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Addressing the economic, social and cultural root causes of violence through the UN Special Procedures System

Position paper relating to substantive and other aspects of attacking the root cause of violence

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Seminar participants and members of the OMCT secretariat, 2 July 2009.

Introduction

The 2009 Special Procedures Seminar is the third such seminar aimed at enabling non-governmental organisations to use the United Nations Special Procedures System to address the economic, social and cultural root causes of violence. Fourteen participants from Afghanistan, Brazil, Cambodia, the Gambia, India, Nigeria, Peru, the Philippines, Romania, Sierra Leone, Uganda, Uruguay and Zimbabwe took part in the seminar. The participants also met with mandate holders dealing with human rights and access to safe drinking water and sanitation, violence against Women, human Rights and extreme poverty, human rights defenders and violence against children. They also met with a former chairperson of the working group on arbitrary detention.

Prior to the seminar, participants prepared papers examining specific situations in which violations of economic, social or cultural rights led to torture or other serious forms of violence in their country. On that basis, and during the seminar, participants developed cases for eventual submission to special procedure mechanisms. This document includes summaries of those cases.

This document begins with an article dealing with OMCT's experience in dealing with the issue of economic relativism; that is the argument that economic priorities can justify violations of human rights. This is part of OMCT's overall objective to reject the various arguments that enjoyment of human rights can be limited by concerns of security or economic development and cultural practices.

Through their case studies, the Seminar participants gave concrete illustrations of the link between violations of economic, social and cultural rights and violence. The mutually reinforcing relationship between marginalisation, poverty, and violence means that reducing violence against women, children, human rights defenders, and other vulnerable groups requires addressing land grabbing, discrimination, denial of educational opportunities, and other economic, social and cultural root causes.

The seminar's participants, in addition to the case studies summarised in this document, identified cross-cutting issues that affected the various situations they were dealing with. **Access to land and forced evictions** were major issues in nearly every country. In many instances, states were directly involved in land dispossession, and in all cases had failed in its obligations under international covenants to protect and respect land rights. Likewise, governments have failed to address **poverty, inequality and discrimination**.

Participants also drew attention to the heightened risk of violence against **women, children, the poor and other vulnerable groups**. In addition to their increased vulnerability, special attention must be paid to the specific effects of torture and violence on these populations, so that support can be tailored to their specific needs.

The primary obstacle to addressing violence and its economic, social and cultural root causes for participants was **poor implementation of existing legislation and obligations**. This often resulted from **corruption and impunity**, both among legislators and the judiciary. Even where domestic laws exist in addition to international obligations, an **ineffective judiciary** does not utilise or enforce them. Similarly, the **criminal justice system**, rather than serving a

rehabilitative function, instead exacerbates economic and social inequalities and perpetuates the mutually reinforcing relationship between poverty and violence.

Needs of NGOs in addressing the root causes

Participants discussed the support they needed to continue addressing the economic, social and cultural root causes of violence in their countries. Many expressed a desire for technical assistance. OMCT was called upon to provide manuals, trainings and practical advice to NGOs, as well as knowledge of and access to UN mechanisms and other international bodies.

The participants also stressed that the presentations from academics and the opportunity to dialogue with experts on the Special Procedures system were very helpful. OMCT can continue to provide such opportunities for cross-fertilisation between local and regional NGOs and international academics and experts.

In addition, OMCT can consolidate and disseminate the information and ideas collected during the Seminar. OMCT is well placed to inform UN agencies and committees on the link between economic, social and cultural rights and violence. It can also push for greater inclusion of grassroots organisations and local NGOs in the UN system.

Next steps for NGOs

Having established a framework and concrete next steps for action files, complaints, and other interventions for submission to UN Special Procedures mandate holders, participants recognised the need for follow-up and finalisation. With technical assistance from OMCT where needed, NGOs will gather additional information and refine the documents drafted at the Seminar.

Participants also recognised the need to utilise the media. By publicising issues and disseminating information to the general public, media coverage can put additional pressure on the government to act, and provide cover for human rights defenders and victims. NGOs should also prioritise follow-up with national and international authorities, and utilise the media to publicise government inaction.

