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## POSITION PAPER OF THE WORLD ORGANISATION AGAINST TORTURE

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## Human Rights and Counter-Terrorism

OMCT has followed developments in the current fight against terror with grave concern.

Since the attacks of September 11, numerous States have adopted or announced measures that are incompatible with their obligations under international law. OMCT recognizes that one of a government's primary duties is to ensure the security of its citizens. Nevertheless, the issue of security must not be used to ignore or abolish guarantees, that have been developed and adopted over many years, to protect all persons from abuse and serious human rights violations such as torture, and protect the innocent from persecution.

Such adopted or contemplated measures, include:

- The removal or severe limitation of basic safeguards for persons in detention. These safeguards are essential to prevent torture or cruel, inhuman or degrading treatment or punishment. In practice, measures such as denial of access to a lawyer, doctor or family members to persons in detention have resulted in prolonged incommunicado detention which together with the increased application of administrative detention has placed some detainees outside the protection of the law.
- The deportation, extradition, denial of entry, or expulsion of persons at risk of being subjected to torture in contravention of article 3 of the UN Convention Against Torture and the principle of *non-refoulement*
- The adoption of laws and measures that severely curtail the right to fair trial. The possibility of the imposition of the death penalty in the absence of minimal guarantees for a fair trial and/or for vaguely defined "terrorist" offences could lead to violations of right to life.

Counter-terrorism laws and measures have been adopted or are being discussed by countries across the world. However, existing human rights mechanisms are not capable of adequately and fully monitoring States compliance with human rights norms when adopting and implementing such laws.

Some of the difficulties faced by existing mechanisms and bodies are: many are applicable only to a limited number of countries; many do not carry out monitoring activities on a continuous basis; finally, others are limited in scope, and thus incapable by their very nature of considering all relevant aspects of existing and proposed counter terrorism measures.

Existing UN monitoring mechanisms face many of the problems described above. The supervision of the human rights treaty system only functions in relation to States parties to the respective human rights treaties. In addition, the examination of general situations by the treaty bodies is normally only accomplished periodically, once every few years and after a State party has deposited a report. As for the various mechanisms created by the Commission on Human Rights (CHR) these have mandates that are restricted to a theme or country.

Measures related to the implementation of Security Council resolution 1373 of 2001 are currently monitored by the Counter-Terrorism Committee of the UN Security Council (CTC). Nevertheless, to date, the CTC has not incorporated a human rights analysis within its work and has not appointed a human rights specialist among its expert advisers.

Regional bodies and mechanisms suffer similar limitations.

In view of the serious consequences that counter terrorist measures have already had on the respect of international human rights norms as well their further potential implications, OMCT considers it essential that an independent supervisory mechanism be created. Such a mechanism should both monitor the implementation of existing and proposed counter-terrorism laws and measures and help ensure their compliance with international human rights law and other relevant international norms.

OMCT welcomes the resolution adopted by the United Nations General Assembly, on 18 November<sup>1</sup>, requesting the High Commissioner to submit a study on the extent to which existing UN mechanisms and bodies are able to address the issue of counter-terrorism measures and Human Rights. Nevertheless, OMCT believes that the establishment of a permanent mechanism with a specific mandate regarding this issue is still of matter of utmost urgency.

On October 28 2003, OMCT co-signed a declaration, together with numerous other human rights non-governmental organizations on the need for an international mechanism to monitor human rights and counter-terrorism<sup>2</sup>. This declaration reflects OMCT's main preoccupations regarding this issue.

In line with the recommendations made in the common declaration OMCT would like to:

- **Call upon the United Nations Commission on Human Rights, at its sixtieth session in 2004, to establish as a matter of utmost priority an independent mechanism on the question of human rights and counter-terrorism measures;**
- **Request that the Commission mandate such a mechanism to monitor the compliance of States with their international human rights obligations in their efforts toward countering terrorism, with a view to ensuring that any measures taken are in compliance with international human rights law;**
- **Request that so as to ensure a comprehensive human rights approach, the mechanism should:**
  - a) **have the capacity to undertake *in situ* visits;**
  - b) **establish a dialogue and enhanced cooperation with the CTC with a view to assisting States to better meet their human rights obligations in implementing UN Security Council resolution 1373;**
  - c) **engage with and take into account the observations and recommendations of all relevant treaty bodies, including the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee Against Torture, the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination Against Women, and the Committee on Economic, Social and Cultural Rights;**
  - d) **engage with and take into account the analyses, observations and recommendations of all Relevant Charter-based organs, including the Commission on Human Rights and its Special Procedures mechanisms**

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<sup>1</sup>United Nations General Assembly, *Protection of human rights and fundamental freedoms while countering terrorism*, 18 November 2003, A/C.3/58/L.71, para. 10.

<sup>2</sup> See *Joint Declaration on the Need for an International Mechanism to Monitor Human Rights and Counter Terrorism*, founding signatories: Amnesty International; Association for the Prevention of Torture (APT); International Federation of Action by Christians for the Abolition of Torture (FIACAT); International Commission of Jurists; International Rehabilitation Council for Torture Victims (IRCT); Redress: Seeking reparation for torture survivors; World Organisation Against Torture (OMCT); Fédération Internationale des Ligues des Droits des Droits de l'Homme (FIDH); Human Rights Watch; International Service for Human Rights; Friends World Committee for Consultation (Quakers).

and the Sub-Commission for the Promotion and Protection of Human Rights;

- e) engage with and take into account also the analyses, observations and recommendations of regional institutions and mechanisms, including the African Commission on Human and Peoples Rights, the Council of Europe, the European Committee for the Prevention of Torture, the European Court of Human Rights, the European Union Network of Independent Experts in Fundamental Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe;
  - f) Co-ordinate activities with the Office of the UN High Commissioner for Human Rights;
- Call upon regional inter-governmental organisations, particularly those presently engaged in counter-terrorism efforts and including the African Union, the Association of South East Asian Nations, the Council of Europe, the European Union, the League of Arab States, the Organisation for Security and Cooperation in Europe, the Organisation of American States, and the Organisation of the Islamic Conference, to develop or strengthen effective monitoring systems to ensure that counter-terrorism measures adopted or contemplated in Member States are compatible with international human rights and humanitarian law.

### Torture and Ill-Treatment

Debate on the legitimacy of the use of torture and/or ill-treatment in the anti-terror campaign has continued in the course of 2003. Discussions have usually taken two forms. The first, is that torture should be allowed in certain circumstances, notably in what are known as “ticking bomb” scenarios. The second argument has been that certain types of ill-treatment or “stress and duress” techniques fall short of torture and are somehow therefore more acceptable.

OMCT would like to recall once again, that the prohibition of torture is a norm that cannot be derogated from or suffer any kind of limitation under any circumstance. It is a norm that is widely regarded as *jus cogens*<sup>3</sup> and that, as such, cannot be altered by treaty or by a subsequent customary rule but only by the emergence of a new contrary norm of *jus cogens*.

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<sup>3</sup> See European Court of Human Rights, *Al Adsani v UK*, judgment of 21 November 2001, Reports of Judgments and Decisions 2001-XI, para. 60-61 ; *the Prosecutor v. Anto Furundzija*, 10 December 1998, *Trial Chamber II* case N° IT-95-17/1T; *General Comment No. 24* on "Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocol thereto, or in relation to declarations under Article 41 of the Covenant", issued on 4 Nov. 1994 by the *United Nations Human Rights Committee*, para. 10 ("the prohibition of torture has the status of a peremptory norm"). In 1986, the *United Nations Special Rapporteur*, P. Kooijmans, in his report to the *Commission on Human Rights*, took a similar view (E/CN. 4/1986/15, p. 1, para 3). That the international proscription of torture has turned into *jus cogens* has been among others held by U.S. courts in *Siderman de Blake v. Republic of Argentina*, 965 F. 2d 699 (9<sup>th</sup> Cir. 1992) Cert. Denied, *Republic of Argentina v. De Blake*, 507 U.S. 1017,123L. Ed. 2d 444, 113 S. Ct. 1812 (1993); *Committee of U.S. Citizens Living in Nicaragua v. Reagan*, 859 F. 2d 929, 949 (D.C. Cir. 1988); *Xuncax et al. v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995); *Cabiri v. Assasie-Gyimah*, 921 F. Supp. 1189, 1196 (S.D.N.Y. 1996); and *In re Estate of Ferdinand E. Marcos*, 978 F. 2d 493 (9<sup>th</sup> Cir. 1992) Cert. Denied, *Marcos Manto v. Thajane*, 508 U.S. 972, 125L. Ed. 2d 661, 113 S. Ct. 2960 (1993). The House of Lords also considered the prohibition of torture to be part of *jus cogens* see *Regina v. Bartle and the Commissioner of Police for the Metropolis and other (Appellants), Ex-Parte Pinochet (Respondent) (On appeal from a Divisional Court of the Queen's Bench Division)*; *Regina v. Evans and Another and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet (On appeal from a Divisional Court of the Queen's Bench Division)*.

