

2009 Annual Report

World Organisation Against Torture



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25
YEARS

World
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Torture



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“ Dear Friends,
Today [my daughter's] advocate
... received by fax the positive
decision ... We are so happy!
Thank you very much for your
support and your help.
Because of your solidarity
and understanding my
daughter will be safe.
Many, many thanks. ”

A Human Rights Defender
from Azerbaijan, October 2009

Foreword by the President

It is Time to React

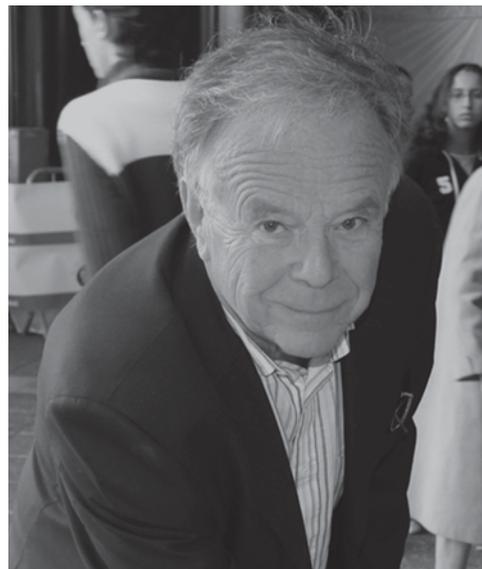
In 2009, the World Organisation Against Torture (OMCT) continued, by means of its urgent interventions, to denounce publicly the cases of torture, inhuman or degrading treatments and forced disappearances of which it had been informed by the members of the SOS-Torture Network. Its action resulted in the release of prisoners and their reinsertion into a normal life in society. OMCT also helped some non-governmental organisation (NGO) members of the SOS-Torture Network to submit to the United Nations (UN) Treaty Bodies alternative reports to those submitted officially on the situation of human rights in their countries, reports that led to the adoption by these bodies of recommendations addressed to the States concerned, which should stimulate some kind of follow-up action on their part.

In addition, in order to better understand their concerns and better respond to them, OMCT has gathered together the members of the Network on a regional basis in Asia and Latin America. The first group had become increasingly disturbed by the rising level of violence against human rights defenders and journalists who were informing their readers about the most serious violations. The second group was worried about the banalisation of torture and the abandonment felt by the judges and lawyers who were trying to exercise their professions honourably. A meeting with Network members in Africa will take place in 2010.

The experience of the SOS-Torture Network, and its own, led OMCT to take a position in the debate that has been developing between those who feel that it is necessary to explicitly denounce abuses, and in particular the States responsible, and those who think that it is more important to strengthen the accepted international system of norms and obligations, as well as the assistance to States that request it to implement these norms and standards, and that it is counterproductive to denounce violations. We are convinced that it is useful to strengthen the international normative system and the assistance to States, but we are equally convinced that, without denouncing violations, the discourse will stray further and further away from the reality and that the tendency towards the banalisation of torture and inhuman and degrading treatment will become more pronounced.

In this context, we are troubled to see the States that show the least respect for the human person creating NGOs to do their bidding and affirm, in the field and before the competent international bodies, that everything is fine. We are concerned about the policy of regional blocs within the UN Human Rights Council and its subsidiary bodies, and to see countries that make an effort to respect human rights, and that sometimes have won their freedom through their struggle for respect for these rights, keep silent in the name of regional solidarity.

The response to the question "What do you expect from Europe today?", which we have heard many times from men and women from the other parts of the world, is that Europe should of course respect the principles that it proclaims, but also, even if it is in the minority, it should continue to uphold the universal principles and the mechanisms that are essential for their defence. The time has come for Europe to join with the countries that defend these values to oppose the degradation of the UN Human Rights Council and turn it into an effective guarantee of human dignity. ■



Yves Berthelot
President

Introduction by the Secretary-General

Denunciation: a Necessary Evil

In recent decades, the struggle for human rights has assumed dimensions that could not have been imagined when the major international treaties that constitute the legal norms in this field were adopted. The number of organisations operating internationally and in the field that document violations, follow the evolution of legislation in States and intervene to ensure that human rights are effectively respected by all of them has increased considerably. However, it must also be said that the victims are, all too often, not recognized as such and do not receive either the compensation or the rehabilitation to which they have a right. In addition, the perpetrators of these acts of violence too often escape the punishment they deserve. This has led some organisations to begin to consider ways to encourage States to collaborate more and to favour a cooperative approach with the authorities. For its part, OMCT has always advocated such dialogue, even when the authorities do not conform to the basic principles to which they have subscribed. The goal is not to “nab” this or that government official, but to create the necessary and sufficient conditions for the full respect of the rights of every individual.

It appears to us, however, that a violation of human rights constitutes a breach of the rule of law which cannot be ignored and that it is not sufficient merely to admit through a truth-telling process, however comprehensive it might be, the injustices inflicted. Abuse of power and endured suffering should be sanctioned, even if such punishment takes a different form from that traditionally used within the framework of national and international criminal law.

The fight against impunity is a key element in ensuring that unacceptable acts will not be repeated. This entails denunciation not only of the violation as such but also of the authors, who must be duly identified and judged in accordance with the law.

This is why OMCT has always maintained its activities in the area of denouncing human rights violations, including urgent interventions in cases of acts of violence of which we have been made aware, complaints presented before judicial or quasi-judicial bodies, or alternative reports to the Committees established under the international treaties. In this context, the Special Procedures – that is, the UN Special Rapporteurs on torture; extrajudicial, summary or arbitrary executions; violence against women; the situation of human rights defenders; and the Working Groups on enforced or involuntary disappearances and arbitrary detention, etc. – have always been privileged partners of OMCT who are expected to send on to governments the allegations that we transmit to them so that the violation ceases and justice is done by compensating the victim and punishing the perpetrator.

However, for several years, and in a more explicit manner since the establishment of the UN Human Rights Council, this approach has been called into question, not only by the States that are the theatres of grave breaches of human rights, but also among those who might have been expected to provide more solid support, and even by certain NGOs and experts who have come to consider that denunciations could, in the final analysis, be counterproductive.

The fact that today less than one third of the allegations of grave violations transmitted by the UN system to States are dealt with by the authorities of the countries concerned cannot fail to disturb. This means that almost two thirds of the identified acts of violence are considered by those who have the primary responsibility for stopping them not to be worth even replying to.

To this must be added the tendency of certain authorities not to follow up on recommendations by the UN Treaty Bodies adopted following the examination of a State party's periodic report or, even more incomprehensibly, on decisions concerning individual victims finding in their favour and requiring that their rights be restored.

In the face of these worrying trends, some have proposed that the dialogue with the authorities should put more emphasis on the principles, the legislative measures, and even the establish-





Introduction by the Secretary-General

Denunciation: a Necessary Evil

ment of specific mechanisms designed to give warning that States are drifting away from the norms. Without contesting in the least the utility of this effort, OMCT considers that it should be seen as a complement to denunciation and punishment, not as a substitute. The loss of confidence in the law often comes from the fact that, for every one of us, a right whose violation is not punished ceases to be a right and is reduced to a vague rule, the non-application of which has no consequences.

This is why OMCT is very concerned to note that the international procedures today are tending to avoid accusing those principally responsible for the violations, in the name of a collaboration, which itself could prevent them from occurring. There appears to be a contradiction that is difficult to reconcile. If the law is not respected, the fact of modifying it, or even establishing mechanisms to make it better known, cannot suffice to ensure more rigorous respect in the future. It is not true that the perpetrators are ignorant of the law, and in particular of the basic rights which are the right to life, to physical and psychological integrity, and not to be subjected to arbitrary detention or to abuses, notably sexual abuse, by those who possess a modicum of power. These norms, before being the subject of international treaties, were part of the rules inherent in every human society and every person has innate knowledge of where the impassable limits are. It is imperative that violations be punished, and in order for there to be punishment, and reparation for the victims, it is necessary, under the rule of law, that there be legal judgment and, consequently, denunciation.

The Special Rapporteurs and Working Groups, particularly those which deal with cases of torture, forced disappearance, summary executions or traffic in human beings, have understood that the compilations of the allegations received that they produce each year and the reaction of States to the questions addressed to them constitute in itself a form of pressure that can help to ensure better respect for justice and the prevention of abuses.

However, despite the undeniable impact of their solidly documented reports, a majority of countries are increasingly pressing them to no longer focus on concrete, geographically identifiable situations in favour of a general analysis that is less accusatory of those responsible for violations. For its part OMCT cannot but be disturbed by this tendency. The fact that few States today consider it their duty to respond to allegations based on documented facts must not cause us to abandon this approach, but rather to strengthen it by more determined follow-up of the actions taken to obtain redress for the crimes committed and to avoid their repetition. In our view, denunciation remains one of the cornerstones of the struggle for better respect for human rights, particularly in a field such as the fight against torture and cruel, inhuman or degrading treatment or punishment.

As the 2009 report on our activities shows, the OMCT International Secretariat has maintained a high level of urgent interventions for individual cases and has put more emphasis on the follow-up of cases that have been submitted. Also, a larger number of complaints and interventions in the form of amicus curiae briefs were submitted to the courts to encourage them not to allow perpetrators – whether they are State actors or individuals – to escape their punishment. If we have sometimes had the feeling that we were swimming against a powerful current, we have never doubted the soundness of our approach, which has been vindicated notably by the successes that we have achieved - even if they are sometimes less complete than we would have wished - and by the testimonies of victims who have expressed their appreciation and encouraged us to continue along this road. ■

Eric Sottas
Secretary-General

Urgent Appeal RUS 270409

On 27 April 2009, OMCT issued an urgent appeal after being informed by its member RCFS about the alleged enforced treatment in a psychiatric hospital of Mr. **Boris Smetanin**, a leader of the banned National Bolshevik Party (NBP) in the town of Kirov, as well as of Ms. **Elena Kozvonina**, a resident of Kirov whose property rights were violated and who has fought for the past two years to secure her rights.