NGOs can utilise the EU Guidelines on torture and other cruel, inhuman or degrading treatment to generate international interest and draw the attention of the EU and its member states to rights violations. Regarding the issue of land rights, the Special Rapporteur on adequate housing's "Basic principles and guidelines on development-based evictions and displacement" can be a useful tool in pressuring states to address land dispossession and forced evictions.

Protection of victims should also be a priority. NGOs must manage expectations of victims, and be realistic about the goals and likely results of interventions. They must also ensure victims receive support (psychological, social, etc.), not only to deal with the trauma of violence itself but also the additional trauma involved in sharing and publicising their stories.

It is also important that, in addition to submitting complaints, NGOs support the work of the Special Procedures mandate holders. Where mandate holders are unable to arrange an official visit, NGOs can invite them to visit the country in an informal capacity. The mandate holders all emphasised that they rely on local organisations for information and guidance when conducting country visits. NGOs therefore have a responsibility to connect mandate holders with grassroots organisations and those affected.

OMCT wishes to thank the participants and presenters for their contributions, and Ms. Lisa Knox for the preparation of this position paper.

The Economic Roots of Relativism: An analysis on the basis of OMCT experience

by
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A three-year project, funded by the European Union¹ and aimed at addressing the economic, social and cultural root causes of violence, is permitting OMCT to focus on the link between economic interests and the incidence of various forms of violence, including torture. A number of cases addressed by OMCT offer a striking illustration of the extent to which states are prepared to violate human rights - or stand by as others violate these rights – in order to promote or facilitate economic development. OMCT's aim in addressing these cases is not to challenge the right of states to pursue development goals or make use of the resources within their territory, but rather to ensure that this is done in the full respect of human rights.

All cases referred to in this paper are available on OMCT's website: www.omct.org

Economic development is all too often regarded by states as an imperative that may involve, or even require, the abuse of human rights, including the use of torture and other forms of cruel, inhuman or degrading treatment or punishment. In many cases, the target of these abuses are individuals or communities who express their opposition to development projects because such projects compromise their way of life or their standard of living. Often the issue at stake is access to the land on which they rely for their livelihoods or, in the case of indigenous communities, from which they also draw their identity. Protests may also arise as a result of concerns over the health implications of certain industrial activities or their environmental impact, or because communities have been excluded from meaningful consultation or denied adequate compensation for the use of their land and resources. And violence is not only directed against those who seek to oppose certain economic projects or influence their form. It is also frequently employed as a means to protect economic interests from industrial unrest provoked by low wages, poor working conditions or restrictions on labour rights.

In some situations the state is the direct perpetrator of human rights abuses, as in the case of the suppression of opposition to the Merowe and Kajbar Dams in Sudan (SDN 301107.ESCR: Ongoing violence against communities resisting dam construction in the Northern Nile Valley, Sudan). In others, like the shooting of the anti-mine activists in front of the offices of a mine jointly owned by Pelican Resources and Sibuyan Nickel Properties Development Corporation in the Philippines (PHL 121207.ESCR: Mining activity on Sibuyan Island,

¹ The European Commission, within the framework of the European Initiative for Democracy and Human Rights (EIDHR) provides substantial funding for the core activities of the project for the period 2007-2009. OMCT also receives support from the Karl Popper Foundation, the Interchurch Organisation for Development Cooperation and the Fondation pour les droits de l'homme au travail.

Romblon Province, the Philippines, must be halted to prevent further killings and violence), the direct perpetrator is a non-state actor. In such cases, the state's responsibility lies in its omission to adequately protect its citizens, punish the perpetrator and sanction the companies involved.

These two cases also illustrate that while the ideology fuelling the drive toward development may be different, the result in terms of human rights abuses is often the same. The incident in the Philippines took place in an economic and political context characterised by an unqualified commitment to trade liberalisation intended to attract foreign capital and accelerate domestic economic development. This approach has seen the establishment of export economic zones, where workers' rights are pared down to a minimum (in the Philippines, as elsewhere, such zones are perhaps one of the most explicit expressions of a state's conviction that human rights present an obstacle to effective development). At the same time, around the country, trade union leaders, labour activists and others who seek to defend economic, social and cultural rights become the targets of harassment, intimidation, abduction, torture and assassination by both state and non-state actors.