Regarding the use of “stress and duress” techniques, OMCT would like to note that the Committee against Torture has concluded that methods such as those that are currently been debated constitute torture, in particular when used in combination.

The Committee against Torture stated that methods which include:

“(…) (1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music for prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats, including death threats, (6) violent shaking, and (7) using cold air to chill, and are, in the Committee's view, breaches of article 16 and also **constitute torture as defined in article 1 of the Convention**. This conclusion is particularly evident where such methods of interrogation are used in combination, which appears to be the standard case.<sup>4</sup> (emphasis added)

Moreover, OMCT would like to note that the prohibition against ill-treatment is non-derogable under general human rights treaties and that, as such, cannot be suspended under any circumstance. Under the Geneva Conventions, the use of ill-treatment constitutes a grave breach giving rise to universal jurisdiction. The Rome Statute lists ill treatment as a separate category (in addition to torture) in its list of acts which may constitute crimes against humanity.<sup>5</sup> Similarly, ill-treatment is also considered by the Rome Statute as a war crime in both international and non-international armed conflict.<sup>6</sup>

Therefore, States have an obligation to prevent not only torture, but also other forms of ill-treatment. In addition, States have an obligation to punish those who perpetrate such acts. Under no circumstance can the use of ill-treatment be authorized. OMCT would like to reiterate that the deliberate use of ill-treatment is a grave violation of human rights and can constitute a war crime and that the use of such treatment can not be authorized or legitimized in any circumstances .

## **Incommunicado Detention**

Since its creation in 1986, it has been OMCT's experience that persons held in incommunicado detention are particularly vulnerable to the most serious violations of their physical and psychological integrity. In addition, as was recalled last year by the UN Commission on Human Rights in its resolution on torture, prolonged incommunicado detention may in itself amount to torture or cruel, inhuman or degrading treatment.

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<sup>4</sup> Concluding observations of the Committee against Torture : Israel. 09/05/97, A/52/44, paras. 253-260. (Concluding Observations/Comments), para. 257.

<sup>5</sup> Article 7 Crimes Against Humanity: (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health, Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9\*

<sup>6</sup> Article 8 War Crimes :

- a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
  - ii) Torture or inhuman treatment, including biological experiments; (...)
- c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
  - (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

Therefore, OMCT shares and supports the UN Special Rapporteur on Torture's view on this issue, according to which "incommunicado detention should be made illegal, and persons held incommunicado should be released without delay".<sup>7</sup>

In this regard, OMCT believes that all persons deprived of their liberty should be guaranteed, from the very outset of their detention, the right to have access to a lawyer of their choice, the right to have access to a doctor of their choice, and the right to notify a close relative or third party of their choice. All meetings with a lawyer or a doctor must also be allowed to be conducted in private if requested.

### **Administrative Detention**

Administrative detention is characterized by holding detainees without charge or trial, outside the context of a criminal procedure. Persons are sometimes held in detention for months and even years.

OMCT believes that administrative detention, as it often puts detainees beyond judicial control, creates conditions which increases the risk of torture and cruel, inhuman or degrading treatment. In some cases, especially when administrative detention is excessively prolonged, it constitutes arbitrary detention and may amount in itself to cruel, inhuman or degrading treatment<sup>8</sup>. In addition, OMCT is concerned that grounds for administrative detention are often broadly defined, leaving space for expansive interpretation, and thus arbitrary practice.

OMCT believes that persons in administrative detention should be entitled to at least the same degree of protection as persons under criminal detention principle persons. In any event persons under administrative detention are entitled to certain minimum guarantees, including: the right to be informed of the reasons for the arrest; the right and the possibility to challenge the lawfulness arrest and detention<sup>9</sup>; and the right to be brought promptly before a judge. In addition, States must precisely and limitedly define the grounds according to which administrative detention may be applied.

Along these lines, OMCT would like to urge the Commission on Human Rights to, in this years Resolution on Torture:

- **Categorically re-affirm that torture is strictly prohibited under international human rights and humanitarian law and its prohibition is a norm of *jus cogens*.**
- **Remind states that certain methods, used to inflict sensory deprivation or other forms of severe discomfort to persons held in detention, breach article 16 and can also constitute torture as defined in article 1 of the Convention Against Torture. As stated by the Committee Against Torture, these methods include: "(...) (1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music for prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats, including death threats, (6) violent shaking, and (7) using cold air to chill"**
- **Recall that ill-treatment cannot be used under any circumstances including situations of if threats to national security.**

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<sup>7</sup> Report of the Special Rapporteur on the question of torture, E/CN.4/2003/68, 17 December 2002, par. 26 g.

<sup>8</sup> See: CAT's Conclusions and Recommendations on Israel, 18 May 1998, A/53/44, para. 241 and the Human Right Committee's Conclusions and Recommendations: Israel 18 August 1998, CCPR/C/79/Add.93, para. 21.

<sup>9</sup> UN Committee on Human Rights, *Adolfo Drescher Caldas v. Uruguay*, Communication N° 43/1979 (11 Jan. 1979), U.N. Doc. Supp. N° 40 (A/38/40) at 192 (1983), para. 13.2.

- **Declare that incommunicado detention should be made illegal and that persons held incommunicado must be released without delay.**
- **Enumerate detailed safeguards aimed at ensuring that incommunicado detention is not used in practice.**
- **Remind States that under international law persons under administrative detention are entitled to certain minimum guarantees, including: the right to be informed of the reasons for the arrest; the right and the possibility to challenge the lawfulness arrest and detention**

## **The Right to Reparation**

OMCT considers that the adoption of a universal instrument within the United Nations System that codifies existing norms and standards on the right to a remedy and reparations is long overdue. The Commission on Human Rights first adopted a resolution in support of the drafting of basic principles concerning the right to reparations in 1993.<sup>10</sup> For many years after discussions on the draft progressed very slowly.

Nevertheless, in the last two years, the process has found a new dynamism. Two Consultative meetings for member States, intergovernmental and non-governmental organisations have been held, one October of 2002 and once again in October of 2003.

These meetings have led to significant progress on a number of issues and proved to be an excellent process to discuss and examine the *Draft Principles*. Informal consultations are to continue this year before the sixtieth session of the Commission on Human Rights in order to advance discussions on the issue.

OMCT would like to express the hope that these consultations will lead to a consensus on a text leading to its adoption by the Commission.

OMCT would like to:

- **Urge the Commission on Human Rights to once again give priority to the finalization of the *Draft Principles* and to, if no consensus emerges, authorize the continuation of discussions in an appropriate forum with a view to their adoption in 2005.**

## **Impunity**

OMCT considers that in spite many recent advances such as the creation of the International Criminal Court, impunity is still one of the most crucial issues facing the international community and national governments in the pursuit of the respect for international human rights and humanitarian law.