“ ... And with regard to **Kirov, both Smetanin and Kozvonina were released from a mental hospital. Kozvonina in the evening of April 29 (no diagnosis). Smetanin next day. They all thank you for the interference into the situation.**”

Russian-Chechen Friendship Society (RCFS),
Russian Federation, May 2009



Prevention of and Protection against Torture, Ill-treatment and Other Related Human Rights Violations, Including by Addressing their Economic, Social and Cultural Root Causes

Dissemination of 700 urgent interventions (urgent appeals, “files for action”, press releases and open or confidential letters addressed to the authorities) either for specific victims (children, women and human rights defenders) or on general subjects (including economic, social and cultural rights), on behalf of 1,242 individuals, 9 groups (representing several thousand victims) and 100 NGOs in the following 82 countries: Algeria, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Belarus, Bolivia, Brazil, Burma, Burundi, Cambodia, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Cuba, Democratic Republic of the Congo, Djibouti, Ecuador, Egypt, Ethiopia, France, Gabon, Gambia, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, India, Indonesia, Iran, Iraq, Israel and the Occupied Palestinian Territories, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Laos, Lebanon, Libya, Madagascar, Malaysia, Mauritania, Mexico, Moldova, Morocco, Nepal, Nicaragua, Niger, Nigeria, Panama, Peru, Philippines, Russian Federation, Rwanda, Saudi Arabia, Senegal, Sierra Leone, South Korea, Spain, Sri Lanka, Sudan, Switzerland, Syria, Thailand, Togo, Tunisia, Turkey, Turkmenistan, Uganda, Uzbekistan, Venezuela, Viet Nam, Yemen, Zambia and Zimbabwe.

In 2009, OMCT succeeded in ensuring follow-up to the urgent interventions sent out in 37.2% of cases, thanks to regular reminders to the NGOs that were the source of the information, to participation in the principal regional and international events, and to direct contact with defenders by means of missions to the field.

Holding of two regional seminars (Buenos Aires in May 2009 and Manila in October 2009) and

a seminar on the UN Special Procedures (Geneva, June 2009) with the members of the SOS-Torture Network, to examine how to address the economic, social and cultural root causes of violence through the UN Special Procedures system. The 55 representatives came from the following countries: Afghanistan, Argentina, Bangladesh, Brazil, Cambodia, Chile, China, Colombia, Costa Rica, Ecuador, El Salvador, Gambia, Guatemala, India, Indonesia, Mexico, Nepal, Nigeria, Pakistan, Paraguay, Peru, Philippines, Romania, Sierra Leone, Sri Lanka, Thailand, Uganda, Uruguay and Zimbabwe.

Publication, in five languages, of the 537-page Annual Report 2009 of the Observatory for the Protection of Human Rights Defenders (hereafter “the Observatory”) entitled *Steadfast in Protest*, launched on 19 June 2009 in Geneva. Holding of national, regional and international press conferences all through the months of July, August and September in Africa (Bamako, Bujumbura, Kinshasa, Nairobi and Nouakchott), in Latin America (Bogota, Guatemala City, Mexico City and Lima), in North Africa and the Middle East (Amman and Cairo), in Europe (Rome and Tbilisi) and in Asia (New Delhi and Katmandu), with the support of member and partner organisations of OMCT and the International Federation for Human Rights (FIDH).

Carrying out of 15 missions to the field within the framework of the Observatory: 3 international inquiry missions to France (March 2009), Mexico (September 2009) and Guatemala (November 2009) and 12 judicial observation missions involving 47 human rights defenders and 2 NGOs in France (February 2009), Tunisia (February and November 2009), the Democratic Republic of the Congo (March, August and September 2009), Belarus (August 2009), Rus-

sia (September and October 2009) and Syria (September 2009).

Holding, at the invitation of the Observatory and the Inter-American Commission on Human Rights (IACHR), of the second meeting of UN and regional human rights mechanisms working on human rights defenders in Washington, DC in October 2009, including the UN Special Rapporteur on the situation of human rights defenders, the Human Rights Defenders’ Unit of the IACHR, the Special Rapporteur of the African Commission on Human and Peoples’ Rights on human rights defenders, the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe, the European Union and the Organisation Internationale de la Francophonie.

Implementation of two preparatory field missions in Benin (October 2009) and Uruguay (November 2009) - within the framework of the new Children’s Rights project entitled *Monitoring the Treatment of Children Deprived of Liberty* - aimed at evaluating access to places where children are deprived of liberty, and to identify 1) the main problems and violations to which they are exposed, 2) the obstacles faced by and the needs of the professionals working with these children, and 3) additional partners and stakeholders in those two countries. ■

Activities Carried Out in 2009

Torture in 2009: an Expanding Phenomenon? Challenges Facing OMCT

The three questions most frequently asked of OMCT concern torture in the world and how it evolved; the countries where this practice is the most serious; and the effectiveness of the actions taken against it. If asking these questions is legitimate and indispensable to an evaluation of the methodology developed and the tools used, and from the perspective of documenting human rights violations and protecting victims, it sometimes leads to the abusive quantification of data that resist being reduced to mere mathematical representations.

Can Progress in Eradicating Torture be Measured?

Thus, the first trap lies in the attempt (or rather the temptation) to measure, using numbers and statistical systems, a reality that is not only complex with regard to the criteria used in capturing it, but also impossible to reduce to purely quantitative parameters. We saw this when the UN Development Programme (UNDP), in response to well-founded criticism reproaching it for measuring the development of a country only in terms of its economic performance, decided in 1990 to set up a scale for classifying States according to their level of "human" development.

In the beginning of that exercise, the level of democratisation achieved was measured according to such criteria as the existence of an elected parliament, the existence of multiple parties, the guarantee of freedom of the press, the holding of regular elections, etc. By weighting each of these criteria, it was possible to obtain a numerical representation of the level of democratic development of the country concerned. The first results surprised the observers: Colombia, for example, was in the first rank. It is true that the opposition was not censored, that elections were open and disputed, that the press could take a position on all the burning issues and that the media were often extremely critical of the action (or the passivity) of the government without the risk of having their right to publish threatened or their broadcasts interrupted. But at the same time, during this period three presidential candidates were assassinated in the middle of the city or in the terminal of the country's main airport, during

the busiest part of the day; simultaneously, the leaders of the Patriotic Union (*Unión Patriótica (UP)*), the principal opposition force, were inexorably eliminated culminating after a dozen years in a total of some 3,000 killings.

Some will retort that the error was purely methodological and that it is sufficient to take into account the human rights violations recorded in a year to correct the results obtained with the value assigned to the other criteria. An apparently simple solution which would easily permit putting the country in its proper place on the global scale, but impracticable if one wishes to be rigorous. In fact, a violation is not considered to be an attack on human rights unless the responsibility of the State is involved, for instance by the action of a State agent acting within the framework of his/her official functions, or by his/her explicit or implicit acceptance of the crime committed by a third person, or indeed by neglecting a responsibility. In the case of torture, it is often possible to establish this responsibility when the violation occurs when the victim is in detention, since the prison personnel can be made to answer for their acts or omissions. On the other hand, it is more difficult to prove that the kidnapping – and torturing to death – of an opponent shortly after release was deliberately carried out by the forces of law and order.

Constantly Evolving Strategies to Repress Torture

OMCT has noted that in certain countries the number of alleged cases of torture of detainees clearly declined after their ratification of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter "the Convention against Torture"), while kidnappings and forced disappearances increased proportionately. How to treat this information? By considering – even without sufficient proof – that these disappearances were all violations by the State or, on the other hand, to put them aside for lack of evidence or other elements on which to base our belief that this was the case? Worse still, in terms of correlating action with the evolution of the situation, should one conclude that the public opinion campaigns which had led the State to ratify the Convention against Torture have in reality only exacerbated the plight of the victims?

In fact, the difficulty is largely created by the need – often due to the requirements of the media – to represent a national or global reality

quantitatively, thereby allowing for comparison both with other countries (ranking) and with the past of the State concerned.

We must have the courage to say it: in this field, a numerical assessment cannot hope to capture reality.

So, is it impossible to undertake objective evaluations; to measure the impact of action in order to improve it? Of course not, but we must use other methods which take into account what cannot be reduced to figures. A number of non-quantifiable elements are as likely to reveal the more important trends as are purely statistical outputs. Even the absence of certain data can be more significant than the presence of solid information. These questions lead us to refine our analyses in order to better understand the reality. As in the field studies dear to sociologists, in which they place each event in its context in order to understand its meaning, in dealing with cases of torture in their context, both general and particular, we have come to question certain too-hasty conclusions.

Experience has taught us that those marginalized and bypassed by social progress are more vulnerable to violence than university-trained leaders, and that the former's capacity to connect with public opinion is clearly more restricted. Is the fact that within the global statistics fewer victims of State violence belong to the

Urgent Appeal COD 050809

On 5 August 2009, OMCT issued an urgent appeal after being informed by its partner CREDDHO about the detention of Messrs. Paluku Mahamba, Mbale Kibula, Mbale Kapanya, Mbale Tsongo Gabriel, Paluku Sadiki and Amani, and the acts of torture and other ill-treatment that they were allegedly subjected to by members of the DRC Armed Force (Forces armées de la RDC), in the province of North-Kivu.