In Sudan, the impetus for economic development is more closely tied to bilateral geopolitical interests and, specifically, to trade links with China based on a mutually advantageous exchange of oil and arms. Indeed, China is responsible for providing the majority of the financial backing, as well as the technical expertise for Sudan's hydroelectric developments (although a number of European companies are also involved in supplying parts).

The victims of torture or other forms of violence that result from the primacy of economic interests are frequently those who have least means to express their opposition to development projects, and whose capacity to reach a negotiated resolution is most limited. This is clearly illustrated by the case of a *dalit* village in India's Tamil Nadu State (IND 041007.ESCR: Violence against and harassment of *dalit* villagers involved in peaceful protest, Tamil Nadu State, India). Here, the failure of the owner of a nearby aquaculture business to respect clearly-established industry norms has had direct consequences for the health and livelihood of the villagers. When these villagers sought to protest against the harmful impact of the aquaculture farm, they were subjected to police violence and harassment and had false charges of a serious nature brought against them by the owner of this farm. Sadly, the elements of this case from Tamil Nadu are replicated around the world, among marginalised communities that lack the economic and political influence to shape development policies or to avoid their damaging effects.

Strong as economic imperatives may be, they do not always prevail, as illustrated by the case of the project for an open-pit coal mine in Phulbari, in the Dinajpur District of Bangladesh (BGD 211207.ESCR: Risk of violent suppression of public opposition to the Phulbari coal mine project, Dinajpur District, Bangladesh). The development rights for this ambitious project are owned by GCM Resources, a British mining company. Until recently, this project has also enjoyed the financial support of the Asian Development Bank (ADB) and several commercial banks (including UBS, Credit Suisse and Barclays). At the same time, however, the Phulbari project has generated widespread opposition due to its environmental impact and its potential negative effects on the socio-economic wellbeing of the population affected (estimates range from 50,000 to 500,000 persons). A public demonstration against the mine in 2006 saw at least five persons killed and fifty others injured by the police and personnel of the Bangladesh Rifles. OMCT contacted the Government of Bangladesh, GCM Resources, the Asian Development Bank, the financial institutions involved, UN special procedures mandate

holders and the European Parliament to express its deep concern at the risk of further violence associated with the project, and insisting that a decision on the future of the Phulbari mine should only be taken once a thorough, transparent and independent investigation into its human and environmental impact has been carried out, with the full and informed participation of all local communities.

In February 2008, at the invitation of GCM Resources, OMCT staff met with the company's Sustainable Development Manager in Geneva to discuss the issues of concern. In early April 2008, OMCT learned that the Asian Development Bank had decided to suspend its support for the project. In a statement, the Bank said,

We think it is premature to continue dialogue with the private sector under current circumstances. So, at this stage we are open to suggestions of the government of Bangladesh, civil society and other stakeholders and prepared to review our engagement in this project to ensure that all sensitivities, including concerns relating to safeguard issues, are fully considered.²

In June 2008 it was announced that Barclays Bank had sold its shares in GCM Resources. The Royal Bank of Scotland followed suit in October.

These decisions bear testament to the potential of concerted civil society action to influence an issue with serious human rights implications and, ultimately, they suggest that the primacy of economic interests, while not easily challenged, is not necessarily absolute.

² See <http://www.guardian.co.uk/business/2008/apr/06/mining.bangladesh>

Case Studies – Main Points

The case studies submitted by Seminar participants provide specific, concrete examples of the way in which the most vulnerable members of society are also the most likely victims of violence. Street children, the poor, prisoners and other marginalised groups that experience violations of their economic, social and cultural rights are in turn more vulnerable to torture and other forms of violence.

These papers also highlight a lack of government initiative to ensure the enjoyment of economic, social and cultural rights through implementing legislation, even where States have signed and ratified the relevant international conventions. Additionally, States are unwilling to take action against non-state actors that violate these rights, and indeed are often are complicit in such violations.

Violations of land rights of indigenous communities

Due to their marginalisation and social exclusion, indigenous groups are often subject to the worst violations of economic, social and cultural rights. Land grabbing in particular is an issue, with private companies taking advantage of this marginalisation to exploit resource-rich indigenous territories. In many instances, dispossession is accomplished through intimidation, threats and outright violence. Even where the State has recognised indigenous land rights, it may not act to protect these rights, and may even be complicit in dispossession.