Last year, OMCT welcomed the Commission's decision to request the Secretary General to commission an independent study to assist States in strengthening their domestic capacity to combat impunity taking into account the Set Principles on Impunity.<sup>11</sup> The proposed study will be of great value in drawing attention to some of the main difficulties faced by governments and to progress made in the struggle against impunity. This document should

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<sup>10</sup> Commission on Human Rights, Resolution 1993/17.

<sup>11</sup> Commission on Human Rights, Impunity, Resolution 2003/72, para. 16.

also provide important insight into current applications of the Set Principles<sup>12</sup> and to additional adequate measures to ensure their implementation.

OMCT believes that the Set Principles are an essential complementary instrument to recent advances in the struggle against impunity. If adopted, such principles would represent an important tool in the struggle against impunity and would provide domestic governments with valuable guidelines on how to render effective their international law obligations regarding this issue. The principles have been already proved invaluable as these have already become a reference for international human rights organs and bodies, in particular within Inter-American system.<sup>13</sup>

Accordingly, OMCT calls on the Commission on Human Rights to:

- **Continue to give priority to the question of impunity and that it establish the most appropriate means with a view to facilitating the prompt adoption of the set Principles by the Commission on Human Rights.**

### **Human Rights Defenders**

OMCT welcomes the vital work that Ms. Hina Jilani, the United Nations Special representative on Human Rights Defenders, has been carrying out to protect and promote human rights defenders over the past years, as well as the work carried out by Inter-American Commission's Special Unit on Human Rights Defenders. OMCT also welcomes the establishment by the African Commission on Human and Peoples' Rights of a focal point on human rights defenders at its 34th Ordinary Session held in Banjul, Gambia, in November 2003.

However, despite all these significant developments at the international and the regional levels, OMCT is gravely concerned over the deterioration of the situation of human rights defenders in many parts of the world. Over the past year OMCT has continued to receive information concerning cases of death threats, acts of violence, torture, arbitrary arrest and detention targeting human rights defenders. Defenders have been victims of smear campaigns and NGOs often are faced with numerous obstacles to carrying out their work like registration, confiscation of equipment, and various forms of harassment.

As OMCT emphasized in its position paper last year, we are particularly concerned about the impact that security and counter-terrorism policy, legislation and practices have on the safety of human rights defenders and on their ability to carry out their work. While OMCT is aware of the States' obligation to provide security for persons under their jurisdiction, it is concerned that the fight against terrorism is increasingly diverted from its primary objective and used by governments to establish or strengthen their hold on power at the expense of their commitments to human rights (see above).

OMCT urges the Commission on Human Rights to:

- **Support the mandate of the United Nations Special representative on Human Rights Defenders by providing necessary material and financial support;**

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<sup>12</sup> Question of the impunity of perpetrators of human rights violations (civil and political), Final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, E/CN.4/Sub.2/1997/29, 26 June 1997.

<sup>13</sup> See the decision of the Inter-American Court in *Bámaca Velásquez Case*, Reparations (art. 63(1) American Conventions on Human Rights), Judgment of 22 February 2002, para. 76. Also Inter-American Commission on Human Rights decisions on: *Manuel Meneses Sotacuro y Félix Inga Cuya v Peru*, Cases 10.904, Report N° 46/00 13 April 2000; *Carmelo Soria Espinoza v. Chile*, Case 11.725, Report N° 133/99 of 19 November 1999; and *Víctor Manuel Oropez v Mexico*, Case 11.740, Report N° 130/99, 19 November 1999, among others.



- **Encourage States to fully implement the principles included in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom through the adoption of the declaration by national parliaments, the dissemination of the declaration, the implementation of awareness-raising and solidarity campaigns with defenders, and the developments of mechanisms that provide safe havens for those under threat;**
- **Urge States to ensure that measures adopted to combat terrorism comply with international human rights norms and standards and are not used to justify disproportionate limitations on freedoms or impair the legitimate work of Human Rights Defenders (freedom of association, freedom of expression, freedom of movement);**
- **Ensure the dissemination of the Declaration at the international level by including it in the United Nations plans and training programmes for state officials.**

### **Violence against Women**

In every region of the world, women and girls continue to suffer from gender-based forms of violence. Although the distinct social, cultural and political contexts give rise to different forms of violence, its prevalence and patterns are remarkably consistent, spanning national and socio-economic borders as well as cultural identities.

Inasmuch as international definitions of torture have been narrowly interpreted, women have been denied equal protection against torture under both international and national law resulting in widespread impunity for the perpetrators of torture and other cruel, inhuman or degrading treatment or punishment committed against women.

Torture of women derives essentially from cultural patterns that perpetuate discrimination and the low economic, social and political status of women. Gender has a considerable effect on the form of the violence, the circumstances in which the violence occurs, the consequences of the violence, and the availability and accessibility of remedies. As a result of violence, women are deprived, either partially or totally, of the enjoyment of their human rights and fundamental freedoms.

While the United Nations General Assembly adopted in 1993 the Declaration on the Elimination of Violence against Women and while various United Nations meetings and conferences, including the Fourth World Conference on Women (Beijing, 1995) and the special session of the General Assembly in June 2000, had agreed on the subject, OMCT notes with grave concern that the United Nations Commission on the Status of Women did not adopt its draft agreed conclusions on women's human rights and the elimination of all forms of violence against women and girls, as it concluded its forty-seventh session in 2003.

#### *Mainstreaming Gender and the Human Rights of Women*

OMCT has long worked to ensure the mainstreaming of gendered causes and consequences of torture and ill-treatment into the work of the various United Nations human rights procedures and mechanisms. It regularly submits reports on violence against women to the UN treaty monitoring bodies and Commission on Human Rights procedures and mechanisms in an effort to draw attention to the particular forms of torture and ill treatment experienced by women.

However, although mainstreaming of gender issues has gained momentum within the United Nations system, there continues to be a lack of attention of the various “mainstream” human rights treaty monitoring bodies and Charter-based mechanisms and procedures to gender-based human rights violations.

OMCT is concerned that the Commission on Human Rights resolution on Torture and other cruel, inhuman or degrading treatment or punishment of 2002<sup>14</sup> and 2003<sup>15</sup> failed to include an explicit recommendation to the Special Rapporteur on Torture to take special note of the situation of women and children as it did in the 2001 resolution.<sup>16</sup> Specifically, the resolutions on torture from the past two years only made a reference to the paragraph in the 2001 resolution which explicitly recommended the Special Rapporteur “*to continue to consider questions concerning torture and other cruel, inhuman or degrading treatment or punishment directed against women and conditions conducive to such torture, to make appropriate recommendations concerning the prevention and redress of gender-specific forms of torture, including rape or any other form of sexual violence, and to exchange views with the Special Rapporteur on violence against women with a view to enhancing further their mutual cooperation.*”

This passing reference to the 2001 resolution gives the impression that gender equality has become a fact. Since gender equality is not the reality, OMCT believes that it is important to continue to explicitly draw attention to the links between gender and torture and ill-treatment, continue inviting the Special Rapporteur on torture to consider questions concerning torture and other cruel, inhuman or degrading treatment or punishment directed against women and conditions conducive to such torture, make appropriate recommendations concerning the prevention and redress of gender-based forms of torture, including rape or any other form of sexual violence, and encourage the Special Rapporteur on torture to exchange views with the Special Rapporteur on violence against women with a view to enhancing further their cooperation.

### *Corporal and Capital Punishment*

OMCT is gravely concerned by the recent increase in the number of women being sentenced to corporal and capital punishments, particularly by religious and ad hoc courts. These punishments are disproportionately applied to women, largely as a result of laws that criminalise adultery and sexual relations outside of marriage. These discriminatory laws are often used as mechanisms to circumscribe and control female sexuality. In addition, evidentiary requirements that provide that pregnancy constitutes irrefutable “evidence” of adultery or that give less weight to the testimony of women reinforce the gender discrimination in the administration of justice which results in women being sentenced to corporal or capital punishment in far larger numbers than men.