“ ... surtout grand merci pour la synergie qui a permis à ces personnes de retrouver la liberté. Elles seraient mortes ou perdraient l'usage de certains de leurs organes. Il y a parmi eux ceux dont les plaies qui saignent encore. Le pire a été évité de justesse. ”

Centre de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme (CREDDHO), Democratic Republic of the Congo, August 2009

underprivileged social category due to a lower level of violence directed against them? Does it reflect a more favourable situation than in other countries or, on the other hand, is it explained by the inability of these persons to make themselves heard and by a lack of interest in them in general? The statistic by itself does not tell us anything. Depending on such data to propose that the situation prevailing in a particular State is better than in its neighbour where a much higher number of cases has been recorded can be a terrible misinterpretation. Worse still if one claims that this result is the outcome of preventive actions taken to avoid torture.

Likewise, the apparent cooperation of a State with the international and regional human rights protection mechanisms can be a decoy, as it is true that certain States are quick to adapt their manner of communicating – if not their practice – in accordance with the criticisms directed at them, and indeed even to forestall such criticism. How to interpret the fact that in 2009 Colombia received no fewer than four Special Procedures (UN Special Rapporteurs on extrajudicial, summary or arbitrary executions; the situation of human rights defenders; the situation of human rights and fundamental freedoms of indigenous people; the independence of judges and lawyers) in one year, in the context of the assassination of 39 trade union activists?¹

The thousands of cases dealt with each year are not statistical raw material. In order to avoid becoming embroiled in a pseudo-scientific approach, it is necessary to address each of the stories, the individual dramas, by asking ourselves – without fixed or preconceived notions – what are the root causes of the violence (in particular, economic, social and cultural causes); what are the specific elements of this denial of humanity? Thus, violence against women does not come systematically from gender-related problems; it can also be explained by a conflict related to the possession of land or by the detention of a traditional authority figure in the context of a community in conflict with the central authority.

Obviously, OMCT does not claim to possess the solution as regards evaluation of the efficacy of its action. It has nevertheless adopted a methodology based on its internal survey of the 297 members of the SOS-Torture Network and externally with specialised companies that are guarantors of a serious evaluation. The resulting adjustment of strategies and activities allows OMCT to continuously improve the services and tools provided to its members (correc-

tive measures are defined in order to overcome the difficulties encountered during the implementation of its activities).

Some Observations on and Adjustments in the Work of OMCT

The witness testimony that we receive and the evaluations which we regularly undertake with our partners and specialized institutions all conclude that the urgent interventions have had an impact on the situations that have been denounced. This impact, however, can vary according to the situation of the victims as well as to the attitude of the authorities and the perception of public opinion.

In fact, the same intervention will have relatively different consequences depending on the State to which it is addressed, its structure, the independence of its judiciary, the possible media links, as well as the sensitivity of national and international public opinion.

Impact and Context of Interventions

The first point we must examine is whether an urgent intervention always has a positive effect or if some of them can be counterproductive. In the great majority of cases, although in an often very different way, we can see that the intervention has a positive effect, sometimes leading to the release of the person unjustly detained and tortured, and in other circumstances improving the conditions of detention, or at least protecting the person against the risk of summary execution in order to eliminate a witness who may tomorrow denounce his/her torturers.

However, there are certain cases, in particular those involving para-State agents (notably paramilitaries), where, the spread of terror being a part of the strategy of intimidating the population, dissemination by the media of the situation of a victim could lead to making the already difficult conditions in which he/she is being held even more harsh.

That is why OMCT, throughout its existence, has modulated its interventions in individual cases, ranging from a massive public intervention (press release, widely disseminated urgent appeal) to confidential communications aimed at influencing those in authority, but with no media impact.

In fact, if public opinion does have a considerable effect on governmental authorities anxious about their image and their prestige in international negotiations, who are faced with groups that use terror to make themselves known and to present themselves on the international stage as partners that cannot be ignored, publicity risks being used in a worst-case strategy to confirm the importance of these groups and their intransigence in the face of demands that they respect an international order which they seek to destroy.

Besides this element, we have also noted that the urgent interventions have more impact if they respect a certain number of conditions.

First of all, precision in the description of the facts. In certain circumstances, in particular in the context of “massive” conflicts, the extremely high number of victims does not allow for the identification of each individual on behalf of whom OMCT will intervene. We have also noted, as much for the public whom we ask to bring pressure to bear as for the authorities whom we address, a general presentation that seeks to stop the violence has much less of an impact than specific cases, described in a way that explains the situation of the individuals subjected to arbitrary treatment and torture. We therefore often find ourselves powerless in situations where it is practically impossible to establish exhaustive lists of persons for whom an intervention is necessary and where the gravity of the situation would nevertheless call for the violations to be dealt with on a priority basis. This was the case of the unprecedented violence committed in most of the countries of the Great Lakes region in Africa, Sri Lanka, Chechnya and Colombia.

Follow-up of Cases and Multiplicity of Actions

In such conditions, we have chosen the option of compiling individual allegations in lists that are too long to be circulated, but are submitted to international institutions, both the UN Treaty Bodies and Special Procedures and regional institutions, where they exist, to draw their attention to the necessity of punishing States that trample on basic rights.

¹ Information submitted by the Department of Human Rights and Solidarity of the Central Union of Workers (*Central Unitaria de Trabajadores, (CUT)*).

While this way of proceeding does produce convictions by judicial or quasi-judicial bodies, the lengthy duration of the procedures of those bodies is a drawback. That is the case for Chechnya at the European level or Colombia in the framework of the inter-American mechanisms where thousands of cases are pending before the Commission and the Court.

In this context, the central question is how to maintain sufficient media attention to bring effective pressure to bear on the authorities so that, once found to be at fault by these bodies, they follow up on the requests and recommendations addressed to them.

OMCT decided several years ago to better integrate its various actions in a strategic framework which would facilitate follow-up in a given situation. For example, urgent interventions are not only regularly evaluated but frequently, as described in *Activities Carried Out in 2009* (p. 6), are sent again if the authorities turn a deaf ear (updated follow-up).

In addition, some of these urgent interventions can lead to the submission of “international” complaints (called “communications” by the various quasi-judicial bodies) or complaints to the international or regional courts. This presupposes that all the domestic avenues of appeal will have been exhausted or demonstrated to be impracticable. In order to ensure that these cases are not simply put aside for having failed to respect the procedures in force, OMCT

has increased the training of its local partners in this field and has widely disseminated guides which it has published on the subject. Also, and to the extent that the situation takes place in the context of systematic violations, the OMCT International Secretariat not only makes use of the mechanism foreseen for denouncing a State where grave and systematic violations have taken place, but also assists with the drafting of alternative reports to the committees concerned.

Another element whose importance we have been able to confirm is the speed of the intervention when a grave violation occurs. The more time that elapses, the greater the risk that the victim will never be released. In fact, the perpetrators of the abuse will be protected by their hierarchies; often a legal “cover” will be used to try to criminalise the perfectly legal actions of the victims so that new charges can be brought against them to justify their continued detention, sentencing to very heavy penalties, and even their extrajudicial execution on the pretext of attempted escape or brawls with other prisoners. By intervening rapidly, if possible in the hours following the commission of the violation, we can perhaps avert cover-ups being put into place to try to discredit the action. In addition, the hierarchy and the political forces will hesitate to cover up a case that has already appeared in the international media.

Rapid intervention, however, has certain risks, notably that of an incomplete presentation, even of possessing information all of whose elements have not been fully established. To minimise this risk, OMCT, as explained above, has recourse to the expertise of the members of its network in the field which provide us with information that they have themselves had the opportunity to vet. In addition, the International Secretariat, if it does not proceed itself to an in situ examination of the facts, verifies not only that the source of the information is trustworthy, but also that the material which it has provided is sufficiently sound to permit an intervention to be made to the authorities. When a key element is either not sufficiently supported by the facts or is questionable, an exchange with the various partners in the field is rapidly initiated with a view to intervening as soon as possible; if necessary, the intervention is postponed while more solid information is sought. Balancing the need for rapid intervention against the need for reliable information is one of the tasks of the members of the International Secretariat. Over the years, precise criteria have been established as a result of the constant review of practices in the light of each case submitted. Therefore, if the name of one

person in a group of three or four victims is lacking, it may be decided to intervene immediately and announce that the missing information will be supplied later. On the other hand, when an element such as whether a known perpetrator of an act of violence has ties with the State is missing, it may be decided to hold off on the intervention as it is essential to be able to determine whether we are in fact dealing with a human rights violation, that is, a case in which the State has responsibility.

Persons and Bodies Targeted by the Interventions

Experience has shown us that it is vitally important to inform the authorities at the highest level; it is equally important to be able, to the extent possible, to make it known to the responsible persons closest to the violation that we know who they are. In fact, torture is by definition a crime that the perpetrators seek to hide, either by denying that it ever took place or by trying to make it seem an act that should be tolerated by force of the circumstances. The persons who commit torture fear that some day they will be punished, and are encouraged in their actions in direct proportion to their sense of security. By letting them know that we know who they are, we open a crack in their sense of security, which is based on their perceived impunity. In addition, the hierarchical superior of the perpetrators also runs the risk of being punished in the end for not having taken measures to prevent the commission of these crimes. This is why we make an effort to communicate, to the extent that the elements of the case are supported by facts, the names of the persons implicated or, at the very least, the names of the detention centres or the police or military units implicated, portraying them, of course, as the persons alleged to be responsible but who must first be fairly judged by a court. We have seen that the fight against impunity starts off by casting greater light on the direct authors of the crimes, but also reaches the chain of command responsible for these activities.

