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JOINT SUBMISSION TO THE
UNITED NATIONS HUMAN RIGHTS COUNCIL
FOR THE UNIVERSAL PERIODIC REVIEW OF SRI LANKA
BY
INTERNATIONAL EDUCATIONAL DEVELOPMENT, INC.,
A NON-GOVERNMENTAL ORGANIZATION ON THE ROSTER
AND
THE ASSOCIATION OF HUMANITARIAN LAWYERS¹

¹ The Association of Humanitarian Lawyers does not have ECOSOC status. Our organizations presented a joint submission to the UPR of Sri Lanka in 2008. Between that time and the present we also submitted 14 written statements on the situation in Sri Lanka. Additionally we transmitted over 30 urgent actions and other information to numerous United Nations mandate holders.

SUMMARY

1. This submission addresses grave breaches of treaty-based and customary humanitarian law between February 2009 and 19 May 2009 in the course of the armed conflict in Sri Lanka between the military forces of the Liberation Tigers of Tamil Eelam (LTTE) and those of the Government of Sri Lanka, focusing mainly on issues relating to the protection of the civilian population. It also addresses violations of post-conflict rules of humanitarian law and the situation of human rights in Sri Lanka from 19 May 2009 until the present.

PROGRESS SINCE PREVIOUS UPR

2. After the previous UPR, there was a marked deterioration in human rights and the application of humanitarian law, especially in the final months of the armed conflict and for months post-conflict. A number of serious violations continue and new ones have emerged. Of the promises made at the 2008 UPR, the government of Sri Lanka (1) has not established a witness protection process; (2) has not upgraded detention facilities; (3) has not established bi-lingual capacity in the security forces and police; and (4) has not developed a bill of rights for internally displaced people (IDPs) – the large majority of which are Tamils displaced by both the war and the Tsunami. In regards to its promise to have a constructive relationship with the Office of the High Commissioner and with special procedures, we believe that the statements severely criticizing the High Commissioner and mandate holders at the sessions of the Council speak to a decidedly confrontational approach. In several of our oral and written statements we call the government's statements *ad hominem* attacks on both the Secretary-General and the High Commissioner. The government also pledged to develop a National Action Plan for the Protection and Realization of Human Rights. This plan was developed, submitted to the Cabinet in September 2011 and made public in December 2011.

GRAVE BREACHES IN THE LAST YEARS OF THE WAR

3. The government of Sri Lanka withdrew from the peace process in January, 2008 and immediately full-scale armed hostilities between its forces and the Liberation Tigers of Tamil Eelam (LTTE) were renewed.² Our organizations were alarmed at the many credible accounts of direct attacks on the civilian population and protected combatants, and we engaged with people on site, including some who have been our representatives at United Nations sessions and were working for national and international charities in the war zone. We set out only a few of the most serious violations of humanitarian law in this submission.

² Throughout the cease-fire period there were numerous breaches but both the government of Sri Lanka and the Liberation Tigers of Tamil Eelam still maintained that the peace process was on-going.

A. Blocking the Provision of Humanitarian Aid.

4. The Government continued to block the provision of food, water and medicines to the war areas and to other areas with large Tamil populations. The Government admitted it did so. We point out that impairing the delivery of humanitarian aid to civilians or wounded combatants is a violation of the most fundamental principles of humanitarian law. We further note that in the Statute and Elements of the International Criminal Court, such acts directed at civilians are part of the crime of extermination.³ Providers of humanitarian aid to Tamil civilians were also targeted: over 60 aid workers were killed or disappeared. In this regard, we point out the International Independent Group of Eminent Persons, appointed to look into some of the incidents involving murdered aid workers and other widely-publicized events, disbanded in April 2008 claiming it was not able to carry out a proper investigation due to the restricted mandate.

B. Carrying out Military Actions Targeting Hospitals and Health Facilities.

5. We obtained credible information from colleagues on the ground verifying the direct targeting by Government forces against hospitals and health care facilities, especially in the Tamil area known as the Vanni. At the time, we raised these concerns to mandate holders and the Council as a whole. Following the conclusion of hostilities, the Secretary-General appointed three persons to a Panel of Experts (PoE) to advise him on steps to take in regards to action on Sri Lanka.⁴ The PoE presented its Report to the Secretary-General and he made it public April 2010.⁵ The PoE Report verifies our information regarding hospitals and health facilities, and indicated that “[v]irtually every hospital in the Vanni, whether permanent or makeshift, was hit by artillery.”⁶

C. Carrying out Military Actions Targeting the Civilian Population.

6. Conservative estimates by UN officials and the PoE indicate as many as 40,000 Tamil civilians died in the final months of the war due to military operations that targeted them or were carried out with wanton and reckless disregard for their security. Since 2008 as many as 60,000 Tamil civilians died as a result of the targeting of them by the Sri Lankan military forces. Our delegates also indicate thousands of wounded persons, many of whom have lost limbs or received other serious life-altering injuries, and thousands of Tamil women who are widows, trying to meet the needs of their children.