OMCT urges the Commission on Human Rights to:

- **Ensure that no language agreed upon in UN texts relating to the protection of women from all forms of violence is either removed or weakened;**
- **support the full integration of a gender perspective throughout the United Nations system, including the treaty monitoring bodies;**
- **Recognize the links between gender and torture and ill-treatment by ensuring that the gendered causes and consequences of torture and ill treatment are fully integrated within the torture resolution and by explicitly recommending**

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<sup>14</sup> E/CN.4/Res/2002/38.

<sup>15</sup> E/CN.4/Res/2003/32.

<sup>16</sup> E/CN.4/Res/2001/62.

that the Special Rapporteur on Torture take special note of the situation of women;

- Specifically mention torture and ill treatment as forms of violence against women in its Resolution on Violence against Women;
- Continue to ensure that the Rapporteur is provided with adequate resources and encourage continued cooperation between the Special Rapporteur and other thematic Rapporteurs, such as the Special Rapporteur on Torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions;
- Request the Special Rapporteur on Torture to undertake a study of corporal and capital punishment and that the gender-based aspects of these forms of torture and ill treatment be adequately addressed. To this end, OMCT encourages the Special Rapporteur on Torture to seek input from other thematic Special Rapporteurs, including the Special Rapporteur on Violence Against Women, its Causes and Consequences.

### Children's rights

Most cases of torture or severe ill-treatment of children dealt with through OMCT's urgent appeals, as well as its alternative reports to the UN Committee on the Rights of the Child and its field visits, clearly show that **international standards on juvenile justice are hardly implemented worldwide**. The implementation of articles 37 and 40 of the Convention on the Rights of the Child is monitored once every 5 years by the Committee on the Rights of the Child as part of the overall examination of State Parties reports to the Convention - which usually do not reflect juvenile justice practice, but only refer to legislation. Non-parties to the Convention do not benefit from this monitoring. Other treaty monitoring bodies rarely refer to the specifics of juvenile justice. And **there is no UN or other relevant body in charge of guaranteeing the implementation and monitoring of key UN instruments related to juvenile justice** (Riyadh guidelines, Beijing Rules, etc.).

Yet, all year long, OMCT's children's rights programme has denounced acts of **torture or severe threats during police custody**, the **non-respect of judicial guarantees** and the imposition of **abusive punishments** contrary to the principles enshrined in the Convention on the Rights of the Child, as well as **inhuman and degrading conditions of detention** imposed on children as young as 7 in certain countries.

OMCT warmly welcomes the increased attention given to this issue by the **UN Committee on the Rights of the Child**, notably through targeted examination of State parties reports, the preparation of a general comment on principles of juvenile justice and the planning of a future thematic discussion on the issue of children deprived of their liberty. OMCT welcomes the technical assistance provided by **UNICEF and UNDP** for juvenile justice reform in certain countries, as well as the inclusion of juvenile justice as one priority area of UNICEF's child protection activities. But OMCT is very concerned by the **absence of strong a commitment to monitoring and implementation of juvenile justice standards by the UN Commission on Human Rights**.

Finally, since the Commission on Human Rights resolution on torture and other cruel, inhuman or degrading treatment or punishment "*reminds* Governments that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture", OMCT is strongly concerned that the legislation of some countries, such as Iran, Saudi Arabia and Sudan, still include provisions enabling children to be subjected to corporal punishment, such as amputation, stoning and flogging. OMCT further believes that torture and other cruel, inhuman and degrading treatment and punishment have a specific impact on children that must be recognised and sanctioned appropriately. Acts of torture committed against children not only inflict immediate physical and psychological damage, but

also lead to developmental problems and diminished physical and psychological capacities over a lifetime. In that respect, it is regretful that the resolutions of 2002 and 2003 committed to recommend the Special Rapporteur on torture to take special note of the situation of children as it did in the 2001 resolution.

OMCT would thus urge the UN Commission on Human Rights to:

- **Create a *special mechanism on Violence against Children* in order to, *inter alia*, solicit, receive and exchange information and communications, including individual complaints and on systematic violations, from all relevant sources, including from children themselves, on any form of violence or ill-treatment they may be subjected to, as well as its causes and consequences; to undertake investigations; and to take appropriate measures and urgent actions – *including in the field of juvenile justice*. This special mechanism should interact with all relevant UN mechanisms, with relevant regional bodies and with national and international NGOs, and seek the views of children, *including those who are detained* ;**
- **Request all States to develop juvenile justice systems and special procedures in line with all relevant international standards on juvenile justice, with special support to *diversion, mediation procedures and alternatives to imprisonment* for all under 18 in conflict with the law;**
- **Request *all States to report on the reality, practice and progress of juvenile justice reforms* in their country to all treaty monitoring bodies, under relevant articles of each treaty.**

And finally to.

- **Recognise the special vulnerability of children to torture and other cruel, inhuman or degrading treatment or punishment and reiterate member States' obligations to prevent and remedy such violations;**
- **condemn member States whose legislation still include provisions enabling children to be subjected to corporal punishment, such as amputation, stoning and flogging;**
- **Recommend the Special Rapporteur on Torture to take special note of the situation of children and to actively cooperate with the independent expert on the UN Study on Violence Against Children in order to highlight and document the scope of the phenomenon of torture of children worldwide.**

## **ESC Rights**

Despite the firm stand taken by the international community on the indivisibility and interdependence of all human rights, in reality civil and political rights continue to be treated separately from economic, social and cultural rights, conceptually, practically and also in terms of priorities. Such separation is notably reflected by the absence of an individual complaint mechanism, at the international level, regarding economic, social and cultural rights. While the practical recognition of the interdependence and indivisibility of all human rights goes well beyond the adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), this step remains essential. Essential for the victims, but also for the coherence and consistency of the whole UN human rights system.<sup>17</sup>

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<sup>17</sup> See Intervention by the World Organisation Against Torture (OMCT), Item 10, Commission on Human Rights, 59th Session, April 2003. See also Submission by non-governmental organisations, human rights institutes and

The establishment of the ICESCR/ Optional Protocol Working Group by the Commission on Human Rights, in its 59<sup>th</sup> session, was a significant step towards the fulfilment of this goal. The independent expert on the question of a draft optional protocol to the ICESCR, concluded in his report that the “there is no longer any doubt about the essentially justiciable nature of all the rights guaranteed by the Covenant”.<sup>18</sup> OMCT believes that it is essential that the discussion on the optional protocol move beyond the question of justiciability to the elaboration and development of an optional protocol that adopts a comprehensive approach to all the rights enshrined in the ICESCR.

OMCT therefore strongly urges the Commission to :

- **Renew the mandate of the Working Group and ensure that it is empowered to negotiate the substantive text of an optional protocol to the ICESCR.**

## **Colombia**

During recent years, international institutions have expressed their grave concern about the human rights situation in Colombia as well as their preoccupation by the lack of implementation of the numerous recommendations that have been made both to the Government and to illegal armed groups. These institutions include: the Office of the High Commissioner for Human Rights, through its Bogota office; the Special Rapporteurs and Representatives as well as thematic Working Groups, notably the Special Rapporteur on Torture and the Special Representative on Human Rights Defenders; treaty bodies, in particular the United Nations Committee Against Torture during its November 2003 session; the Inter-American Commission and Court; the European Commission; and the donor group during its preparatory meeting in July 2003. The Colombian Government and Congress have not only ignored these recommendations but have pursued the drafting and implementation of legislation that has been denounced by these institutions as being contrary to international law.

OMCT has, for its part, issued a large number of urgent appeals concerning grave violations of human rights against civilians, members of civil society and human rights defenders who are attempting to protect to victims of such abuses. OMCT has also insisted on the identification and sanctioning of perpetrators of violations, regardless of who they or the victims are. Finally, OMCT has intervened to request that the recommendations made by international institutions be implemented in full and without further delay.

The Commission should take adequate measures in order to urge the Colombian Government to adopt and implement a human rights policy that is consistent with international law, and in particular, those instruments to which Colombia is party.