Brazil

Mr Luis Emmanuel Barbosa Cunha, *Legal Advisory Office for Popular Organisations (GAJOP)*

The Xukuru people are the biggest indigenous group in Northeastern Brazil. For more than 100 years, they have waited for the Brazilian State to recognize their land rights and protect their land from trespassers. This has still not happened, and outsiders have killed and threatened the Xukuru over their land. Besides this, there is a movement towards criminalization of the political activism of the Xukuru people, with legal cases directed against those who have defended indigenous human rights. Non-indigenous economic interests are supported at the expense of Xukuru interests. This situation is making it increasingly difficult for the Xukuru to maintain their culture and way of life.

Peru

Mr Tomás Alarcón, *Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos*

In 1994, Peru adopted ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, and in 2007 the United Nations Declaration of the Rights of Indigenous Peoples. Yet the country does not respect these international instruments of human rights. The Peruvian government has ignored the right of indigenous groups to free, prior and informed consent over development projects in indigenous territories, and their right to be involved in any decision making processes that would impact on indigenous peoples' lands, resources or rights. When indigenous people have protested this violation of their economic, social and cultural rights, the Peruvian government has responded with violence.

Economic policy and violations of human rights

In many countries, the poor and minority groups are excluded from economic and social development. The failure of economic policies to address income inequality means that even successful economic development strategies do not include these marginalised populations, and may even drive them further down the economic ladder. High unemployment and lack of basic social services lead to increased reliance on the informal sector, where workers have few protections. This vulnerability and instability can often lead to violence.

Displacement of people and violence by border guards

India

Mr Kurity Roy, *Banglar Manabadhikar Suraksha Mancha (MASUM)*

The erosion of the embankment of the river Padma which has been going on for the last decades has resulted in the displacement of people on a large scale and reports by the locals put it as 60 000 people residing and cultivating lands in proportion to nearly 1 000 acres around the villages of Parashpur, Taltali, Dayarampur, Udaynagar, Jalangi and Dakhhin Goshpara. This erosion or partial erosion forces the populace to live a life of penury. A large section, more than 20 000 people, migrated to different places for livelihood and fending for their families by every menial job on alien lands. This part of the land before the erosion was prosperous, with a distinction as model village for Dayarampur. The victims who had their own land and who used to hire workers are now themselves working as agricultural labourers in the absence of any other means of living.

The government has done little to improve the situation. The situation only reflects human misery expressed in tears and a sense of absolute despair on the face of every one. Because of non-deliverance to the marginalized, a huge number of people do not possess the Below Poverty Line Card and have never been enlisted to it. The very distribution of BPL cards is maligned with partisan approaches and they are not reaching actual persons, which is depriving destitute and hapless people from all sorts of aid meant for them, like Annapurna, Antyodya, Integrated Child Development Scheme (ICDS) for lactating mothers and neo natal. Last but not the least people were deprived off from National Rural Employment Guarantee Act (NREGA). All of these schemes and policies are enacted by the government.

To add fuel to the tragedy and plight of these people, they have to face the atrocity and torture of the Border Security Forces (BSF) who are stationed in the borders of Indo- Bangladesh border including at Jalangi and adjoining areas. There is no trace of privacy; women have to attend nature's call under open sky and in view of the BSF personnel. The extrajudicial killing of innocents or people engaged with illegal cross border smugglings due to abject poverty is routine.

Violence against workers in the informal economy, debt servicing, and migration

The Philippines

Ms Resurreccion Lao Manalo, *Economic, Social and Cultural Rights – Asia*

The Philippine labour force is estimated to be 30 million (National Statistics Office, 2006) of an estimated country population of almost 90 million. Of this, the informal economy, which is increasing, is estimated to be 20 million. Composed of more than seven subsectors – street

vendors, small transport drivers, home-based workers, marginalized fisher folk, small farmers, and non-corporate construction workers- this sector has suffered specific cases of harassment and of violations of the rights of its members, as was reported to ESCR-Asia as early as 2003.

