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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251  
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**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.

[28 February 2007]

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

### **Children and armed conflict<sup>1</sup>**

1. International Educational Development (IED) has long been concerned about the situation of children affected by armed conflicts because our organization's primary mandate is the application of humanitarian law in all armed conflicts. We note with interest the concern about children and armed conflict shown by the Security Council, and especially the efforts made by its Working group on children and armed conflict that it established in July 2005 and is most ably chaired by France.

2. The Working group has developed a list of six key issues for the monitoring and reporting mechanism: (a) the killing and maiming of children; (2) recruiting and using child soldiers; (3) attacks against schools and hospitals; (4) rape and other grave sexual violations against children; (5) abduction of children; and (6) denial of humanitarian aid access to children.

3. While we agree these areas of review are of critical importance, in our view monitoring and reporting should provide the most comprehensive picture possible of the situation of children in any particular conflict. For example, in many wars there are large numbers of war-displaced children. Displacement is frequently under extreme hardship conditions for children, with lack of shelter; inadequate food, water or medical care; separation from parents; and lack of schooling. A comprehensive approach to reviewing a particular conflict that adversely affects children can help plan for and deliver the most appropriate relief from national or international relief providers.

4. While war in general results in internal displacement, combatant groups, whether government forces or opposition forces, frequently target the civilian population with military bombardments or use food as a weapon of war to force them to flee a particular area. When the targeted civilians are of a particular ethnicity, this results in ethnic cleansing. Such was the case in several of the parts of the former Yugoslavia, in Burundi, in Sri Lanka and in other current or recently ended conflicts. In Sri Lanka, for example, Tamil civilians, a large percentage of which are children, were recently starved out and bombarded out of the Vaharai region in the East of the island-- a Tamil area for hundreds of years. As in other areas where Tamil civilians were forced to flee, the government is already relocating Sinhala people from the Sinhala areas into this newly "ethnically cleansed" area.

5. We agree that the issue of the recruitment and use of child soldiers is extremely important, but have some concerns relating to at what age a child is a child soldier. The current law of armed conflict, in particular the Geneva Conventions of 1949 and the Protocols Additional of the Geneva Conventions, promulgated in 1977, provide that the minimum age for soldiers is 15. For example, Article 77.2 of Protocol Additional I provides, in pertinent part:

"The parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take

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<sup>1</sup> The Association of Humanitarian Lawyers also shares the views expressed in this statement.

direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces.”<sup>2</sup>

The rules also indicate that recruitment shall give priority to the oldest of those between fifteen and eighteen. Article 38.2 and 38.3 of the Convention on the Rights of the Child also reflects this established rule. We note that the International Criminal Court has established that charges of using child soldiers brought in March 2006 against Thomas Lubanga Dyilo, a militia leader of the Union of Congolese Patriots, will use the age fifteen. This has been confirmed by the pre-trial Chamber on 29 January 2007.

6. In spite of the rights and duties of combatant forces established in humanitarian law, the Optional Protocol to the Convention on the Rights of the Child raises the age of recruitment and participation in hostilities in a very troubling way. Article 3.1 to the Optional Protocol states that Parties “shall” raise the age of voluntary recruitment to age eighteen. Normally, the term “shall” in international instruments is absolute. However, in the Article 3.3, the Optional Protocol addresses Parties that do not, in fact comply with Article 3.1: the Parties that recruit and use at an unspecified age younger than eighteen must provide certain safeguards related to that recruitment and use. In this light, the Optional Protocol does not actually change the age of recruitment or use of children between the ages of fifteen and eighteen at all, but rather keeps the ages established by the Geneva Conventions and Protocols Additional. States that in their national law limit recruitment and use of combatants to those who have attained age eighteen, have no need to ratify this Optional Protocol. Those that recruit at a younger age (but, of course, only those that have attained the age of fifteen) have no reason to ratify this Optional Protocol either, as they can merely cite Article 3.3 and change nothing except ensure unspecified “safeguards.”

7. Even more troubling in the Optional Protocol is the provision of Article 4, which purports to obligate “armed groups” other than government forces not to recruit or use soldiers under the age of eighteen. This provision alters the clear language of the Geneva Conventions and Protocols Additional, which provide “armed groups” with the same age fifteen choice as government forces. The Optional Protocol does not on its face indicate that it is undermining the Geneva Conventions or other norms of customary international humanitarian law. In our view a subsequent treaty may not reach back to an earlier treaty and modify it without clear notice to the States Parties that that is what their ratification would signify. Further, the “armed groups” with rights under the Geneva Conventions are not States Parties of the Optional Protocol, and thus can have no rights or duties altered by it in reference to them: it is a fundamental principle of international law that a treaty may not alter rights and duties of third parties with rights under other treaties without their full consent. Of course, “other groups” can agree voluntarily to the age requirements of the Optional Protocol, but they are also free to reject such agreements at any time. In our view, the International Criminal Court’s decision to use the age fifteen in its case against Thomas Lubang Dyilo reflects our analysis.

8. We are aware of the political agenda of various actors relating to this highly controversial measure and that this issue has been exploited in relation to certain armed

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<sup>2</sup> This rule is set out in Protocol Additional II governing non-international armed conflicts (civil wars) in Article 4.3 (c).

conflicts, most especially in Sri Lanka. In the armed conflict there, over-emphasis on a relatively small issue in the context of the devastation this war has rained on mostly Tamil children has allowed a genocidal catastrophe to be sidelined over quibbling on names and numbers of combatants, many of whom are admitted to be age seventeen. Even the special mission carried out by the Special Representative of the Secretary General on Children Affected by Armed Conflict focused almost exclusively on the child soldier controversy and covered, albeit in a cursory fashion, only a few of the other, far more critical issues, for Tamil children affected by war. Further, there was no mention at all of targeting of Tamil schools and hospitals or the killing or maiming of Tamil children. Finally, there was no presentation of the overall situation of children in the armed conflict in Sri Lanka, including the fact that nearly one-third of all Tamil children in the war area are in camps for the displaced under brutal conditions with a life-stunting shortage of food.

9. The Human Rights Council can play a useful role in efforts to address the situation of children adversely affected by armed conflict. First of all, it can indicate its support for a comprehensive monitoring and reporting effort by the Security Council's Working group. Secondly, it can propose an advisory opinion of the International Court of Justice on the problems set out here on the Optional Protocol to the Convention on the Rights of the Child regarding the legal age of combatants. Thirdly, it can adopt a balanced approach regarding all armed conflicts in which children are adversely affected and call on the international community as a whole as well as the mechanisms of the United Nations to provide effective remedies and relief.

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