7. Of particular concern to our organizations was the repeated military action against the Tamil people in the “no fire zones” established by the Government beginning in January 2009. The first “no fire zone” was attacked just days after Tamil civilians had moved into it. Several other “no fire zones” were set up, but each of them were subjected to military operations as well.

³ International Criminal Court, Rome Statute, Articles 7 (1)(b) and 7(2)(b); ICC Elements, Article 7(1)(b). Although Sri Lanka is not a party to the Rome Statute, its provisions are part of customary humanitarian law and thus Sri Lanka is bound by them in the course of armed conflict.

⁴This Panel is a result of a joint statement issued by the Secretary-General and the President of Sri Lanka to address accountability for acts in the course of the conflicts final days that violate humanitarian law and human rights law.

⁵ Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, March 31, 2011. (PoE Report). This Report has been transmitted to the Council and the High Commissioner.

⁶ PoE Report, para. 81.

The Government, in its own announcements and in the report it authorized to counter the PoE report, defended some of these attacks.⁷ However, the defenses offered by the Government do not conform to humanitarian law rules: the Government's report concluded that firing into "no fire zones" was justified because no other choice was possible. This is in stark contrast to norms of humanitarian law: a military action is prohibited if there would be undue civilian casualties. Clearly a "no fire zone" mostly populated by civilians is an area where military operations would necessarily produce undue civilian casualties. The PoE concluded that the Government forces deliberately targeted the "no fire zones."⁸ In fact, reading the PoE Report and the Report of the LLRC, one could reach the conclusion that they were about entirely different wars.

D. Killing Surrendering Combatants

8. From all credible evidence, including government photographs and information from Marie Colvin, a journalist who was in contact with the Government and the LTTE about an agreed-upon surrender, it appears that the Government's armed forces opened fire on surrendering LTTE combatants and others, such as family members, with them. Most of those surrendering were the commanders of the LTTE. While we believe this is true as we have reviewed many photographs of the LTTE leader and his family dead, we note that the evidence, to date, is not fully conclusive about what occurred.

POST-CONFLICT ARBITRARY DETENTION OF TAMIL CIVILIANS FROM THE WAR ZONE

9. Following the termination of hostilities, the Government forced the Tamils civilians who had been in the "no-fire zones" into camps, the largest being Manik Farm which housed nearly 300,000 of them.⁹ These Tamils were not allowed to leave, nor could they receive visitors and were effectively in detention camp. While humanitarian law does allow relocation of civilians during war-time, the relocation must be related to the exigencies of the war for the sole purpose of the safety of civilians. As is obvious, the war was over, the LTTE had no military capacity, and the safety-of civilians rule could no longer be applied. We grant that the Government was entitled to screen the detainees to ascertain if any were part of the LTTE forces, but the vast majority of the detainees were clearly not. We view the detention of these Tamils past a certain brief time to be prolonged arbitrary detention. Further, as was obvious from the Secretary-General's comments on visiting Manik Farm, minimum standards for detainees were clearly not

⁷ The Government of Sri Lanka established its own "investigative" committee, presumably to counter the Panel of Experts. The 8 member "Lessons Learnt and Reconciliation Committee (LRRC) was established in May 2010, and ordered to report within six months on 1. The failure of the Cease Fire Agreement; 2. Who might be responsible in this regard; 3. What lessons could be learned to ensure that there is no recurrence; 4. Methods of restitution to those affected; and, 5. Measures that can promote national unity and reconciliation. The LLRC issued preliminary recommendations in September 2011, and presented its final report in December 2011.

⁸ PoE Report, p.ii. This has apparently been verified by the satellite images from the UNITAR Operational Satellite Applications Programme (UNOSAT) provided to the PoE, especially in regards to "no-fire zones" 2 and 3. UNOSAT also reported that several heavy calibers howitzers were aimed at these "no-fire-zones" and that other weaponry was in areas with no legal military targets.

⁹We point out that up to the end of the fighting, the Government made many statements at the Council and elsewhere that there were only 70,000 Tamil civilians in the combat area, a figure we refuted based on information from people in the area. We also note that there were Tamils in other camps who fled the destruction of the Tsunami but had not yet been able to resettle.

met. Further, while these civilians were in dire need of food, medical care, and other necessities, international aid providers were not allowed to minister to them, in violation of humanitarian law rules.¹⁰

CIVIL AND POLITICAL RIGHTS OF TAMIL CIVILIANS¹¹

10. We have submitted information to the mandate holders for arbitrary detention, torture, disappearances, summary execution, human rights defenders and freedom of expression because of the continuing violations directed against Tamils that one of our colleagues calls worse than what led to the war in the first place. We note that there have been many unsolved murders of journalists in Sri Lanka, largely due to writing with sympathy for the Tamil community. We are aware of many submissions by other NGOs on these points, and rather than duplicate the information, state that we concur with their findings.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF TAMIL CIVILIANS

11. Of alarm in the post-war period is the imposition of conditions that places undue hardships on Tamils and their culture as Tamils. Of grave concern is the large number of confiscations of Tamils homes and property, which are then turned over to Sinhala people, many of them former soldiers from the south. As reported in the *Hindustan Times*,

[T]he military has been given free-run in the Tamil-dominated North and East. New cantonments are being built, army personnel run shops and Tamils are being shouldered out of their traditional fishing areas. In these areas, as a British diplomat who visited there says, “Civilian authority is completely subservient to the military.”¹²

Tamils have traditionally inhabited about 19,000 square kilometers but Government forces now occupy about 7,000 square kilometers of these.