For the reasons outlined above (i.e., the need for speed), it is not always possible in every case to seek out the direct and indirect authors of the crime. On the other hand, the inquiry missions or the various regularly published reports can go deeper and provide, as described above, to UN or regional institutions, sufficiently precise elements to indicate who the responsible parties are and ask why the State has been passive in the face of their crimes.

Press Release Mexico 180909

On 18 September 2009, OMCT disseminated a press release at the request of its member, the Centro Prodh, on the case of Mrs. Jacinta Francisco Marcial, a member of the indigenous community ñihā-ñhú (otomí), who had been detained for more than three years following an unfair trial.

“Desde el Centro Prodh, les agradecemos muchísimo a ustedes por su trabajo en el caso de Jacinta, por el excelente comunicado sobre Jacinta, Alberta y Teresa que sacaron hoy mismo y por la difusión del caso internacionalmente, la cual seguramente ha contribuido a que sale libre el día de hoy ...”

Centro de Derechos Humanos
“Miguel Agustín Pro Juárez” (PRODH),
Mexico, September 2009

Added Value at the International Level

As our presentation shows, in the system put into place by OMCT, the source of the information is the members of the Network, who are in close proximity to the victims. As we have stated, the best strategy for eradicating torture is one which can be developed in the country itself as it presupposes the support of the population for cleaning up the institutions responsible. We can now begin to examine the added value that the international work represents, and in particular the urgent interventions and the alternative reports that the national organisations could produce themselves, if need be.

Experience has shown us that sanction by an international organisation, to the extent that the organisation is credible and respected, brings triple added value. First, at the practical level, it gives global visibility to a case which would otherwise be known only locally. Next, knowledge of the international procedures and jurisprudence allows the most appropriate and effective bodies to be seized: international organizations fare better than national ones in avoiding obstacles arising from inadequate knowledge of the international mechanisms and institutions. Finally, the rigor that the recognized international NGOs have demonstrated is an added guarantee in those matters which State authorities have a tendency to call biased information, for political, religious, and even criminal reasons.

It follows from the preceding that the success of an intervention, of whatever kind, depends on the capacity of the different intervening entities to convince reluctant authorities to ensure full respect for the international norms and to assume their responsibilities by putting an end to abuses, punishing the perpetrators and compensating the victims. It is the result of multiple pressures where each partner plays an important role. OMCT, these last years, has been confronted by growing indifference on the part of certain repressive governments to recommendations and interventions by international institutions. Certain governments have not hesitated, when they are examined under the Universal Periodic Review, to reject the recommendations of the committees which have found grave lapses in their international commitments. In addition, the judicial branch in certain countries has even been sanctioned for having followed up as requested by the international procedures, such action having discomfited the authorities.

In this context, as already pointed out, emphasis has been placed, and will be placed more forcefully in the future, on better informing public opinion, the mobilisation of which has fallen off in recent years, and strengthening the judicial or quasi-judicial international institutions whose role is fundamental in protection and the promotion of the fight against torture, but also on closer monitoring of national judicial bodies whose lack of freedom is one of the main obstacles to fighting torture more effectively. ■

Open letter Panamá 091209

On 9 December 2009, OMCT issued an open letter on the basis of information received by its member, Centro Por la Justicia y el Derecho Internacional (CEJIL), concerning the allegation that Mr. Jesús Tranquilino Vélez Loo, an Ecuadorian national, had been tortured and ill-treated by police and prison staff in Panama, where he had been detained for 10 months before being deported to Ecuador. No investigation was reportedly launched into the complaints Mr. Vélez Loo had submitted to the relevant authorities.

“ Panamá remitió una carta a CEJIL donde nos han invitado a un acuerdo amistoso que CEJIL está gestionando. Esto ocurrió el 11 de diciembre es decir dos días después que usted la lanzo la campaña y considero que su noble carta tuvo efectos positivos. Una vez más estoy agradecido de usted. ”

A victim, Panama, January 2010

“ We would like to take this opportunity to express our profound thanks and gratitude to partners and all other friends... in and outside of Ethiopia for your uninterrupted support and words of encouragement particularly during the rather long period of re-registration. We sincerely hope that the support and solidarity will continue in the months and years to come. ”

Message to the Observatory from the Secretary General of the Ethiopian Human Rights Council (EHRCO), following the re-registration of the association in spite of restrictive national legislation.

Assisting Victims of Torture, Ill-Treatment and Other Related Human Rights Violations in Obtaining Appropriate Redress, Including Rehabilitation

Emergency medical, legal and/or social assistance to 132 victims of torture or ill-treatment (90 cases²), including 28 human rights defenders and 4 NGOs, in the following 33 countries: Angola, Azerbaijan, Bangladesh, Belgium, Burma, Chile, Colombia, Democratic Republic of the Congo, Ecuador, Egypt, Georgia, Guatemala, Guinea, India, Iran, Iraq, Jordan, Kazakhstan, Kyrgyzstan, Lebanon, Mexico, Moldova, Russian Federation, Rwanda, Sierra Leone, Sri Lanka, Sudan, Syria, Togo Turkey, Tunisia, Uganda and Uzbekistan. Of the 132 victims, 58 were female and 74 were male; 21 were children.

- Medical assistance to victims suffering from health problems caused by torture or the forced disappearance of a member of the family was provided in close partnership with rehabilitation centres and helped the persons concerned to recover or to improve the state of their physical and mental health (full payment of the medical costs or participation with other NGOs).
- With regard to social assistance, families received help in making a swift departure of their country, where they were at risk of being subjected to torture (“protective action”), while others were given one-time support to help them to cover basic living expenses in their own country (including social rehabilitation) or in a country of temporary refuge. Furthermore, within the family reunification process, a family - whose father had been granted political asylum in a European country - was reunited thanks to OMCT’s support.
- As for legal assistance, OMCT carried out case analyses in close collaboration with members of the SOS-Torture Network, provided legal advice within the context of refoulement procedures and paid the fees for the legal defence of the victim. In addition, certain victims obtained asylum after OMCT had evaluated their situation and confirmed the existence of a genuine risk of torture should they be subjected to refoulement to their country of origin (article 3 of the UN Convention against Torture). Finally, other victims - including the families of victims who died under torture - received legal and/or financial support allowing them to begin or join legal proceedings before national courts (representation before the highest court in a European country), regional mechanisms (Inter-American and European Courts of Human Rights) and international human rights mechanisms (following an individual complaint to the UN Committee against Torture) aimed at obtaining reparation and compensation.

Ongoing follow-up – submission of comments after the response of the States parties – of 2 individual complaints submitted to the UN Human Rights Committee [communications No. 1486/2006, *Kalamiotis v. Greece* (March 2009) and No. 1447/2006 *Amirov v. Russian Federation* (November 2009)] and of 1 complaint submitted to the UN Committee against Torture [communication No. 291/2006, *Ali v. Tunisia* (June 2009)]. Contribution to the submission of 2 amicus curiae briefs, one to the Inter-American Court of Human Rights in the case *González and others (“Campo Algodonero”) v. Mexico* (April 2009) and the other to the Eleventh Circuit Court of Appeal of the United States in the case *United States of America v. Roy M. Belfast Jr. (Charles Taylor Jr.)* (September 2009).

Dissemination – together with the members of the SOS-Torture Network in India, Malaysia, Nicaragua and Sierra Leone – of 4 press releases on the occasion of the International Day for the Protection of Torture Victims (26 June 2009) and support for the holding, on the same day, of a seminar organised at the Parliament in Freetown entitled *Making reparations a reality for victims of war in Sierra Leone* and of a public colloquium in Bogota, from 25 to 27 June 2009, entitled *Vizibilizando el crimen de tortura en Colombia*, an initiative of the Colombian Coalition against Torture and OMCT in the framework of the campaign *Firme contra la tortura*. ■

The Right of Victims to Obtain Compensation: a Road strewn with Obstacles

For most victims, punishment of the perpetrators, compensation for the damage caused and their full rehabilitation are fundamental requirements that need to be satisfied if they are to carry on with their lives.

Far from waiting passively for the system to resolve their dramas, most of the men and women whose rights have been violated are fighting, using the instruments that they have helped to put in place since 1948. Often, their struggle turns out to be as painful as the violence they endured and, by demanding reparation, the militant victims make every effort to avoid the perpetuation or renewal of the injustices that sought to crush them. Many of them, owing to a lack of an adequate national mechanism, turn to international bodies to obtain satisfaction. However, their requests often encounter difficulties in being dealt with by the bodies established over the last 60 years.

Two meetings which OMCT attended, one in Bristol (9-11 September 2009) and the other in Kiev (17 and 18 September 2009), despite thematic and methodological differences, addressed a problem that has been steadily growing worse: the limited effectiveness of the international mechanisms charged with securing respect for human rights.

One of the main areas of progress achieved since the 1960s is undeniably the questioning of the scope of the principle of national sovereignty. While formerly States took advantage of every occasion to reaffirm the absolute and indisputable character of their sovereignty, since the entry into force of the main human rights conventions, and especially the establishment of the follow-up mechanisms provided

²A case may involve several victims and include several types of assistance.

Assisting Victims of Torture, Ill-Treatment and Other Related Human Rights Violations in Obtaining Appropriate Redress, Including Rehabilitation

for by these conventions, official discourse has profoundly changed. By agreeing to ratify these conventions, the States parties commit themselves not only to respect their provisions, but also accept that a committee of experts can regularly examine their practice in this field, and indeed, in certain circumstances, can examine in a quasi-judicial manner complaints from individuals under their jurisdiction.

It is therefore no longer possible for a government to reject – on the grounds of national sovereignty – the conclusions and recommendations of the Committee against Torture, the Committee on the Rights of the Child, the Human Rights Committee or one of the five other UN Treaty Bodies. As these committees base their legitimacy on the fact of the State's adherence to the respective treaty, it is difficult for the authorities of the State being examined to claim that their authority has been violated when the conclusions of these experts do not suit them. States adhere to the international instrument that gives the committee its legitimacy by a sovereign act, and by so doing they must respect the commitments they have, as sovereign States, undertaken.

