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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Written statement* submitted by the 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.

[30 August 2007]

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

Children and armed conflict*

1. On 15 August 2007 International Educational Development and the Association of Humanitarian Lawyers sent a letter to M. Jean-Maurice Ripert, the Ambassador of France to the United Nations Headquarters in New York, in his capacity as chairperson of the Security Council Working Group on Children and Armed Conflict. We expressed concern about aerial bombardments of schools, hospitals, towns and camps for the internally displaced, the continued blockage of land supply routes for food, medicine and water for the Tamil areas, and dire warnings from the World Health Organization and others involved in humanitarian relief that the Tamil children face starvation, serious malnutrition and illnesses as a result. Urgent action is sorely needed.[†]

2. We also indicated concern that the issue of “child soldiers” in that conflict has far overshadowed these and many other grave breaches of humanitarian law. We noted that the Report of the Secretary-General on children in armed conflict in Sri Lanka (S/2006/1006) addresses the issue of child soldiers in far more detail than any other issue, even though in the reporting period the Liberation Tigers of Tamil Eelam (LTTE) had recruited perhaps 530 persons under age eighteen, of which about 230 were fifteen or older, with no indication whether any of these youths had actually engaged in hostilities. We pointed out the absence of detailed information on the numbers of military operations directed against civilians or the outcomes of such operations. We further pointed out that only five paragraphs addressed killing of children, although the Report indicates that as of October 2006, civilian casualties for the reporting year were about 1335, of which a significant number were children and that only five paragraphs addressing attacks on schools and hospitals.[‡] There were no statistics regarding the numbers of children wounded in military operations, or malnourished or ill due to severe shortages of food, medicine and water. In the three paragraphs addressing the “Action Plan,” one paragraph again discusses the LTTE and child soldiers, and there is no discussion at all of any other aspects of the presumably now-defunct plan that was to address such issues as urgently needed food and shelter. While the report mentions serious restrictions on humanitarian access, which of course constitutes the crime of extermination under the Rome Statute Article 7.1(b) and 7.2(b), we noted the lack of an overview of the situation of children in this war, including the fact that of the perhaps 500,000 persons displaced by both the Tsunami and the renewed fighting, there are estimates that as many as 50% are children.[§]

* The Association of Humanitarian Lawyers also shares the views expressed in this statement.

† Since the hostilities resumed in January 2006, we have submitted letters and information to, *inter alia*, the High Commissioner, the Special Advisor to the Secretary-General on genocide, Commission and Council special rapporteurs, and the Office for the Coordination of Humanitarian Affairs on the legal issues and the necessity of urgent action.

‡ Since this report, which for the most part addresses the situation as of October 2006, military operations directed at largely Tamil civilians have continued unabated, and many children have been killed or seriously injured.

§ We also noted that the report of the Special Advisor to the Special Representative for Children and Armed Conflicts focuses almost exclusively on the child soldier issue and only touches on a few of the other five important issues identified by the Working Group.

3. We are troubled by the fact that international monitors, including those operating under United Nations auspices, are using the age of 18 for the minimum age for recruitment or participation in hostilities when the international law age is clearly 15. This improper application of the law has been a key element in international demonizing of the Tamil forces (LTTE), which has spilled over to the Tamil people in Sri Lanka and the Tamil diaspora in a completely unacceptable manner.** It is also a factor in the unbelievable “free ride” given to the government of Sri Lanka in regards to grave breaches of humanitarian law in this conflict, including those adversely affecting hundreds of thousands of children, the vast majority of which are Tamil.

4. To support our view that the minimum age for recruitment or participation in hostilities is 15, we first indicated that the International Criminal Court uses that age. Rome Statute, Article 8.2(e)(vii). This provision derives from Article 77(2) of Protocol Additional I to the Geneva Conventions of 1949 and Article 4.3(c) of Protocol Additional II to the Geneva Conventions of 1949, both promulgated in 1977.†† In spite of the ambiguous language in Protocol Additional I we consider that the international community as a whole has accepted age fifteen as the minimum age for participation in hostilities.

5. We set out that Article 38 of the Convention on the Rights of the Child maintains the Geneva Convention age of 15 for participation in hostilities‡‡ and merely urges that States refrain from recruiting children under 15.

6. We indicated that the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (Optional Protocol) neither categorically raises the minimum age for participation in hostilities or of recruitment to 18 for States Parties. Article 1 of the Optional Protocol merely provides that States Parties take “all feasible measures” to ensure the non-participation of persons under 18 in direct hostilities. The Optional Protocol does not indicate what these “feasible measures” might be, or what direct participation in hostilities might mean.§§ If the

** The “Karuna Group” is also accused of using child soldiers.

†† We note that the provision in Protocol Additional II is much stronger, stating categorically that “children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in the hostilities.” Article 77 of Protocol Additional I merely requires States to “take all feasible measure in order that children who have not attained the age of fifteen do not take a direct part in the hostilities and, in particular, they shall refrain from recruiting them into their armed forces.” (Emphasis added).

‡‡ On this point, we agree with the statement of the representative of the United States that age 15 “reflected existing international law.” United Nations, *Legislative History of the Convention on the Rights of the Child*, Sales number:07.XVI.3 (2007) at p. 319.

§§ The article presumes, of course, that a State Party had members of its armed forces who had not attained the age of 18. The Optional Protocol also does not address situations such as those contemplated by the Geneva Convention articles regarding those who “spontaneously take up arms to resist invading forces” (for example Geneva Convention I, Article 13). In this regard, we construe “direct part in hostilities” to most reasonably mean participation in offensive, as opposed to defensive, military operations. In this regard, see Statement of Pakistan, E/CN.4/2000/SR.40. We also know of no provision of international law that precludes the rights of warring parties to teach self-defense or emergency first aid skills even to persons under age 15.

drafters truly intended to raise the age of participation in hostilities, they would have adopted the language from the Protocol Additional II, substituting age 18. We also pointed out that Article 3.1, addressing voluntary recruitment, is even weaker, with language so unwieldy that it is not certain what it actually means. Nonetheless, Article 3.1 is completely undone by Article 3.3.^{***} We pointed out a further weakness in that Article 3.5 exempts military schools.^{†††}

7. Finally, we urged that Article 4 of the Optional Protocol, which seeks, albeit in precatory not mandatory language, to hold non-State combatants to a different standard, is null and void due to its violation of the principle of non-discrimination in humanitarian law and its negative impact on the right to self-determination and basic principles of human rights. We also pointed out that a sizable number of States submitted reservations or declarations indicating that their minimum age is 16 or 17, further undermining any assertion that the Optional Protocol has generated a customary law standard.

8. If the Human Rights Council, the Security Council, and other actors are truly interested in the children of Sri Lanka affected by the armed conflict, there must be credible and accurate evaluation of the situation of children in Sri Lanka in light of all of the Working Group's six key issues. The issue of child soldiers should focus on children under the age of 15.

^{***} It is puzzling why involuntary recruitment was not addressed in the operative section of the Optional Protocol.

^{†††} The International Committee of the Red Cross joins us with concerns about this provision. See E/CN.4/2000/SR.42 at para. 53.