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Human rights situations that require the Council's attention

Written statement* submitted by the 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.

[13 February 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. 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. We submitted written statements and made oral ones at almost every United Nations human rights forum since 1983, and submitted countless appeals and documents to essentially all mandate holders. We stressed the Responsibility to Protect (R2P), the duty to prevent genocide and mass atrocities, obligations under the Geneva Conventions regarding civilians and other aspects of treaty-based and customary humanitarian law. While former Secretary-General Annan, three High Commissioners (Robertson, Arbour and Pillay), and a number of other mandate holders spoke out strongly as the situation got more and more dire, there was, as The Elders stated in a Press release in August 2010, a "deafening global silence" regarding the plight of Tamil civilians.¹ The resolution adopted at the Council's Special Session 11 is, in our view, the nadir of UN action in the field of human rights.

Post-conflict assessment

There have been two major post-conflict assessments -- the report issued in March 2011 by the Panel of Experts appointed by Secretary-General Ban Ki-moon and the report issued in December 2011 by Lessons Learnt and Reconciliation Commission (LLRC) appointed by the government of Sri Lanka. Reading carefully these two reports, one could reasonably conclude that they are about two different wars: the Panel of Expert's report stresses "carnage" of the civilian population, attacks on hospitals, systematic deprivation of food and medical supplies, and points out binding obligations in regards to accountability while the LLRC report essentially exonerates government armed forces, offers nothing new in terms of reconciliation and largely ignores the issue of accountability. International reaction to the Panel of Experts has been overwhelmingly favourable while reaction to the LLRC report has been largely negative.

Post-conflict action at the Council up to now

Since Special Session 11, there is essentially a verbal war and timing battle between the Government of Sri Lanka and anyone who addresses war-time violations, accountability, on-going violations or the possibility of further Council action. For example, in sessions since March 2010, the government has criticized the Secretary-General, the High Commissioner, the Secretary-General's Panel of Experts, several other mandate holders, a

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

¹ We note the statement of Elie Wiesel, Nobel Laureate for Peace: "What hurts the victims the most is not the cruelty of the oppressor but the silence of the bystander."

number of governments, and non-governmental organizations. We consider some of these attacks, particularly those directed at the High Commissioner, *ad hominem* and unique at human rights forums. Further, the government argues that the Panel of Expert's report is not an "official" document and cannot be discussed – a preposterous argument given that mandate holders, governments and non-governmental organizations always refer to "unofficial" documents in statements, reports and even in specific resolutions. Indeed, the Council holds special sessions largely on evidence from "non-official" information. Finally, the government delayed organizing the LLRC until May 15, 2010. The LLRC was to issue its report in November 2011-- after the Council's 18th session -- which we believe was to prevent any action at that session. We believe issuing the report itself was delayed to try to prevent action at this 19th session.² We also expect that the government will now beg for time in order to "implement" the recommendations of the LLRC and will argue that the next round of the Universal Periodic Review will suffice.

The report of the Panel of Experts, statements made by mandate holders and governments, and numerous oral and written statements by our organizations and other non-governmental organizations indicate that there are still wide-spread and serious human rights violations targeting Tamils in Sri Lanka.³ For example, credible evidence indicates more than five hundred disappearances since the end of the war. Tamil homes have been confiscated with no compensation in order to house more and more Sinhala soldiers or settlers into the Tamil areas. In this regard, reviewing the situation in Sri Lanka should not be limited by what we call "the battle of the reports" and methods and mechanisms to address accountability for war crimes, crimes against humanity and mass atrocities, but should also address on-going violations. As one investigator sets out:

More than two years after the end of the conflict, draconian emergency and anti-terror laws remain in place. Journalists, political opponents and human right defenders continue to be harassed, and public institutions and the rule of law eroded. ... Meanwhile the north of the country has been militarised, with the army controlling all aspects of daily life. Political activities have been suppressed and killings, disappearances and sexual violence remain frequent.⁴

We also point out the lack of any meaningful process toward reconciliation: a genuine reconciliation must properly address serious past and present grievances. The main Tamil political party, the Tamil National Alliance (TNA), currently indicates no progress to date, and the government has now cut off talks.

The failure of so many to have spoken up strongly in the face of what the obvious outcome was going to be for the Tamil people at the end of the war emboldened the government. We increasingly fear that manoeuvres by the government of Sri Lanka will drive the Council into a corner. We ask, will there ever be the accountability demanded by imperative rules of international law? Members of the Panel of Experts are pleading now with the international community to go forward with international inquiry into all events, even in the face of Sri Lanka's resistance. Looking into war crimes, crimes against humanity and mass atrocities

² The LLRC report was made public in mid-December 2011.

³ IED/AHL has recently sent communications of ongoing-violations to mandate holders in housing, arbitrary detention, cultural rights, disappearances, summary executions, human rights defenders, displaced persons, minority issues, torture, freedom of expression and violence against women.

⁴ E. Mortimer, "Is this Ban's 'Never Again' Moment?" The Huffington Post, August 17, 2011, www.huffingtonpost.co.uk/edward-mortimer/is-this-bans-never-again-moment. See also, International Crisis Group, "Sri Lanka: Women's Insecurity in North and East." Media release, December 20, 2011.

should not require the permission of the alleged perpetrator: compliance is neither discretionary nor is it a political question.⁵

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, and 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?

It is reasonable to ask how long the international community and the Council itself will tolerate the toxic approach taken by the government of Sri Lanka and by doing so fail to take reasonable and timely action to address accountability for past war crimes, crimes against humanity and mass atrocities. No government should get a “free pass.” The government will likely plea for time so that it can begin to implement recommendations made by the LLRC in its report. However, as we and a number of other organizations have stated, the evidence, especially in the area of the final battles, is being destroyed. Violence against Tamils is increasing. We also point out that the recommendations of the LLRC report do not adequately address accountability. Additionally, further delays in an inquiry by trying to set up an interactive dialogue or “stand alone” on the LLRC report is not helpful, as the document to address is the report of the Panel of Experts.

Recommendations

- The Council should discuss the report of the Panel of Experts, along with its recommendations.
- Council should either establish its own inquiry using the Commission of Inquiry on Libya as a possible model, or, in the alternative, request the Secretary-General to establish one. Such an inquiry should include recommendations regarding past and present violations, including measures addressing accountability.
- The Council should look very concertedly and honestly at how and why it failed the Tamil people and make recommendations in this regard. The Council should also ask the Secretary-General for his views on how the United Nations failed the Tamil people and how this can be avoided in the future in other conflicts and with other peoples.

⁵ 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.