12. Equally disturbing the Government destroyed over 2500 Hindu Temples and 400 churches and constructed over 2500 Buddhist stupas and statutes in the Tamil areas. Towns and villages are being renamed from their Tamil names to Sinhala ones. Tamil graves have been bulldozed.¹³

¹⁰ We note that a Party to the Geneva Conventions can refuse to allow outside providers as long as that Party is adequately addressing the need, which in this case was not so.

¹¹ We recognize that there are human rights violations against members of other communities in Sri Lanka. However, as organizations that specialize in humanitarian law, we have focused on the armed conflict and its impact on civilians. It was the Tamil community that suffered by far the worse violations in that war. The war was about Tamil rights and the Tamil community remains in a very precarious position.

¹² S.Patranobis & P.P. Chaudhuri, “T-Junction in the Road,” *Hindustan Times*, 19 April 2012.

¹³ The combination of grave breaches targeting Tamils, and the post-conflict acts to undermine the Tamil people and their culture evokes criteria for the application of the law of genocide as the International Court of Justice did in its orders of 8 April and 13 September of 1993 in regards to actions against Bosnian Muslims by Serbian forces. The finding of the International Tribunal for Rwanda in its *Akayesu* case is also instructive. See ICTR-96-4-T.

RECONCILIATION AND ACCOUNTABILITY

13. Our organizations detect no efforts whatsoever to foster reconciliation between the Tamil community and the Sinhala majority.¹⁴ Tellingly, the government has issued no statement of regret, condolence or apology to the Tamil community as a whole or to a single Tamil victim. As has been noted by the Tamil National Alliance political party in communications to us and also to the Secretary-General and the Council, there had been some initial interaction between them and the Government, but this has been essentially suspended. Most of the rehabilitation of the war areas has been in favor of the Sinhala settlers and international business developers, a reality that is hardly conducive to establishing rapport between peoples who have been hostile to each other since the end of British rule in 1948. Reconciliation must go far beyond dialogue between political parties but include assurances that a perpetual minority such as the Tamils has a genuine say in their governance, has the ability to promote and preserve its language and culture, and is able fully to realize their human rights. We consider that a full accounting of all violations during the war between the parties is an essential component of reconciliation as this would provide a basis for trust that is not now present. Further, without a witness protection program, it will not be possible accurately to account for events. The Government's two efforts to date to address the situation – the LLRC and the National Action Plan on the Protection and Promotion of Human Rights -- are seriously flawed.¹⁵ We also note the hostility that the Government and Sinhala groups have overtly displayed against those addressing the plight of the Tamils or seeking accountability and reconciliation. These hostile displays have occurred against our delegates and others in Sri Lanka. Regrettably, they have also occurred at the sessions of the Council and in events taking place in and outside the Palais. In addition to the verbal attacks on UN personnel, several of our delegates to the Council's 19th session were directly bullied and threatened by representatives of the Government. The Government representatives have also rudely interrupted a number of NGO forums since 2009.

14. There has been a culture of complete impunity in Sri Lanka for many years, further hampering future efforts of reconciliation and accountability should the government choose to start any. The international community has been partially responsible for this by failing properly to address the situation in Sri Lanka until the final days of the war when preventing mass atrocities was not possible, and even though the international community was bound by the provision of Common Article 1 to the Geneva Conventions, the UN's Responsibility to protect (R2P) doctrine and other binding provision of humanitarian and human rights law. There has also been a history of failed "commissions" or investigations by successive Sinhala Governments since independence. There are no signs that this has changed. On the contrary, the Government continues to display what the PoE Report refers to as "triumphalism."

¹⁴ There are, of course, major hostilities between Sinhala parties, but reconciliation between them is not what the Government and the international community means by reconciliation in Sri Lanka.

¹⁵ We note that many States and non-governmental organizations have this view. We are aware of NGO submissions in this regard, and rather than duplicate them, we state that we concur with their criticisms of the LLRC Report and the plan.

CONCLUSION

15. The situation of human rights in Sri Lanka will not improve until the culture of impunity gives way to a culture of responsibility, accountability, and genuine and meaningful proposals to ensure the full rights of the Tamil community and all others in Sri Lanka. This will require concerted and effective international action, including forceful action by the Council.