In its 2008 Alternative Report, ESCR-Asia noted that a few NGOs directly report cases of arbitrary deprivation of wares/goods and their small transport units in their conduct of livelihood. Goods or wares of street vendors including those of their members often were seized, burned, thrown into the garbage, and not returned; if returned these were lacking in quantity. With minimal income, these vendors are often subject to “kotongs” (bribes) for them to be able to continue selling in the streets. Members of security forces hit the street vendors with their hard wooden batons, thus prompting the latter to fight back.

Due to the enormity of the country’s standing financial obligation, the Philippine Government has continued to prioritize debt servicing over allocations for basic needs. Most of the Philippine budget, around 40%, goes to the payment of the national debt, thereby decreasing the funds that should have been allocated for food, education, medicine and other essentials that ensure adequate living standards.

The inability of the Philippine government to sufficiently provide for its people has driven hungry and discontented citizens to search for greener pastures in other countries. According to the National Statistics Office, the number of Overseas Filipino Workers (OFWs) has reached 1.75 million as of the 2007 survey. This number continues to rise as more and more Filipinos have sadly abandoned all hope for success in their motherland in favor of the opportunity to work abroad, sometimes enduring inhuman and unsafe working conditions.

Forced evictions and demolition of illegal housing

Sierra Leone

The demolition of "illegal" or "temporary" structures has been an issue with authorities since the end of the war. These structures are perceived as an "eye sore" destroying the beauty of the city, and their demolition is aimed at giving a face-lift to the city. In the past, demolitions have mainly been done on structures built on the hills or situated on precarious sites around the city, with a few regular structures allegedly built on state land demolished. However, there are some political connotations surrounding the issue because in election years, political parties use it to woo voters by promising not to demolish temporary structures or remove street traders from the streets.

The current ongoing demolition has raised some consternation, with allegations to the effect that the demolition is politically selective. Regardless of whether this is true, it still does not respect the rights of the dispossessed persons, nor the social, economic and cultural rights of the poor.

In a fragile society with a propensity for violence, the planned continuation of the demolition exercise has a high probability of resulting in violence. This is linked to the fact that the ‘Operation Sweep Clean’ is also intended to clear the main streets of street vendors/traders. Trading in the streets of Freetown and other cities in the provinces is prevalent. This has been attributed to the fact that there are not enough markets to accommodate traders, and because the existing ones lack enough space or proper sanitation. Some market structures are unfit for the purpose of selling goods, especially foodstuffs, due to leaking roofs, cracked walls and open sewages. These markets are overpopulated and clogged, and the result is sellers peddling their wares on the street.

Violence against illegal miners

Zimbabwe

The Chiadzwa Diamond Fields are located in Marange in Mutare West Constituency, Manicaland Province in the east of Zimbabwe. In December 2006, while the African Consolidates Resources company was readying trial mining operations, the Government of Zimbabwe took over the rights via the Zimbabwe Mining Development Corporation – a state owned company. This happened despite African Consolidated Resources having won a court case allowing them to continue mining.

A diamond rush started in September 2006, and it accelerated following the government take-over. By mid- December 2006, an estimated 15,000-20,000 illegal miners were working very small plots at Marange. Many of those rushing to Chiadzwa are unemployed and some homeless. Some were internally displaced and lost their livelihoods during Operation Murambatsvina in 2005. When the diamond rush began in late 2006, they saw Chiadzwa as a way out of their hunger and poverty.

In April 2008 a special task force raided the Chiadzwa area and arrested over one thousand suspected illegal miners, including women and children. In the process, it is alleged some individuals were bitten by dogs and assaulted by police officers, while others sustained injuries from falling whilst attempting to flee the unleashed dogs.³ The arrests were reportedly indiscriminate, with suspects complaining to lawyers that they had been arrested from the main road, their homes, the grazing fields, shopping centres and homesteads in and around the Chiadzwa area. Some of the accused persons have also alleged that their homes were forcefully opened and their money, possessions and groceries confiscated without lawful cause and without being recorded.

Accused persons were taken to various police holding cells where they were kept in crowded and filthy conditions for as long as 4 to 5 days before an initial court appearance. The holding cells' toilets, bathing facilities and food provisions ranged from inadequate to non-existent. Among the detainees were juveniles as young as 12 and 13 years of age, and elderly persons in their 60s.