In this context, special attention must be given to legislation that hands military forces the certain policing and judicial functions. OMCT recalls that the 1992 Constitution, basing itself on a ruling by the Supreme Court concerning the 1886 Constitution, clearly prohibits military forces from benefiting from such powers, and that several recommendations, notably by the treaty bodies, underline that such legislation infringes upon guarantees for a fair trial. Despite the numerous appeals that have been directed at the Government and the Congress, they have pursued the drafting of this legislation, which is to come into force in the near future.

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civil society pertaining to article 9(f) of resolution 2002/24 of the Commission on Human Rights concerning the question of an optional protocol to the International Covenant on Economic Social and Cultural Rights, Commission on Human Rights, 59th Session, April 2003.

<sup>18</sup> Report by Mr. Hatem Kotrane, independent expert on the question of a draft optional protocol to the International Covenant on Economic, Social and Cultural Rights, E/CN.4/2003/53, p. 2.

In addition, pending legislation, known as the “penal alternative,” which has been devised in order to enable the disarmament of the so-called “self-defence forces,” has also faced criticism from the Office of the High Commissioner for Human Rights, as it risks resulting in the impunity of perpetrators of grave and massive human rights violations;

Additionally, the authorities have refused to give up their networks of civilian informers and their programmes to arm civilians, despite the recommendations made by the United Nations calling for their abandonment.

The Commission must therefore insist on the need for all human rights to be guaranteed as part of a negotiated settlement to the armed conflict, and notably that: the facts be established; the perpetrators sanctioned, while benefiting from legal and procedural guarantees; and that the victims receive adequate reparation.

As a result of its concerns with regard to the activities of the Government and of the illegal armed groups in Colombia, OMCT calls upon the Commission during its 60<sup>th</sup> session to:

- **Pay particular note to the special situation of human rights in Colombia and the lack of implementation of the resolutions and recommendations that have been issued by a number of the United Nation’s bodies;**
- **To make available all necessary resources in order to ensure that the Colombian authorities and the illegal armed groups respect human rights, as defined by international law and standards. The adherence to and implementation of recommendations made by the Office of the High Commissioner for Human Rights, the Special Rapporteurs and Representatives, the Working Groups and the treaty bodies, should be the subject of a study, which would aim at culminating in the full, effective and rapid implementation of these recommendations.**

## **Democratic Republic of Congo (DRC)**

### **1. Context**

In her last report presented at the 59<sup>th</sup> Human Rights Commission, the Special Representative on the situation of Human Rights in Democratic Republic of Congo, Ms. Illulia Motoc, stated that *“despite the positive developments, the human rights situation in the Democratic Republic of the Congo remained very serious”* .

Though much progress has been made, grave violations of human rights and humanitarian law have continued, notably in the east of the country. During 2003, the armed conflict between rival factions continued and became widespread in the region of Ituri. This deterioration was the most marked in February 2003 in Bogoro (south of Bunia) and then again in May 2003 in Bunia.

The Security Council has broadened and extended the mandate of the multinational force until July 30 2004.

OMCT remains gravely concerned about support (arms, logistics and human resources) that is being provided to the belligerent groups perpetrating the afore-mentioned violations. This support comes from nearby regional powers, notably from Uganda and Rwanda, as recalled

in Resolution 2003/15 of the 59<sup>th</sup> Human Rights Commission<sup>19</sup> and in the above mentioned report on the human rights situation in DRC<sup>20</sup>.

## 2. OMCT's Concerns

OMCT's network has alerted it to the prevalence of numerous violations of human rights and humanitarian law in the DRC, including: arbitrary arrests and detentions; poor conditions of detention; the systematic use of torture and other forms of ill treatment, leading to custodial deaths; summary or extra-judicial executions; and massacres of civilians, notably in North Katanga, Ankoro, Malemba and Nkulu.

Of particular concern is the continuing use of child soldiers, despite a June 2000 presidential decree for their demobilisation. Child soldiers are present within all armed forces that have been engaged in the conflict, constituting an estimated 20% of all armed forces and tribal militias, and are subjected to forms of ill-treatment that constitute torture. In addition there are thousands of women who are victims of rape and other forms of sexual violence by all parties to the conflict, notably in Kindu, Fizi, Uvira, Goma and Bukavu.

Moreover, the fight against impunity remains a subject of primary preoccupation for OMCT which would like to call on the Congolese authorities to resolve the problem in accordance with (UN) Security Council Resolution 1468<sup>21</sup>. Moreover, OMCT calls for the implementation of the Pretoria Agreements, which provides for the establishment of a Truth and Reconciliation Commission<sup>22</sup>.

While OMCT welcomes any progress that is made under the auspices of the transitional government, it must underline with concern the involvement within this authority of persons known to be responsible for the perpetration of grave human rights violations. OMCT therefore calls on the authorities to make a commitment to fighting widespread impunity, notably by launching impartial investigations into allegations of grave violations and by bringing those responsible to justice, in line with its international obligations.

In its last written statement under item 11 at the 59<sup>th</sup> Human Rights Commission, OMCT expressed grave concern about the Military Court (COM) and called for reforms in the judicial system in the DRC. OMCT welcomes the reforms that took place in 2003 and especially the Government's decision to abolish the COM, replacing it by a Higher Military Court. However, OMCT believes that as the COM did not provide persons with minimum guarantees necessary for a fair trial, that the persons who have been sentenced by it should either benefit from the amnesty law 03/2001 from April 15<sup>th</sup>, 2003, in particular in cases of prisoners of conscience, or be given the opportunity for a re-trial.

Finally, OMCT had also previously expressed its grave concern about the Government's decision to suspend the moratorium on the death penalty. This remains a concern as, to this day, the suspension remains in place.

OMCT therefore would like to call on the Commission to:

- **Ensure that the High Commissioner is provided with adequate funds to carry out its work in the country**

Urge the government of the Democratic Republic of Congo to :

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<sup>19</sup> Resolution 2003/15 adopted without vote during the 54<sup>th</sup> session.

<sup>20</sup> *ibid*, p.9

<sup>21</sup> Resolution 1468 of March 20<sup>th</sup>, 2003.

<sup>22</sup> Pretoria Agreement of December 17<sup>th</sup>, 2002 on the Global and Inclusive Agreement on Transition in the Democratic Republic of Congo.

- **Reconsider the suspension of the moratorium on the death penalty and adopt the Congolese Charter on Human Rights, which provides *inter alia* for the interdiction of the death penalty;**
- **Impose an immediate moratorium on death penalty sentences;**
- **Establish new legal structures to replace the COM as quickly as possible and prohibit military courts from handling cases of civilians;**
- **Implement a process to fight impunity and establish a Truth and Reconciliation Commission as provided for by the Pretoria Agreements;**
- **Take effective measures to combat and eradicate impunity;**

And to urge both Government of the Democratic Republic of Congo and the armed groups that are the de facto occupiers of the Eastern territory to:

- **Ensure the respect of international human rights and humanitarian law by members of their armed forces during conflict;**

### **Indonesia (Aceh)**

OMCT would like to express its deep concern about the ongoing conflict in the province of Aceh, which, to a great extent, is being ignored by the international community. Official reports claim that around 2,000 suspected members of the Free Aceh Movement (GAM) rebel forces, including 470 civilians have been killed as a result of the new phase of this 26-year old conflict, although the actual number of civilian casualties is likely to be much higher. This phase began on May 18th, 2003, when Indonesian President Megawati Sukarnoputri declared a state of emergency and imposed martial law in the province, including closing the Acehese borders off to all foreign media and humanitarian organisations, and an augmentation of the military presence to around 40'000 men, who are now reportedly engaged in committing widespread violations of human rights and humanitarian law against civilians including members of the nascent and fragile civil society in the country. Reports indicate that a further 3'000 elite troops have recently been sent to Aceh, signalling an increased risk to the civilian population.

OMCT condemns the Indonesian Government's November 6<sup>th</sup>, 2003 decision to extend martial law in the province for a further six months. Although OMCT welcomes news that representatives of the World Health Organisation (WHO), the United Nations Children's Fund (UNICEF), the International Committee of the Red Cross (ICRC) and the UN Office for the Coordination of Humanitarian Affairs (OCHA) have been allowed back into the country, OMCT insists that human rights monitoring, both by the relevant United Nations mechanisms and by international human rights NGOs, be allowed to take place unhindered.