Does this change in the discourse indicate a change in institutional behaviour? The response is not a simple yes or no.

In the case of individual complaints, the authorities of the country concerned naturally provide the elements that they judge to be pertinent to their defence and argue for the rejection of the accusation levied against them. There is indeed debate and questioning of State practice in the presence of the independent experts. However, it happens too often – notably in the most serious cases (torture, forced disappearances, summary executions, grave acts of violence against the rights of minorities, threats against human rights defenders, etc.) – that at the end of the process, the State ignores, “sovereignly”, the decisions of the Treaty Bodies, even more so if they have been found “guilty”.

This attitude is serious, and it is painful.

Serious, because the States parties, while claiming to respect their international commitments, call them into question, often hiding behind legal quibbling about the obligatory nature of the treaties. The quarrel over the distinction between what falls under “soft law” – that is, non-binding – and norms that are actually binding – that is, obligatory – are not relevant here. When a State ratifies an international convention that outlaws torture and cruel, inhuman or

degrading treatment, it accepts the obligation to take all measures not only to ensure that its agents do not engage in such practices, but also to put into place effective mechanisms to protect the persons under its jurisdiction against these heinous crimes. When they fail to do so, the authorities must, as the committees remind them, take the necessary steps to correct the shortcomings, compensate the victims and punish the perpetrators. To claim that the decisions of the Treaty Bodies are not binding is nothing less than to call into question – in practice – a commitment that should be respected with pride on principle.

Sad, because the men and women who denounce the abuses they have suffered or that are known to them are frequently subjected to all sorts of additional violations of their rights: threats; social marginalisation (loss of jobs and professional ostracism); rescinding of their passports, or even of their citizenship; injuries; beatings; acts of torture; forced disappearance or summary execution. It is not the least likely of paradoxes to see complainants, whose complaints have been determined to be well-founded at the international level following a balanced inquiry where the State was able to explain itself fully, become victims of violations once again, and sometimes of even more serious violations than those they had previously suffered or denounced.

Emergency Assistance Granted by OMCT: a Holistic Approach

Since the establishment in 1986 of the Urgent Assistance Fund for Victims of Torture, OMCT has endeavoured to embed emergency assistance in a global approach to the situation of the victim, in the belief that assuaging the suffering that has been endured must be accompanied by the identification, pursuit and punishment of the alleged perpetrator of the violations. Rehabilitation activities must aim at the restoration of the right of the victim to see justice done and include medical and social rehabilitation, compensation and reparation at every level (national, regional and international), which contributes not only to their return to health but also to the fight against impunity.

Armed with this conviction, OMCT has sought to develop close collaboration with the NGOs or rehabilitation centres of the SOS-Torture Network that can either complete the action that OMCT undertakes in this field, or can replace OMCT in their area of specialisation.

OMCT has also organised training seminars designed to offer to NGOs and others working on behalf of victims a broader understanding of how to submit an individual complaint - jointly with OMCT – and to increase their knowledge of the law related to torture and ill-treatment as developed in particular by the UN Human Rights Committee and the Committee against Torture, as well as by the regional human rights courts and commissions. In fact, a positive decision by a Treaty Body, for example following a complaint submitted on behalf of a victim, will advance the jurisprudence both of this body and of the judicial bodies of the country concerned, as well as the judicial bodies of other countries that will adopt this jurisprudence. It will also have the effect of improving the situation of victims of the same type of violation in that country.

The soundness of this approach – using the submission of alternative reports to the Treaty Bodies as an additional means of exerting pressure on the State concerned (see below, page 14) – was singled out in the external evaluation of the project *Promotion of Justice and the Rule of Law by Strengthening the Contributions of NGOs to the Work of the Treaty Bodies* carried out from 2007 to 2009 as follows:

“The separation of the project into three distinct types of activities – training, support for the submission of individual complaints, formation of a coalition to draft an alternative report and follow-up of recommendations – responds fully to this strategic objective [promote justice and the rule of law by strengthening of the capacity of NGOs to contribute to the work of the treaty bodies and to support the implementation of their recommendations]. In fact, these three activities appear to be intimately related: the pedagogic conception behind training workshops is at the same time to encourage the identification of individual cases that can be the subject – by their singular nature – of an individual complaint, and to offer an in-depth introduction to the international mechanisms and their potential usefulness ... In any case, one can only defend and commend the value of the approach followed for the drafting of alternative reports. The approach followed (preparatory mission with a view to forming a national coalition of NGOs, joint drafting of an alternative report, guiding NGOs through the committee sessions, follow-up mission) encourages transversal learning ...”³

Encouraged by this positive evaluation, OMCT intends to pursue and intensify its adopted strategy in the area of assistance to victims of torture, that is, a strategy that unites emergen-

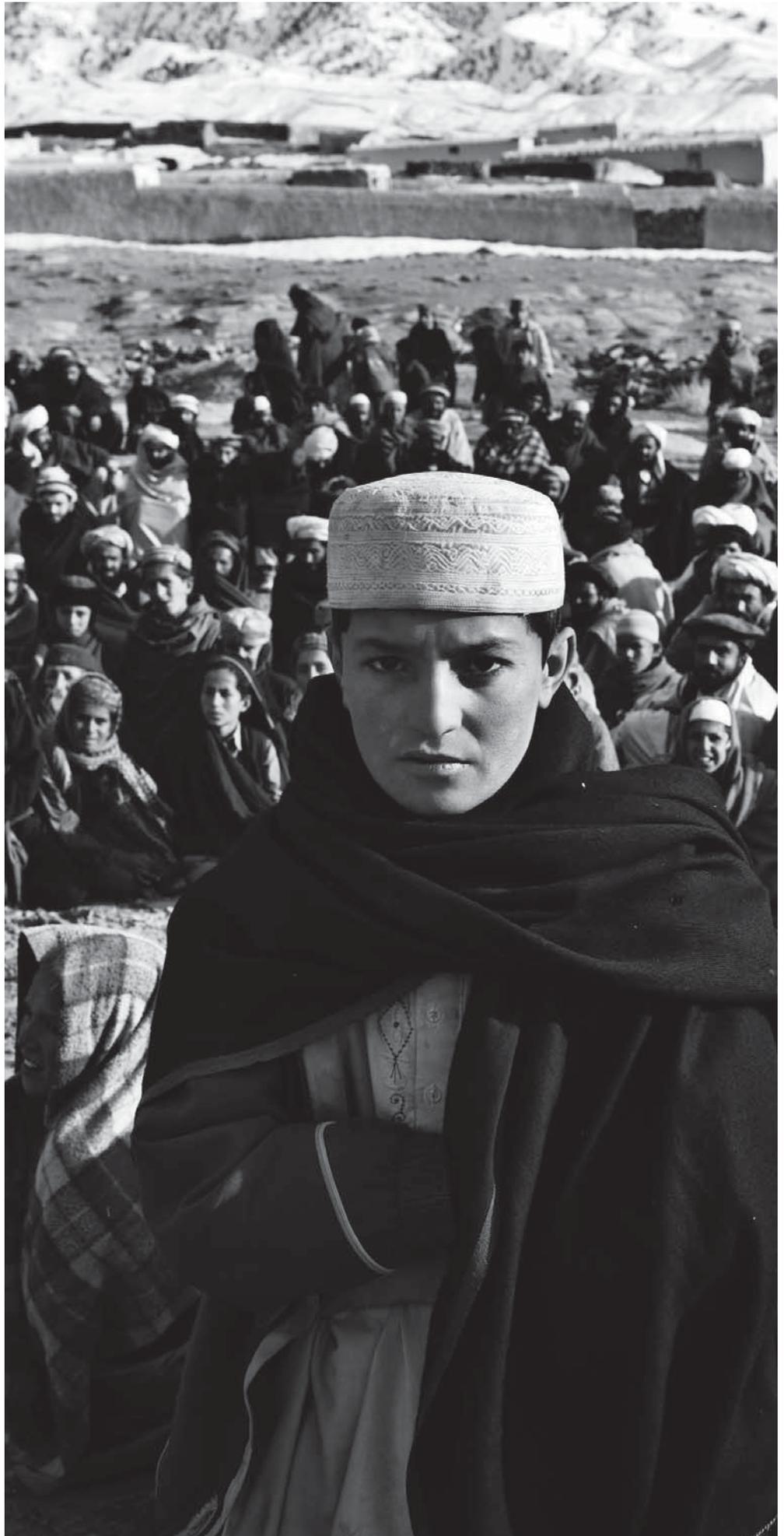
cy action in response to appeals for help from the victim and an intervention that purports to have an effect in the medium and long term by submitting complaints to the Treaty Bodies with a view to the adoption of progressive jurisprudence on the absolute prohibition of torture and ill-treatment. ■

“ Veuillez trouver au travers de mon présent courriel toute notre gratitude et toute notre reconnaissance pour tout votre soutien tant moral que financier durant cette dure épreuve que ma famille et moi avons commencé à traverser depuis le mois de décembre 2008 jusqu'à ce jour. L'implication de l'OMCT ... dans la défense de notre cas nous a été d'un inestimable apport et nous ne serons l'oublier.

Enfin le «Home Office» n'a pas estimé nécessaire de faire appel au niveau de la cour suprême, et m'a convoqué hier vendredi 6 novembre au «Home Office» à Liverpool pour retirer mon statut d'immigration en qualité de réfugié octroyé par le gouvernement britannique pour une période initiale de 5 ans à dater du 02 octobre 2009. Je suis donc autorisé à entamer les démarches relatives au regroupement familial aussitôt que possible.