When the individuals appeared in court, several had visible injuries and deep dog bites. No medical attention had been available to them for rabies or tetanus. A number required assistance to enter and leave the court.

In January 2009 the Government announced plans to relocate approximately 5000 families from the Chiadzwa area. No concrete plans have been made for adequate housing, water and sanitation in the area to which the families are to be relocated. While the community living near the diamond field may need to be relocated, they also have the right to adequate compensation for any losses incurred by the relocation, and to be provided with basic infrastructure in the area to which they are to be relocated.

³ *'Diamonds in Chiadzwa'* Zimbabwe Lawyers for Human Rights press release, 20 May 2008

Vulnerable populations and minority groups

Women, children and other vulnerable groups are extremely vulnerable to social and economic exclusion. They are in turn more likely to experience poverty, unemployment, and other factors that put them at a greater risk of violence. Due to discrimination and the inequality in dignity, values and respect afforded to these marginalised populations, they may effectively have no protections or recourse to legal avenues for redress against perpetrators of violence.

Ill-treatment of psychiatric patients, discrimination against Roma, and spousal abuse

Romania

Laurentia Mariana Mereuta, *European Association for the Defense of Human Rights – AEPADO*

The government addressed some human rights problems during the last years since the accession to the European Union, but some abuses continue to occur.

According to the reports of the human rights NGOs, the placement, living conditions, and treatment of patients in many psychiatric hospitals are not fulfilling international human rights standards and are much below professional norms and are inhuman and degrading. Most psychiatric hospitals had poor hygiene, insufficient heating, and insufficient food rations. Some hospitals lacked running water, were heavily overcrowded, lacked a sufficient number of beds, and had no mechanism for complaints of abuse. Patients were in many cases accommodated in rooms with metal bars on the windows based on arbitrary decisions of the staff. The international observers noted that electroshock and strait jackets were used in psychiatric hospitals where some patients suffered from malnutrition.

Discrimination against Roma continued to be a major concern, both by public officials and in society at large. The Romanian authorities failed to take adequate measures to combat discrimination and stop violence against Roma.

Roma groups complained that police brutality, including beatings and harassment, was routine. They continued to be denied equal access to education, housing, health, access to social services, care and employment.

In its report to the UN Human Rights Council, Romania acknowledged that Roma communities faced economic insecurity and were at particular risk of various forms of discrimination. The report also noted that Roma were subjected to policies which could in effect result in segregation, especially in the field of education.

Rape, including spousal rape, is illegal. The prosecution of rape cases is difficult because it requires a medical certificate and a witness, and a rapist could avoid punishment if the victim withdrew the complaint. The successful prosecution of spousal rape cases is more difficult because the law requires the victim to personally file a criminal complaint against the abusive spouse and does not permit other parties, such as relatives or support organizations, to file a complaint on the victim's behalf. Violence against women, including spousal abuse, continued to be a serious problem, and the government did not effectively address it.

Criminal justice practices

State criminal justice policies can have a direct impact upon the enjoyment of economic, social and cultural rights. Poverty and marginalisation put individuals at greater risk for arrest and detention, which in turn puts them at greater risk of violence, including torture and other ill treatment. Harsh criminal justice policies that focus on punitive measures, rather than addressing these underlying economic and social inequalities, perpetuate this mutually reinforcing relationship between poverty and violence.

Criminal justice practices as a factor in discrimination and violence

Uruguay

Mr Diego Camaño, Instituto de Estudios Legales y Sociales del Uruguay

Although Uruguay has a strong welfare and democratic tradition, over the past two decades criminal justice practices have become *themselves* a factor in discrimination and violence. Socially disadvantaged groups suffer torture and other forms of ill treatment most. As a consequence of the new role of the liberal State, by abandoning the ‘old fashioned’ concept of welfare, an important part of the population has become not only economically disadvantaged but also socially marginalized. Nowadays, criminal justice practices do not seem to be dealing with the situation of social exclusion. The response is not social but punitive measures.