Since May 18th, 2003, OMCT has received a worrying number of reports of arbitrary arrests, incommunicado detention, torture, forced disappearances and extra-judicial executions from its sources. Over 2'000 persons have reportedly been arrested and trials concerning nearly 400 cases have resulted in a variety of sentences. Of note is the fact that these trials fail to meet the internationally recognised standards for fair trial, as they were conducted without transparency and without any recourse to legal counsel for the defendants.

Tens of thousands of civilians, mainly thought to be women and children, are reportedly displaced in Aceh, and are without sufficient food, water and medicine. There are also reports surfacing of the discovery of at least one mass grave in the province and it is feared that this is but the tip of the iceberg, as there is virtually no monitoring of the situation by human rights organisations as a result of the closure being enforced by the Indonesian



military (TNI). The TNI are also reported to be targeting men, who are likely to be subjected to the worst abuses, including torture and execution.

Further to this, reports indicate that Indonesian military personnel, including high ranking officers, who were involved in widespread violations in East Timor, have now been transferred to participate in operations in Aceh. OMCT is appalled by the impunity with which these persons are able to continue conducting violations and calls upon the Indonesian authorities to immediately remove them from Aceh and bring them to trial for past and current violations.

OMCT therefore calls on the Commission to:

- **Condemn the current widespread violations of human rights and humanitarian law taking place in the Province of Aceh, including the arbitrary arrests and detention of a large number of persons, the widespread use of torture and other forms of ill-treatment, and the forced disappearances and extra-judicial executions to which so many civilians, including human rights defenders, have and continue to be subjected.**
- **Call on both the Indonesian authorities and the GAM to immediately put a halt to the perpetration of the afore-mentioned violations of human rights and humanitarian law and return to the negotiating table;**

...and to urge the Indonesian authorities to:

- **Order an end to the state of emergency and the martial law that accompanies it – martial law was extended on November 6<sup>th</sup>, 2003 for a further six months;**
- **Identify all perpetrators of grave violations of human rights and humanitarian law, bring them to trial and apply penal and/or administrative sanctions that are consistent with international law and standards;**
- **Issue a standing invitation for visits to the country and its provinces to all of the United Nations human rights mechanisms, and to give particular priority to visits by the Special Rapporteurs on Torture and on Summary Executions, and the Working Groups on Arbitrary Detention and on Forced Disappearances;**
- **Allow unlimited access to the region and cooperate fully with human rights and humanitarian organisations, including guaranteeing the personal integrity of members of local civil society.**

## **Israel/Palestine**

The Israeli Government began construction of a so-called 'separation fence/barrier' or 'Annexation/Apartheid Wall', in June 2002, which currently stretches over 180 kms and will be extended by another 507 kms. The wall does not follow the 1967 boundary between Israel and Palestine, the 'green line' but has the effect of incorporating substantial parts of the Palestinian occupied territories within Israel. Approximately 210,000 acres of West Bank land (14.5% of the area), excluding East Jerusalem, will be isolated and in effect, annexed by the construction of the wall.<sup>23</sup> Fertile agricultural Palestinian land and some of the most important water wells in the region will be taken over and a considerable number of trees and water pipes have already been destroyed in the construction process. Estimates indicate that more than 274,000 Palestinians, in 122 villages and towns, will either live in closed areas between the wall and the green line or in enclaves totally surrounded by the wall. An additional

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<sup>23</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA), The West Bank Barrier: Humanitarian Status Report, December 2003.

400,000 Palestinians, living to the east of the wall will need to cross it to get to their farms workplaces and other services.<sup>24</sup>

The potential impact of the wall on the lives of these Palestinians is starkly illustrated by the example of the town of Qalqilya. Once a major economic centre, it is now cut off from the farms which supply its markets and from water sources. Access to the 40,000-inhabitant town passes through a single military checkpoint and the town had, by August 2003, an unemployment rate of 70%.<sup>25</sup>

Israel has cited security and the need to take measures to prevent suicide bombers from reaching its territory as the rationale for its actions. While OMCT recognises these legitimate concerns of the government, it believes that the actions taken are disproportionate, do not meet the requirements of the principle of necessity and violate Israel's international obligations under human rights and humanitarian law. As a consequence of taking over large portions of land, outside of the green line, and by using the path of the wall to protect illegal settlements, OMCT believes that the actions of the government of Israel amount to an act of annexation. OMCT notes that through this acquisition of territory, Israel is acting in violation of Art. 2 of the UN Charter, Security Council resolution 242 (1967) and Art. 47 of the Fourth Geneva Convention. The government is also violating, among others, the human rights of the Palestinians to freedom of movement, property, adequate housing, water, access to public goods and services, non-discrimination and self-determination and its obligations under the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and the International Convention on the Elimination of all Forms of Racial Discrimination.

OMCT supports the assertion of John Dugard, the Special Rapporteur on the situation of human rights in the occupied territories, that "the time has come to condemn the Wall as an act of unlawful annexation in the language of Security Council resolutions 478 (1980) and 497 (1981) which declare that Israel's actions aimed at the annexation of East Jerusalem and the Golan Heights are 'null and void' and should not be recognized by States."<sup>26</sup> OMCT also welcomes General Assembly Resolution A/ES-10/14, requesting the International Court of Justice to submit an advisory opinion on the legal consequences arising from the construction of the wall by Israel.

OMCT therefore strongly urges the Commission to:

- **Condemn the wall as an act of annexation and to call upon members of the Commission not to recognise any rights of Israel over the territory acquired as part of the process**
- **Request the Security Council (through ECOSOC and the General Assembly) to pass a resolution declaring Israel's actions aimed at the annexation of the Palestinian occupied territories through the construction of the wall to be null and void**

...and to urge the Israeli authorities to:

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<sup>24</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *'Preliminary analysis by OCHA reveals that the planned new Wall will have severe humanitarian consequences for more than 680,000 Palestinians in the West Bank – well beyond the impact of the current Wall'*, 15 December 2003.

<sup>25</sup> OMCT and HIC-HLRN, Urgent Action on the Apartheid Wall, Case ISR-FE 050803.

<sup>26</sup> Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission resolution 1993/2 A, Commission on Human Rights, 60th Session, E/CN.4/2004/6, 8 September 2003.

- **Comply with their international obligations; cease any further construction, dismantle all the parts of the wall that have already been constructed and return to the status quo ante**
- **Return all land that has been confiscated for the construction and ensure that the people affected by the construction of the wall are given restitution and compensation for loss and damage of property**

### **Deteriorating human rights situation**

Reports from OMCT sources and other human rights organisations have documented the continued use of torture and ill-treatment of detainees, including children and women in Israel and the occupied territories.<sup>27</sup> Israeli military incursions, the policy of 'targeted assassinations' and other attacks have been characterised by the excessive and indiscriminate use of force, resulting in a high number of injuries and deaths amongst civilian bystanders. OMCT also notes with concern the effects of prolonged closures and curfews, the demolition of homes and destruction and confiscation of land and property and believes that despite international condemnation, Israel continues with its illegal policy of collective punishment against the Palestinian people.

OMCT welcomes the General Assembly resolution A/RES/58/155 on the Situation of and assistance to Palestinian children, which stresses the urgent need for Palestinian children to live a normal life free from foreign occupation, destruction and fear in their own State.