Nous vous en sommes sincèrement gré; à l'OMCT ... pour votre solidarité car nous pouvons enfin espérer commence à bâtir une nouvelle vie après que nous ayons perdu ce que nous avons bâti au prix de tant de sacrifices et d'abnégation. De tout cœur, merci. ”

Victim, Democratic Republic of the Congo, November 2009.



³ External evaluation of the project *Promotion of Justice and the Rule of Law by Strengthening the Contributions of NGOs to the Work of the Treaty Bodies*, Evaluanda, 5 October 2009, p. 35 (French original).

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UN Conventional Mechanisms

Submission, in partnership with NGOs in the field, members and non-members of the SOS-Torture Network, of:

- 5 alternative reports to the following UN Treaty Bodies: Committee against Torture (4 reports on Colombia, Israel, Nicaragua and the Philippines) and Committee on Economic, Social and Cultural Rights (1 report on Brazil).
- 2 information notes to the UN Committee on the Elimination of Discrimination against Women (July 2009) and the Committee against Torture (February 2009 and update in September 2009) on discrimination and domestic violence against women (notably migrant women) in Switzerland and 1 information note, submitted by the Observatory, to the UN Committee on Economic, Social and Cultural Rights on the situation of defenders of economic, social and cultural rights in the Democratic Republic of the Congo.

Participation of representatives of 10 national NGOs (Brazil, Colombia, Israel, Nicaragua and the Philippines) in the sessions of the UN Committee against Torture (including in the formal briefing of the experts) and of the Committee on Economic, Social and Cultural Rights, and the holding of 2 press conferences in Geneva and in Bogota on the examination of Colombia.

Carrying out of 5 follow-up missions to Indonesia (February 2009), Tunisia (May 2009), Macedonia (May 2009), Nicaragua (June 2009) and Kenya (June 2009) and of 2 preparatory missions to Brazil (February 2009) and the Philippines (March 2009), either in order to prepare the drafting and submission of alternative reports or to follow up the implementation of recommendations of UN Treaty Bodies. In Kenya:

- A one-day training workshop (29 June 2009) entitled *The follow-up and implementation of concluding observations of the UN Committee against Torture with regard to Kenya* was held, with the participation of 21 representatives of 15 Kenyan NGOs and the National Human Rights Commission of Kenya.
- An OMCT staff member spent 3 months on Nairobi where she participated – alongside the national partners – in lobbying the Kenyan authorities concerning the implementation of the recommendations of the UN Committee against Torture and the Committee on Economic, Social and Cultural Rights.

Interventions (2) in the framework of the ninth and tenth Inter-Committee Meetings concerning the participation of NGOs in the work of the Treaty Bodies, follow-up to conclusions and recommendations, and the relationship between the Treaty Bodies and the Universal Periodic Review.

UN Non-Conventional Mechanisms

In the framework of the Universal Periodic Review, monitoring the examination of 4 countries (Colombia, Jordan, Mexico and Nicaragua) by means of parallel events (Colombia and Jordan), joint interventions (Mexico) and a joint report (Nicaragua) carried out in close partnership with the members of the SOS-Torture Network and OMCT's partners.

Interventions (17) in the framework of the UN Human Rights Council on different items of its agenda falling within the mandate of OMCT and participation in interactive dialogues with the UN Special Rapporteur on torture, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers. Organisation and facilitation of parallel events on human rights defenders, the rights of the child and an assessment of the 15 years of the mandate of the UN Special Rapporteur on violence against women.

Intervention in the framework of the sixteenth Annual Meeting of Special Rapporteurs, Representatives, Independent Experts and Chairpersons of Working Groups of the UN Human Rights Council on item VIII of its agenda, "Consultation with Stakeholders" (June 2009). ■

What Strategy to Promote Respect for the Absolute Prohibition of Torture?

One of the fundamental objectives of OMCT remains the preservation and strengthening of the international and national human rights norms and mechanisms, including the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. In pursuing this goal, OMCT has endeavoured to collaborate with the UN mechanisms created for this purpose, that is the Treaty Bodies charged with monitoring the application by the States parties of the obligations flowing from the conventions, the Special Procedures established by the now-defunct Commission on Human Rights and afterwards by the Human Rights Council, and finally, the Universal Periodic Review created by the Council.

The year 2009 saw the tendencies observed in 2008 become more pronounced: increased politicisation of the Human Rights Council; obstacles repeatedly put in the way of the Special Procedures in seeking to carry out their mandates; and constraints imposed on NGOs, whose independent voices are having ever-greater difficulty in being heard.

Universal Periodic Review: the Reasons for Disappointment

At the end of the first cycle of the examination of the States Members of the United Nations, we are obliged to conclude that the Universal Periodic Review has far from kept its promises, if only in terms of a "universal" examination. The purpose of this procedure was to avoid the selectivity of which the Commission stood accused in terms of the attention given to different situations prevailing in the world. If by itself the fact of ensuring that the examination of every country, each in turn and according to an identical procedure, would offer a priori insurance against non-discrimination, the decision to entrust to a political body, comprised of ambassadors, the responsibility for undertaking this examination limits considerably the possibility for real equality of treatment. In fact, the Council, like the Commission before it, is composed of groups of countries with different

degrees of influence that are assured of an automatic majority in case of confrontation with the *Like-Minded Group*; this group is formed mainly by African and Asian countries and is able, when it votes, to impose its point of view, even if this manifestly does not correspond to objective reality.

What's more, if one considers that the country being examined can choose from among the recommendations addressed to it by the members of the Council those it agrees to implement and those it rejects, even when the recommendations simply echo the ones adopted by the Treaty Bodies, it becomes clear that the Universal Periodic Review is more a diplomatic negotiation than an objective evaluation of the human rights situation in the country concerned. In fact, the only way of obtaining a more or less constructive attitude and a minimum of cooperation from a country is to be conciliatory in order to maintain a dialogue which one hopes will bear fruit. Furthermore, the countries being examined must be prepared to hear the criticisms that may be directed at it. In the case of Iran, as one might expect, the regime refused to admit even the mildest challenge, presenting itself as the victim of a West seeking domination by imposing its laws and culture. What is more, at the end of the debate, the Iranian delegation rejected the more than 20 recommendations from the Western countries, concerning, in particular, halting executions, especially executions of minors; authorisation for the UN Special Rapporteur on torture to undertake a mission to Iran to visit detention sites; guarantees of the independence of the judiciary; and respect for freedom of expression.

The Treaty Bodies: Guardians of the Temple

In this context, collaboration with the Treaty Bodies is crucial in OMCT's struggle to maintain respect for the absolute prohibition of torture and ill-treatment.

Since 1992, when we submitted our first report to the UN Committee against Torture, OMCT has tried to bring local NGOs together to submit, jointly with the International Secretariat or on their own, alternative reports offering a different take on the information provided by the State being examined. Too often, the States parties to an international legal instrument provide a truncated image of reality, failing to ad-

dress certain sensitive points (such as the effective implementation of national mechanisms designed to prevent and eradicate torture and other ill-treatment and to pursue the perpetrators, thereby guaranteeing justice and the rule of law) and "forget" to disseminate and follow up the recommendations adopted by the Treaty Bodies.

The increase in and diversification of the information received by the different committees can, to a large extent, be credited to the efforts of OMCT over the last 15 years. The Organisation can also be proud of having "popularised" mainstreaming of women's and children's concerns, systematising the carrying out of missions (preparatory as well as follow-up) in the field and strengthening national NGOs' capacity to exert pressure on the State concerned to implement the conclusions and recommendations of the Treaty Bodies.

The external evaluation of the project *Promotion of Justice and the Rule of Law by Strengthening the Contributions of NGOs to the Work of the Treaty Bodies* clearly highlighted the value added of the approach adopted by OMCT.

"In terms of the effects on the capacities of the national NGOs themselves, we observe that:

- *The preparation of other alternative reports is entirely possible for 73% of the national NGOs, the functioning of the HRC and CAT committees having become clearer for 87% of them.*
- *The integration of the women and children dimension, a priority for OMCT, has been understood by, respectively, 71% and 80% of the NGOs.*
- *Strengthening of the capacity to lobby the international institutions (67%), work in collaboration with other national NGOs (73%), [and] possible future access to other human rights mechanisms (53%) illustrate the added value of the project.*
- *The project has had a very strong impact on the relations and the collaboration practices of the responding NGOs with other similar national organisations (100% of respondents).*

These effects are far from negligible and illustrate the soundness of the project's concept and of the approach followed by the team in charge: OMCT always tries to avoid taking excessive and directive leadership, opting for a flexible position according to the capacities of

*the respective NGO national partner. In other words, and outside the formal phases of the project (organisation of missions, preparing alternative reports, etc.), the degree of involvement by OMCT is modulated in accordance with the experience of its partners, leaving room for optimal development of the capacities of the partners. The insistence of OMCT on developing specific lines of action linked to the rights of women and children also meets with strong approval."*⁴

Wishing to adapt to the greatest possible extent to the structural and procedural evolution of these mechanisms, OMCT has also put itself in a strong position by submitting follow-up notes and intervening regularly in the framework of the lists of issues to be addressed that are drawn up by the respective committees before their examination of a State party's report. These contributions concerned dozens of countries in all the regions of the world, with very different political and legal systems and where the human rights situation is sometimes difficult and national NGOs are persecuted.

