revitalize humanitarian law. In particular we urge the appointment of a Special Rapporteur on humanitarian law. Such a mandate would not in any way conflict with the operations of existing humanitarian aid providers, such as the International Committee of the Red Cross, but rather would monitor existing armed conflicts for compliance with humanitarian law in an open and transparent way and would make recommendations accordingly to the Council and the General Assembly.