OMCT therefore strongly urges the Commission to:

- **Treat the deteriorating human rights situation in the occupied territories as a matter of high priority**
- **Reaffirm the illegality of the occupation and condemn the continuing human rights violations committed by the Israeli authorities in the occupied territories and against Palestinian detainees within Israel**
- **Call upon member states to take effective measures to end the illegal occupation and otherwise ensure Israel's compliance with international law**
- **Request that all the relevant United National organs consider the best ways to provide the necessary international protection for the Palestinian people living in the occupied territories as a matter of the utmost urgency**

...and to urge the Israeli authorities to:

- **End the occupation and withdraw from the occupied territories**
- **To desist from all forms of violations of human rights in the occupied territories and comply with its obligations under international law**
- **Respect relevant provisions of the Convention on the Rights of the Child and comply fully with the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War in order to ensure the well-being and protection of Palestinian children and their families.**

### **Nepal**

The situation in Nepal is of particular concern. On August 27<sup>th</sup>, 2003, a cease-fire between the Government and the rebel Communist Party of Nepal (Maoist) group broke down, since which time a dangerously escalating number of violations of human rights and humanitarian law have been perpetrated by both parties, including arbitrary and incommunicado detention

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<sup>27</sup> See OMCT, Open letter concerning the use of ill-treatment and torture on Palestinian detainees, 25 June 2003 and Case ISR 101203.CC.

for lengthy periods, rapes, torture, forced disappearances and extra-judicial executions. Since August 2003, OMCT has received numerous and increasingly frequent allegations of these practices, and had issued 20 urgent appeals by the end of the year. For example, there had been over 100 cases of disappearances attributed to the authorities that have been reported from August 2003 to the end of the year, with the real figure likely to be significantly higher than this. With reports indicating that there have been over 700 forced disappearances at the hands of the security forces and the Maoist rebels in the last four years, Nepal finds itself amongst the world's worst perpetrators of this grave human rights violation.

OMCT wishes to express its support for an increased United Nations monitoring presence in the country, in order to expand on the very good work already being performed despite limited resources by the UN's current representative. OMCT also wishes to express its support for the Nepalese National Human Rights Commission's (NHRC) work during this phase of the conflict, including its recent call to have the Government invite the UN Commission's experts to the country. Further to this, OMCT urges both the Nepalese authorities and the Maoist rebels to sign the Human Rights Accord, under which the NHRC will set up five regional offices to monitor human rights with technical assistance provided by the UN. OMCT is convinced that the provisions included in the Human Rights Accord, notably the increased monitoring capabilities that it enables, constitute a vital platform for the establishment of a peaceful resolution to the conflict.

A recent development which is of grave concern is the establishment of so-called "Rural Volunteer Security Groups and Peace Committees," which will include civilians in "maintaining peace and security" within the context of the ongoing conflict - blurring the distinction between combatants and civilians - and will likely pit members of communities against each other. Inadequate training and command structures for such groups may lead to them committing grave violations, as was seen by the comparable "Civil Defence Patrols" in Guatemala in the 1980s. Persons refusing to take part also risk being targeted as Maoist supporters, leading to a greater incidence of the already widespread violations mentioned above.

OMCT recalls the November 12<sup>th</sup>, 2003 joint press release issued by the Special Rapporteurs on torture and on the right to freedom of opinion and the Chairperson of the Working Group on arbitrary detention, which highlighted their concerns about reports of dozens of cases of incommunicado detention and therefore risks of torture and other forms of ill-treatment, and therefore calls on the Commission to:

- **Adopt a resolution on Nepal, denouncing the widespread violations of human rights and humanitarian law perpetrated by both parties to the conflict, the Government and the CPN (Maoist), notably: arbitrary arrests, incommunicado detention, torture and other forms of ill-treatment, rape, forced disappearances and extra-judicial executions. The resolution should also include provisions for the extension of the activities of the UN's current human rights monitoring activities and for the immediate provision of resources to enable the UN technical support included in the Human Rights Accord;**

...and to urge the Government of Nepal to:

- **Launch prompt and impartial investigations into all reported violations of human rights and humanitarian law in order to bring the perpetrators to justice;**
- **Dismantle the recently established Rural Volunteer Security Groups and Peace Committees;**
- **Invite the Commissions' experts to the country, in line with the NHRC's recent recommendation.**

...and urge both parties to the conflict to:

- **Sign and implement the Human Rights Accord, in conformity with the relevant human rights and humanitarian law standards;**
- **Cooperate fully with the National Human Rights Commission, as well as the UN Commission's mechanisms and other human rights and humanitarian organisations.**

## **Russia (Chechnya)**

OMCT is gravely concerned about the continuing conflict in Chechnya. Over the past decade, the republic of Chechnya has suffered through two wars, both of which were characterised by severe human rights violations perpetrated by Russian armed forces as well as Chechen rebel groups. These abuses continue in the present day. Reports of torture, disappearances, summary executions, rape, forced evictions, and other forms of ill treatment perpetrated by the Russian armed forces are common news in the Chechen Republic. The city of Grozny remains in ruins, with no effort having been made to reconstruct hospitals, apartment buildings, schools, or other fundamental structures.

There is an enormous amount of documentation attesting to the widespread nature of torture in Chechnya, but at the same time, many stories have not been heard because the victims of torture are also frequently disappeared. The dead bodies of persons who have been detained frequently show traces of torture. Common forms of torture include severe beatings, extensive use of electro-shock, including electro-shock to the genitals, and mutilation such as cutting off the victim's ear. Victims of torture, like all residents of Chechnya, are afraid to go to the hospital for treatment because of frequent military searches of hospitals.

In the face of the horrors faced by Chechen people on a daily basis, the Russian government has been claiming that the situation in Chechnya is "normalised." In March 2003, a constitutional referendum was organised, which approved a constitution establishing Chechnya as an autonomous Republic within the Russian Federation. However, the legitimacy of the referendum has been seriously doubted. Although violence perpetrated by Russian state agents appeared to decrease immediately before the referendum, once the vote had taken place, the Russian armed forces and other state agents committed human rights abuses with renewed force.

Additionally, in October 2003, a presidential poll was held and many doubts were expressed about its legitimacy as many of the serious opposition candidates were forced out of the race a month before. There were no international election monitors present for the presidential poll, the OSCE and the Council of Europe having refused to send such observers. Local observers of the elections witnessed an extremely low turn out of voters, and the results of the election do not appear to reflect the voice of people. The Chechen people continue to live in fear and fiercely dispute claims of normality, as the pro-Russian Chechen government perpetrate human rights violations on a daily basis.

Access to justice is also a severe problem in Chechnya for victims of human rights abuses or their family members. The justice system in Chechnya is plagued by corruption, long arduous procedures, jurisdictional issues as well as frequent threats against complainants. In the few instances where complaints have been successfully brought before the courts, military personnel who have committed grave human rights abuses reportedly receive minimum punishment, if they are punished at all. These obstacles often prevent victims from receiving adequate redress and reparation for the abuse they have suffered and perpetuate the system of impunity throughout Chechnya.

With regard to Chechnya, OMCT would like to urge the Commission to adopt a resolution on the Russian Federation:

- **Appointing a Special Rapporteur on the human rights situation in Chechnya;**
- **Recommend the establishment of an ad hoc international tribunal, as the Russian Federation has signed but not ratified the Rome Treaty establishing the International Criminal Court, with a mandate to judge crimes against humanity and war crimes occurring in the territory of Chechnya, to bring the perpetrators of these crimes to justice and to offer reparations to victims of these crimes;**
- **Challenging claims of normalisation of the Chechen situation by the Russian government and highlighting the serious and widespread violations of human rights and humanitarian law in the region**

And to urge the Russian Government to:

- **Put an end to torture and other human rights abuses and to immediately cease the forcible return of Chechen IDPs in Ingushetia;**
- **Ensure that all victims of human rights abuses have access to relevant judicial procedures and are provided with adequate compensation;**
- **Re-open the frontiers of Chechnya to international observers to ensure adequate monitoring of compliance with human rights and humanitarian law on the territory of Chechnya and issue a standing invitation to all human rights mechanisms of the UN Commission on Human Rights, in order that they might visit Chechnya and report on the human rights situation there.**

## **Sudan**

OMCT welcomes the progress made in the human rights situation in the north of the country, notably the release of political detainees from Kober prison, including members of the PNC.