Challenges for the Coming Years

The UN Human Rights Council, as it has been defined, potentially offers a framework for the improvement of the promotion and protection of human rights. The difficulties or the weaknesses of its action are probably more a political problem than a structural matter. Concretely, the role of State representatives charged with adopting decisions in accordance with the instructions received from their capital and that of independent experts, from whom one expects the greatest possible objectivity concerning the situations prevailing in each country and a clear statement of the deficiencies of States with regard to their international obligations in the field of human rights, must be clarified in an atmosphere of mutual respect. At present, besides the point already mentioned concerning examination by ambassadors of the situation prevailing in the countries examined under the Universal Periodic Review, increasing pressure is being exercised by certain countries to limit the experts' power to act and sometimes to impose on them unacceptable restraints that hinder them from playing their full role.

⁴Ibid., p. 4.



“ Thanks for your support. I am grateful for your assistance and help. ”

Greetings to the Observatory from a member of an Uzbek human rights organisation, following her temporary relocation to neighbouring Kyrgyzstan, because of the increasing threats faced by civil society in the run-up to the elections held in Uzbekistan in December 2009.

“ Solo le escribo (...) para dar una buena noticia. Recién nos notificaron que desde el viernes pasado la Oficina de Asilo y Refugio (...) aceptó nuestra solicitud de asilo. Fue en menos de un mes, cuando el plazo que establece la ley es de dos meses. Así que estamos muy contentos porque ya pasamos la primera etapa del proceso. Muchas gracias por su apoyo, esto no hubiera sucedido si ustedes no nos hubieran ayudado a salir (del país). Por lo pronto, mis niños ya empezaron a ir a la escuela y están muy contentos porque también empezaron a participar en otras actividades. A mi hijo E. lo invitaron a participar en un equipo de fútbol y lo eligieron como portero. A mi hija V. le están ayudando a encontrar un lugar donde den clases de teatro para niñas de su edad... Y P., la más pequeña, hoy fue a su primer día de clases. ”

Latin-American journalist, August 2009

Maintaining and Reinforcing International and National Human Rights Standards and Bodies, Including the Absolute Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The March 2010 (thirteenth) session of the Council, which continued the activities and documents prepared by the Special Procedures in 2009, witnessed a significant and disturbing confrontation. A joint study was carried out on secret detention in the context of countering terrorism by four mechanisms particularly concerned with this question: the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture, the Working Group on arbitrary detention and the Working Group on enforced or involuntary disappearances.⁵ The study, whose conclusions include a series of measures to be adopted without delay, is based on a questionnaire sent to all States Members of the United Nations, 44 of which replied, and is supplemented by 24 files of individuals whose rights were seriously violated in this context.

In December 2009 and January 2010, Pakistan wrote, on behalf of the Organisation of the Islamic Conference, and Nigeria wrote, on behalf of the Group of African States, letters in which they asserted that the mandate of the experts concerned did not permit them to undertake such research, that the UN should not publish this study and that the UN Human Rights Council should not examine it. This attack was renewed in February 2010 by the Russian Federation and during the session itself, a decision was taken to postpone the examination of the document. In addition to the countries already mentioned, Zimbabwe seized on this study as a pretext to attack the UN Special Rapporteur on torture.

This refusal by certain States to allow mechanisms of the Commission on Human Rights – and we can agree that this is one area of progress achieved by the Commission on Human Rights that it is the duty of the Human Rights Council to protect – is to be seen in parallel to the nonchalance with which many countries treat the urgent communications on individual cases sent to them. Thus, Manfred Nowak, UN Special Rapporteur on torture, has indicated that less than one third of the duly documented cases that he submitted to States were followed up by them. In other words, about 70% of the urgent communications on which this Special Rapporteur requested clarification from States remained without any reply.

In the public debate, the UN Special Rapporteur on torture did not hide the fact that certain governments, such as those of China, Jordan, Indonesia, Equatorial Guinea and Kazakhstan, had subjected him to intense surveillance and made various attempts to obstruct

his independent fact-finding by intimidating witnesses and detainees. In his presentation, Manfred Nowak did not hesitate to appeal to those countries that were impeding the work of the international mechanisms by trying to prevent independent voices from being heard. He even affirmed that rather than think about putting into place a code of conduct for NGOs, we would perhaps need a code of conduct for Member States. In his view, if the tendency that he had observed were to continue, the Council would lose credibility and might be discredited. He asserted that the billions of human beings who were suffering from poverty, violence and other gross violations of human rights in all the regions of the world deserved a different commitment to human rights than the one prevailing at present in the Council.⁶

If OMCT can congratulate itself for having facilitated the access of victims and NGOs in the field to the Treaty Bodies and the Special Procedures, it cannot today remain indifferent to the pressures being exerted on these institutions. One of the tasks of any independent NGO is to strengthen the bodies that, over the course of the last decades, have been set up to protect potential victims against human rights violations and to encourage States to clearly demonstrate the political will to respect their international obligations, including when the independent experts cast light on their failings.

This task is not limited to interventions within the UN but requires, as we have done in 2009, our commitment to strengthening the regional bodies established to respond to the same problems. Europe, the Americas and, most recently, Africa have provided themselves with conventions and control mechanisms which carry with them means of intervening to promote fundamental rights and securing their concrete implementation in the countries that have signed them.

It is our firm hope that all countries in all regions will make greater efforts to respect the human rights and fundamental freedoms of all persons under their jurisdiction, without exception. ■

⁵United Nations document A/HRC/13/42.

⁶Intervention by Manfred Nowak, UN Special Rapporteur on torture, thirteenth session of the UN Human Rights Council, 8 March 2010, Geneva.

Annual Accounts

*Report from the Auditor for the Annual Accounts ending on December 31, 2009
to the
Ordinary General Assembly of the "World Organisation Against Torture"
Association
Geneva*

Dear Sirs,

Upon request of your Executive Council and in compliance with article 19 of the statutes of your Association we carried out the auditing of the annual accounts (statements of accounts, balance sheet and annexes) of the "World Organisation Against Torture" Association for the period ending on December 31, 2009.

The responsibility for establishing the annual accounts lies with the Executive Council of the Association, whereas our mission consists of controlling these accounts. We testify that we fulfil the legal demand of qualification and independence.

Following our monitoring, we are able to state that:

- The statement of accounts and balance sheet are in conformity with accounting.
- Accounting is properly kept.
- Assets and liabilities are in accordance with the law and statutes.

In conclusion, we recommend the approval of the annual accounts stating an excess of expenditures for 2009 of CHF 18'093, 77 and taking into account the amount carried forward at 1 January 2009, an excess of expenditures in the balance sheet of CHF 12'347,15.

COFIDA S.A.
Michel BLANCHUT Réviseur-agréé
Pierre-Yves COTS Réviseur-agréé

April 27 2010, COFIDA SA, Carouge

Enclose : Annual accounts 2009
(Statements of accounts, balance sheet and annexes)

Balance Sheet on 31 December 2009

OMCT - Organisation Mondiale Contre la Torture - Genève / OMCT - World Organisation Against Torture - Geneva
Compte général / General account
Monnaie : CHF / Currency : CHF

BILAN AU 31 DECEMBRE 2009 (avec comparatif 2008) / BALANCE SHEET ON 31 DECEMBER 2009 (with 2008 comparative)

		ANNEE 2009 / YEAR 2009	ANNEE 2008 / YEAR 2008
ACTIF / ASSETS			
LIQUIDITES / CASH		1'926'236.95	2'244'790.81
Caisses / Cash funds	1'333.28		2'598.31
CCP / Postal cheque account	88'733.33		108'098.22
Banque Lombard et Odier / Bank Lombard & Odier	1'532'621.37		1'804'960.53
Banque UBS / Bank UBS	303'548.97		329'133.75
AUTRES ACTIFS / OTHER ASSETS		100'026.60	207'628.39
Impôts anticipés / Withholding tax recoverable	1'022.19		669.79
Actifs transitoires / Other assets	13'280.49		36'022.92
Garanties / Guarantees	10'468.20		10'468.20
Débiteurs et subventions à recevoir / Debtors and grants to be received	75'255.72		160'467.48
TOTAL DE L'ACTIF / TOTAL ASSETS		2'026'263.55	2'452'419.20
PASSIF / LIABILITIES			
CREANCIERS / CREDITORS		1'400'760.70	1'936'672.58
Créanciers / Creditors	200'512.96		505'667.16
Frais échus / Other liabilities	141'072.61		122'660.67
Subventions et produits reçus d'avance / Grants paid in advance	1'059'175.13		1'308'344.75
PROVISIONS / OTHER LIABILITIES		637'850.00	510'000.00
Provision Assemblée quadriennale / Provision for Quadriennial Assembly	150'000.00		0.00
Provision Assemblée biennale / Provision for Biennial Assembly	157'850.00		150'000.00
Provision Conseil exécutif / Provision for Executive Council	50'000.00		50'000.00
Provision garantie sur salaires et charges sociales / Provision for salaries and social charges	250'000.00		250'000.00
Provision Formation / Provision for Training	30'000.00		30'000.00
Provision Violence contre les femmes / Provision for Violence against Women	0.00		30'000.00
COMPTE DE RESULTAT / RESULTS		-12'347.15	5746.62
Report au 1er janvier 2009 / Carried forward at 1 January 2009	5746.62		-15'517.69
Attribution de la Fondation de soutien à l'OMCT / Contribution from the Foundation supporting OMCT	0.00		0.00
Excédent de dépenses de l'exercice / Excess of expenditures	-18'093.77		21'264.31
TOTAL DU PASSIF / TOTAL LIABILITIES		2'026'263.55	2'452'419.20

Genève, le 29 mars 2010 / Geneva, 29 March 2010

Statement of Income and Expenditure

OMCT - Organisation Mondiale Contre la Torture - Genève / OMCT - World Organisation Against Torture - Geneva
Compte général / General account
Monnaie : CHF / Currency : CHF