In the past, Uruguay typically had a prison population of 2.000-2.500 people. Today it has more than 8.200 prisoners. In the past two decades the prison population has multiplied four times. This does not reflect a corresponding increase in crime rates but rather a preference for a punitive response. Harder legislation on crimes against property –mainly ‘street crimes’, the absence of effective alternatives to imprisonment, high rates of pre-trial detention, prison overcrowding and providing inhumane treatment, more violent action from the police, a harder response from judges – especially against crimes related to the use or trafficking of ‘pasta base’- are some of the structural problems that have to be faced urgently. The reality is showing that the use of torture and other forms of ill treatment is closely linked with a socially disadvantaged condition. Criminal justice practices themselves have come to be a fact of discrimination and a source of institutional violence and inequity.

Torture and violence within the prison system

Nigeria

Mr Joseph Izibili, Media Rights Agenda

A large number of youths in the country have been driven to crime by extreme poverty and desperation. Incidences of armed robbery and kidnapping are now rampant around the country, especially in the Niger Delta region, resulting in dispossession, maiming, killing, assaults, rape and other forms of brutality.

The prisons and police detention centres are veritable theatres of torture and violence. Some of the reasons for this are the lack of strict observance of the rule of law, ignorance on the part of victims and security personnel, abuse of fire arms by security personnel, the lack of proper education or orientation for members of the police force, etc.

Nigerian prisons are not only over-populated, they are largely unfit for human dwelling. Rather than being reformatory centres, they have become torture centres. Dilapidated prison

structures, filthy environment and, most sadly, abuse of female inmates are common occurrences.

At the Kirikiri Prison in Lagos there are no less than 14 children and about seven pregnant inmates. According to recent media reports, some of these inmates are infected with the HIV/AIDS virus.

What is not clear is whether these female inmates were impregnated in police cells before they were taken to the prisons or while in prison custody. A prison official, who pleaded anonymity, claimed that the pregnant female inmates were brought into the prison already pregnant. A female inmate confirmed this, claiming that in some police stations, policemen harass and sexually assault female detainees in the police cell.

There are many cases of inmates awaiting trial who have been in prison custody for between 10 and 15 years.

Ineffective State institutions

The absence of mechanisms addressing inequality, and of programmes to promote the enjoyment of economic, social and cultural rights, can in itself be a cause of violence. Even where the State has incorporated protections for economic, social and cultural rights into national law, a lack of enforcement mechanisms can mean that vulnerable populations are not ensured full enjoyment of these rights. Corruption and an ineffective judiciary often can result in violence and intimidation being used against those who speak out for economic, social and cultural rights with impunity.

The Gambia

African Centre for Democracy and Human Rights Studies

Most of the fundamental human rights contained in the major international human rights documents are provided for by the 1997 Constitution of the Republic of The Gambia and some like the CRC and CEDAW have been domesticated into national laws or are in the process of being so. However, in areas where international laws have been ratified by The Gambia, reservations have been made on fundamental provisions making them subject to personal law. For example the right to non discrimination, when made subject to Islamic law which discriminates against women and children on aspects such as inheritance, has the effect of denying these vulnerable groups the rights which are sought to be protected by the instrument in the first place and which they are in so much need of protection.

Furthermore, there are several outdated laws and Decrees from the former military regime which still exists in the statute books and which are in violation of the constitution - like sedition, false publication, the death penalty, corporal punishment, and economic crimes - which have been successfully utilized against suspects time and time again despite their unconstitutionality.

There is widespread persecution and prosecution of certain professions and groups which speak out against the government and which advocate for socioeconomic and cultural rights. Journalists in particular have been targeted. There have been several laws passed in order to curb and regulate their activities through government agencies. They are now obliged to reveal their sources and have been prosecuted under laws that contravene the right to freedom

of speech. They are constantly being arrested and detained arbitrarily without charge. There have been some disappearances and one murder of a journalist.

The Gambia being a Commonwealth country, international treaties do not have direct effect or applicability locally once signed and ratified. National legislation must be passed in order to make them enforceable in national courts. They do have limited persuasive authority, which progressive judges may utilize in the interpretation of national laws to give effect to international obligations, but this is rare. Especially when the independence of the judiciary is being gradually eroded by continued government interference in judicial decisions, lack of security of tenure for judges, internal corruption due to insufficient remuneration, incentives and many others unsatisfactory conditions of service.