



# General Assembly

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## Human Rights Council

### Twenty-second session

Agenda items 2 and 4

### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

### 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.

[11 February 2013]

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

## **Advancing accountability for war crimes and human rights violations committed against 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. In the last 6 months of the conflict, which ended in May 2009, between 35,000 and 50,000 Tamil civilians were killed by illegal military operations of the Sri Lanka forces targeting them, by malnutrition due to government's policy of cutting off of supply-lines to the Tamil civilians, and by other acts of the Sri Lankan authorities. On the last day of the war, nearly the entire command of the Liberation Tigers of Tamil Eelam (LTTE) was killed as individuals sought to surrender to the government's forces. These acts all constitute grave breaches (war crimes) under humanitarian law.

### **The United Nations system and the international community utterly failed in their obligations towards Tamil civilians and captured combatants**

Except for strong statements from former Secretary-General Annan, the last three High Commissioners, and several mandate holders, States, the Council and other mandate holders were largely silent, even though the information provided indicated that obligations under humanitarian law, the laws on genocide and of the Responsibility to Protect (R2P) should have been undertaken.<sup>1</sup> Our organizations addressed war crimes and crimes against humanity and the obligations to prevent genocide and mass atrocities in written and oral statements at all sessions of the Council and submitted numerous appeals with documentation to all relevant mandate holders. The Council's failure to act until after the war ended is without precedence, and the failure of the Secretary-General and his Special Advisor on the prevention of genocide and mass atrocities adequately to respond is inexplicable. Also, in our view the constant accusations against the LTTE for using child soldiers made by the Special Advisor on Children in Armed Conflict poisoned the well for all Tamil children in the conflict zones, whose plight in regards to the other 5 areas of the mandate was almost totally ignored. Additionally, the Special Advisor used the age of 18 as the legal age of combat, when the Geneva Conventions and the international tribunals indicate 15. There were relatively few "combatants" under age 15 in the LTTE (perhaps as few as several hundred) while hundreds of thousands of Tamil children suffered death, starvation, abuse (including rape), war-related injuries, preventable illness and homelessness.

### **Attempts to study what happened and ameliorate the plight of Tamil civilians and former LTTE combatants**

After a seriously flawed pro-government resolution was adopted by the Council at its 11<sup>th</sup> Special session, the Secretary-General appointed a Panel of Experts (POE) to study the situation. That panel came to the same conclusions that our organizations have been reporting throughout the war – shocking war crimes and equally shocking failures of the

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

<sup>1</sup> A number of States merely labeled the LTTE as a terrorist organization, and did not review what was happening on the ground from the perspective of humanitarian law. This prompted the government to commit even more grave breaches of the Geneva Conventions and customary humanitarian law.

international community and the United Nations responsibly to respond. The government of Sri Lanka then issued its own report of the conflict prepared by its Lessons Learnt and Reconciliation Commission (LLRC) that reads as if it is reviewing an entirely different conflict.

The Human Rights Council's resolution, A/HRC/RES/19/2, set up a process to assist and monitor the recommendations made in the report of the LLRC while ignoring the POE report. Even so, the High Commissioner was asked to report to this 22nd 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, but at time of writing we do not know who did although we urged all relevant ones to do so. The Sri Lanka authorities refused a visit by the High Commissioner under the preposterous pretext that it was not a party to the resolution. At this time, it is also apparent that reconciliation is a non-starter. We concluded long ago 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.

### **On-going violations**

To date, nothing has slowed the steady onslaught of the Sri Lankan authorities against the Tamil people, their lands and homes, their livelihood, and their language and culture. The media, especially the Tamil media, is facing extreme hardship. Torture, arbitrary detention and disappearances targeting Tamils continue. The Tamil areas are now heavily militarized. Tamils are being removed from voting lists in large numbers. Sinhala "triumphalism" (the term used in the POE report) flourishes. All of this is in plain view. Due to both the on-going violations and the failure to progress in terms of accountability and reconciliation, many human rights organizations have called for the Commonwealth to move its 2013 meeting scheduled to be held in Sri Lanka.

Neither the reports of extreme atrocities during the war, nor the on-going Council procedure, nor international pressure, nor the URP process has had any effect on the Sinhala-controlled government – the Tamils continue to suffer and the authorities enjoy complete impunity. There is no incentive domestically for "reconciliation" as most of the Sinhala political parties count on the military to control the Tamils in the North and East. Government officials at all levels of authority as well as certain political parties and prominent political actors continue harsh anti-Tamil rhetoric both at home and around the world. The Sri Lankan authorities continue their belligerency at Council sessions. Many of those speaking the loudest have international positions in embassies, and some of them had a direct role in the grave violations of humanitarian law. 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?

### **Advancing accountability: the urgent need for truth, justice and reparation and guarantee of non-recurrence**

Under imperative rules of international law there must be accountability and effective remedies for gross violations of humanitarian law.<sup>2</sup> Members of the Panel of Experts have urged international inquiry into all events, even in the face of Sri Lanka's resistance.

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<sup>2</sup> This arises not only under the "Basic Principles and Guidelines" set out by the General Assembly in its resolution 60/147 of 16 December 2005 but also under the individual instruments that are the basis of them such as the Geneva Conventions of 1949, the Protocols Additional, the Covenants, and the customary law principle of a right to a remedy.

Looking into war crimes, crimes against humanity, genocide and mass atrocities should not require the permission of the alleged perpetrator: compliance is neither discretionary nor is it a political question.

It is clear that the Sri Lankan government has no intention of moving towards accountability and indeed the authorities take measures to prevent it. There are no plans for reparation and no assurance of non-recurrence. Because of the intransigency of the government, the international community must prepare to assume the obligation itself. The Secretary-General has now appointed Deputy Secretary-General Eliasson to review both the report of the POE and that of his internal review committee – the Petrie Report. Hopefully, a mechanism or process for accountability will emerge. We especially encourage Special Rapporteur de Greiff to contribute to this.

### **Recommendations**

1. The Council should recommend and encourage an appropriate international mechanism to ensure full accountability for what took place and to provide appropriate remedies for the Tamil people. Such remedies must ensure provisions to prevent the recurrence of violations against the Tamil people. The government of Sri Lanka has impeded efforts in this regard for far too long.
  2. All mandate holders should consider both individual and joint measures to address both the on-going violations of human rights now taking place as well as contributing a review of how the United Nations system failed the Tamil people.
  3. The international community as a whole should look very concertedly and honestly at how and why it failed the Tamil people and make recommendations in this regard.
  4. Since the government of Sri Lanka is not moving forward with any credible proposals for reconciliation, the Council and the international community as a whole should consider a referendum of the Tamils in Sri Lanka, such as that held in South Sudan, to determine their political will in accordance with the principles set out in Article 21 of the Universal Declaration of Human Rights and other international instruments.
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