COMPTE DE RECETTES ET DEPENSES DE L'EXERCICE 2009 / STATEMENT OF INCOME AND EXPENDITURE ON 31 DECEMBER 2009

ANNEE 2009 / YEAR 2009

RECETTES		2'875'989.61
Assistance d'urgence aux victimes de la torture / Urgent Assistance to Victims of Torture	160'602.00	
Droits de l'enfant / Children's Rights	99'370.31	
Violence contre les femmes / Violence against Women	9'842.83	
Défenseurs des droits de l'homme - Observatoire / Human Rights Defenders - Observatory	729'656.41	
Campagnes d'urgence / Urgent Campaigns	78'823.55	
Suivi des mécanismes de protection / Monitoring of Protection Mechanisms	56'181.46	
Division opérations (gestion) / Operations Division (management)	58'823.55	
TOTAL DIVISION OPERATIONS / TOTAL OPERATIONS DIVISION	1'193'300.11	
Droits économiques, sociaux et culturels / Economic, Social and Cultural Rights	409'330.44	
Formation / Training	67'896.43	
Division recherche & développement (gestion) / Research and Development Division (management)	58'823.50	
TOTAL DIVISION RECHERCHE ET DEVELOPPEMENT / TOTAL RESEARCH AND DEVELOPMENT DIVISION	536'050.37	
Division recherche de fonds & communication (gestion) / Fundraising and Commission Division (management)	58'823.50	
TOTAL DIVISION RECHERCHE DE FONDS ET COMMUNICATION / TOTAL FUNDRAISING AND COMMUNICATION DIVISION	58'823.50	
Cotisations des membres du réseau / Membership fees	7'555.75	
Dons "Club des Cent" / Donation "Club des Cent"	10'100.00	
Contributions privées / Private donations	8'644.95	
Soirées - Mailings / Gala evenings - Mailings	42'395.23	
Bulletins et produits divers / Bulletins and various donations	12'065.80	
Subventions fédérales, cantonales, communales / Federal, cantonal, communal grants	188'900.00	
Subventions gouvernementales européennes / Grants from European governments	571'739.90	
Subventions de fondations et autres / Grants from foundations and others	246'414.00	
TOTAL EXTENSION, DEVELOPPEMENT DU RESEAU, REPRESENTATION EN DEHORS DU SIEGE ET GESTION / TOTAL EXTENSIONS, DEVELOPMENT OF THE NETWORK, REPRESENTATION OUTSIDE GENEVA HEADQUARTERS	1'087'815.63	
DEPENSES		-2'900'845.94
Assistance d'urgence aux victimes de la torture / Urgent Assistance to Victims of Torture	210'206.80	
Droits de l'enfant / Children's Rights	140'982.89	
Violence contre les femmes / Violence against Women	71'896.15	
Défenseurs des droits de l'homme - Observatoire / Human Rights Defenders - Observatory	611'402.77	
Campagnes d'urgence / Urgent Campaigns	230'967.31	
Suivi des mécanismes de protection / Monitoring of Protection Mechanisms	122'790.20	
Division opérations (gestion) / Operations Division (management)	73'827.02	
TOTAL DIVISION OPERATIONS / TOTAL OPERATIONS DIVISION	1'462'073.14	
Droits économiques, sociaux et culturels / Economic, Social and Cultural Rights	445'127.24	
Formation / Training	75'920.60	
Conférence et réunions statutaires / Conference and statutory meetings	222'077.47	
Division recherche et développement (gestion) / Research and Development Division (management)	44'572.12	
TOTAL DIVISION RECHERCHE ET DEVELOPPEMENT / TOTAL RESEARCH AND DEVELOPMENT DIVISION	787'697.43	
Promotion	303'304.07	
Communication	7'746.46	
Division recherche de fonds & comm. (gestion) / Fundraising and Comm. Division (management)	57'861.80	
TOTAL DIVISION RECHERCHE DE FONDS ET COMMUNICATION / TOTAL FUNDRAISING AND COMMUNICATION DIVISION	368'912.33	
Extensions et développement du réseau / Extensions and development of the network	66'255.32	
Représentation en dehors du siège / Representation outside Geneva Headquarters	38'712.03	
Gestion / Management	177'195.69	
TOTAL EXTENSION, DEVELOPPEMENT DU RESEAU, REPRESENTATION EN DEHORS DU SIEGE ET GESTION / TOTAL EXTENSIONS, DEVELOPMENT OF THE NETWORK, REPRESENTATION OUTSIDE GENEVA HEADQUARTERS	282'163.04	
RESULTAT AVANT INTERETS CREANCIERS ET AUTRES PRODUITS / RESULTS BEFORE CREDITORS INTERESTS AND OTHER INCOMES		-24'856.33
INTERETS CREANCIERS ET AUTRES PRODUITS / CREDITORS INTERESTS AND OTHER INCOMES		6'762.56
Intérêts créanciers / Creditors interests	5'219.83	
Autres produits / Other incomes	1'542.73	
EXCEDENT DES DEPENSES DE L'EXERCICE / EXCESS OF EXPENDITURES		-18'093.77

Genève, le 29 mars 2010 / Geneva, 29 March 2010

Non-governmental grants

Catholic Committee
against Hunger and for Development

Diakonisches Werk

Fonds Mécénat SIG

Greendale Charitable Foundation

Human Rights at Work Foundation

ICCO

Karl Popper Foundation

MacArthur Foundation

Misereor

Oak Foundation

Open Society Institute

Tawain Foundation for Democracy

Tides Foundation

Government grants

Finland

Liechtenstein

Switzerland

Sweden (Sida)

Grants from international or intergovernmental organisations

European Commission

United Nations Voluntary Fund for Victims of Torture

Cantonal grants (Switzerland)

Geneva

Municipal grants (Switzerland)

Bottmingen

Cartigny

Choulex

Colley-Bossey

Erlenbach

Geneva

Huenenberg

Jussy

Lausanne

Meinier

Plan-Les-Ouates

Sion

Troinex

Others

SOS-Torture Network membership fees

Private donations - Club des Cent

OMCT extends its sincere thanks to all the contributing individuals, institutions and governments for their support and generosity.

OMCT Bodies

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Deputy Secretary-General Anne-Laurence Lacroix

Operations Division Anna-Lena Svensson-McCarthy (director)

Urgent Campaigns Alexandra Kossin (coordinator) - Clemencia Devia Suarez

Urgent Assistance to Victims of Torture Orlane Varesano (coordinator)

Children's Rights Cécile Trochu Grasso (coordinator)

Human Rights Defenders/Observatory for the Protection of Human Rights Defenders

Delphine Reculeau (coordinator), Carlos Pampín García (project officer),

Martina Schmidt ("Defend the Defenders" project coordinator)

Violence against Women Mariana Duarte (coordinator)

United Nations Treaty Bodies Claire Britsch

Research and Development Division Michael Miller (director)

Economic, Social and Cultural Rights Tom McCarthy (special adviser)

Francesca Restifo - Jastine Barrett

Fundraising and Communication Division

Administration Halima Dekhissi - Claudine Fäsch - Kurt Hofstetter - Eliane Rau-Reist

Webmaster Sébastien Courvoisier

IT Support Alain Gross

Accounting Marc Aebersold and Marinella Gras-Michiellini (NDC Conseil)

OMCT-Europe

European Coordinator Guro Engstrøm Nilsen

Publications and Reports

Publications and reports

Economic, Social and Cultural Rights

- *Addressing the Economic, Social and Cultural Root Causes of Torture in the Philippines*, submitted in April 2009, published in English and Pilipino.

UN Committee on Economic, Social and Cultural Rights

- *The Criminalisation of Poverty*, a report on the economic, social and cultural root causes of torture in Brazil, submitted in May 2009, published in English and Portuguese.

Human Rights Defenders / Observatory for the Protection of Human Rights Defenders

Annual Report

- *Steadfast in Protest* – 2009 Annual Report of the Observatory for the Protection of Human Rights Defenders, published in June 2009 in French, English, Spanish, Arabic and Russian.

Missions Reports

- *Mexico: Defensores de derechos humanos frente a la mutación política y la violencia - Misión Internacional de Investigación*, February 2009, published in Spanish.
- *France: Délit de solidarité - Stigmatisation, répression et intimidation des défenseurs des droits des migrants*, June 2009, published in French.
The summary of the conclusions of the mission was published in English and Spanish.
- *Belarus: Public Human Rights Association «Nasha Viasna» v. Ministry of Justice of Belarus* Judicial Observation Mission Report, September 2009, published in English.
- *Russian Federation: Ramzan Kadyrov v. Oleg Orlov and The Human Rights Centre «Memorial»* Judicial Observation Mission Report, December 2009, published in English and French.

United Nations Treaty Bodies

UN Human Rights Committee

- *La situation des droits de l'homme en Tunisie*, submitted in March 2008, published in 2009 in Arabic and French.
- *La situación de los derechos humanos en Nicaragua*, submitted in October 2008, published in 2009 in Spanish and English.

UN Committee against Torture

- *The Human Rights Situation in Macedonia*, submitted in May 2008, published in 2009 in English and Macedonian.
- *The Human Rights Situation in Indonesia*, submitted in May 2008, published in 2009 in English and Bahasa Indonesian.
- *Violence Against Women and Children in Kenya*, submitted in May 2008, published in 2009 in English and Kiswahili.
- *Implementation of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Israel*, submitted in May 2009, published in 2009 in English, Hebrew and Arabic.
- *Informe alternativo sobre tortura, tratos crueles, inhumanos o degradantes, Colombia 2003-2009*, submitted in November 2009 by the Colombian Coalition against Torture, published in 2009 in Spanish.

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