OMCT however remains gravely concerned by the human rights situation in the region of Darfur, particularly the marked increase this year of arbitrary arrests, detention and systematic torture or ill treatment of detainees belonging to the African tribes. OMCT recalls that it had issued 37 urgent appeals concerning men, women and children in Sudan in 2003 alone, a significant portion of which concern the Darfur region.

OMCT is alarmed by the use of the death penalty as punishment in this region: during 2003, over 200 persons were sentenced to death, including at least two children, over 20 were executed, and there were over 100 persons awaiting conviction, who face execution should their appeals fail. In addition, OMCT also condemns the use of corporal punishment in the country: during 2003, two girls were sentenced to lashes of the whip, without any recourse to an appeal; over 20 persons were sentenced to amputation or cross-amputation of the left arm and right leg, including a 16-year old child last October.

Women and girls are particularly vulnerable to corporal and capital punishments for not adhering to strict dress codes or based on charges of alleged adulterous activity. These punishments are disproportionately applied against women and girls in Sudan and frequently, the punishment is executed summarily, giving the female defendant no opportunity to defend herself against the charges. Where the charges are tried in court, the law in Sudan accords a woman's testimony only half the weight of a man's, making it unlikely that a woman defendant will be acquitted. Most of these sentences were handed out by Special Courts that do not meet international standards for fair trial, including no legal

representation prior to the appeal stage. These courts have now been abolished, but the criminal courts that replace them still follow many of the same special procedures, despite now allegedly allowing for legal representation, and therefore remain a concern.

OMCT recommends that the Commission:

- **Adopt a resolution on Sudan condemning the current widespread human rights violations taking place in the country, notably in the Darfur region, including arbitrary arrests and detention, torture and other forms of ill-treatment, corporal punishment, extra-judicial executions and unlawful killings.**
- **Renew the mandate of the Special Rapporteur on Sudan, which was discontinued in 2003 and has been sorely missed since that time. The mandate of the Special Rapporteur should explicitly call on such person to examine the human rights situation in the Darfur region as well as to report on the continued use of corporal and capital punishment in Sudan, particularly against women and girls.**
- **Urge the Sudanese authorities to disarm the militias in the Darfur region; to halt attacks upon civilians by its armed forces; to issue standing invitations to all of the Commission's mechanisms; and allow for unlimited access to the region by human rights and humanitarian organisations.**

## **Togo**

Agir Ensemble pour les Droits de l'Homme, the International Federation of Human Rights Leagues (FIDH), the International Federation of Action by Christians for the Abolition of Torture (FIACAT), Franciscans International (FI) and the World Organization Against Torture (OMCT), in cooperation with Action by Christians for the Abolition of Torture - France (ACAT - France), Misereor, Secours Catholique (Caritas France) and Survie wish to express their serious concern about the deteriorating human rights situation in Togo.

Although Togo - a Member State of the Human Rights Commission - has ratified most of the international and regional human rights instruments, this group of NGOs, set up in May 2003, nevertheless draws attention to violations of these instruments by the national authorities and the failure of the latter to cooperate with the United Nations' monitoring mechanisms and procedures aimed at protecting human rights.

### *Violations of the freedom of expression, information and opinion*

The authorities are making a mockery of freedom of expression and information, in blatant violation of Article 19 of the International Covenant on Civil and Political Rights and Article 9 of the African Charter on Human and Peoples' Rights, which Togo has ratified.

In August 2002, the press code was altered to place tighter restrictions on such freedom. The new text introduces more severe penalties than those of the 2000 text for infringements of legislation on the press, in particular libel and defamation of character, offences for which prison sentences may now be passed. Sweeping powers are now granted to the Ministry of the Interior, which may order the seizure of any newspaper deemed to pose a threat to law and order. This step is in flagrant violation of Article 26 of the Constitution of Togo, which states that no publication may be banned except by order of the courts. Since August 2002, journalists have increasingly been intimidated, harassed and threatened. Several have been sentenced to long terms of imprisonment. Some have had to go into hiding or flee the country to escape this kind of repression. The situation was particularly bad around the time of the presidential elections of 1 June 2003.

The High Authority for Audiovisual Media and Communications (HAAC), made up of representatives of the party in power, exhibits an obvious lack of independence, even though, according to the African Commission on Human and Peoples' Rights, this kind of regulatory mechanism is supposed to be immune from outside interference, in particular any of a political or economic nature. It is supposed to work openly and publicly to take due account of civil society and should not be controlled by any political party.

Peaceful demonstrations are regularly banned (unlike marches in support of and organised by the party in power) and the authorities do not hesitate to use force to disperse them.

Churchmen are likewise frequently intimidated by the authorities if they elect to take a stance. They are harassed, their telephones are tapped, they are sent anonymous messages and in some cases even threatened with physical violence.

#### *Human rights defenders in danger*

In general, the daily lives of human rights defenders are severely restricted: they are under constant police surveillance as they carry out their activities and regularly suffer intimidation, harassment and arbitrary arrest. Many defenders have had to leave their homeland in order to flee this repression. Even when they have gone into exile, their friends and families continue to be harassed.

In November 2002, the Human Rights Committee urged the government of Togo to "*adopt legislative or other measures to combat and prevent the perpetration of such violations, in keeping with articles 6 and 9 of the Covenant*". (CCPR/CO/76/TGO, p.3).

#### *Torture and arbitrary detention*

Persons under arrest and those held in most prisons or other places of custody, particularly detainees in solitary confinement in premises such as police or gendarmerie stations and military camps, are systematically ill-treated, beaten up and tortured. The centres in Kara (the home town of the Head of State in the north of Togo) have a particularly bad reputation for the inhuman treatment meted out there. There have been deaths resulting from the poor conditions in which prisoners are held and from their ill-treatment. It is government agents who are responsible, in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified by Togo. Most victims are members of the public who have protested against the current regime, who are said to have been "manipulated", and members of the armed forces whose conduct is deemed "disloyal".

Noting with concern "*the many allegations that torture is common practice in Togo*", in November 2002 the Human Rights Committee urged the Togolese government to ensure that all acts of torture constitute offences under its criminal law, that persons who have been arbitrarily arrested are released as soon as possible, and that judicial proceedings are instituted against the perpetrators of such violations.. (CCPR/CO/76/TGO, p. 4)

#### *Lack of independence of the judiciary and impunity*

The principle of the separation of powers is being flouted, within the legal system in particular, in contravention of Article 113 of the Constitution of Togo, which states that the judiciary is independent of the legislative authority and of the executive authority, that in carrying out their duties judges are to be subject only to the authority of the law and that the judiciary authority stands surety for the individual freedoms and basic rights of the citizens of the country. Despite this, most judges are in fact acting under government control and are given orders and instructions. Some trials are simply a farce.



Impunity is widespread in the country owing to the lack of any political will to take the necessary steps to ensure that investigations are impartial and that trials are fair. Further reasons are the lack of independence of the judiciary, corruption and the fear and disillusionment of the victims, who dare not complain. Bringing the guilty to justice is, however, a prerequisite for the establishment of a state governed by the rule of law, without which there can be no respect for human rights.

The Group of NGOs urges the Togolese authorities to:

- **Ratify the international and regional instruments relating to the protection of human rights and combating impunity, in particular the additional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, the Statute of the International Criminal Court and the additional Protocol setting up the African Commission on Human and Peoples' Rights;**
- **Harmonise national legislation with international instruments relating to human rights which the country has ratified;**
- **Comply with the provisions of the 1998 United Nations Declaration on defenders of human rights and guarantee the physical safety of all Togolese human rights defenders;**
- **Implement forthwith the recommendations (CCPR/CO/76/TGO) made in November 2002 by the Human Rights Committee and all those previously adopted by the other bodies responsible for monitoring treaty implementation and to cooperate effectively with UN monitoring mechanisms, in particular when its initial report to the Committee against Torture is examined in November 2004;**
- **Invite immediately the Special Rapporteur on Torture, the Special Representative on Human Rights Defenders and the members of the United Nations Working Group on Arbitrary Detention to visit Togo and guarantee them free access to individuals, communities and places.**